

Tip Sheet for Clinicians (2)

Testifying in Court about Trauma: The Court Hearing



“Testifying in court can be a difficult and stressful experience for clinicians. But judges and lawyers are not experts in child development or the impact of trauma on children. The knowledge clinicians bring to bear is essential if the legal system is to have any hope of making sound decisions that will serve children’s interests. By educating the court through testifying, clinicians provide an invaluable service to the legal system and, most importantly, to children.”

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CASE EXAMPLE (Introduction):

Heather is the clinician for Sam, a five-year-old girl who, with her sister, was placed in foster care one year ago because of the severe abuse and neglect they suffered in the care of their biological parents. Due to extreme behavioral issues, Sam and her sister have had five placements. Heather began seeing Sam when she arrived at her current foster home and now has been subpoenaed to testify at a hearing to discuss a permanency plan. The attorney representing the child welfare agency told Heather that she would ask about Sam’s diagnosis, her trauma exposure, the effect of the trauma on Sam, and Heather’s recommendations regarding the child’s needs in terms of placement and permanency.

Heather, although nervous about testifying, feels confident that she has reviewed the case, has some idea of what she will be asked in court, and has met with her supervisor Josh on several occasions. Josh, who has testified in court many times, reminded her that testifying will be a chance for Heather to educate the court on Sam’s traumatic events and their effects and how Sam exhibits common traits seen in children who have suffered from early childhood traumatic experiences. Josh also encouraged Heather to engage in self-care activities to help manage her stress level through the court process.

WHAT TO EXPECT IN COURT

Despite all the unknowns of a court hearing, the process of testifying follows a predictable, predetermined path. Just as we prepare our clients for a court hearing, preparing yourself by knowing what to expect can help you feel more confident in your testimony and ease anxiety.

Self-Care Tips for Managing Anxiety during the Hearing

- Be prepared to wait; expect frequent delays in court. Bring an activity (e.g., a book, knitting, crossword puzzles) to occupy you while you wait your turn on the witness stand.
- Remember to breathe! This can decrease your anxiety, give you an opportunity to pace the question and answer process, and permit you to pause and think before you respond.
- Use relaxation strategies (e.g., muscle relaxation, grounding techniques) or positive affirmations to stay calm and focused when you are on the witness stand.

1. **Direct examination:** The attorney who called you as a witness questions you. Generally, you will be asked first about your qualifications, education, and work history and second about your client and your treatment. You then may be asked to give recommendations or opinions based on your professional knowledge and treatment of the client. The attorney will ask open-ended questions and ask you to elaborate on your responses.
2. **Cross-examination:** The opposing attorney will ask you questions designed to bring out points in your testimony that may be favorable to his or her client's case or that may appear contradictory. These questions typically will be short, closed-ended questions requiring a "yes" or "no" answer.
3. **Objections:** Sometimes an attorney will interrupt a question by saying, "Objection." If this happens, stop talking. If the judge *sustains* (approves) the objection, you should not answer the question. If the judge *overrules* (denies) the objection, you will be asked to answer the question.
4. **Examination by the judge:** At any point in the proceeding, the judge may question you.



After cross-examination, the attorney who originally called a witness has two options: (a) to "redirect" the witness' testimony by asking follow-up questions to further develop or clarify a certain point, or (b) to decide the concerns raised during the cross-examination were not significant to warrant further questioning. The latter may leave the witness feeling frustrated or misunderstood; however, the attorney's decision is not a reflection of the content or value of the witness' testimony, but rather a judgment based on legal strategy.

TYPES OF CASES

The following are four types of cases in which clinicians may be asked to testify about the impact of trauma on children.

Criminal

A *criminal* case involves the charging and prosecution of an individual for actions that violate state or federal law (e.g., child abuse or maltreatment, child sex trafficking)—a “crime.”

There are two named parties to the case:

the defendant and the state (or US), which is

represented by the prosecution. In criminal trials,

clinicians may be called to testify as a *fact* or *expert witness* about the child victim of the accused.

At trial, this testimony may be used to determine whether a crime took place. During sentencing, this

testimony may be used to influence the defendant’s sentencing (See below for more information about types of witnesses.).

Delinquency

A *delinquency* case is the charging of a juvenile for a delinquent act (behavior by a minor that would be criminally punishable if committed by an adult) or status offense (an act that is only illegal if committed by a juvenile and not an adult, such as truancy or running away). Youth tried in the juvenile delinquency court are treated differently than adults in the criminal court, as juvenile court is intended to provide rehabilitation for offenders, while adult criminal court is intended to provide sentencing. The parties involved in a delinquency case are the juvenile defendant and the prosecution.

In delinquency cases, clinicians may be called to testify on behalf of a juvenile victim or a juvenile offender. Testifying for the victim will be similar to testifying for a victim in the adult criminal court. However, a clinician may also testify for the juvenile offender by offering insight into his or her past mental, physical, and behavioral histories, providing context for the juvenile’s action. Fact and expert witness testimony may be used in either of the two phases of a delinquency case: adjudication and disposition. During an adjudication hearing, the judge or jury will determine the culpability of the defendant; while the disposition hearing determines how the youth will be sentenced (i.e., treatment, training, or services.)

Dependency

A *dependency*, or child welfare, case is a proceeding that addresses alleged neglect or inadequate care by parents or guardians of the children in their charge. Although parental abuse and neglect may be severe enough to warrant the filing of separate criminal charges, a dependency case is NOT a criminal case. The parents and the child welfare agency are parties to the case. Children may also be parties, depending on the jurisdiction, and may also be represented by an attorney, who advocates for the *wishes* of the child, or a *guardian ad litem*, who advocates for the *best interests* of the child. Clinicians may be called by any of these parties to support that party’s position (e.g., removal of the child, return of custody, permanency placement). Clinicians will be called to give their opinion of the child’s social-emotional, mental, and behavioral well-being.



Family Law

Family law cases involve a wide range of issues relating to marriage, divorce, and the care of children, including custody, guardianship, and adoption. A *custody* case is a proceeding that determines the legal and physical custody of a child. *Guardianship* grants a non-parent physical custody as well as the power to make significant decisions about the child's upbringing. *Adoption* is a judicial order that creates a legal parent-child relationship. In any of these cases, there may be only one party, e.g., the person seeking uncontested adoption, or there may be multiple parties, e.g., parents or other relatives contesting the custody or adoption of a child. Sometimes the child has his or her own legal representative, such as a *guardian ad litem*. In all of these cases, the judge must determine which placement and custody arrangement is in the best interests of the child. Parties will often call clinicians as fact or expert witnesses to inform the court's decision.

TYPES OF WITNESSES

A clinician's testimony may be used either as an "expert witness" or a "fact witness." The following describes these different roles:

Expert Witness

An *expert witness* is an individual qualified by knowledge, skill, experience, or training to provide a scientific or other specialized opinion about evidence that is beyond the common knowledge of the jury. The expert witness provides clarifying information for the judge or jury on a substantive topic area. The expert witness gives testimony based on facts and materials provided to him or her by one of the parties to the case, and she or he is not required to meet with or evaluate the client. Examples of expert testimony are information on child development, childhood traumatic stress, and the behavioral characteristics of abused children. Expert witnesses must be qualified by the judge in order to testify in this role, but the rules for qualifying as an expert witness vary by jurisdiction.



Fact Witness

More often, a clinician will be called to testify as a *fact witness* (also known as a lay witness) whose testimony is restricted to providing information based on his or her firsthand knowledge or observations, rather than providing expert testimony on a particular subject. This opinion is based on his/her "rational perceptions." While a clinician has specialized training that makes him or her an expert in the field, this differs from an expert witness who must be qualified by the court. The court may ask the clinician as a fact witness to give his or her professional opinion of the client, but it is still based on firsthand knowledge and facts gathered during interactions with the client. For example, a clinician testifying as a fact witness may be asked to speak about a client's attendance, the assessments conducted, or treatment goals. Interpretation and opinion related to a client's treatment needs and progress may be included in this testimony. As a fact witness, the clinician can only speak about his or her client, and cannot extrapolate as to other parties to the case with whom he or she has not interacted. The determination between fact versus expert witness may vary based on jurisdiction. Be sure you understand the requirements for the jurisdiction in which your testimony will be used. It is also possible that a judge may decide on his or her own to qualify you as an expert during your testimony, allowing you to testify as an expert witness.

TESTIFYING EFFECTIVELY

To testify successfully, simply convey information as you would in your practice as a clinician and in your personal life: use a confident, firm, controlled, and calm, yet alert demeanor.

1. Maintain a respectful attitude. Avoid speaking at the same time as others.
2. Listen carefully to the question asked. Make sure you understand each part of the question. Ask for clarification or for the question to be repeated, if you do not fully understand.
3. When you answer, speak directly to the judge or to the jury (in a jury trial), not to the person who asked the question. The judge and jury are the ones who need to understand your responses.
4. Speak slowly and thoughtfully. Answer only the question asked. Do not volunteer extra information. Provide short, succinct answers; answer “yes” or “no” if possible. If you must explain your answer, or cannot answer “yes” or “no,” be brief.
5. Be prepared to answer questions about the number of times you interacted with the child/family, length of service, treatment methods, your clinical qualifications and training. (For more information on how to prepare, see Tip Sheet on How to Prepare for Court.)
6. Respond directly and honestly to the questions asked of you.
7. Do not add comments or opinions.
8. Limit your testimony to what you know, and do not guess or speculate.
9. Do not allow yourself to become defensive or argumentative when being questioned.

Your Rights as a Witness

- You have the right to ask for a glass of water, to go to the bathroom, to consider a question or request, to have the question repeated, or to speak to the attorney who has called you to court.
- You have the right to look at a document (including your own reports) to which the attorneys or judge are referring while you are a witness.
- You have the right to say that you cannot give an opinion, because you do not have the necessary data. If you do not know the answer to a question or feel that you are asked something that is out of the scope of your knowledge or expertise, say so.

Trauma Talking Points

You will want to be prepared to define, discuss, give examples, and explain how the following apply to your client:

- Types of trauma (physical and psychological)
- Acute, chronic, and complex trauma and how the appropriate type applies to your client’s experience
- DSM criteria for PTSD, depression, and other trauma-related diagnoses, and methods used to diagnose and monitor the client’s symptoms, including results of standardized measures pre- and post-treatment for your client

- Trauma stress reactions and their role in the client’s life
- Impact of trauma on the child’s social development and ability to form healthy, secure relationships
- “Evidence-Based Practice” and supporting research for selected interventions
- Trauma-specific treatment provided and what that treatment addresses
- Client’s progress with the selected treatment model
- Caregiver involvement in treatment, impact on the client of the caregiver’s willingness and ability to participate in treatment

Behaviors and Symptoms Commonly Explained in Testimony

The following chart lists behaviors demonstrated by children with traumatic stress. Note that this is not an exhaustive list, nor do traumatized children fit neatly into these descriptions. They may display more than one behavior.

Behaviors Displayed	Possible Contributing Factors from a Trauma Perspective
Anger, irritability, defiance, oppositionality with authority	Emotional/mood dysregulation (depression/anxiety), hyperarousal, survival strategies, getting needs met
Lying or profound distrust of authority	Negative beliefs about self, caregivers and world view based on traumatic experience
Running away	Survival (fight/flight), hypervigilance, hyperarousal
High risk behavior (e.g., substance use, promiscuity, rule breaking, self-mutilation)	Pain numbing, attempts to increase sense of power, control, and self-worth
Impulsivity	Impact on brain development, hyperarousal (fight/flight response)
Difficulty falling asleep or staying asleep	Re-experiencing, hyperarousal
Distractibility, difficulty following through with tasks, poor concentration, daydreaming	Difficulty regulating attention and cognition (problem solving), re-experiencing, hyperarousal, dissociation (pre frontal cortex “off line”)
Denying experiences of harm/trauma, avoiding talking about history	Primary symptom of trauma (avoidance); strategy for managing overwhelming emotions
Avoiding activities, isolating from others	Poor self-concept, anxiety and/or depression

CASE EXAMPLE (conclusion)

Heather initially felt uncertain and unsure of herself when she got on the stand, but was able to breathe, manage her anxiety, and focus herself. Because Cindy, the attorney representing the child welfare agency, asked the questions she said she would, Heather felt prepared with good answers. After Heather testified, she experienced a common reaction—relief—but with some uncertainty about her testimony. She felt slightly anxious about whether her testimony was ultimately helpful to Sam and concerned about how the information she presented in her testimony would be interpreted. She felt slightly better after Cindy, the attorney representing the child welfare agency, thanked her and talked to her about the hearing. Cindy pointed out that her testimony was helpful in explaining to the court that Sam's behaviors were common to children that are abused and helped the court understand the dynamics of trauma and abuse and the purpose of Heather's treatment. Heather decided to take her supervisor's advice and take care of herself by watching a funny movie after she got home.

Prior to the Day of the Hearing

- Call the attorney who subpoenaed you to make sure the hearing is scheduled and that you are still expected to appear.
- Find out the name of the judge and the courtroom where the hearing will take place.
- Make sure you have the phone number of the attorney or the court in case of an emergency on the day of the hearing.
- Make sure the Court has your contact information in case there are changes in the schedule.
- Engage in self-care activities and arrive rested.
- Check in with the attorney or wait outside the courtroom until you are called in. Do not discuss your information with other witnesses.