

The Role of the Expert Witness (Court Survival 101)

Court Prep Starts With Your First Patient Contact

- Stay objective – ALWAYS
- Medical evaluation must stand independently
- Don't go out on a limb
 - Importance of peer review and expert consultation

Explain Parent Role to Parents

- Don't confront the alleged perpetrator
- Let your child talk but don't lead them
 - DON'T DO YOUR OWN FORENSIC INTERVIEWS
 - DON'T DO YOUR OWN EXAMS
 - DON'T TAKE YOUR OWN GENITAL PHOTOS
- Believe your child
- Let your child know it's not their fault
- Report new concerns, statements

Pre-Court Preparation 1

- CV or resume
 - Education
 - Experience
 - Including non-abuse patient exams/care
 - Specialized training
 - Memberships & professional affiliations
 - Awards
 - Publications

Pre-Court Preparation 2

- Logs/tracking of cases
 - Number
 - Type
 - Ages
 - Previous testimony (grand jury and trial)
 - Previous qualification as an expert
 - Prosecution & defense

Pre-Court Preparation 3

- Research/literature: Stay up to date
 - “Classic” or key articles
 - APSAC: www.apsac.org
 - ISPCAN: www.ispcan.org
 - The Quarterly: www.quarterlyupdate.org
 - PubMed

Pre-Court Preparation 4

- Know your case

*THE PREPARATION AND PRESENTATION OF
EXPERT TESTIMONY IN CHILD ABUSE
LITIGATIONS*

Paul Stern

Sage Publications

Court Survival Tips

- **Know why you are in court**
 - To TEACH
 - Explain the process for children and the child you saw
 - About anatomy
 - About the facts of what you saw, heard, etc.
 - About what they mean
 - Use diagrams rather than child's photos when possible
 - Why it is normal to be normal

Court Survival Tips

- **You ARE an expert**
 - Skills, training, specialized training, experience
- **You are a professional**
 - Dress & act professionally
 - Start before you ever enter courtroom door
 - Interactions with attorneys
 - Facial expressions & tone of voice

Court Survival Tips

- **Don't get carried away**
 - Limit yourself to what you really know
 - Don't be afraid to say you don't know
 - Don't offer more than asked for
 - BUT be sure you have opportunity to explain your opinion well
- **Tell the truth**
 - Always

Court Survival Tips

- **Prepare**
 - The attorneys may have read your report and CV many times
 - Keep your CV up to date
 - Know your education, experience, stats
 - Know your case & report cold
 - Be ready to defend your opinion

Court Survival Tips

- **Pre-trial conference**
 - Meet with the attorney before you testify
 - Know what's expected of you
 - Educate the prosecutor
 - Opposing witnesses & opinions
 - REVIEW!!
 - Defense theory
 - Meeting with the defense
 - Ask about what to bring/not bring
 - Copy of report already submitted into evidence

Court Survival Tips

- **Speak English**
 - Keep it simple & to the point
 - Define terms
 - Look jurors in the eye
 - Use examples or analogies
 - Speak clearly
 - No nodding, mumbling

Court Survival Tips

- **Say it three times. At least.**
 - Overall theory of work/field
 - Hypothetical or prior similar case
 - This case: See, you did it right

Court Survival Tips

- **Be the witness, not the lawyer**
 - Don't volunteer information
 - You must answer the questions unless instructed to do otherwise

Understand potential defense strategies (for defendant)

- “I didn’t do it”
- “It was somebody else” (“SODDI defense”)
- “It was an accident” (or misunderstanding)
- “I thought she/he was older”
- “She/he said OK”
- “I only touched her/him”
- “She/he came on to me”

Understand potential defense strategies (against your testimony)

- “Isn’t it possible that...?”
 - Alternate explanations
 - Reasonable medical certainty
 - Possible vs. probable
- Bias
 - Child ADVOCACY Center
 - Subjective vs. objective portions of evaluation

Understand potential defense strategies (against your testimony)

- Your information is unreliable
 - Biased sources
 - Did you consider...? Were you aware of...?
- You're incompetent
 - Defense expert witness
 - Case review and peer review

Court Survival Tips

- **Avoid traps**
 - Listen carefully to wording of question or statement
 - “Isn’t it true that...?”
 - Ask for clarification
 - Be sure you understand the question
 - Break 2 – 3 part questions into one at a time
 - Ask to see contradictory opinions or articles with which you are not familiar
 - Be respectful and professional

Court Survival Tips

- **Your testimony can come back to haunt you**
 - Transcripts of this and prior testimonies, depositions
 - Consider asking for copies
 - Review Grand Jury testimony before trial
 - Be careful, consistent, informed, logical

Court Survival Tips

- **The criminal justice system is not perfect**
 - Sometimes there is not enough to even go to trial
 - The most important things we do happen regardless of the justice system:
 - Give children a voice
 - Let them know their bodies are OK
 - Get them help