



TIPS FOR TESTIFYING IN COURT

Questions to Expect in Direct Examination – General Testimony

- What is your occupation?
- How long have you been employed at _____?
- What is a CAC?
- Tell us about _____(CAC)? What is the purpose of a CAC? How long has it been in existence?
- How is the CAC funded?
- How many people are employed at the CAC?
- What services are provided at the CAC?
- How widely used is the CAC by agencies in _____ (your city, county)?
- What is a multidisciplinary team? Who are your partner agencies? Who do you provide interviews for?
- Do you have any other professional experience in child abuse?
- What is your educational background?
- Have you received any training since obtaining your degree?
- Have you had any specialized training in forensic or investigative interviewing? What is it?
- What is a forensic interview?
- How many interviews have you conducted?
- Approximately how many children have been interviewed at the CAC?
- What is the purpose of conducting an interview?
- Why is the interview recorded? How?
- Is the interview objective? (*Yes, I am a neutral interviewer. The CAC does not have any stake in the outcome of the interview.*)
- Is abuse substantiated in every case?
- Are there differences in your interview process with respect to older or younger children?
- Do you notice differences in children's cognitive or developmental abilities during your interview? How do your interviews take these differences into consideration?
- Do you use human figure diagrams in your interview? Do you use any other tools in your interview?

Questions to Expect in Direct Examination – Specific to Interview

- Pre-interview actions
 - Did you have information regarding the case before your interview? Did this prejudice your interview?
 - Did you talk with the child before you begin the interview? What did you talk about? Why is this not recorded?

- Interview itself
 - Did the child know she/he is being recorded?
 - Who was allowed in the interview room during the interview? Who was allowed to observe the interview?
- Post-interview actions
- Be prepared to defend your actions/questions in the interview and explain in detail why you did/did not do certain actions based on your training and experience
- Do you have a process/protocol/structure for conducting a forensic interview? (Be prepared to explain the fluid nature of forensic interviewing over the years due to research and clinical experience)
 - How do you decide whether or not to use human figure diagrams in your interview?
 - What occurs after the interview with the child? (*Be ready to address if the child is given a stuffed animal, snack, etc.*)

Questions to Expect in Direct Examination – If Qualified as Expert

- Testimony concerning experience as a forensic interviewer/your experience in the expert topic in question
- Testimony concerning prior testimony as a qualified expert
- Testimony concerning topic that needs expert testimony such as recantation, delayed disclosure, the forensic interview structure/protocol/model
- What are your professional memberships?
- What are the benefits of these memberships? (*It is a way of staying current in the field. These organizations provide professional journals and hold annual conferences.*)
- What is a professional journal? (*Journals are like magazines for the professional. They contain articles on subjects of concern to the field.*)
- Why would you read these articles? (*To improve my skills, knowledge, and practice. It allows me to keep current with the most research.*)
- Are you familiar with literature and research in the field of child sexual abuse?
- Have you conducted any teaching, lecturing, or writing in the area of child abuse?
- Do you attend any professional conferences? If yes, why? (*Leading practitioners/researchers in the field come to present their work.*)
- Have you ever presented at any conferences?

Other questions would be based on the reason that you have been called to serve as an expert in court. Are you there to explain why a child did not make an outcry, or why children recant? Perhaps you are there to talk about the manipulation/grooming process that an alleged offender might go through with a child. This is information that, hopefully, you would have covered with the prosecutor or attorney who subpoenaed to court, prior to appearing to testify.

Questions to Expect in Cross Examination

Cross Examination is an opportunity for the defense attorney to further examine any testimony you might have provided during direct examination. Many defense attorneys attempt to use this as an opportunity for the lawyer themselves to testify *through* the witness. Before your testimony discuss likely areas for cross with the prosecutor. What is the defense theory and how does the prosecutor plan to counter it? Prepare responses in advance.

Common Tactics of Attorneys Conducting Cross Examination:

- Rapid Fire Questions
- Condescension
- Best Friend, Friendly Approach
- Badgering
- Suggestive Questions
- Demanding a “Yes” or “No” Answer to a Question That Needs Further Explanation
- Reversing Witness’ Words

Sample Cross Examination Questions:

- Children lie, don’t they?
- The child made a disclosure involving conduct of a sexual nature before you interviewed her, didn’t she?
- You were aware of the nature of that disclosure?
- You believed it to be a disclosure of sexual abuse?
- Your interview was conducted because you suspected the child had been abused?
- Do you consider yourself an expert on how to interview children?
- Do you have any particular professional qualifications for your job in interviewing children?
- Are there any educational requirements for this job? (*Refer to the educational requirements of your job description.*)
- Are there any certification procedures for interviewing children?
- Is there a proper “method” or “protocol” for interviewing children?
- Did you follow that method or protocol in this interview?
- Did you deviate at all from that method or protocol in this case?
- So it’s okay if you do your own thing because you can justify it later, right?
- You didn’t record all your interviews with the child, did you?
- How many times was the child spoken to that were not recorded?
- You don’t know how this child was influenced by prior interviews, do you?
- Children lie, don’t they?
- Children lie about abuse, don’t they?
- And children are highly suggestible, right?
- Did you attempt to find out how suggestible this child was?
- Did you attempt to find out this child’s reputation for honesty?
- Were you aware of this child’s reputation for lying, delinquency, etc.

Watch out for the following kinds of questions:

- Isn't it true that....
- Isn't it a fact that....
- What if....
- Don't you think...
- Wouldn't you agree...
- Isn't it possible...
- Didn't you say....

IN DEFENDING YOUR INTERVIEW, WHAT IS LEADING AND WHAT IS SUGGESTIVE IS LARGELY IN THE EYE OF THE BEHOLDER. DO NOT LET DEFENSE TAKE YOUR QUESTIONS OUT OF CONTEXT.

Tips for Effective Courtroom Testimony -- General

- Testify Accurately and Candidly
 - Tell the truth. Don't lie
 - Answer questions whether they help or hurt the case
 - Don't exaggerate
 - Remember, you are not an advocate for the child (don't become emotionally involved in the case)
 - Just tell what happened
 - Admit prior discussions with the attorney who subpoenaed you
- Testify Only to What You Know or Can Recall
 - Don't guess
 - Say that you don't know or can't remember
 - Don't create details
 - Ask to see the document (transcript, research article, etc.) if you forget or if you believe something has been taken out of context
- Make Sure You Understand the Question
 - Listen carefully
 - Seek clarification
- Answer the Question Asked Using Plain, Simple Language.
 - Use concise, appropriate language
 - Use simple words
 - Don't use "buzz" words or acronyms such as CAC, CPS, DHR, SANE, etc.
 - Keep it simple

- Answer only the question asked
 - Don't volunteer information
 - If possible, answer yes or no, nothing more (Ex. *Do you know what time it is? Yes.*)

- Stick to the facts
 - Talk only about what you know
 - Don't state what others told you
 - Don't say "I think" or "I believe"
 - Respond to open-ended questions with "*As I recall...*" or "*To the best of my recollection...*"
 - Don't sneak things in against the defense
 - Give positive, definitive answers

- Don't lock yourself in unnecessarily when you are cross-examined
 - Don't say "*nothing else happened*"
 - Give yourself some room

- Admit your mistakes
 - Concede things you need to concede
 - Admit if you don't know
 - Admit if you are not sure

- Hold your ground when you are cross-examined
 - Do not be led into answering yes or no to a question which does not accurately reflect what your testimony is
 - If a "yes" or "no" answer would be misleading, say so (*I can't answer the question yes or no. Can I explain?*)
 - Answer yes or no if you can
 - Watch out for "*wouldn't you agree that...*"

- Stop when an objection has been raised, stop immediately
 - Wait until the judge has ruled on the objection and has provided instructions as to whether you should respond to the question
 - If the objection is overruled, continue with your testimony
 - If the objection is sustained, the attorney will have to ask another question

- Develop a Courtroom Style – Poised, Polished, and Professional
 - Dress conservatively and be well groomed
 - Be confident, but not arrogant
 - Sit tall, remain attentive, and maintain eye contact
 - Project your voice loud enough so that you can be heard
 - Know the facts
 - Be even tempered
 - Don't be emotional
 - Don't call attention to yourself. Be yourself and you will be perceived as honest
 - Don't slouch or roll your eyes
 - Avoid distracting mannerisms (Ex. Don't mumble, chew gum, fidget, pop knuckles, etc.)
 - Control the pace by taking your time and pausing before you answer
 - Speak slowly
 - Be aware of overly-broad generalizations
 - Keep your cool
 - Don't argue or become defensive
 - Avoid “uh”, “uh-huh”, “um” “yeah”, “you know”, “like I said”, or “whatever you say”
 - Be patient, especially with bumblers
 - Don't be sarcastic
 - Refrain from laughing or joking during the hearing
 - Call the attorneys and judge by sir or ma'am
 - Don't take documents to the stand unless the prosecutor has approved
 - If you do take documents to the stand, don't fumble through them when asked a question
 - Make eye contact with the attorney and/or jury (also position your entire body toward whomever you are making eye contact with)
 - Do not look at the attorney who subpoenaed you to receive approval or guidance

- Watch what you do when you are off the stand
 - You are being observed by all
 - Don't tell other witnesses what you testified about
 - Avoid the jury during breaks
 - Assume all conversations with attorneys will be recorded and that you will be cross-examined
 - Your character and testimony begins before you get on the stand – it begins with your interaction in the community

Tips for Effective Courtroom Testimony – Expert Witness

- Know why you're in court
 - You are not there to defend the victim
 - Your job is to educate the jury
 - Give facts to the jury
 - Only give your opinion if asked

- You are an expert
 - You do have the skills, training, and experience necessary to be an “expert” in court
 - Never give an opinion about matters in which you are not trained
 - Understand the purposes of impeachment are to test your credentials, data, or findings – it's not personal

- Don't get carried away
 - Limit yourself to areas in which you have received training
 - Be able to concede points on cross-examination; it will enhance your objectivity and professionalism

- Show wisdom
 - You may be cross-examined with articles, books, other's opinions, or other testimony you've given
 - If an article or book is mentioned, and the attorney confronts you with an opinion that appears contradictory to your testimony, ask to see the information. Read it, consider it, and compare it – you'll probably find that it has been taken out of context or misrepresented by the attorney

- Prepare
 - Know the facts cold
 - If you're fumbling through pages of transcript you will appear unprofessional (*Remember, you are the expert. You need to look, sound, and dress like one.*)

- Speak English
 - Keep it simple and make it easy to understand
 - If you must use technical terms, define them
 - Do not use acronyms or “buzz” words (i.e. CAC, Multidisciplinary Team etc.)
 - Use analogies or comparisons whenever possible (By making comparisons to everyday events, you convey your point more graphically.)

- Say it at least three times
 - The first time through, talk about the overall theory of your work – what you are trained to look for and why
 - The second time, talk about a hypothetical case or a prior, similar case
 - The third time, you'll explain what you did, what you looked for, what you observed in *this* case (Your opinion carries more weight now.)

Tips for Testifying in Court

- Be yourself
 - Go and watch other people testify in court
 - Do not copy their style but develop your own style based on what you observe
 - Sit back, listen, think about your answers, tell the truth, and be yourself

(Above section comes from Paul Stern, *Surviving in the Courtroom: Rules for Testifying as an Expert in the Courtroom*)

Tips for Minimizing and Overcoming Challenges Related to Prosecution/Court Proceedings Issues

- Take time to get to know local prosecutors. Explore and familiarize yourself with the philosophy, practice, structure and challenges of the local prosecution office(s). Each office is unique and generally reflective of the preferences of the elected District Attorney as well as local judges.
- Observe as many courtroom proceedings as you can – even those involving cases not involving child abuse offenses. This should include hearings as well as courtroom trials. This will help you to feel more comfortable in the courtroom but it will also demonstrate to prosecutors that you have an interest in what they do and how they do it.
- Search for opportunities to discuss with local prosecutors any training you have received, research articles you have read, etc. In this way, you may be able to persuade local prosecutors that you can be a valuable asset in the preparation of cases as well as preparation of child witnesses.
- Request that local prosecutors participate in monthly or quarterly review sessions so that you can benefit from their critiques of your interview style, protocols, etc.
- Do not assume, because the local prosecutor does not utilize you as a witness in court, that this is an indication of lack of trust or respect for you professionally. This may instead simply be a reflection of the accepted practices in that particular prosecutorial office or in the local courts, as dictated by the local judges. However, it may also be an indicator that you need to seek opportunities to enlighten the local prosecutor regarding how other jurisdictions are now utilizing interviewers to strengthen cases and enhance the court proceedings, i.e. trainings, research articles, etc.
- Appreciate and recognize the special challenges prosecutors face in their unique and distinct roles. Respect and acknowledge their specific areas of authority in the prosecution of these cases.