

Tip Sheet for Clinicians (3)

Testifying in Court about Trauma: Following the Hearing



“Without the therapist’s critical explanation about the depth of impact of complex trauma and the need for the correct, trauma-informed interventions, all in the system will fail your client. More importantly, without it, your clients will see themselves as failures. The understanding that “it was not their fault,” that there is hope for their future, has tremendous redemptive value. It makes it all worthwhile.”

Judge Lynn Tepper
Circuit Judge, 6th Judicial Circuit,
Pasco County, Florida

CASE EXAMPLE (Introduction):

Shelly vividly recalls what it was like to appear in Family Court for a permanency hearing. “At the age of 15, I went in front of a judge in Family Court. I was anxious about what the outcome might be, and whether I would be moved back to my adoptive placement. After all, that was the original plan. However, that is not what happened. [When the judge said that I would not be moving back with my adoptive family], I was overwhelmed with emotion. After the hearing I remember feeling helpless, hurt, and lost. I know I had a counselor at the time, which is good that was in place, but not enough information was given to me about possible outcomes of the court hearing. I think it would have helped to lessen the pain I felt then if the counselor had brought up more opportunities for me to explore my feelings prior to the court hearing, and the possibility that there might not be reconciliation with my adoptive family. Open conversations after the hearing also would have been helpful to explore what I was feeling, and remind me why I was there and talk through what happened, and especially to remind me of coping skills I could use at a time when I was really vulnerable. I don’t recall the counselor doing this. Having someone to listen was of course really important and helpful . . . but in addition to just having someone to listen, I could have used more guidance for building self-awareness and practicing coping with my emotions. I would have liked it if someone would have reassured me that what I was feeling was normal considering all that was going on, but also that people have a lot of different types of responses and emotions and that not everyone reacts the same.”

The first two tip sheets in this series addressed how to prepare to give testimony and what to expect from the experience. Follow-through, for clinicians, clients, and their caregivers, is another important element in the process. Because testifying in court can be a difficult and stressful experience for clients and their caregivers, it is important for the clinician to follow-up with them, to give them the opportunity to ask questions, and to provide support. It is also essential for clinicians to be aware that testifying can be indirectly traumatizing and that they can seek out strategies for the prevention of secondary traumatic stress.



Immediately Following Your Testimony

- After you give your testimony, the judge will dismiss you. You should not tell other witnesses what was said during the testimony until after the case is completely closed. Likewise, do not ask other witnesses about their testimony and do not volunteer information about your own testimony.
- Make arrangements for how you can be contacted so that you can be present for or informed about the court's decision and discuss what will happen next.
- Testifying can be demanding, so you deserve to take time to sit and be quiet or go for a short walk. If you think it would be helpful to verbally process what happened, make time to debrief with your supervisor or a trusted colleague.
- Review questions that were asked and information that came out during the hearing. Consider the possible impact on the child and caregivers, and be prepared to respond and support the child and his or her caregivers following the hearing.

Tips on strategies for supporting children and families before and after court proceedings are on page 6 of this tip sheet.

TYPES OF CASE OUTCOMES

Juvenile Justice

As mentioned in Tip Sheet #2, the clinician may be called to testify either on behalf of a client who is an offender or on behalf of the offender's victim. At the conclusion of the fact-finding phase of a juvenile delinquency case (called an adjudicatory hearing), the judge will determine whether the juvenile is delinquent, a ruling that is called "sustaining the petition." If a delinquency ruling is made, a probation officer will evaluate the juvenile, order a psychological examination or diagnostic tests if necessary, and

then make recommendations at the disposition hearing (which is similar to a sentencing hearing in criminal court). The judge then decides what is in the best interest of the juvenile, and may order conditions as part of the disposition. These conditions can include counseling, confinement in a juvenile detention facility, reimbursement or restitution to the victim, probation, or some combination of conditions. A restitution hearing may also be scheduled, and clinicians are increasingly asked to testify about a victim's therapy needs so that orders of restitution can adequately cover those costs. The judge may also order the juvenile to appear in court periodically during post-disposition hearings to monitor the juvenile's behavior and progress.



Child Welfare

There are many types of hearings in child welfare cases, ranging from emergency or preliminary protective hearings, adjudication hearings, disposition hearings, and permanency planning hearings to a variety of review hearings. The outcome of a hearing at which a clinician may be asked to testify will depend on the hearing type.

After an adjudication hearing, the child is either found dependent—which means there has been abuse or neglect—or the court finds the child welfare agency did not present sufficient evidence to support finding the child dependent. If the child is found not to be dependent, the case does not continue and the child remains with or returns to the parents. The child welfare agency may remain involved with the family by providing voluntary in-home services, but formal court oversight ceases. If the child is found dependent, the process continues to the disposition phase.

At disposition hearings, the court determines whether or not the child may be placed in foster care, and who will be awarded custody and have the authority to care for and supervise the child. In many cases, the court sets the conditions under which the child is placed. Most state laws distinguish between the adjudication and the disposition, although not all states use the term “disposition hearing.”

At periodic review hearings, the court examines case progress and the current well-being of the child. It reviews progress under the current case plan, makes corrections in the plan when appropriate, and revises timetables to achieve case goals. During review hearings, the judge decides whether and how to modify court orders concerning the child's placement and care. The court also reviews the agency's efforts to secure long-term safety and permanency for the child.

Permanency hearings are intended to be different from review hearings. While the purpose of a review hearing is to oversee and refine the case plan, a permanency hearing is to set a permanent goal (“permanency plan”) for the child. When approving the permanency goal, the court places the highest priority on returning the child to the home (also called “reunification”), followed by adoption, legal guardianship, placement with relatives or, in very limited circumstances, another planned permanent living arrangement. The court must conduct permanency hearings within 12 months after a child is

considered to have entered foster care and then at least once every 12 months thereafter as long as the child remains in foster care. However, a more streamlined process is invoked in cases when a court decides that the agency is not required to help a child return home safely.

Adult Criminal Court

An adult criminal case will result in either a guilty or not guilty verdict. A guilty verdict results when the prosecution has proved a case beyond a reasonable doubt. A not guilty verdict results when the jury (or judge, in a bench trial) decides the prosecution has not met its burden of proof. A not guilty verdict relates to the sufficiency of the evidence and not to the actual guilt or innocence of the defendant. This is a distinction that may be significant for clinicians working with victims.

If a criminal charge is proved beyond a reasonable doubt, the sentencing of the defendant may include incarceration, fines, restitution (for example, payment for the child victim's treatment expenses), the placement of the defendant on probation with terms or conditions that must be followed, or a combination of these sanctions. As in juvenile delinquency cases, a clinician may be asked to testify again at a restitution hearing so that the order of restitution can sufficiently cover therapy costs for victims.

In some cases, there may be a mistrial—a trial that is terminated and declared void before the jury returns a verdict or the judge renders his or her decision in a nonjury trial. Mistrials may result from incorrect jury selection, juror misconduct, a fundamental error prejudicial to the defendant, or a deadlocked (or hung) jury. In the case of a mistrial, the prosecution must decide whether to proceed with a new trial.



How Does Your Testimony Help?

Testifying on behalf of clients takes a great deal of your professional time, can cause stress for you and your client, and potentially places your therapist/client relationship at risk. As a result, it is often hard to see the value in going to court.

However, your testimony does matter. Therapists are in a unique position to educate the court and other parties involved in your client's legal case about complex trauma and its effects on children's development and functioning. In dependency or family law cases, your testimony can show the court how your client's past trauma or a potential change in placement or life circumstances would affect your client. If you are testifying in a delinquency case, your testimony can help the court understand why your client may have behaved in a certain manner and the causes of and circumstances behind your client's actions. If your client has been the victim of a crime and you are testifying in a criminal case, you can help demonstrate how the trauma induced by that crime has affected your client.

Judges and attorneys place a great deal of weight on what therapists tell them, because they understand that therapists have a specialized skill set and an intimate relationship with the client that

contributes to a deeper understanding of the situation before the court.

Even if the judge does not agree with your recommendations, remember that the information you shared has served to educate the court and to help the parties involved in the case understand more about complex trauma and its effects on children and youth. Therapists may believe they are at fault if the outcome of the hearing is not favorable to their client. However, it is important to understand that the jury reaches a verdict and the judge makes a decision based on all of the information that has been given during the trial. The therapist’s testimony is just one piece of the information that has been given. The outcome does not rest on any one witness’s testimony.

Maintaining and/or Rebuilding of Therapeutic Relationships

Testifying in court, especially against someone who may have been in a position of trust, can rekindle feelings of betrayal, helplessness, powerlessness, shame, or guilt that the child felt during the original trauma.

Cross-examination can be particularly stressful for children. Questions can remind them about the abuse and may make them feel as if they are being blamed for the abuse, or that they are not being reliable witnesses. That is, having to answer questions may make them feel as if they are perceived as liars, even though they are being truthful.

My husband Alex, our son Seth, and I found that having his psychologist “testify” when Seth had encounters with the criminal justice system and school discipline was a help. We would meet with Dr. Chambers prior to any court appearances or school meetings. Dr. Chambers did not always appear in court but he always provided written information which was shared with the court. Seth always read what Dr. Chambers wrote and never felt what he had shared was inappropriate or in any way breached confidentiality. I think having it in writing ahead of time allowed Seth to vent his concerns with Dr. Chambers and get used to what needed to be said to help him with his situation. Dr. Chambers was very good at acknowledging Seth’s concerns and then explaining what he planned to say and why.

The following chart lists some topics to consider discussing when following up with the child and caregivers after a court hearing. These strategies can be useful whether the clinician is testifying or the client is testifying.

| Family and Youth Preparation | Family and Youth Debrief |
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| Review psychoeducation on trauma symptoms (e.g., re-experiencing, arousal) and learned coping strategies with the child. | Discuss the child’s use of learned coping strategies during the court hearing and acknowledge the strengths/characteristics that enabled the child to testify. |
| Explain the court process and why the hearing is needed. | Provide an opportunity for the youth to vent and ask questions. Provide an opportunity to follow up on information discussed in court. |

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| Explain the rules around confidentiality. | Rather than push for disclosure of feelings, observe the client's behaviors or reactions during and after the court event. (Sometimes it takes time to process such events, and debriefing after court is not as effective for some youth.) |
| Start the relationship with clear guidelines regarding court involvement. | Discuss with the child and family after the court hearing to ensure that everyone is on the same page prior to the next scheduled session. |
| Explain that the role of the therapist is to present information to the court regarding the trauma treatment provided to the child. | Remind the family and youth about the therapist's role and answer any questions about issues the therapist discussed during testimony. |
| Discuss whether the youth/family will be present in the courtroom while the therapist is testifying, and prepare the family/youth accordingly. | Assess the individual child's needs and ask the child about his or her preferences. For example, what kind of environment or activity would the child be interested in or find comfort in after the hearing concludes? |
| Always offer reassurance that it is not the child's fault, and that this process is mandated. | Offer some kind of post-court counseling session. |
| Explain that the steps that are happening now will help move the process forward. | Meet with your client and the caregivers as soon as possible after the hearing to brief them on the process and give them the space to share their feelings. |
| Find a way to testify without releasing the client's detailed information; de-identify information from clients and avoid sharing exact details of the trauma when possible. | Provide the youth and family with the opportunity to process their experience and their perception of the hearing. |

SELF-CARE TIPS

Testifying in court about a client's trauma history can be a stressful experience for the clinician, the client and the client's caregivers. It is important to attend not only to your own physical and emotional needs after the process but also to those of your clients and their caregivers. The court experience can be a trauma reminder and can lead to secondary traumatic stress. As a helping professional, you may also be vulnerable to secondary traumatic stress. To increase self-care after testifying, consider the following:

- Address your feelings about your testimony including secondary traumatic stress reactions that may have arisen from having to testify with your supervisor, or seek out peer supervision or consultation.
- Practice proper self-care activities, such as getting adequate rest, nutrition, exercise, and stress reduction activities.
- Practice a balance between home and work life (include a strong family/friend/spiritual support system)

A partial list of symptoms and conditions associated with secondary traumatic stress includes:

- Hypervigilance
- Hopelessness
- Guilt
- Avoidance
- Survival Coping
- Social Withdrawal
- Minimizing
- Anger and Cynicism
- Sleeplessness
- Insensitivity to Violence
- Anger or Cynicism
- Illness
- Fear
- Chronic Exhaustion
- Physical Abuse
- Disconnection
- Poor Boundaries
- Loss of Creativity
- Inability to embrace complexity
- Inability to listen or avoidance of clients
- Diminished Self-Care

For additional information on secondary traumatic stress and prevention/intervention strategies, please go to the NCTSN Secondary Traumatic Stress website.

“It is important to emphasize self-awareness in a way that will not hinder the child. I know that as a child I was on what I call survival mode. That I was able to continuously block out painful memories, cry and move forward, is difficult to comprehend. I recall feeling pain; however, I wasn’t as self-aware as I am now. What can happen with self-awareness is that the amount of pain being felt might be too much for a child to bear. It is important for the clinician to know and understand the strengths and weaknesses of each child as far as knowing what they can handle emotionally.”

Shelly, youth