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Analysis

Domestic Violence and Mental Health Issues in Court

Whether a domestic violence victim is representing herself or being represented by an attorney, the goal is the same: Convince the court of her own veracity and be skeptical of the other side. How is that possible when a pejorative mental health label may have been pinned onto her? In their Family Law column, Daniel Pollack and Toby Kleinman examine ways for an accuser to bolster credibility.

By **Daniel Pollack and Toby Kleinman** | November 04, 2020 at 11:30 AM



Toby Kleinman and Daniel Pollack

Every case depends upon evidence and credibility. It is well known that domestic violence can cause Post-Traumatic Stress Disorder (PTSD) and depression. Evaluators who are not well-trained in domestic violence may misdiagnose PTSD. Frequently, untrained forensic evaluators may misdiagnose domestic violence as borderline personality disorder (BPD) or paranoia. As well, during a marriage people may go for marriage counselling and may not realize the extent to which battering exists, especially if it is psychological, emotional battering. They may blame themselves. At some point they may recognize the battering but it may not have been raised during counselling. When the couple finally comes to court the abuser may raise the victim's mental health as an issue.

Ironically, there are times when victims go to marriage counselling with their abuser and the abuser requires them to commit in advance that they will not discuss abuse. Thus, those records will not reveal any concerns of domestic violence. Despite the problems associated with records, an entire counselling history should be disclosed at the outset of litigation, even where the victim has not disclosed the abuse. This helps to protect a victim's credibility.

Noteworthy, reliability and credibility are not interchangeable concepts. Credibility is principally concerned with the veracity of the witness. The witness may be credible to a court in the sense that the court believes the witness is trying her¹ best to be truthful. Reliability speaks more to the ability of the witness to accurately recall and testify to events.

The 'halo effect' is the idea that global positive inferences about a person extend into judgements about other personality or biological attributes of that person. Movie stars are perfect examples. They are attractive and charismatic, so we

assume their political assessments are sound. Applied to domestic violence cases, abusers may look harmless, be articulate, and well-dressed. As a consequence, people may ascribe to such a person an extra measure of credibility. Conversely, an accuser does not have to be lying to be found not credible. There may be factors relating to their victimization that make their testimony seem less credible. Yet, the victim of abuse is often in a Catch-22. Their testimony may be accurate, but their credibility may be questioned because the abuser or an unqualified expert may aver that the victim has mental health problems, and that the accuser's mental health issues are affecting her perception of past events and present-day judgment.

Whether a domestic violence victim is representing herself or being represented by an attorney, the goal is the same: Convince the court of her own veracity and be skeptical of the other side. How is that possible when a pejorative mental health label may have been pinned onto her?

Like every individual case, our court system rests on the principle of credibility. A victim of abuse must appreciate the dynamics and reality of courtroom procedures and prepare herself to tell the whole truth.

If a mental health label has been attached, it is critical to prepare for direct and cross examination. Understand and anticipate the multiple ways a witness can be challenged and impeached. Preparing for cross-examination means being able to blunt its impact through the ability to answer questions. It also means being able to rehabilitate the witness where confusion may exist after cross-examination. On both fronts, the mental health of a domestic violence victim should be fully known.

Just like the abuse itself, victims of abuse who are experiencing mental health issues as a result of abuse may be angry or feel shame. This is not easy. While seemingly elementary, to bolster the victim's credibility, the attorney must ensure that the victim

- Always answers questions truthfully.
- Asks for clarification if the question is not understood.
- Addresses her responses directly to the court.
- Acknowledges if she cannot remember something.
- Is thoroughly familiar with all the evidence.
- Never interrupts someone who is speaking.

The National Center on Domestic Violence, Trauma & Mental Health, [asserts](#) that “Research conducted over the past 30 years has consistently demonstrated that being victimized by an intimate partner increases one's risk for developing depression, PTSD, substance abuse, and suicidality as well as a range of chronic health conditions...” Research has also shown that once out of the abusive relationship these issues can diminish significantly.

An attorney defending an abuser will try to undermine the credibility of the victim's case, other witnesses, or establish that the accuser misread the defendant's intentions and actions. In other words, the defense attorney will try to show that the accused did not commit the actions the victim says were committed, nor did the accused have any intent to be harmful. To undermine the victim's credibility, all it takes is one or two mistakes, or to appear inconsistent. Any damage to credibility is like a slow leak in a tire. It alone may not ruin an accuser's case, but it will erode her credibility.

Daniel Pollack is a professor at the School of Social Work at Yeshiva University in New York. He has been retained as an expert witness in more than 30 states. **Toby Kleinman**, a New Jersey attorney and partner at Adler & Kleinman, has litigated domestic violence, child custody and abuse cases, and has been a consultant in cases dealing with domestic violence and child abuse in over 45 states. They can be reached at dpollack@yu.edu and toby@adlerkleinman.com, respectively. This column is written for general informational purposes only and should not be construed as NY-specific legal advice.

¹ For ease of writing, and because most victims of domestic abuse are women, this article identifies the victim of abuse as “she,” “wife,” or similar terms. Similarly, because most batterers are men, masculine pronouns are used.