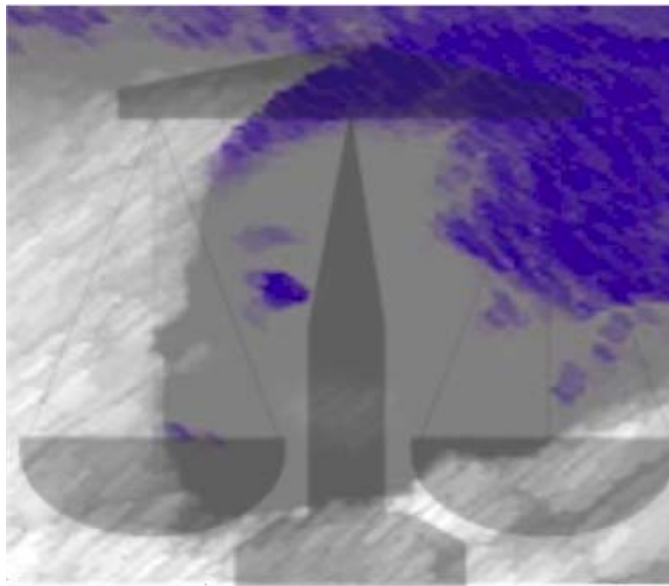




Testifying in Juvenile and Family Court

Preparing for Depositions, Hearings and Trials



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This booklet is one in a series developed by the ChildTrauma Academy to assist parents, caregivers, teachers and various professionals working with maltreated and traumatized children.

INTERDISCIPLINARY EDUCATION SERIES

Edited by B. D. Perry

INTRODUCTION

Most professionals working with maltreated children will eventually be called upon to testify in a hearing, deposition or trial. These legal proceedings have profound implications for children and families. The courts make crucial decisions about the child's health and welfare. Indeed, it is likely that a Judge's decisions about placement and services have more impact on the health and welfare of maltreated children than clinicians or caseworkers. It is imperative, therefore, that the professionals working with children and their families participate effectively in this process. The insights and professional opinions of the caseworkers and the treatment teams must be accurately and fairly represented in the courts. In the end, the Judge's decisions depend upon the quality and quantity of information available at the time that he or she considers the case.

Unfortunately, many professionals find these legal settings unfamiliar, threatening, confusing and antagonistic. Bad experiences in court can dissuade professionals from becoming involved in subsequent child abuse situations. It is crucial to understand that the legal system obtains 'information' and makes decisions in a fashion very different from that familiar to clinicians. It seems, at times, that the process is arbitrary, constricted and demeaning. *It is not meant to be.* Our current child and family systems have evolved out of a long tradition of American jurisprudence with the goal of being objective, fair and just. Unfortunately, as with other child-related areas in our society, the law and the courts are struggling with the balance between the rights of children, parents, and the community. Progress is slow. In contrast to other Courts, the Juvenile and Family Court system is just now celebrating its 100th Anniversary in 1999. While the evolution of Child Law and the Juvenile and Family Court systems is beyond the scope of this booklet, it is fair to say that child law (and the decision-making processes regarding maltreated children) continues to evolve. In the meantime, the best way to participate in this process is to become familiar with the legal decision-making process and be prepared.

Each day professionals working with maltreated children encounter children and families in distress. As strange as it may seem, the very same principles that help us understand maltreated children can help make us more effective in legal proceedings. Think for a moment about all of the unfamiliar and threatening situations the maltreated child will experience - first the abuse, but then removal, transitions, examinations, new placement, new school, new peers. For many children, this process is repeated in what feels like a random fashion. Maltreated children are challenged with the unknown and the uncontrollable on a daily basis.

Testifying can be an unknown and uncontrollable experience. You will find yourself in a setting where *you* are not in control. You will be in a new and threatening environment. You may feel intimidated by the lawyers and Judge. You may feel attacked by the opposing attorney and un-supported by the attorney that has called you. Your professional qualities or personal character may be attacked. You may feel threatened. If nothing else, testifying can give you a small window of insight into the uncontrollable, unfamiliar and, often, unsettling feelings that maltreated children live with.

This booklet is designed to help you do more, however. This is written for an interdisciplinary audience with the objective of helping prepare professionals to participate in legal proceedings in the most effective fashion possible. There *are* ways to make testifying less threatening. Indeed, the same principles we use to help traumatized children feel less threatened can help make testifying less threatening for you. These principles are derived from an understanding of how the brain responds to threat.

Fear and Memory: How We Remember Under Duress

<i>Sense of Time</i>	Future Past	Days Hours	Minutes Seconds	Immediate Present	No Sense of Time
<i>Controlling Brain Areas</i>	NEOCORTEX Cortex	CORTEX Limbic	LIMBIC Midbrain	MIDBRAIN Brainstem	BRAINSTEM Autonomic
<i>COGNITION</i>	ABSTRACT	CONCRETE	EMOTIONAL	REACTIVE	REFLEXIVE
<i>Internal State</i>	CALM	AROUSAL	ALARM	FEAR	TERROR

State-dependent recall. All humans process, store and recall information in a state-dependent fashion. This means that our thinking (cognition) changes as our internal state changes. Simply stated, the individual resting at home in a safe, comfortable, familiar setting will have certain parts of the brain “in control” (neocortex). This person can engage in abstract, creative thinking and is capable of focusing on the far past or future. This very same person at work will be focused on the routine tasks of the day. Other parts of the brain are mediating this more concrete routine style of thinking (cortex). In court for the first time, this person may feel very anxious. In this situation, even more primitive parts of the brain (limbic) begin to play a role in controlling cognition. There is a sense of anxiety; changes in the body may become apparent - tightening muscles, voice cracking, heart racing, and sweaty palms. The style of cognition shifts and the capacity to think in the most clear, efficient fashion is impaired. Remembering cognitive information stored in the neocortex is more difficult. The more intimidated and threatened this person becomes on the stand, the less capable they become of representing accurately the facts, opinions, thoughts and rationale for their opinions. They are less effective in court. Many courtroom tactics (see below) are designed to make the witness feel off-balance, anxious, confused and intimidated. This will shift their internal state down the arousal continuum (to the right - above) and make them less capable of thinking clearly. An anxious, intimidated witness can more easily appear “defensive, “combative and less professional. In these situations, the witness often has difficulty remembering key details, provides incomplete explanations and has less capacity to think “on their feet,” becoming more easily surprised or trapped by misleading or distorting questions.

When you are asked to testify, you are being asked to remember. And when we remember, we are using our brain. The brain is the organ that allows us to walk, talk, think, learn and remember. While complete description of memory is beyond the scope of this booklet, it is important to know that the brain has different parts responsible for different functions. The

neocortex, at the top of our brain, is responsible for our most complex thinking and processing. While the bottom of the brain, the brainstem, is responsible for more simple regulatory functions such as regulating heart rate and body temperature. Further it is important to know that the brain stores information. Cognitive information (e.g., the details of a specific child's abuse situation and all of the stored professional facts and principles you used to make your opinions about the child) is stored in the cortex. Other parts of the brain store other kinds of information. For the purposes of testimony, what you will be asked to remember - and the parts of the brain you will need to use - are the neocortex and cortex. Unfortunately, this stored information is not always so easy to access and recall. Recall of stored information is "state-dependent" (see Table above).

We have all heard someone say, "I was so anxious, I forgot my name." Fear inhibits our capacity to remember certain kinds of information. We all are familiar with 'test' anxiety. When we feel threatened, we move down an arousal continuum from calm to arousal to fear. As we move along this continuum our neurophysiologic, emotional, behavioral and cognitive functioning shift. The more threatened we feel, the less capable of complex thinking and remembering we become.

Think about the continuum of arousal and state dependent recall in terms of your own experience on the witness stand. Because you are in a new and stressful situation, your ability to recall information about the facts may be impaired. This is what is meant by the term "state dependent recall." It explains why we have some of our "deepest" thoughts and best ideas while we are alone in safe, familiar places - with no distractions - driving home from work (assuming traffic is not too bad), taking a shower, taking a walk. We are in a calm state and more easily able to access and use the parts of our brain that allow us to think abstractly. In contrast, on the witness stand, we are in a heightened state of arousal.

Minimizing the Distress of Testifying

There are several key principles that can help decrease your anxiety in court and minimize the shift down the arousal continuum during testimony.

The first principle is related to our response to the unknown. In general, the unknown will induce a fear response. Therefore, the first step is to make the unknown, known and the unfamiliar, familiar. The more you learn about the specific proceeding and the processes associated with testimony, the comfortable you will feel testifying.

The second key principle is that any stressful experience is less distressing if you have elements of control. Despite the fact that you are not in control of the process, you control the most important part of your testimony experience - you control how much and how well you know the facts and the basis for your opinions. You control your demeanor, your appearance, and your knowledge base. More control and confidence comes from preparation.

Key Steps

Information (About the process and proceedings): Make the unknown more familiar. Find answers for the central questions. Who are the parties, what is the proceeding, when will it be, where it is being held, why are you being asked to testify? Learn about this specific

proceeding. It may be different from other courtroom proceedings you have had. Will this be a criminal trial, a civil trial, a family court trial, an emergency hearing, a status hearing, a termination of parental rights hearing or deposition? If you have never been in court, visit a courtroom. If you have never been in this kind of proceeding, consider a visit to another hearing and watch how it works. Meet and talk with the attorney calling you. Get clarity about what this lawyer will ask you. Help this lawyer to understand your opinion and expertise. And then help decide how to ask you the right questions to best get at your opinions or expertise. Finally, try to anticipate the questions the opposing lawyer may ask and be aware of the areas where your opinions, expertise or experience may be vulnerable. Your testimony should be within your area of knowledge or expertise so try to anticipate where the opposing attorney may try to get you to outside of your “comfort” zone.

Preparation (Case and topic specific): Once you know the area of testimony, prepare. Refresh yourself about the central issues of the case. Review notes, materials, records and supportive materials used in forming your opinions. Memorize important dates, names and findings. The more familiar and comfortable you are with the material the easier it will be to recall and the more professional you will appear. With all of this preparation, however, it is important to remember that you should not memorize answers to questions - memorize central facts but do not prepare automatic responses. It is reasonable to prepare outlines, case summaries or other materials to support or summarize your opinions and key findings. And remember that at the time of testimony it will be fine to ask to see any primary materials that the opposing attorney uses. No one is ever expected to memorize the voluminous records that often accumulate in abuse and neglect cases.

Presentation (How you look and act): Like all other arenas of life, appearances do matter. Important impressions about credibility, professionalism, intellect and other character qualities are made based upon how you look and behave in the courtroom. These impressions are important; you want to make sure that nothing you do interferes with what you want to tell the judge or jury. In fact, if possible, the way you look and carry yourself can lend credibility to your testimony.

The key here is respect. Respect for the proceedings and all participants - especially those who may be hostile or unprofessional to you. Show respect by being sincere, honest, thoughtful and professional but in no way condescending or arrogant. The way you dress should be conservative and reflect the serious and important process taking place in the courtroom. Always be polite and circumspect in your comments before testimony, while testifying and during breaks. This is not the time to be loud or funny. *Remember why you are there* - the lives of children and families have been terribly fractured and the decisions being made as a result of this process can forever change many lives.

Personal Style (How you communicate): After memory, the most important mental process in testimony is communication. Good memory does not matter if you can not effectively communicate what you remember to the judge or jury. Communication requires a “sender” and a “receiver.”

Be a good sender. You are not going to be communicating much if the judge or jury is so bored and distracted because you are monotonous, repetitive or lack any animation. In the beginning, sit up in the stand, listen carefully, and answer in a clear, loud and slow voice. As you feel more comfortable, let your personal style come through a bit - it looks and feels more natural to the trier of fact. It is imperative that you realize how much you convey with non-

verbal behaviors. Your body posture and movements, facial expressions, tone and volume of voice and eye movements are as important (if not more) in communicating as your words. And remember when you are comfortable, confident and answering within your expertise and knowledge of the facts, your verbal and non-verbal signs will match. This match makes for much more effective communication.

Help the triers of fact become good receivers. The triers of fact - the judge or jury - do not have your training. They do not use or even understand some of the words, phrases and concepts you use everyday in your work. You are being asked, at times, to be a teacher. On direct examination, when you have more flexibility, don't make any assumptions that the concepts or process or language of your discipline are familiar to anyone. Explain, clarify and describe in ways that are respectful and not condescending. Few things are more irritating to a judge or jury than arrogance. Finally, you must keep the attention of the judge or jury. While your testimony is something that is, typically, a novel experience for you, it is what the Judge does everyday. This is a familiar, comfortable setting; the Judge hears dozens of people like you each week. To some degree you must decide how to develop 'topography' to your testimony - what are the high points, which out of all the facts, findings and opinions that you give are the central points? Which findings or opinions do you absolutely have to communicate? When the opportunity arises - in direct or cross examination - highlight these points.

Legal Proceedings: Participants and Process

In all courtroom proceedings, there are participants and process. If you are familiar with these, you will feel more comfortable and prepared.

Key Participants

Each court proceeding has key participants. Being aware of the role of the various potential participants can help make a confusing jumble of people into something more structured and comfortable for the witness.

The children: In some cases, the children will be present in the court or in the court waiting areas. If you work with the children or know them, seeing them can be awkward. They may not know how to respond to you outside the confines of your office or your other role. They may be confused about why their family is hostile to you. They may be angry, hungry, tired and frightened. It is often heartbreaking to be present when children and families re-unite or separate. Different courts handle these circumstances in different fashion. If you are a therapist, counselor, caseworker or other professional working with these children or families you will have to interact in some fashion with the children. Do not ignore them. It is often helpful to go over and greet the children. Further, it is respectful to greet to their family if you have interacted with them, even if you will testify against them. Anticipate hostility and try not to let it distract or distress you to the point where your testimony will be compromised. If you feel you cannot do that without getting distressed, greet the children only.

The family: Often other siblings, parents, grandparents, uncles, aunts or cousins may be present. As members of the family are often the defendants, they are allowed to be in court

in most cases. You will find that during breaks, prior to testimony and on the stand, their presence can be disconcerting. You are often in the position of saying difficult or awkward things about the parenting practices and are being asked to provide opinions that are often life-altering for these families. Again, anticipate an emotionally charged environment. Family courts can be very tense. Try not to let this distract you. Sometimes it is best to ask your attorney to have a more private place to wait when you are not testifying - this can help minimize tense interactions that may interfere with your capacity to concentrate and perform on the stand.

Attorneys: There will always be at least two sides represented by attorneys. In civil trials, such as abuse/neglect cases, the State generally brings a petition alleging that a child has been maltreated. The attorneys representing the State are usually called prosecutors, assistant state's attorneys or assistant attorney generals. In most cases, an attorney will also represent the child's parent(s). The interests of the child in the case will also be represented, although not necessarily by an attorney. Depending on the jurisdiction, the child may be appointed an attorney or a non-attorney GAL or Court Appointed Special Advocate (CASA) worker may represent him. In some jurisdictions, an attorney may also represent the Child Protective Services agency (or an individual caseworker).

All in all, this makes for a lot of lawyers in the courtroom. Before you begin testifying, it will be important to figure out who each of these lawyers is representing. Who is their client? Understanding this information will help you have a better idea of the questions they may ask, which will reduce your stress level.

The Trier(s) of Fact: In addition to the lawyers, there will also be a trier of fact. In civil abuse/neglect trials, the trier of fact is a judge or magistrate. The judge will determine the outcome of the child's case based on the testimony presented at the hearing or trial. In criminal cases, the trier of fact will be either a judge or a jury. The defendant has a right under the Constitution to a jury trial in felony cases. If the defendant decides to have a jury trial, the jury will be called upon to make the ultimate decision of guilty or not guilty. The judge, however, will still make all of the decisions related to evidence and trial procedure.

Other court personnel: The courtroom can often have lots of other people. Some common participants are the Bailiff, a law enforcement officer charged with assisting the proceedings in specific ways and the Court Reporter, charged with recording the proceedings. Attorneys may have associates, assistants or investigators working with them who, at different times during your testimony, may be present.

Types of Proceeding

Deposition: A deposition is actually not a courtroom proceeding. A deposition is a way for the opposing attorney to learn about the facts and opinions that you will provide at the time of trial. In addition, you must be prepared to share why you hold those opinions - what is the basis for your opinions.

In deposition, you are under oath, the proceedings are recorded by a court reporter and you may be audio- or video-recorded. The statements you provide in deposition may be used at the time of trial. It is a common tactic to try to use your own statements in deposition against you at the time of trial in an attempt to demonstrate inconsistencies in your opinions.

Hearing: There are several types of hearings (see Glossary) in the typical child protective process: the emergency hearing (24 to 48 hours after removal), the initial disposition hearing (typically 14 days after removal) and a status or review hearing (every 3 to 6 months). In hearings, there may not be as much formal testimony as in a trial. Some hearings follow the same process as a trial, others are very quick and less formal (e.g., all parties standing before the Judge).

Trial: There are several types of trials. For most purposes, these can be divided into civil and criminal. The majority of court processes in abuse and neglect cases are handled in civil trials or hearings. In many situations, however, there will be a criminal case may be proceeding simultaneously with the civil abuse and neglect case. Whether or not a criminal case is filed by the State depends on the seriousness of the allegations in the abuse/neglect trial, as well as the State's ability to prove these allegations. The prosecutor or state's attorney for the particular jurisdiction has complete discretion over which cases to prosecute. Criminal trials will have similar players, but there will only be two parties: the State and the defendant. A prosecutor or assistant state's attorney will represent the State. An attorney, who is either in private practice or working for the public defender's office, will usually represent the defendant.

The Testimony

The actual testimony in trial or deposition has several stages. Courtroom procedure can vary from hearing to hearing. The following steps are based upon trial testimony. Elements of this procedure are present in almost all court procedures.

Elements of Courtroom Procedure

Swearing in: In most situations, you will be waiting outside the courtroom. Your name will be called by the bailiff and you will enter the courtroom, proceed to the witness stand and be asked to take an oath, to tell the truth, the whole truth and nothing but the truth. Remember this when the opposing lawyer asks you a yes-or-no question when a yes-or-no response would lead to a distortion of the truth. It will be ok to say that you cannot give an accurate response by only answering yes or no. The complexities of the situation and a truthful representation of your opinions may require an explanation rather than a simple response.

Direct Examination: There are several stages to the process of questioning a witness. The first is direct examination. The attorney who has called you as a witness will conduct the direct examination. Direct examination usually involves more open-ended questions. Typically the examining attorney will ask clarifying questions to establish your role in the specific case, your occupation, your professional training, experience, responsibilities and the details of your involvement in the present matter. You will be allowed to give more complete explanations and answers. Indeed, with preparation, you will be aware of the general or even specific questions that will be asked on direct examination. This is usually the easiest part of testimony. And then it is time for cross-examination.

Cross-Examination: This is the opportunity for the opposing attorney to zealously represent his or her client. For you, this means that this attorney will try to make your testimony less credible. They have lots of ways to do this. The opposing attorney will ask close-ended questions designed to elicit a yes or no response. Attempts to give more explanatory response will not be permitted. One primary objective of these questions is to bring doubt to the minds of the judge or jury about you. This is achieved by highlighting weakness related to:

Training - (*Is it true that you have no certification in child abuse evaluation? -as if it existed*)

Discipline - (*Isn't it true that you can give me no specific references that have the percentage of Hispanic girls under the age of six suffering from this...what did you call this Dr. Perry....post-traumatic stress stuff? And then - "So wouldn't it be accurate to say this is a new, speculative and poorly documented mental problem in children?"):*

Experience - (*Isn't it true that I can count on one hand the number of children you have seen with these specific problems?):*

Practice - (*"Without a videotape or audiotape, aside from your remarkable memory, then, there is no way for us to know what or how you actually asked during your interview is there?")*

Judgment - (*"Don't you think that talking to this child's teacher who sees the child everyday, the therapist who has had hours of contact with the child, and the parents who this child lives with would be important in forming your opinions?")*

Personal bias - (*"Isn't it true that you have a service contract with Child Protective Services? What percentage of your practice's income is from CPS? You just plain don't like these parents do you?")*

Inconsistency - (*"Is this your handwriting? Am I misreading this or does progress note, written by you on July 6, 1996 say - patient denied any history of inappropriate sexual contact?" Or "In your deposition you said, and I quote - not sure that this is the only cause of hypersexual symptoms -- Can you see how I could be a little confused now? That is not what you said here today, is it? Which answer would you like us to use?")*

Cross-examination can be a bit tense. As hard as it may be, it is important not to take the cross-examination personally. Attorneys are required to do everything within the limits of the law to help their client. You will often feel attacked during cross-examination, but if you become defensive you leave a bad impression with the judge. If you stay reasonable and respectful, testifying within your area of comfort (those opinions and facts you are sure of), you can often turn the tables on the examining attorney. Sometimes the calmer you become, the more anxious they become. When an attorney badgers or treat you with disrespect, especially if you do not reciprocate, they leave a bad impression with the judge or jury.

Re-direct: If the attorney who presented the witness feels that some of the answers on cross-examination require clarification, they may conduct a *redirect* examination. This examination is limited to those issues raised on cross-examination. Any issue the witness did not get a chance to explain on cross-examination can be cleared up or answered more fully on redirect. Finally, any issues raised on redirect may be addressed by *recross-examination* of the witness. The back and forth, however is usually much shorter and limited in scope.

Key Points: Testifying

TELL THE TRUTH

This probably sounds easy, but it can be difficult at times. In order to tell the truth, there are other helpful guidelines.

First and foremost, to tell the truth you must **understand the question**. Accordingly, it is important to listen to each question carefully. It is impossible to tell the truth if you have not heard and understood the question. If you find that you do not understand the question, you must ask the questioner to make the question clear before you answer it. Many problems can arise from failure to listen to the question. It is important to listen to the entire question—and not assume you know where the questioner is heading. It is also important to watch out for ambiguous references to “he/she,” “they,” “it” and vague time references in the question. Here’s an example.

Question: *She says that you showed up an hour later when she did that. Is that true?*

To answer this truthfully, you must know what the questioner means by “she,” “there,” “this,” and “an hour later.” Lawyers sometimes ask confusing questions. They may not intend to do this, but it will inevitably happen. You should not feel ignorant, silly or uncooperative for requiring a lawyer to provide reasonable clarification of questions. Nor should you allow the lawyer to intimidate you into answering questions that do not make sense to you.

THINK BEFORE YOU SPEAK

There are a number of ways to answer a question. You should not answer “yes” or “no” if the true answer is “I do not recall.” Sometimes, “I do not recall” is the most accurate response.

Question: *Have you ever met a person named Michael Simpson?*

This question presumably refers to your entire life and is so broad that you probably cannot truthfully say “no.” It would not be truthful to say “no” if the correct answer is actually “I am not sure.” Do not be afraid to answer this way. Also, do not feel compelled to answer the question immediately if you need a moment to think the question through. Often lawyers like to get witnesses “on a roll.” To do this, they will ask numerous questions in rapid succession. Do not be taken in by these tactics; they are often designed to control your testimony. Take the time you need to answer the question truthfully.

DO NOT ACCEPT THE QUESTIONER’S STATEMENTS AS FACT

Do not assume that a statement is “fact” merely because the lawyer questioning you says it. Remember: you probably know a lot more about the facts of the case than the lawyer does—and you certainly know more about your field and role in the case. Do not allow the lawyer’s questions to make you lose sight of this. If you do not know for sure that a certain “fact” is

accurate, say so in your answer. If something does not sound right to you, do not make the assumption that it must be right because the lawyer said it a certain way.

DO NOT “PLAY LAWYER”

Once you are on the witness stand, do not waste your mental energy trying to figure out why the lawyer is asking you a particular question or series of questions if it is not immediately apparent. Focusing on *why* the question is being asked instead of the question itself will just distract you. While it may be fun to intellectually spar with a lawyer, this is not recommended. Remember, respect for the process and the participants is much more important than feeling like you are “winning” an intellectual battle. The most important part of your job as a witness is to focus your attention on the question in order to accurately and fairly convey your opinions.

PREPARE, PREPARE, PREPARE

Being prepared is important for three reasons. First, having a solid understanding of the facts and opinions that you are being called upon to present will decrease your vulnerability and, thereby, your anxiety. Second, the more clearly and precisely you present your testimony, the more likely it will be that your objectives are met. Third, the more prepared you feel coming into court the more comfortable and confident you can be. When you are prepared, it is harder for you to be pushed along the arousal continuum.

There are a few ways to prepare. It is always good to review any documents you have written or received regarding the child. If you have been working with an attorney, s/he may also want to meet with you to help you prepare. There is nothing wrong with receiving help from an attorney in preparing for trial. If you are asked whether or not a lawyer helped prepare you for trial, do not feel uncomfortable. We all know that being a witness does not come naturally to most people. Accordingly, it is normal for attorneys to prepare their witnesses.

LEAVE THE ARGUMENTS FOR THE LAWYERS

This rule goes along with not “playing lawyer.” Lawyers argue. Witnesses testify. Answer the questions presented to the best of your ability. Feel free to ask to have the question repeated or express that you do not understand. But do not argue. Arguing with the lawyer will only distract you from your responsibility to tell the truth. It may also upset you and impede your ability to think clearly. The lawyer may be trying to upset you or make you emotional so that he or she can control your testimony. Do not fall into that trap. Keep your eye on the ball; and let the lawyers argue with each other. Arguing also may damage your credibility in the eyes of the judge or jury.

DO NOT VOLUNTEER INFORMATION

Witnesses are only supposed to respond to the questions asked. If you are asked for your name, do not give your date of birth, family history and the names of all of your pets. This is a normal nervous reaction, but this extra information is not responsive to the question asked. Get into the habit of only answering the exact question asked. If the lawyer wants more information, he or she will ask more questions. Volunteering extra information will probably prolong your time on the stand.

PAY ATTENTION

Testifying can get boring, especially if you are required to sit on the witness stand for long periods of time. It is important, however, that you always pay close attention to the proceedings. Pretend like each question is the most important one you will be asked. Do not let yourself become relaxed to the point that you lose sight of your important role in the trial.

GO AT YOUR OWN PACE

Each question deserves your time and attention. Do not let the lawyer rush your answers. Pause and give yourself time to process each question. Go through a mental checklist: (1) Did I hear the full question? (2) Did I understand the question? (3) Do I know the answer to the question? (4) What is the most accurate response to the question?

Using this mental checklist will also enable you to be in control of the rhythm of the testimony. The attorney will not be able to proceed with a rapid-fire cross-examination if you pause, reflect, and answer at your own pace.

CORRECT YOUR MISTAKES

This suggestion goes back to the importance of telling the truth. If you realize during the course of your testimony that you have made an inaccurate statement, you should interrupt the questioning and correct your answer. In this situation, it is okay to make a statement that is not directly responsive to the lawyer's question. Do not feel bad about accidentally making an inaccurate statement. We all make mistakes. The important thing is to make the appropriate correction.

DON'T LET THE LAWYERS DISTRACT YOU

At various points during your testimony, your lawyer will probably make legal objections. These objections are based on rules of evidence, laws that guide the types of questions and information that attorneys can present in court. You may understand immediately what your lawyer is getting at or you may have no clue. Either way, do not let the discussions distract you. The rules of evidence can be quite complex and confusing.

DON'T GUESS

It is perfectly acceptable to make reasonable estimates—but avoid making guesses. If you do not know an exact date, chronological sequence or other piece of information, be truthful about it. Provide your “best estimate.” Do not let the lawyer force you to provide a more specific answer if you do not feel comfortable with it.

TAKE A BREAK

Do not hesitate to ask to take a break if you are feeling tired, ill, or in need of a restroom. It is difficult to stay focused when you are not feeling okay. You should not feel bad about making this sort of request, especially if you are being required on the stand for long periods of time.

BE CONFIDENT

As was discussed earlier, remember that you know the substance of your testimony much better than the lawyer questioning you. Do not let the lawyer undermine your confidence with the pace or complexity of the questions. Also do not let the lawyer cut you off when you are providing a responsive answer. If your answer requires an explanation, respectfully inform the lawyer that you cannot answer the question honestly with a yes/no response.

After Testifying

When you finish testifying, you really are not finished. There are two main issues to address. How did your testimony impact the child's situation? What steps do you need to do to make sure the interests of the child are maintained? Did your testimony poison any potential for working with an impaired parent? If so, how can you make sure services continue? How is the foster family weathering this? Try to understand the impact your testimony has had on the myriad relationships you have in the many systems. Will any of this influence how you work with the CPS Attorney, the DA, specific caseworkers, professionals, teachers, foster parents?

Finally, what did you learn? Did you realize that your interviewing techniques are vulnerable to attack in court? Did you learn that the way you keep records can lead to misunderstanding? Did you learn that you need to bone up on some primary academic area? Did you learn that you have to try to keep your cool better? Did you learn that this wasn't so bad after all?

Don't just walk away from testifying without learning from the experience. You can and will get better at it. You can actually get comfortable and come to enjoy testifying. You can make the unfamiliar familiar. Your ability to help maltreated children will be related to how effectively you can participate in the crucial proceedings in juvenile and family courts.

Glossary

CASA: Many communities benefit from the Court-Appointed Special Advocates program. This is a national organization (CASA) with local chapters. These are usually volunteers who receive special training to serve as advocates for children. They work to ensure that the needs and interests of a child being met.

Child Protective Services (CPS): All states have some form of state agency with the mandate of investigating and protecting children at risk. The primary tasks of CPS include investigating reports of abuse or neglect and provide services to children and families with problems related to child maltreatment.

Defendant: The person or persons that are being accused by the petition before the court. In most abuse cases, this would be the parent(s). In divorce proceedings, the plaintiff can be considered the party that brings a petition of divorce or the contested element of that process to the court and the defendant is the other spouse.

Disposition Hearing: Following an investigation of abuse and neglect and after the case has been adjudicated, the Court holds a Disposition Hearing. This hearing determines the placement and service needs for the child and family.

Emergency Hearings: This is when the Court decides the need for emergency out-of-home placement of a child who may have been a victim of alleged maltreatment. These hearings must be held between 24 and 72 hours of any emergency placement, depending on State law, once an emergency custody order has been issued.

Expert Witness: There is one major difference between a material witness and an expert witness: the expert may give *opinion* testimony in a substantive area (e.g., sexual assault examination). It is the judge who decides whether the witness qualifies as an expert.

Guardian *ad Litem*: A lawyer or lay person who represents a child. Usually this person considers the best interest of the child and may perform a variety of roles, including those of independent investigator, advocate, advisor, and guardian for the child. A CASA worker may play this role in certain jurisdictions.

Petition: A legal document filed with the court. In abuse cases, a petition contains the essential allegations of abuse or neglect but rarely the detailed facts related to the allegations.

Plaintiff: The named person that is bringing the charges or claims. In most cases, both criminal and civil, involving abuse and neglect, the State will bring a petition that the child has been maltreated.

Review Hearing: These are periodic hearings to review the placement and service plans for children in the custody of the State (usually every 6 months). Federal law has mandated specific guidelines for the frequency and nature of review hearings. Each state has developed regulations responsive to these Federal guidelines.

RESOURCES

There are many other places to learn more about the children and the law. A few starting places are listed below.

ORGANIZATIONS

National Council of Juvenile and Family Court Judges

The National Council's began in 1937 when a group of leading judges sought to bring together judicial officers working with in Juvenile and Family Courts. The purpose was two-fold: to focus attention on the concept of a separate tribunal for children and to encourage the development of essential treatment programs for children with special needs.

Juvenile law has changed dramatically since then, and so, too, has the National Council. Increased awareness and sensitivity to children's issues have given the Council the insight to provide meaningful assistance to judges, court administrators and related professionals in whose care the concerns of children and their families have been entrusted. Consequently, the Council is not only the nation's oldest judicial membership organization, it is also the largest.

NCJFCJ
P.O. Box 8970,
Reno, NV 89507
(702) 784-4858 Fax
(702) 784-6628
<http://www.ncjfcj.unr.edu/>

National Association of Counsel for Children

The National Association of Counsel for Children (NACC) is a non-profit professional membership organization dedicated to quality representation and protection of children in the legal system. The purpose of the NACC is to assist attorneys and other professionals in their work with children in the legal system. At the same time, the NACC carries out a Policy Agenda designed to improve the legal system for children.

National Association of Counsel for Children
1825 Marion Street, Suite 340
Denver, CO 80218
888/828-NACC
advocate@NACCchildlaw.org
<http://naccchildlaw.org/>

ABA Center on Children and the Law

Established in 1978, the ABA Center on Children and the Law's mission is to improve children's lives through advances in law, justice, knowledge, practice, and public policy. Its work includes:

- Strengthening laws, policies, and judicial procedures affecting children
- Researching and disseminating information on laws, policies, and practices affecting children and families
- Enhancing skills and competence of legal professionals in children's proceedings
- Educating nonattorneys on child-related law and its impact on their work

- Increasing public awareness of law and justice related to children
- Stimulating and assisting activities and projects on children and the law

Center on Children and the Law

740 15th Street, NW
Washington, DC 20005

Phone: 202/662-1720

Fax: 202/662-1755

e-mail: ctrchildlaw@abanet.org

Website: <http://www.abanet.org/child/home.html>

This page on the their website is particularly useful as a resource.

<http://www.abanet.org/child/links.html>

American Professional Society on the Abuse of Children (APSAC)

APSAC's mission is to ensure that everyone affected by child maltreatment receives the best possible professional response.

APSAC

407 South Dearborn Street Suite 1300

Chicago, IL 60605

<http://www.apsac.org/>

National Clearinghouse on Child Abuse and Neglect (NCCAN)

The National Clearinghouse on Child Abuse and Neglect Information is a national resource for professionals seeking information on the prevention, identification, and treatment of child abuse and neglect, and related child welfare issues.

National Clearinghouse on Child Abuse and Neglect Information

330 C Street, SW

Washington, DC 20447

Phone: (800) 394-3366 or (703) 385-7565

Fax: (703) 385-3206

<http://www.calib.com/nccanch/>

nccanch@calib.com

These resources will be periodically updated and posted in a special section of the ChildTrauma Academy web site <http://www.ChildTrauma.org>. Visit this site for updates and for other resource materials about traumatic events and children.

About the Author

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Dr. Perry is the Senior Fellow of the ChildTrauma Academy. In addition he serves as the Medical Director for Children's Mental Health Services for the Alberta Mental Health Board. From 1992 to 2001, Dr. Perry served as the Thomas S. Trammell Research Professor of Child Psychiatry at Baylor College of Medicine and Chief of Psychiatry at Texas Children's Hospital in Houston, Texas.

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Ms. Welch is a graduate of the inaugural CIVITAS Child Law class at Loyola University Chicago School of Law. She served as the CIVITAS Scholar in Child Law in 1997 and 1998. She currently is practicing law in Seattle and continues to work with high risk children.

The ChildTrauma Academy

The ChildTrauma Academy, a not-for-profit organization based in Houston, TX, is a unique collaborative of individuals and organizations working to improve the lives of high-risk children through direct service, research and education. These efforts are in partnership with the public and private systems that are mandated to protect, heal and educate children. The work of the Academy has been supported, in part, by grants from Texas Department of Protective and Regulatory Services, the Children's Justice Act, the Court Improvement Act and through innovative partnerships with academic and corporate partners such as Powered, Inc., Scholastic, Inc. and Digital Consulting and Software Services.

The mission of the ChildTrauma Academy is to foster the creation of innovations in practice, programs and policy related to traumatized and maltreated children. To support this mission, the Academy has two main activities; 1) Program development and consultation and 2) specialized education and training services.

For more information or to direct donations:

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Web Resources:

ChildTrauma Web site
www.ChildTrauma.org