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SURVIVORS REPRESENTING SURVIVORS: SHARED EXPERIENCE AND IDENTITY IN DIRECT SERVICE LAWYERING

Kelly Jo Popkin

I. INTRODUCTION¹

The statistics regarding the prevalence of gender-based violence in the United States suggest that a significant percentage of attorneys, including those working professionally on this issue, are survivors themselves.² In fact, many zealous advocates are drawn to direct service work because of their personal experiences. (see Part 2, IV. Effects on outlook and perception, ii. Empathy and passion, *infra*). Though much has been written on legal ethics in theory and in practice, there is very little scholarship on the ethical dilemmas that might arise when a survivor of gender-based violence

¹ This survey was conducted in conjunction with the Domestic Violence and Family Law Clinic at the WilmerHale Legal Services Center of Harvard Law School. Many thanks to clinical supervisor Stephanie Davidson, Esq. for the original idea, as well as the brilliant insights and guidance she provided along the way.

² See Joan S. Meier, *Notes from the Underground: Integrated Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1351 (1993) (“[A]ssuming an incidence rate of at least one incident in 25% of households, ‘at least four of the fifteen or more actors in an average criminal action—jurors, judge, and attorneys—probably will have experienced or committed at least one domestic assault.”). For statistics on the prevalence of gender-based violence in the United States, see “Violence Against Women in the United States: Statistics”, National Organization for Women, available at <http://now.org/resource/violence-against-women-in-the-united-states-statistic/> (Last visited Dec. 4, 2016).

represents a fellow survivor of a similar experience. This survey was created to address this gap.

The questions follow two divergent themes. First, the survey gauges the effects that personal experiences of gender-based violence may have on the delivery of quality direct legal representation for survivors of gender-based violence. Instead of tracking trial outcomes or other tangible legal “wins,” these questions assess metrics of quality through empathy, professional distance, client-centered practice, and other commonly regarded ideals within the practice of direct service lawyering for under-served communities. The survey also gauges the lasting effect that this work may have on the attorneys themselves, in both their approach to lawyering and their perception of gender-based violence on an individual, local, and systemic scale.

The finalized survey was approved by the Harvard Human Research Protection Program (“IRB”) on May 31, 2016, and disseminated to over 400 direct service nonprofits that have practices dedicated to domestic violence survivors and/or victims of sexual assault. We received 163 responses total, of which 108 were completed in full. Through the use of quantitative and qualitative questions, the survey gathered data reporting the ethical implications, general challenges, and potential benefits that may exist when attorneys working in the field of gender-based violence identify with their clients on a personal level, due to their personal experiences with gender-based violence. As a whole, this group is referred to as “survivor-attorneys” throughout the survey analysis and discussion. Attorneys who work in this field who have not identified themselves as having personally experienced gender-based violence are referred to as “non-survivors.”

II. QUANTITATIVE RESPONSES

The following is a summary and analysis of findings for the survey's quantitative questions. Questions were labeled "quantitative" if they were accompanied with a predetermined set of response choices, including multiple choice and scale questions. Certain quantitative responses were then reexamined in light of trauma levels, with Question 8 being used as a key indicator (i.e., the results of Question 8: "While working on a case involving gender-based violence, have you ever had upsetting memories of your own personal experience with gender-based violence? Episodes may include being "triggered" or having "flashbacks," but could also simply be having distressing recollections about a painful time."). For example, Question 12 asks survivor-attorneys to rank the effect of their personal experience of gender-based violence on their ability to cultivate professional distance between themselves and their clients. The results, which scaled from "significant negative effect" to "significant positive effect," were subdivided into categories based on whether the respondent had never, sometimes, frequently, or always experienced flashbacks while working in this field. Though the comparisons use the shorthand term "flashback," it is important to note that the data pulled from Question 8 encompasses any and all other forms of triggering or mental distress within its ambit.

A. IMPACT OF WORK ON SURVIVOR-ATTORNEYS

Of the survivor-attorneys who responded to the survey (48% of total respondents), 65% expressed that they had experienced one or more instances of gender-based violence prior to their employment as a direct service attorney representing fellow survivors. 21% expressed that they underwent a personal experience of domestic

violence both before their involvement in this work *and* after. Because only 14% of survivors working in this field experienced gender-based violence after they had already been employed in the field, it could be surmised that the remaining 76% of survivors might have been motivated to enter this field, at least in part, by their personal experiences of domestic violence, sexual assault, or other forms of gender-based violence.

The survivor-attorneys were asked a series of questions that gauged their level of trauma and/or post-traumatic stress disorder (“PTSD”), and how often they experience the effects of this trauma while at work (Question 6: “Have you experienced secondary trauma, vicarious trauma, or mental distress while working with survivors?”). Secondary trauma was defined as “the presence of Post-traumatic stress disorder (PTSD) caused by at least one indirect exposure to traumatic material.”³ PTSD was described as “a pathological anxiety disorder resulting after exposure to a traumatic event” and is often characterized by flashbacks, recurring nightmares, depression, anxiety, hypervigilance, and/or emotional numbness.⁴ Vicarious trauma, also called compassion fatigue, was described as “a state of tension and preoccupation of the stories/trauma experiences described by clients.”⁵ Mental distress was defined as “a more generalized feeling of anxiety, anger, emotional withdrawal, or depression.” Though subjective experiences vary, secondary trauma is seen as the most acute of these three categories, followed by vicarious trauma, and mental distress. 30% of all survivors-attorneys

³ *Secondary Traumatic Stress*, The National Child Traumatic Stress Network, <http://www.nctsn.org/resources/topics/secondary-traumatic-stress> (last visited Dec. 4, 2016).

⁴ *Post-traumatic Stress Disorder*, Center for the Treatment and Study of Anxiety, Perelman School of Medicine at the University of Pennsylvania, http://www.med.upenn.edu/ctsa/ptsd_symptoms.html (last visited Dec. 4, 2016).

⁵ *Vicarious Trauma*, American Counseling Association, <https://www.counseling.org/docs/trauma-disaster/fact-sheet-9---vicarious-trauma.pdf?sfvrsn=2> (last visited Dec. 4, 2016).

admitted to feeling secondary trauma sometimes,” with just as many answering that they had never felt secondary trauma while at work. Vicarious trauma seems more common, with almost half of respondents answering that they experience vicarious trauma “sometimes” and 33% of respondents experiencing it “often.” Though mental distress was described as the least acute of the three traumatic responses, it was also the most common. All respondents experienced at least some amount of mental distress on the job, with 37% experiencing mental distress “often” and 21% experiencing it “very frequently.”

Survivor-attorneys were also asked if they had experienced “flashbacks,” “triggers,” or “distressing recollections” while working on a case related to gender-based violence. The vast majority of survivors (72%) “sometimes” experience these episodes and over 15% experience these upsetting memories at least half of the time. With only 12% of respondents insulated from the painful resurfacing of these memories, it appears that “distressing memories” are a significant and common occurrence among survivors working in direct service for survivors of gender-based violence. In spite of this, 70% of respondents have found the work to be beneficial in dealing with their personal experiences. A little over 11% found the work to be detrimental to their healing process, but no respondents found their work to be “very detrimental.” Similarly, when asked whether “professional work with survivors” has helped survivor-attorneys “to cope, heal, or understand” what they have experienced in their personal life, 43% reported a “slight positive effect” and 28% reported a “substantial positive effect.” Oddly enough, this work appears to have the strongest “healing” effect for respondents that experience the most severe level of flashbacks. In fact, the respondents in this group also tend to report “significant positive effects” of their experience on communication,

empathy, trauma-informed legal assistance, and client-informed legal practice.

B. IMPACT OF SURVIVOR-STATUS ON WORK

In the aggregate, survivor-attorneys working in this field appear to perceive their survivor status as an asset to their legal practice, even in the face of flashbacks, mental distress, and other traumatic episodes. Survivor-attorneys were asked to rate the extent to which their personal experience has impacted their delivery of several key components of successful direct service lawyering, including communication, empathy, trauma-informed legal assistance, client-informed practice, and professional distance. Out of all of these categories, professional distance was the only value negatively impacted by personal survivor experience. This could indicate that survivor-attorneys might have a more challenging time establishing distance because they relate so personally with their client's situation, or with the cause more generally. This claim is corroborated by the significant positive impact that personal experience of gender-based violence appears to have on empathy towards one's clients. Though potentially a mere correlation, establishing professional distance might be made more challenging when the empathy between survivor-attorneys and their clients is so strong.

Another correlation exists among severity of flashbacks and professional distance. 50% of individuals reporting having flashbacks "most of the time" report that their personal experience of gender-based violence establishes a "slightly negative effect" on their ability to cultivate professional distance between themselves and their client. For those who experience flashbacks "about half of the time," that number rises to 60%. Furthermore, 20% of those who reported flashbacks half of the time cite a "significant negative effect" on their ability to establish professional distance. Strangely, the other 50% of those who reported experiencing the most flashbacks claim that their

experience has a “significant positive effect.” Perhaps severe flashbacks may push some attorneys closer to their clients, but may drive others away as a way to insulate themselves from possible triggers.

Equally significant is the large percentage of survivor-attorneys who assert that their personal experience has a detrimental effect on their ability to interact with opposing parties. While 36% claim that their personal experience has had no effect on their interactions with opposing parties to their gender-based violence cases, 36% also stated that their personal experience had a deleterious effect on their ability to interact with these parties. In contrast, 28% of respondents claimed that it had a positive effect on their interactions with opposing parties, possibly because they understand how to interact with abusers and de-escalate antagonistic situations. The number of individuals that reported this negative effect may reflect the challenges of cultivating professional distance in casework that triggers traumatic memories or emotions.

The challenges of professional distance manifest not only within the attorney-client relationship, but also with other parties and the case more generally. When asked specifically about cultivating professional distance within the attorney-client relationship, responses were mixed. While 42% claimed that their personal experience with gender-based violence helped them maintain a professional distance, 30% claimed that it hindered their ability to cultivate this distance. 28% remained undecided, emphasizing the complicated nature of the (survivor) attorney--(survivor) client relationship. Responses were also mixed when asked whether or not their personal experience impacted a specific decision in a case, rather than the tenor of a relationship or the nature of one’s work more generally. Though survivor status may have an adverse impact on professional distance, the majority (70%) of survivor-attorneys still

maintain that professional distance is “crucial” to their work.

III. QUALITATIVE RESPONSES

The following is a summary and analysis of findings for qualitative questions. Questions were labeled “qualitative” if they were accompanied by a text box soliciting a long-form response from survey respondents. Responses were accumulated and grouped according to themes as a way to reveal common perceptions, experiences, and viewpoints among survivor-attorneys and non-survivor attorneys alike.

A. REVEALING SURVIVOR STATUS

1. IN THE WORKPLACE

Question 29 is the only quantitative survey question that expresses a highly significant deviation between survivors and non-survivor attorney responses (p value is 0.001). It asks, “Do you know any survivors of gender-based violence who work as attorneys for survivors of gender-based violence?” Of the eighty-nine responders to this question, 56% said yes (fifty), 18% said no (sixteen), and 26% said they were not sure (twenty-three). Thirty-two of respondents who answered “yes” also identified as survivors, as compared to eighteen non-survivor respondents. 18 non-survivors were not sure whether or not they knew any survivors who work in the field of gender-based violence, as compared to only four survivors. While not dispositive, this data may indicate that survivors in this field may be reticent to divulge their status to other colleagues in the workplace. It is possible that some of the survivors who responded “yes” were counting their own presence in this field and are not aware of other survivor-attorneys in their workplace or field at large.

Qualitative responses reveal the drawbacks of revealing one's status to coworkers. For example, one respondent stated that revealing her status to clients or coworkers would make her "less credible in her role." She stated that she wished to "work hard against the notion that only survivors choose to get into this line of work." This stigma may be self-imposed in some circumstances. As one respondent puts it: "I think I feel even more shame than most women for experiencing IPV (intimate partner violence), since I was already an expert in it and I should have seen and understood the signs." According to various respondents, this notion of "credibility" affects the tenor of an attorney's interactions with fellow coworkers, opposing counsel, law enforcement, and courtroom personnel. As one attorney states it:

The push and pull between being an outspoken survivor, but also a 'respected' legal advocate is the part of this work that is probably the most difficult. On the one hand, I cannot change anything or empower others by not speaking out. But on the other hand, speaking out can paint me as a person who 'ALWAYS believes the victim' and does not look at the facts in a reasonable and ethical way.

Another respondent claims that "survivor status was a hiring detriment" for domestic violence commissioners in her judicial district. This same respondent asserts that "clients think the commissioners don't 'get it' . . . without personal experience." This sentiment is echoed in another respondent's answer, who describes the "unfortunate 'us vs. them' mentality" evinced by court personnel and younger staff attorneys, which "appears as palpable disdain" for survivors. She attributes this reaction among younger attorneys to an "automatic defense mechanism." Another respondent elucidates the potential root of this mentality, namely, that "a smart woman" who is "aware of the red flags" could not become a victim, and is thereby "inoculated" from potential abuse. She writes, "I think my survivor status has helped me at times in explaining trauma and the

after effects to others. Our bodies respond to trauma, and just because we are informed of the neurobiology of trauma doesn't mean that we can prevent it from occurring in ourselves when we face a trauma."

Acknowledging this unfortunate double standard, one attorney wrote: "My survivor status and the negativity with which it is received by practicing attorneys especially is a detriment, and detriments cause less case flow for a law practice. It's like, we are doing a wonderful thing representing these poor survivors, but what's wrong with her, a fellow attorney, who didn't keep herself from being victimized." She correlates the existence of this double standard to the overall misogyny apparent in this field, "especially where one's practice is somewhat "less than" because of a reduced case load or a solo practice due to long-term caregiving from ramifications on children of early life abuse." She continues: "While I am an incredibly successful attorney in cases won and lives mended, I don't have an association name or professorship attached to my law practice, and our profession fails to offer part-time work or professional recognition to attorneys who are, for example, caring for children affected by violence." The overall structure of the legal profession, from its accolades to its accommodations, does not seem to adequately acknowledge the existence of attorney-survivors.

In spite of these drawbacks, qualitative responses have also indicated potential benefits to revealing one's survivor status to the workplace. Of the forty-eight respondents to Question 14 ("Have you ever disclosed your status as a survivor of gender-based violence in the workplace or to a client?"), thirteen stated that they have disclosed to colleagues in the workplace. Some respondents have disclosed their status in the workplace as a way to explain their passion and interest in gender-based violence legal representation to colleagues. One respondent disclosed their status while

interviewing for their current position (“I was asked why I wanted the job and felt that my status was relevant and an important part of my answer.”) Other respondents revealed their status to coworkers who “have become friends” after working in close proximity over the years. One respondent found disclosure useful to “inform them of where I am coming from and to seek understanding if there is a case in which I feel I need to take a step back from.”

2. TO CLIENTS

Survey respondents were also asked to discuss their viewpoint on revealing their survivor status to clients. While twenty-two respondents stated that they would not reveal their status to clients or colleagues, fourteen out of forty-eight respondents said that they had disclosed their status to clients in the past. According to these answers, disclosure is a useful strategy for some survivor-attorneys to comfort a client or build a strong foundation of trust with a particularly traumatized survivor. Qualitative answers emphasize the utility of this practice as a way to mitigate the problems of distance and mistrust that may arise in the client-attorney relationship. One attorney characterizes this distance, saying, “Sometimes I have a professional distance; however I think it's also very important my clients see me as a human being in order to establish a relationship of openness and trust. The power dynamic of a suit/tie and leather chairs can be very intimidating, especially to an already intimidated, minimized, and marginalized client.” As one attorney puts it, “Survivors are frequently distrustful and when they hear relevant parts of my story they know I ‘get it.’” For this same respondent, however, professional disclosure “causes distance from the other attorneys” because they work *for* but not *with* victims of violence. In her jurisdiction, “the stereotypes that we would

never as a profession apply to our clients DO apply to our attorney colleagues: why didn't she leave, call the police, etc."

The majority of respondents who do regularly reveal their status express that it greatly assists in normalizing the experience for clients – particularly those clients who are ashamed of being survivors of sexual violence or are, as one attorney describes it, “destroying themselves with self-blame.” One respondent writes that she reveals her status to “assure them that I understand the challenge of conflicting feelings and to assure them that it is common to feel unsure in dealing legally with violence.” A few responses directly address the perceived socioeconomic and educational “gap” between direct service clients and their legal representation. One respondent chooses to reveal her status in order to highlight the pervasiveness of gender-based violence and its ability to cut across class lines: “I will tell a client who is ashamed of being a survivor in order to let her know that anyone—even an educated professional woman—can become a victim.” Another respondent echoes this sentiment: “I sometimes disclose to clients when I feel it will help them be not so hard on themselves. I tell them surviving abuse is like being in AA . . . just take one day at a time.” Cutting to the root of the shame for many of her clients, she continues, “Some clients state that a smart woman like myself must think they are an ‘idiot’ for staying with their abuser for so long, to which I reply that I was in their shoes for over sixteen years, that it happens to everyone, and that it is very common for victims to blame themselves.” Another attorney writes, “Bringing my own experiences to the work helps me connect with the clients who know that I, too, lived it and my education and status as a professional did not make it any different emotionally—I got hurt like the clients did, and so did my children.”

In revealing their survivor status, these attorneys have attempted to combat the shame, stigma, and stereotypes surrounding abusive relationships, whether harbored by their clients, colleagues, or society at large. The majority of respondents stated that they have not divulged their status to their clients or coworkers, however. Of this subgroup, attorneys most often cited concerns related to “intimacy,” “boundaries,” and “professionalism.” One attorney sees it as “a sign to me that I have become too close to the client emotionally and need to give myself some professional separation.” Another admits to revealing her status to clients so long as they are “good at boundaries.” One respondent delineates between divulging personal information and providing empathetic direct service: “I like to keep those lines clear. I also don’t feel the need to share my personal experience in order to show compassion and empathy for my clients—our experiences are different—and in those moments, it’s not about my experience, it’s about my client’s experience and what I can do (legally) to make it a little better.”

Of the twenty-two who responded that they would not reveal their survivor status, twelve attorneys explained their hesitation towards taking any focus away from their clients. In describing this concern, one respondent writes, “As a legal advocate at a domestic violence shelter, I have not disclosed my past to any clients because I do not want it to affect the client’s care, i.e., the client now wants to help me, or else she feels that I may be less able to help her if she tells me something that may upset me.” Citing professional boundaries as the rationale, another attorney writes, “Empathy does not require self-disclosure.” One respondent describes self-disclosure as a mistake she made as an inexperienced attorney. She writes, “I disclosed my status when I first began practicing and didn’t fully comprehend that in talking about my situation with a

particular survivor that I had shifted the focus away from her and her current needs. I disclose now only if a client asks.”

This response is echoed by the response of another attorney who was asked whether she had trouble balancing professional distance with her empathy towards the fellow survivors she represented (Question 25: “Do you ever feel that the need for empathy and the need to cultivate professional distance are at odds in your work? If so, how do you navigate this tension? Which value do you think is more important, or are they of equal importance?”) She admits, “I think the need for empathy is far more important than cultivating professional distance, but I’m also a newer attorney so perhaps I haven’t realized the importance of the need to cultivate professional distance yet.” Another younger attorney critiqued her supervisor’s “rigid” rules against sharing personal information with clients. She states, “I don’t think this is a very effective way to build rapport and trust with someone. I think you can share enough to be relatable and make someone feel at ease without turning the conversation into a meeting about ‘you’.”

B. EMPATHY AND PROFESSIONAL DISTANCE – THE “DELICATE TANGO”

Of the thirty-five respondents to Question 25, fourteen survivor-attorneys found that empathy and professional distance were at odds in their profession. A more senior attorney states, “I do not think empathy and professional distance are at odds, but I see a lot of my staff struggle with the two. It is not an easy balance, but it has to be an intentional balance . . .” Other attorneys agree with this categorization and admit to the difficulty of maintaining this delicate balance. One attorney cautions, “It is difficult to focus and juggle all the competing aspects of the work if you are becoming too emotional about it. It also makes you burn out quickly, like I did.” Another attorney corroborates the difficulty of this challenge:

The tension is constant and I'm still unsure of how to best deal with it—I tend to play it by ear and I'm not honestly sure how it's going. I think part of the solution comes from redefining 'empathy'—it doesn't have to mean that I feel everything my client is feeling, or that I always try to relate her experiences to my own. More and more I find I have to put my own experiences aside so that I don't impose my own lens on a client whose response to a similar situation may be very different from mine, and so that I don't become too identified with a client and unable to cope with the fact that I am likely to lose a lot of cases.

"Imposing one's own lens" is a concern shared by many attorneys who have hesitated to reveal their survivor status to their clients (*see* Part 2, I. Revealing Survivor Status, i. To Clients, *supra*). Some survivor-attorneys perceive professional distance as a way to preserve focus on the client; as one attorney writes, "[I]t is critical to maintain distance, as the client's experience is not my own." Others see professional distance as a function of self-care. One attorney writes, "I see empathy as benefiting the client and professional distance as benefiting me more, so I tend to put empathy before professional distance." Another says, "I'm still trying to navigate this tension. Right now, I'm experimenting with geographic boundaries. In the office, I maximize empathy. Out of the office, I try to turn it off and not think of my clients." And yet another admits to the difficulty of "turning off empathy," stating, "I force myself to do it because I know it's necessary for my health and well-being and that of my family."

Those attorneys who admitted to having struggled to turn off empathetic reactions to their clients' situations tended to value empathy as slightly more important than professional distance. Others found both to be of critical and equal importance to the success of their direct service work. One writes, "Without some distance, the case will collapse because client counseling and expectation-management will not be possible." Another survivor-attorney describes a particular situation where both

empathy and professional distance must be utilized in tandem: "It's really hard to convey to a client that I believe her, but I can't prove her case. That's my least favorite part of the job, but the part where both empathy and professional distance are critical." In such a situation, this attorney uses empathy to compassionately relate to her client's situation, while simultaneously cultivating professional distance as a way to delineate her particular role in her client's case. She continues, "I have to explain that as an attorney, part of my job is to assess the admissible evidence available and advise the client of her likelihood of success in court."

Other attorneys similarly describe the fluidity of this field, where the lines delineating social work, therapy, advocacy, and legal representation tend to blur. One writes, "I mistakenly believed in the beginning that I could play the role of an advocate as well as a client's attorney. I quickly learned that we both play vital but different roles and both were necessary for the best outcomes for all involved." Another survivor-attorney also attests to this challenge, saying, "I have to tell myself that I'm not a social worker, and my role is to represent this person in court I think with lawyering in Domestic Violence court, it's more important for me to cultivate professional distance than to express empathy, because I am already so bogged down in the emotional heaviness." Even in spite of this "emotional heaviness," other attorneys believe that empathy is more important than distance: "Our clients are already marginalized. They don't need us distancing unreasonably from them along with the rest of the world."

Thirteen of the thirty-five respondents stated that empathy and professional distance were not at odds in this work, yet most responses contain the caveat that the balance between both of these values must be learned and carefully preserved. Echoing the aforementioned attorney who had to "remind herself that she is not a social worker,"

another attorney writes, “It is crucial to strike a balance. If a client is requiring too much non-legal support, I encourage them to work with a therapist and/or DV counselors. I explain that we can all work together to get them through the process, and that I don’t have the expertise that others do to support them and vice versa.”

A few attorneys state that these two values are not at odds because they are both crucial aspects that comprise the attorney-client relationship. One attorney writes, “I don’t think they are at odds with one another at all. There is a difference between empathy and over-identification. Being able to empathize without over-identifying is only strengthened by the ability to maintain professional distance and to set boundaries.” Another respondent states, “A true professional can be caring and comforting and still protect herself.” Most respondents in this subgroup characterized the two values of empathy and professional distance as a “balancing act.” As one attorney warns, “If the attorney wants to remain mentally stable, s/he must learn the empathy/distance tango. If I identify too much with the client, I cannot get them on their feet again. If I am too cold, I will chase them away feeling resentment and guilt.” Another writes, “Without empathy, professional distance is just distance. Without professional distance, empathy can lead to blurred boundaries which can damage both client and worker.”

C. THE CHALLENGES AND BENEFITS OF PERSONAL EXPERIENCE ON PROFESSIONAL PRACTICE

1. NEGATIVE EFFECTS

When asked, “Has your personal experience with gender-based violence ever made it difficult for you to provide the best possible legal services for survivors?” a number of survivor-attorneys pointed to problems maintaining professional distance

while working on a fellow survivor's case. Of the forty-two respondents to this question, eleven admit to their personal experience negatively impacting their ability to practice gender-based violence direct service. Citing professional distance as a major challenge, one attorney writes, "[My personal experience] makes it harder to see my client's case objectively. For example, when someone tells me she's a survivor of gender-based violence, I tend to believe her, and it makes it harder for me to objectively see when her case is weak." Often the problem lies in assessing a client's credibility as perceived through the eyes of a factfinder, rather than through the eyes of a fellow survivor, advocate, and legal representative. The attorney continues, "[I]f we're trying to gain asylum on the basis of rape or domestic abuse, it is often the case that a woman's testimony is not enough. I'm in the position of explaining to her why even though I believe her, we need to see if we can come up with other evidence (e.g. police reports, medical records, corroborating witnesses, psych reports, etc.) which usually don't exist. Because I find her credible, it's hard for me to see whether her testimony alone would look credible to a judge." Another corroborates, "My personal experience with gender-based violence has made it more difficult to advocate to the client what will be the most likely outcome."

Other attorneys find that their personal history creates challenges surrounding burnout, anxiety, and trauma. Though unsure of the precise cause, one attorney writes, "This spring, my anxiety spiked, and I found myself flooded with my clients' stories during my personal time. I couldn't turn it off. My representation was not as good during this period, since I was so drained and in need of a break. I don't know if this related to my experiences with abuse, but I suspect it did." Another writes, "My own experience makes it hard to 'leave my work at the office' and contributes to an

increasing specter of burnout. When I was in law school, I would constantly have nightmares about my first client, whose father sent a group of men to gang rape her after she refused to undergo female genital mutilation.”

A small number of attorneys described the challenges of interacting with opposing parties given their personal experience with abuse. An attorney writes, “The only time it truly feels challenging to my work is in keeping my cool with an opposing party who is being offensive rather than professional so it requires me to work hard to stay professional.” A more senior attorney describes a unique situation where her personal experience and her professional career collided: “I had to refuse cases twice because my abuser was involved in these cases. Sometimes I get too emotional if I over-identify, and I handle this challenge by having my associate do the work.” When asked a similar question (“Can you provide any other examples or thoughts about how your survivor status might impact your work in any way?”), seven of thirty-three respondents acknowledged that their personal experience with gender-based violence affected their interactions with opposing parties, in a variety of both positive and negative ways. One admits, “It makes it difficult for me to remain calm when antagonized by an opposing party.” Another writes, “My survivor status makes it more difficult to understand opposing counsel’s work and argument because, for me, it’s personal.”

2. POSITIVE EFFECTS

Others convey the benefits that an increased understanding of abuser mentality might have on their representation. One attorney says, for example, “I am much more attuned to how abusers work and attempt to hide their actions. I saw it growing up and watched it in my own marriage.” Another survivor-attorney writes, “Offenders cannot

intimidate me and I am better able to isolate clients from abusers in courtroom situations.” One respondent acknowledges the benefits and drawbacks to her experience, stating, “It makes me fight more passionately for my clients. It also makes me more cautious but less afraid of abusive opposing parties. It can cause burnout, though, because I can become personally invested in the most intense cases and carry them home with me.”

In contrast to the eleven attorneys who did find that their personal experience impacted their professional work, the majority of respondents found that it did not impact their work in a detrimental fashion. Twenty-six attorneys found that their personal experience as a survivor did not impact their work in either a positive or negative way. As one survivor-attorney describes it, “My experience is mine; theirs is their own. If they ask my opinion about how the abuse might affect the children, I tell them about the studies comparing children from abusive homes who witness abuse to children who do not. I am an attorney first; a survivor way down the list.” This response is in stark contrast to an attorney who, in answering an earlier survey question, stated, “I have disclosed my experience as an abused child to a client solely to illustrate that an older child may want to testify or make a statement.”

Six attorneys stated that their personal experience has positively impacted their professionalism and delivery of legal services. One writes, “I think my experiences have made me a more zealous advocate,” a sentiment shared by many survivor-attorneys throughout the survey (see Part 2, IV. Effects on outlook and perception, ii. Empathy and passion, *infra*). In answering this question, two responders tie in their interpretation of professional distance to their personal experience. One writes, “I get personally connected with each client regardless of the subject of the representation [whether I can

relate personally or not], because clients need to believe we understand them and their lives enough to trust THEM to make assisted choices and participate in the legal proceedings. I think somewhat LESS professional distance is needed overall in the delivery of legal services—we are service providers, after all.” Another responds similarly: “I’m not sure maintaining what we define as “professional distance” is beneficial when working with victims/survivors. Being able to compartmentalize your work and your home life is more beneficial than maintaining a strict ‘professional distance’ from your clients.” She continues, “My personal experience doesn’t impact my decision-making in my professional life because I attempt to inform my client and then have them make the decisions. I do not make decisions in my cases, per se.”

3. ENGAGING WITH OPPOSING COUNSEL

Ten attorneys described the ways in which their survivor status affected their professional relationship with opposing counsel and other attorneys. One sees their status as a net positive, stating, “I feel I am less judgmental and more compassionate and can explain to opposing counsel how the Cycle of Violence or the Power and Control wheel work in our particular case.” Another attorney finds that it has the opposite effect: “As someone who has experienced victimization and who understands it more thoroughly than many (most) other attorneys, it angers me when I feel that opposing attorneys are furthering their client’s abuse of my client.” One respondent appears to agree with this sentiment, stating, “I think I have much less tolerance for anything I perceive as victim-blaming than I used to. In previous work, this created tension with the D.A. that may not have always been 100% helpful to the client.” Survivor-attorneys may feel discomfited by their coworkers for similar reasons: “It upsets me if colleagues

do not get why a survivor went back or similar thoughts. I understand because I felt that fear.”

Other survivor-attorneys describe the intersection of personal and professional within the criminal justice system. One writes, “I also represent male abusers, where sometimes the alleged victim is a witness for the prosecution. I think it helps me understand where the prosecution is coming from and why they give particular importance to a case. I think it can also help me identify when it looks like an alleged victim is lying. On the other hand, it sometimes makes me feel like I’m on the “wrong” side, which is distressing.” Others describe the feelings of frustration that emerge from interacting with law enforcement and the court. For some, it is highly personal. One survivor writes,

As someone who was raped by a police officer, but now wants to train police officers on how to do proper and thorough investigations and relay the chilling effect that police sexual misconduct has on a community, I also know that some departments and officers may think I hate all police, have an agenda I am trying to push, or that I am attempting to paint them in a bad light because of my past. That’s unfair to me, but I cannot change someone’s perception of me.

Another attorney describes a similarly uncomfortable intersection of personal and professional experiences. She writes, “I was arraigned by a judge on a domestic violence incident by an ex-husband where I was choked unconscious, and the judge refused the District Attorney’s attempt to dismiss pre-arraignment. I then appeared before the same judge later as an attorney. It felt odd, and makes me feel that my personal experience is limiting professionally.” This same attorney also attests to the vestiges of “victim blaming by attorneys of other attorneys who experience what our clients experience.”

D. EFFECTS ON OUTLOOK AND PERCEPTION

Respondents were asked various iterations of a similar qualitative question in order to determine how they feel their survivor status might impact their professional career. After answering a few quantitative Likert scale questions regarding triggering, flashbacks, vicarious trauma, secondary trauma, and mental distress, respondents were asked: "Briefly explain how your personal experience has impacted your work."

Respondents were then asked to rate the impact of their personal experience on their ability to communicate, empathize, cultivate a professional distance, interact with opposing parties, and establish a trauma informed and client-centered practice. Respondents were then asked another iteration of the "effects" question, namely, "Can you provide any other examples or thoughts about how your survivor status might impact your work in any way?" Finally, after asked whether their personal experience with gender-based violence ever impacted a decision they made on a case, and whether their experience has ever made it difficult to provide the best possible services for survivors, the respondents were once again asked an iteration of the "effects" question, specifically, "Can you provide any other examples or thoughts of how your survivor status might impact your work in any way, in either a positive or negative fashion?" The responses remained remarkably consistent in theme and tenor, even after answering the quantitative survey questions--which, through their predetermined set of answers, hint at the possible detriments and benefits of a survivor status in this line of work.

1. UNDERSTANDING

Of the ninety-eight unique responses, twenty-nine extolled the benefits that a unique, personal understanding of their clients' physical and emotional situation had on their professional work. Responses included, "I can more readily understand what the

victim is experiencing and how difficult it is to break ties with an abusive partner,” and, “I understand the fear and why they stayed.” Another attorney writes, “It helps me better understand why they sometimes make decisions that don’t seem ‘rational’ to the objective eye. It helps me remember to view things through her lens.” This response is in direct contrast to other attorneys who fear that too much empathy and too little professional distance may lead an attorney to input themselves into their client’s position (see Part 2, II. Empathy and Professional Distance – the “delicate tango” *supra*). A few respondents claimed that they are better-equipped than their non-survivor colleagues to provide services like safety-planning and emotional support. One attorney writes: “My safety planning methods are insightful. I know instinctively and can easily read cues when a person is a true threat. I know how to help those close to the survivor to understand that it is not her fault that she has ignored red flags, refused their advice, or had otherwise become isolated from them.” Another attorney says, “My survivor status has helped open my eyes to issues that the clients may not be able to navigate or anticipate, e.g., understanding the issues that can be predicted to come up for children who have witnessed violence.”

One survivor-attorney explains that her experience has given her a deeper understanding of the tenuous position of her clients. She says, “I understand when my clients are not willing to fight for their rights because that may be the one trigger that will cause the most violence.” Another respondent explains that because of her personal experience, she can “understand the motivation behind seemingly counterintuitive actions and help the client express that in a way that makes sense to the judge.” One attorney explains that her personal experience assists her in understanding the client’s position without admonishing or blaming her for her actions. She writes, “I know what

it is like to be involved, and care about, an abuser. This gives me the ability to, without judgment, assist my client as much as I can. It has allowed me to more efficiently communicate with my clients." Another says, "I am able to stay calm and not escalate with the client when they're in crisis. As I have to ask very probing questions, I try to read their verbal and emotional cues to navigate the more difficult conversations." Acknowledging the challenges of communicating with clients in crisis, another survivor-attorney says, "I am able to elicit more information from clients because I know what they are going through. This helps me be more effective as an advocate, and I can use my service to empower my clients by giving them ownership over their case."

Another respondent describes her transition from mere awareness of her clients' positions to a deeper understanding of their position. She writes, "I get less frustrated with my clients because I have also made decisions like not leaving. I thought I understood before, but experiencing it completely changed my comprehension of the dynamics of abuse." Finally, a fourth survivor-attorney discusses the unique perspective her experience has engendered in establishing both sympathetic understanding and professional distance:

I am sensitive to the complex issues and emotions associated with victimization and its aftermath. I am respectful of the victims' need to be empowered with the information needed to help them make their own decisions. Knowing the additional harm the system can inflict on victims in the way the system relates to their needs, I am determined to treat victims with the utmost respect and help to protect and defend their personal dignity in the process. Equally damaging can be ANY professional who crosses professional boundaries with a victim, at which point it ceases to be about the client and the interaction is now, somehow, also about the advocate.

Echoing this concern, some attorneys admit to having a "greater understanding" of their clients' situations, but a "worse sense of boundaries." Attorneys report "get[ting]

too emotionally involved... and shut[ting] down,” and “never want[ing] to leave a fellow survivor feeling unsupported,” making it nearly impossible “to recover and renew your energy. . .” One survivor-attorney writes, “It makes me passionate about the work, but also makes me unable to maintain distance from my clients or the outcomes of my cases.” In contrast, other attorneys found that a personal and deep-rooted comprehension of gender-based violence actively assists in cultivating the delicate boundaries between professionals and clients. As one attorney describes, “I am a better advocate both because I can empathize and because I can recognize that sometimes need to be made that require an objectivity and professional distance that a survivor might not have access to in the moment and that another, non-survivor professional might hesitate to make out of a fear of being insensitive.” Another attorney corroborates, “My personal experience has provided me with increased empathy, but also a better understanding of the need for appropriate boundary-setting.”

2. EMPATHY AND PASSION

Twelve of the ninety-eight responses mentioned empathy and compassion as concrete benefits arising from their survivor status. One respondent extolls the long-term benefits of her experience on her professional career, while acknowledging time’s ability to mitigate the shorter-term negative effects such trauma may also bring to the forefront. She writes, “I don’t think it impacts it negatively since both experiences were so long ago and brief. It may impact positively in terms of my being empathetic to my client’s experiences.” Ten of the ninety-eight responses recount how their affinity with survivors foments feelings of commitment, passion, and motivation to keep fighting on behalf of their clients. Comments include: “I think it makes me more passionate to work in this field,” “I am much more zealous in my work,” and “It impacts my work in

innumerable, positive ways.” Labeling this tendency as emblematic of “post-traumatic growth,” an attorney writes: “Surviving the trauma to serve victims of gender-based violence gives meaning to every single second of the work that I do.” For some survivor-attorneys, this passion for direct service can be directly attributable to what they believed was unavailable to them in their time of need. One attorney describes her commitment in such a way, stating, “I believe it has increased my commitment for providing excellent services to victims as services were not made available to me following my experience.” Another attorney agrees: “It shapes my representation as well as the outreach and advocacy that I do, because I often think about how things might have been different if I had an advocate at the time.” Some responses expose the direct, palpable connection that survivor-attorneys have with their “fellow survivors.” One attorney writes: “My experience of gender-based violence has made my work so meaningful to me. I have the ability to offer support to other survivors to enable them to improve their life and reduce the violence that is occurring.”

3. PERSONAL HEALING

As described above, many respondents extolled the benefits that their personal experience of gender-based violence had on the delivery of legal services for survivors. Additionally, respondents described the impact that direct service work has had on their ability to manage, cope, and heal from their personal traumatic experiences. Some responses reveal that direct service had provided attorneys with crucial moments of clarity, for example: “I understand better how to explain what happened to me, and can see it through a broader lens,” and “I was able to more clearly recognize that what I had experienced was physical abuse with a former boyfriend, and date rape with another.”

One attorney was provided with solace knowing that she was “not alone in [her] experiences.”

For others, their experience as a survivor remains a motivating factor to keep them pushing for their clients. One attorney puts it simply: “It gives me a reason to keep going, even when it seems hopeless.” Another attests to the cathartic nature of this work: “My own experience enhances my understanding of my clients’ experiences but additionally the work in this field can be healing by the difference that you make for others.” Another attorney writes, “My experience of gender-based violence has also made my work so meaningful to me. I have the ability to offer support to other survivors to enable them to improve their life and reduce the violence that is occurring.” One respondent discusses the way in which her work provides her with another forum by which to receive the closure that is often denied sexual assault survivors:

It reminds me that getting a prosecution to occur is not the be-all end-all solution to the assault and that even having an arrest or prosecution will not “fix” me. My professional work motivates me to continue fighting. It also helps to divert energy from being angry at the system or the person who raped me to educating prosecutors and police and assisting survivors so they are not alone like I was.

Other survivor-attorneys, particularly those who had survived rape and sexual assault, attest to their own personal frustrations with the legal system and how it intersects with the frustrations that they harbor on behalf of their clients. One writes, “It can make my work frustrating, because I can understand what’s going on, but I can’t always convey that understanding to the trier of fact.” Another attorney details the painful reality of sexual assault prosecution, and the deliberations that she must make when preparing her client for the “fallout” of working within a system that so often fails survivors:

I do not think I prepared her enough for the reality that the police will likely not make an arrest and the prosecutor will likely not prosecute. I hesitate to tell survivors this because I fear that my own experience of the police and prosecutors doing nothing clouds this view of the legal system more than the actual numbers do. I also worry that if I tell them that prosecution is not likely, then they will not report, despite my personal belief that reporting the assault has its benefits, nonetheless.

E. OBSTACLES IN PROVIDING GENDER-BASED VIOLENCE DIRECT SERVICE

Both survivors and non-survivors surveyed were asked to identify the main challenges that they have confronted in this unique area of the law. Of the problems identified, both groups cited lack of resources, secondary trauma, and gender-based stigma as major hurdles most frequently confronted over the course of a workday on a daily basis. Only one survivor-attorney mentioned that her PTSD was a significant hindrance in her representation: "I have PTSD triggered by the opposing party and by learning my clients' stories, and an almost constant anxiety about the outcomes of my cases." Other survivor attorneys disagreed, stating that their "personal experience has only helped" in "dealing with somebody in the middle of their tornado of crisis."

Another attorney acknowledges the common problems of "burn out and vicarious or secondary trauma," but reasons that "already going through the trauma and working it through to a good place personally makes it easier to withstand vicarious or secondary trauma." In contrast to the three survivors who cited trauma as a significant hurdle to their professional careers, eight of the non-survivors found trauma to be a challenge in providing the best possible legal assistance for survivors. One non-survivor admits to the challenges of running a trauma-informed practice, and other survivors noted struggling with vicarious and secondary trauma. Non-survivors acknowledge that "any information that could be triggering may take an advocate outside the scope of focusing on their client and their client's needs," and that it is a

constant struggle to “not become too emotionally attached while still providing the client with support and encouragement.” As one non-survivor conveys it, “Whether the attorney has experienced gender-based violence herself/himself or not, it can be difficult to hear those stories and not be affected by them. Most of us who do this work are empathetic people by nature, so we are more likely to feel trauma and pain from other people’s stories of trauma and pain.” Another non-survivor appears to agree: “our limited resources are best served by representing victims who are able to break from that cycle, but it is difficult on a psychological level for attorneys who work for the indigent to tell a person in distress that we cannot help.”

Another non-survivor describes this as “the compartmentalization of needs” for survivors. She laments, “The legal aspect is just one of these needs and there is often not a lot of time or need to go into other needs that the client may have, since one doesn’t necessarily have the tools to address them.” Two survivor-attorneys agreed that the perceived limitation in resources has best evinced the field’s focus on “safety above all, in spite of the fact that this is not how most survivors problem-solve.” As one survivor-attorney describes, “I’ve spoken with many clients over the years who sadly have more pressing issues than their own physical safety. I also think we tend to require clients to ‘out’ themselves as ‘victims’ or ‘survivors’ in order to qualify for legal help and I think this prevents a lot of people from reaching out either because of shame or because they don’t define themselves that way.”

Both survivors and non-survivors alike acknowledged the unique quasi-social work skills needed to successfully represent survivors of gender-based violence. One non-survivor laments:

As an attorney, I am trained only in the legal aspect of addressing the violence. I may attend trainings unrelated to the law, but I am still not qualified to address issues of mental health or other related areas. So, although I can counsel on legal issues, it can be difficult to even accomplish that if the client is having non-legal problems related to the violence. So having a wider support system seems fairly essential, but not always possible.

Another non-survivor agrees, stating, "All direct services are personal, but this area is extremely personal and sometimes intrusive. It's difficult to practice in an area that often requires a client to recount traumatic experiences in detail. I believe you need to have a quasi-social worker approach to this work to be both legally effective and ensure your client is taken care of emotionally. Survivors likewise expound upon the emotional and mental challenges of handling clients in a state of trauma. One writes, "Sometimes clients are in too much trauma to help themselves and they want you as a lawyer to help alleviate their emotional pain." Another survivor-attorney quotes her typical conversation wherein she levels expectations with her clients. She writes, "I am an attorney, not a priest, therapist, or magician. I can get you divorced from an abuser, but you have to decide what happens to you and your children after this divorce is final. I will help you in any way I can, but you have to decide what you really want, then ask for help to obtain your goal and then pursue it." A third survivor-attorney writes: "I see advocates patronize clients by hand holding or talking down to them. My experience helps me to focus on empowering my clients by giving them ownership and responsibility." Another survivor-attorney admits to this tendency, saying, "The hardest obstacle for me is how much hand-holding some victims need. Most people do not understand that calling the prosecutor to check on the status of their decision or calling the Title IX coordinator to ask about the status of an investigation is hard and

exhausting. I believe I have more empathy to this because I know how hard it is, but I also worry that I baby/counsel clients too much.”

Both survivors and non-survivors cite issues of misogyny and stigma within the legal system as one of the largest and most challenging obstacles to overcome in this field. One survivor says, “There are obstacles associated with trust and lack of trustworthiness of women and non-heterosexual men underlying everything, but my experience keeps me fired up at work to fight this.” Another survivor lists, “misinformation, ignorance about domestic violence, and the nuances of domestic violence,” as significant obstacles that she must overcome while on the job. Survivor experience does not seem to alleviate the challenge of deeply rooted misogyny within the legal system. A survivor writes, “The hardest thing is making our clients’ experience comprehensible and compelling for judges. I don’t think my experience has helped in that capacity.” Another survivor thinks her experience helps, but this insight can only take her so far. As she explains, “My experience can help by informing the questions I ask to elicit the client’s story and potential evidence, but it can also hinder my preparation of a case, because I tend to underestimate the amount of evidence needed to convince a trier of fact who doesn’t understand the dynamics of domestic violence. It is a challenge to convince a judge that the violence which the abuser denies is a more significant threat to the children than the victim’s admitted mental health or substance abuse disorder, which is often the RESULT of the abuse.” Other survivor-attorneys complain about the stigma against women and children, whom they believe “are prone to lie about being victimized.” One survivor-attorney explains:

There is stigma, especially in rural counties, that victims of domestic violence and sexual assault are disclosing these things for personal gain, whether that be custody, child support, attention, you name it. I’ve even

been told that we shouldn't bring up domestic violence in a divorce case because the parties were married. There are absolutely obstacles when it comes to gender-based violence in direct legal service, and I hope that the lens through which I see the world, including having my own personal history, allows me to more easily issue spot such biases and zealously advocate for my clients.

Another survivor explains that attorneys, judges, and the legal system at large impose societal misconceptions onto attorneys who are known survivors in addition to the clients themselves, perhaps due to the fact that "there are too many generalized rather than individualized views of the causes and complications of domestic violence." This particular attorney combats this stigma through a "representational style that allows me to make each client an individual and begin the process of teaching the court this individual's personal experience. I think this is humanizing and survivors need to be humanized." Non-survivors echo these concerns, with particular emphasis on "judges having a poor understanding of the dynamics of abuse," the "unwillingness of courts and prosecutors to treat intimate partner violence as seriously as stranger violence," and "the dismiss[al of] victims of gender-based violence by the criminal justice system. . . ."

The one major difference between non-survivor and survivor groups is that the non-survivor group articulated issues in cultivating trust and working relationships with survivors. Of the non-survivor respondents, eleven said that they had frustrating problems with clients, e.g. "establishing a relationship that allows the client to provide you full disclosure of all relevant facts," "building trust and rapport with clients who have experienced physical, mental or emotional trauma," "navigating the quagmire of clients' thoughts throughout the cycle of abuse," and "knowing the difference between victims who need the help and will take it versus victims who need the help but will not

leave their partner at this time. . . .” Another non-survivor notes how difficult it is to “watch clients make bad choices.” One non-survivor summarizes: “It’s time-consuming, and it is not taught in law school. We learn a lot in law school, but nothing about people. I think law school should include some kind of social work 101 class where we are taught about people and trauma.”

In contrast, only two of the survivor-attorneys mention client interactions as a significant obstacle in their direct service work, and both responses cite client indecision, rather than any one-on-one interaction with the client, as a significant barrier to successful representation. As one survivor attorney describes, “Clients are often ambivalent or alternate, for instance, wanting an order of protection and wanting to withdraw it. I feel that my own personal experiences have helped me to build trusting professional relationships with clients, recognize their right to self-determine, and accept that this is a process for each individual.”

IV. CONCLUSIONS AND COMMENTS

Slightly less than half of all respondents identified as survivors of some form of domestic violence. Survivor-attorneys were likely motivated to complete this survey based on the email solicitation, which describes the survey as a way “to analyze the ethical implications, general challenges, and potential benefits that may exist when attorneys working in the field of gender-based violence identify with their clients on a personal level, due to their personal experiences with gender-based violence.” Because the project is largely designed towards providing a voice for survivor-attorneys to share their experiences, the number of respondents who identify as members of this group might be over-represented in this survey. Accounting for the potential of selection bias, however, it remains likely that survivor-attorneys comprise a significant portion of the

total number of attorneys working in direct service work assisting survivors of gender-based violence. Whether due to shame or stigma, survivor-attorneys remain an invisible population within this group of professionals (25% of respondents replied that they “weren’t sure” they knew of any survivors working as attorneys in their field).

This phenomenon parallels the isolating nature of gender-based violence more generally, where victims of domestic violence and sexual assault are made to feel alone in their experiences.⁶ Some survivor-attorneys admitted to revealing their survivor status to their clients as a way to break down isolating walls, establish trust, and emphasize that gender-based violence is an injustice that cuts across socio-economic lines (*see* Part 2, Revealing Survivor Status, ii. To Clients). In revealing one’s survivor status, these attorneys could be performing a strategic move to address the problems inherent within an attorney-client relationship. Any sense of confidentiality and safety that one-on-one representation could provide a survivor is jeopardized by the acute imbalances of power that is inherent in such a relationship.⁷

Through a gesture of intimacy and vulnerability, attorneys could potentially invert this power imbalance. In emphasizing the common ground that exists between survivor-attorneys and their clients, attorneys who reveal their statuses are politicizing what has become a depoliticized field of social services. In the spirit of “mobilization lawyering,” attorneys who openly identify themselves as survivors to clients and

⁶ See K. Daniel O’Leary, *Psychological Abuse: A Variable Deserving Critical Attention in Domestic Violence*, VIOLENCE AND VICTIMS, Volume 14, Number 1, 3, 21, (1999).

⁷ See Elizabeth Newman, *Bridging the Justice Gap: Building Communities by Responding to Individual Need*, 17 CLINICAL L. REV. 615, 620-21 (2011) (“The assumption that one-on-one representation is the best structure to protect a client’s confidences and to optimize representation often proves false for clients from marginalized communities, especially for those who have been victimized. In many instances, the intensely individual nature of traditional practice heightens the imbalance of power between attorney and client and exacerbates the separateness and isolation that victims experience.”).

colleagues are challenging the perception of clients as “isolated victims.”⁸ Instead, survivors could be seen “as members of broader classes of individuals experiencing similar inequalities.”⁹ By highlighting the broadness of the “survivor” class, survivor-attorneys expose the pervasiveness of misogyny and patriarchal violence within our society. In creating these broad affinities, survivor-attorneys could be viewed as engaging in “consciousness-raising.”¹⁰ Revealing one’s survivor status revives the initial impulses of the gender-based violence movement, which had been centered around shared experiences and collaborative efforts. Domestic violence direct service has been criticized for moving away from its “founding goals of widespread social change toward a more constrained, less political emphasis on social service provision.”¹¹ A harm-reductionist or survivor-defined advocacy¹² approach may ameliorate some of the societal effects of gender-based violence on an individual level, yet does little to attack and confront this prevalent problem at its causal roots.¹³

⁸ Nicholas Hartigan, *No One Leaves: Community Mobilization As A Response to the Foreclosure Crisis in Massachusetts*, 45 HARV. C.R.-C.L. L. REV. 181, 184 (2010).

⁹ *Id.*

¹⁰ For more on the theory of consciousness raising, see Catherin MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, SIGNS, Vol. 7, No. 3, Feminist Theory (Spring, 1982), 515-544 (Editor’s note: “Central to feminist theory and feminist method, Catharine A. MacKinnon shows, is consciousness raising. Through this process, feminists confront the reality of women’s condition by examining their experience and by taking this analysis as the starting point for individual and social change. By its nature, this method of inquiry challenges traditional notions of authority and objectivity and opens a dialectical questioning of existing power structures, own experience, and of theory itself.”).

¹¹ Amy Lehrner & Nicole E. Allen, *Still a Movement After All These Years?: Current Tensions in the Domestic Violence Movement*, 15 VIOLENCE AGAINST WOMEN 656, 657 (2009).

¹² For an example of “survivor-defined advocacy”, see *Representing Domestic Violence Survivors Who Are Experiencing Trauma and Other Mental Health Challenges: A Handbook for Attorneys*, National Center on Domestic Violence, Trauma, and Mental Health, available at <http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2012/01/AttorneyHandbookFINAL2Jan2012.pdf> (last visited Dec. 4, 2016). (At p. 6: “Survivor-defined advocacy requires that attorneys tailor their advocacy approach to meet the individualized needs of survivors.”)

¹³ *Id.* at 664 (“Participants labeled domestic violence a ‘social problem’ to convey its prevalence in a society and the widespread effect it has in the workplace, healthcare, and other settings. This is

This goal is in keeping with the community lawyering movement, which seeks to “foster connections between clients with similar problems, to lessen the isolation often experienced by clients when represented by legal service lawyers.”¹⁴ It is worth noting that the goal does not wholly translate when the connections to be made are between clients and their attorneys, rather than among clients. In cultivating this common ground, survivor-attorneys run the risk of plowing over their clients’ individuated experiences and individualized perceptions. By fostering connections among survivors that straddle across class lines, survivor-attorneys threaten to impart a powerful political statement at the expense of their client’s personal wellbeing.

While overarching patriarchal societal structures certainly contribute to the proliferation of domestic violence, sexual assault, and other forms of gender-based violence, they are not necessarily the *only* causal factors behind a particular individual manifestation of this form of violence. Solely focusing on gender inequality obviates the class, race, religious background, geographical location, and other intersectional cultural components that comprise a client’s identity. By emphasizing a shared aspect of their identity, survivor-attorneys also devalue the importance of individual perception and self-realization. One survivor-attorney reported that she actively refuses to label herself as a survivor of rape, even though she admitted that the definition certainly applied to her case. Clients may likewise be made to feel uncomfortable when an attorney attempts to “normalize” or “destigmatize” her experience by proffering their own stories of gender-based violence. Without fully understanding the client’s vantage point, a

a description of the violence (i.e., it is a prevalent problem in society) rather than an analysis of the causes of violence (i.e. that it is socially constituted).”).

¹⁴ Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 161 (2000).

survivor-attorney may be imposing the labels of “victim” or “survivor” onto an individual who does not view her current situation in a similar way.

Though attorneys may choose to reveal their personal experience with gender-based violence as a way to foster feelings of comfort and trust, it may also have the opposite effect on their clients and among their colleagues. Some survivor-attorneys extolled the benefits of revealing their status in the workplace, as a way to exhibit their passion and dedication to the work (*see* Part 2, I. Revealing Survivor Status, i. In the workplace). A strong identification with one’s client on the basis of “women’s rights issues such as domestic violence can fuel a strong empathy for battered women clients, conviction about their cause, and strong advocacy on their behalf.”¹⁵ Others found that it was necessary to reveal their status as a way to ask for time off when they are particularly triggered by a fact pattern that mimics their personal experience. Nearly as many survivor-attorneys cautioned against openly admitting their survivor status to fellow attorneys, because the stigmatized label of “victim” may make them seem less credible or professional as attorneys.

According to Joan S. Meier, who studies the intersection of psychology and domestic violence law: “a female judge or attorney will react critically to a battered woman, e.g. blaming her for ‘not leaving’ the abuser . . . a harsh response [may] reflect[] the strong need the observer has to separate herself from the victim and to believe that she would never be, or was not in the past, such a victim.”¹⁶ In her essay entitled “Battered Women and Family Lawyers: The Need for an Identification Protocol,” Kathleen Waits corroborates the existence of this psychological response and argues that

¹⁵ Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1352 (1993).

¹⁶ *Id.*

greater identification between attorneys and their survivor-clients is needed in order to actively combat this harmful proclivity.¹⁷ She states: “For many affluent, white women lawyers it is frightening to think about the affluent, educated, employed, white, battered woman. When faced with such a woman, the woman lawyer is forced to admit, ‘If someone who is just like me could be battered, then I’m not safe.’”¹⁸ As a result, women lawyers representing this subgroup of clients may fail to discover and properly address the domestic violence their clients might be enduring.¹⁹

The majority of survivor-attorney respondents believed that revealing one’s status could be viewed as unprofessional in that it takes the focus off of the client and onto their own personal issues, perspectives, and vendettas. This is not only offensive to the client, who most likely sacrificed her time, money, and personal safety to meet with her attorney, but it also jeopardizes the entire framework of “client-centered lawyering.” Client-centered lawyering recognizes the power imbalance inherent within the confines of an attorney-client relationship, and addresses this imbalance by empowering the client to become the primary decision-maker in her case. An attorney who places her own narrative within the context of their clients’ cases may overpower her client’s decision-making authority and overshadow her client’s own struggle to move away from crisis. According to the Rules of Professional Conduct, a lawyer must “act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”²⁰

¹⁷ Kathleen Waits, *Battered Women and Family Lawyers: The Need for an Identification Protocol*, 58 ALB. L. REV. 1027 (1995).

¹⁸ *Id.* at 1035-1036.

¹⁹ *Id.*

²⁰ Model Rules of Prof’l Conduct R. 1.3 cmt. (1983).

Though survivor-attorneys may view their pasts as strong sources of passion and motivation (*see* Part II, Other Effects, ii. Empathy and Passion), an advocate's personal experience of gender-based violence should never take precedence over the needs and experiences of her clients. Without proper boundaries and checks to her passion, a survivor-attorney might overpower her client by instructing her to act in a way that a survivor-attorney had acted or wished that she had acted. This form of advocacy might "look[] very similar to the way the abuser exercises power and control," and may disempower a client through insistent demands, rather than empowering her through resources and options.²¹

As Meier writes:

All legal professionals, but especially those in the domestic violence field, need to learn to recognize and separate out those of their personal responses which may interfere with professional efficacy. There is an irony to this prescription, since the women's movement in this country was built on-and feminism in most of its forms starts from-the recognition that 'the personal is the political.' It may be that our ability to go beyond the first recognition of the connection, to a more multi-dimensional understanding of the interaction between 'personal' and 'political,' is a sign of feminism's growing maturity. This more complex understanding would contemplate that to the extent that our personal feelings produce empathy and commitment consistent with professional role, 'the personal' is consistent with 'the professional.' However, when the personal interferes with professional role, the boundary between the two identities should remain distinct.²²

According to Meier, professionals working with clients must "work through" their strong personal reactions to a client, so as to make these personal affinities assist them in providing empathetic and compassionate professional services.²³ In her view, "professionals who deny that they have any personal responses to clients, and therefore

²¹ Julie Saffren, *Professional Responsibility in Civil Domestic Violence Matters*, 24 HASTINGS WOMEN'S L. J. 3, 7-8 (2013).

²² Meier, *supra* note 15, at 1354-55.

²³ Meier, *supra* note 15, at 1366.

do not work them through, are likely to be somewhat handicapped in their professional interactions with the client.”²⁴ Accordingly, both survivors and non-survivors alike might find it beneficial to consciously address the cases in which they find themselves strongly identifying with their clients. Non-survivors working in the field of direct service may nonetheless have highly personal reasons for entering into this field, *e.g.* they witnessed a family member endure a traumatic incident, or they themselves may have experienced a traumatic incident. As clinical legal professor Natasha Martin suggests, “lawyers bring a variety of experiences, backgrounds, and dispositions to the practice of law and to the exercise of ethical prerogative.”²⁵ Survivors who are driven to perform direct legal service because of their experience of gender-based violence may have a greater awareness of their personal identity’s ability to influence their professional judgment. This awareness does not necessarily equate to a greater ability to cabin emotional responses and personal reactions, however. Martin suggests that *all* attorneys engaging in direct legal service engage in the following thought exercise:

If I close my eyes and IMAGINE A LAWYER,
I expose myself to a *ROLE*
If I close my eyes and SEE ME, I expose myself to an *IDENTITY*
If I close my eyes and SEE MYSELF AS A LAWYER, I expose myself to
the *CONFLICT BETWEEN MY ROLE AND MY IDENTITY*
Consider your personal values, background, identity, and life experiences
that shape the person you are today:
a) How might this context *assist* me in dealing with challenging ethical
situations and the daily practice of law?
b) How might this context *hinder* my ability to resolve challenging
situations and to engage in the daily practice of law?²⁶

²⁴ *Id.*

²⁵ Natasha Martin, *Role, Identity, and Lawyering: Empowering Professional Responsibility*, 3 CAL. L. REV. CIRCUIT 44, 50-51(2012).

²⁶ Martin, *supra* note 21, at 50.

Regardless, survivor-attorneys establish that their personal experience of gender-based violence assists them in their work, whether or not they choose to divulge this identity to clients or colleagues. Though lawyers are charged with the responsibility of “navigat[ing] the unknown world of the rule of reason for their clients,” they put themselves at a disadvantage if they approach their clients and their work with cold reason and legal analysis.²⁷ “If the lawyer’s identification rests solely with the legal community, however, the client’s alienation is virtually guaranteed, especially when the client perceives herself as an outside in the first instance, and the controversy involves unquantifiable personal, rather than business relationships.”²⁸ The need for personal identification is especially true in domestic violence law—as evinced in highly aspirational and moral standard set forth in the American Academy of Matrimonial Lawyer’s “Bounds of Advocacy.”²⁹

While providing a steady source of passion and motivation, personal experiences with gender-based violence may also inculcate concrete survival skills and deep-seeded comprehension of the range of psychological responses to gender-based violence (*see see* Part 2, IV. Effects on outlook and perception, i. Understanding). Survivor-attorneys noted that their personal experiences aided them in truly understanding why a client may want to continue a relationship with her abuser—a nuanced concept that non-survivors may have a harder time fully grasping. The duties of a domestic violence attorney, in particular, require much more than mere knowledge of relevant statutes and case law. “Competency must include an understanding of domestic violence,” especially

²⁷ Susan Daicoff, *Law As A Healing Profession: The Comprehensive Law Movement*, 6 PEPP. DISP. RESOL. L.J. 1, 14 (2006).

²⁸ *Id.*

²⁹ Janet Weinstein & Ricardo Weinstein, “I Know Better Than That”: *The Role of Emotions and the Brain in Family Law Disputes*, 7 J. L. & FAM. STUD. 351, 376-77 (2005).

the “constellation of behaviors that comprise abuse. . . .”³⁰ Survivors may have better safety planning advice than other advocates because they too cultivated innovative solutions to remain safe during their abusive relationships. They may be more patient with clients undergoing trauma after a sexual assault and may be better equipped to describe the erratic or counter-intuitive behavior of a client undergoing PTSD or another form of traumatic response. In the courtroom, a legal representative “is the equivalent of the anthropologist reporting on the studied culture to the court: She must translate the client’s stories.”³¹ Survivor-attorneys have a unique advantage in filling this role, because they straddle the line between the legal world and the private, isolating inner world of a survivor. In translating the client’s lived experience into a proper case theory, a survivor-attorney who borrows too heavily from her own life story risks erasing the unique perspective and needs of an individual client.

Within their scope of practice, attorneys must oftentimes face non-legal considerations. An attorney who has survived gender-based violence may be well-equipped with the requisite life experience to properly counsel a client on their myriad of issues that may be inextricably tied to her case, but only tangentially related to the law. Model Rule 2.1 of the ABA’s *Model Rules of Professional Conduct* explicitly authorizes an attorney to “refer not only to the law, but also to other considerations such as moral, economic, social, and political factors, that may be relevant to the client’s situation.”³²

³⁰ Saffren, *supra* note 20, at 13-14.

³¹ Ilene Durst, *Valuing Women Storytellers: What They Talk About When They Talk About Law*, 11 *YALE J.L. & FEMINISM* 245, 261-62 (1999).

³² Model Rules of Prof’l Conduct R. 2.1 (1983).

A rule like Rule 2.1 is permissive, but could arguably be read as an ethical mandate to go beyond non-legal considerations, and beyond the professional code itself.³³ In fact, attorneys have voiced that the code of professional conduct “actually offers little guidance in resolving the unique problems they confronted,” particularly when working within marginalized communities.³⁴ As one legal services attorney mentions in an interview conducted for a legal ethics article entitled “It’s Hard to be a Human Being and a Lawyer”:

The kinds of ethical problems that come up for me are questions about how to treat clients or problems with opposing counsel. Like how invasive do you get in a client's life to find out what's going on, how much you help them solve only the problems they bring to you and how much you have an obligation to get into their face and identify a problem they don't want to admit to.³⁵

Rule 2.1 seems to cut against common legal practice, which tends to caution against straying too far from the traditional legal scope of practice. Whether due to consternation surrounding “the inherent ambiguity of non-legal questions,” or “concerns about client autonomy [or] lawyer competence” many attorneys in other legal fields avoid addressing their clients’ extralegal questions.³⁶ While some attorneys might find themselves ill-equipped to assist their clients with these concerns, attorneys who have navigated and survived similar personal experiences may provide strong exceptions to this rule. As opposed to pure legal questions, however, non-legal assistance guided by an attorney’s personal experience may create a wildly disparate attorney-client relationship for one attorney assigned to a case as opposed to another.

³³ See Larry O. Natt Gantt, II, *More than Lawyers: The Legal and Ethical Implications of Counseling Clients on Nonlegal Considerations*, 18 GEO. J. LEGAL ETHICS 365, 366 (2005).

³⁴ Robert Granfield & Thomas Koenig, “It’s Hard to Be A Human Being and A Lawyer”: *Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 510 (2003).

³⁵ *Id.* at 511.

³⁶ See Gantt, *supra* note 33 at 366.at 366.

This could prove problematic for a survivor in need of legal services, who would most likely be appealing to a non-profit organization in general, with little to no choice in her assigning attorney. Furthermore, advice based on social, moral, or otherwise non-legal conditions differ from pure legal questions in that they have no external limiting principles. Survivor-attorneys must determine themselves how far they will allow themselves to stray away from the purely legal aspects of their clients' cases.

In some cases, direct service attorneys have no choice but to wear as many hats as necessary to assist their clients through crisis. Survivors and non-survivors alike reported a disturbing lack of resources in their field. As such, attorneys are stretched thin and forced to play the role of social worker, psychologist, and babysitter, all without sacrificing any energy or focus dedicated to their main role as attorney (*see* Part 2, V. Obstacles in Providing Legal Services). While some attorneys level expectations with their client, survivor-attorneys who identify strongly with their clients might have a more challenging time establishing the requisite boundaries to prevent burnout, compassion fatigue, frustration, or mental distress. Medical-legal partnerships³⁷ or partnerships with social service programs³⁸ can shoulder some of these extralegal obligations, yet even with these resources, the attorney may still find it challenging to retain within the confines of her designated role.

Though this is true for advocates working in all forms of direct service legal organizations, and social services more generally, survivors working in gender-based

³⁷ See, e.g., *Empowering Families Impacted by Domestic Violence: Optimizing Financial Stability through Medical-Legal Partnerships*, MED. LEGAL P'SHIP. BOSTON, <http://hungercenter.wpengine.netdna-cdn.com/wp-content/uploads/2011/06/Empowering-Families-Impacted-by-Domestic-Violence-Edouard.pdf> (last visited Dec. 4, 2016).

³⁸ See, e.g., *Passageway – Domestic Abuse Intervention and Prevention*, Brigham and Women's Hospital, *description available at* http://www.brighamandwomens.org/about_bwh/communityprograms/our-programs/violence/passageway.aspx (last visited Dec. 4, 2016).

violence direct legal service bring an especially zealous form of advocacy to their work. Though unquantifiable and unmeasurable, their passion for the cause and empathy for their clients are perhaps the most valuable resources that a direct service organization may have.