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Testifying Tips for Child Abuse Investigators

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Police officers are often the first responders in many situations -- traffic accidents, crimes they observe, even violent crimes to which they are assigned. Police officers may also be the first to respond to a report of child abuse and neglect even when the officer is inexperienced in handling these cases. Similarly, Child Protective Services (CPS) workers often are the first responders to abuse and neglect cases. Many times, because they have been the first response, CPS and police officers are responsible for putting abuse and neglect cases into the "system" and therefore become major witnesses for the prosecution, especially in Juvenile/Family Court. Testifying in any court can be an intimidating, fearful experience but, with preparation, knowledge of the facts, and a readiness for what to expect in court, you can achieve your goal of helping abused and neglected children and will do so with less stress. To this end, the following tips may help.

1. Know the Facts of Your Case. Know **who** is involved -- the names of all the parties involved, their relationship to each other, whether they were involved in the abuse and neglect or witnesses to it. Know **what** happened to the child/ children. Is this a case of abuse (physical/ sexual or both), neglect (environmental, educational, medical, psychological), or both. Know **where** the abuse happened. Did it happen in the child's home, a relative's home, in the car, in the garage, at church, etc. Once you determine the location(s) for the abuse determine where in the location(s) the abuse took place. For example, **where** within the child's bedroom did the assault occur? Know **how** and **why** the abuse happened if possible. In physical abuse cases the the responder might observe marks on the child's body. Child abuse, unlike other violent crimes, usually does not involve knives and guns. Regular household items -- hairbrushes, belts, curling irons, lit cigarettes, lighters, frying pans, electrical cords -- become the implements of abuse. These implements often leave distinctive marks. If the victim(s) or anyone else can tell you what was used to cause the marks, and that item can be recovered as evidence, the case will be strengthened.

2. Be Prepared. Being prepared involves more than just knowing the facts of the case, it means meeting with the prosecutor to discuss **why** you are testifying, **what** you are testifying about, and **where**, **when** and **how** you are

testifying. Even police officers who have been qualified as expert witnesses in cases involving street gangs, narcotics, or firearms[2] may be novices at testifying in abuse and neglect cases and need to meet with prosecutors before court. CPS workers may be very familiar with and comfortable about testifying in Juvenile Court but not in Criminal Court. When three are court proceedings in both Juvenile/ Family Court and Criminal Court, involving different burdens of proof and Rules of Evidence and Procedure, it is especially important that all witnesses meet with the prosecutor. For example, in many jurisdictions laws governing non-criminal child abuse and neglect proceedings admit into evidence a child victim's hearsay[3] statements. However, for the same case in Criminal Court hearsay may not be allowed. Different evidentiary standards necessitate meeting with the prosecutor for the criminal case even if you already have testified in the Juvenile/ Family Court action. Do not hesitate to ask questions and tell the prosecutor if you don't understand her questions. Do not assume, make sure you know what you are being asked and why you are being asked it before you answer.

3. Be Aware. Testimony in one court proceeding can be used in any other court proceeding involving the abuse, neglect or related issues (divorce, custody, visitation, criminal charges, etc.). If you have testified at Juvenile/ Family Court and then are contacted to testify in Criminal Court, make sure the prosecutor knows about your previous testimony. In some jurisdictions the prosecutor's office is not involved in the Juvenile/ Family Court proceedings. When this is the case, you may play a vital role in coordinating information between the lawyers involved in the various court proceedings. If it has been a long time since your previous testimony, get a transcript to refresh your memory. Keep in mind that the transcript of your previous testimony, or your testimony in any related court proceeding, can also be used to impeach you. Impeachment is the legal process of casting doubt on your credibility, usually during cross-examination. Impeachment can be accomplished in several different ways:

a. Through inconsistent statements, if it can be shown that what you have just testified about is different from what you said before, in a report or at a prior court proceeding. If you are impeached with a prior inconsistent statement the impeaching attorney can argue that you are unbelievable because you tell different stories. If the inconsistency was at another court proceeding, the argument is that you tell different stories (lie) under oath.

b. Through bias for the child victim or prejudice against the defendant.

c. Through a challenge to your senses, telling the judge and/or jury that you really did not see/ hear/ smell or remember what you said you saw/ heard/ smelled or remembered or that you could not see/ hear/ smell or remember it as well as you said you did.

d. Through omission in a report, conversation, or prior court appearance. Witnesses are frequently attacked for failing to use available technology.

For example, the defense attorney may ask if you taped (audio and/or video) the interview, the scene, the victim's condition, etc. If your office/ agency/ department does not use available technology, know the reason why and be prepared to explain the underlying policy. If you do use these procedures but did not in this particular case be prepared for extra scrutiny about the reason for omitting the procedure. This type of impeachment causes many witnesses to become argumentative. Do not fall into this trap. Whatever the reason for the omission (only a preliminary report, clerical error, mechanical error, only a summary of events, lack of equipment, etc.) it is better to admit and explain than to argue. A skilled prosecutor will cover the omission during direct examination or will deal with it in re-direct.

4. Listen to the Question. The question and answer format is designed to allow the prosecutor to direct your testimony in court, to let you tell the judge and/or the jury what happened in a clear, logical, legally admissible, often chronological order. If you do not understand, politely say "I don't understand the question." This not only forces the prosecutor to ask a question you understand, but also lets the jury know your testimony is not rehearsed. When you do not answer the prosecutor's question directly, you lessen the impact of your testimony in several ways:

- You "tell" the judge and/or jury that you are not listening/paying attention to the prosecutor so it must not be important;
- You "tell the judge and/or jury that you don't care what the question is, that you know better than the prosecutor and you will tell what you think they should hear;
- You "tell" the judge that the Rules of Evidence and Procedure (what testimony is admissible and how it should be admitted) do not apply to you.

5. Do Not Volunteer Information. Prosecutors must follow the Rules of Evidence and Procedure in court, rules that dictate what information can be told and how it can be told. The way we structure our questions incorporates those Rules and is part of our strategy. If you volunteer information that is not asked you may be violating the Rules and/or interfering with our strategy about how to present your testimony. Inevitably, volunteered information affords avenues of attack by defense counsel that would not otherwise have existed.

6. Use Plain Language. One of the most frequently heard complaints about expert testimony, regardless of whether the expert is a doctor, lawyer, chemist, psychologist, or firearms expert, is that the expert's language is too technical and is difficult for lay persons to understand. Sometimes, CPS workers and police officers fall into this trap and use technical language specific to their profession but which is confusing to the judge or jury. If the judge or jury is confused your testimony may be disregarded completely. Try to use the same

language as you would in a conversation with a friend or neighbor. If it is necessary to use a technical term give an understandable definition of the term. Conversely, tell a prosecutor using "legalese" that you do not understand the question. Hopefully, the prosecutor will rephrase the question in plain English. The more conversational the dialogue between you and the prosecutor, the more it will hold the judge or jury's attention and the more helpful it will be to the case.

7. Do Not Argue With:

a. *The judge.* The judge is always the boss in the courtroom.

b. *The defense attorney/ parents' attorney.* You should be ready for cross-examination. During your preparation with the prosecutor, cross-examination should be discussed so that you know what you will be asked, how you will be asked it, what to say if you forget/ don't understand/ can't answer as asked, what impeachment is, and how to respond when an objection is made (do not answer until the judge rules on the objection). Because you have been prepared you will know how to respond to confusing questions, questions based on incorrect information or premises, badgering, and hostility. This does not mean that you cannot disagree. Assume you are asked the following question: "Isn't it true that this is only the second time CPS has been involved with this family?" If this is the fourth time CPS has responded, you should answer "No, that is not true." Do not argue with the defense attorney/ parents' attorney: "You know very well it is not the second time we've been involved, it is the fourth time. You have all the reports, you should read them" If the defense attorney can goad you into arguing you look bad to the judge or jury and that diminishes the impact of your testimony.

c. *The prosecutor.* Any area of disagreement between you and the prosecutor should be discussed and resolved before, nor during the trial. You and the prosecutor are usually part of the same team, trying to protect and help the victim(s). Arguments between you and the prosecutor in court diminish the impact of your testimony even more than arguing with the defense attorney because your are testifying as a prosecution witness. Your testimony about child abuse or neglect may, literally, make the difference between life and death for a child victim. Make sure that, armed with your knowledge, preparation and experience, you continue to fight to protect innocent victims entrusted to our care.

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[1]Senior Attorney, APRI's National Center for Prosecution of Child Abuse
[2]People v. Jackson, 495 N.E.2d 1207, (Ill. App. Ct. 1986).
[3]Hearsay is an out of court statement offered to prove the truth of the matter asserted.