

Tips, Tragedies and Triumphs

Tips for Testifying and Surviving Cross Examination*

Admit, deny. Although it is true that the field of domestic violence has a long way to go, it is my definite professional opinion, based on a careful and detailed interview and examination of records, that woman is afraid of her husband and based on her interview and examination of records and his writings and tapes, she has good reason.

Bought expert. The reason I work for the attorney is after spending time with the woman and examining materials supplied to me that I can make an objective determination about my findings. After relating that to the attorney, the attorney can choose to use me or not. There have been quite a few who chose not to use me. Once I have determined that the case is meritorious, I might then be called an advocate.

Degree of certainty. It is my best professional judgment that is always my criterion for my clinical conclusions.

Inexperience. Years in field, training, teaching, direct service. Say what you have realizing that it could always be more.

Experience. State what you have. Do not apologize. Not only do I have professional experience of the subject, I also have personal experience and that has served to enrich my professional knowledge.

Generalizability. Even though the experiences of battered women are not all the same, there are many similarities and these we find repeated over and over in the field.

Changing your mind. Based on the full evaluation I conducted which included interview, review of her social history, documents supplied me, writing samples of both parties, video and audio tapes of both, tape transcriptions, and on my 25 years in this field, it is my considered judgment that she is a battered woman and had good reason to act as she did.

Lying, faking. Clinical data included spontaneity, knowledge that many who have not had the same experience would have, and consistency in retelling of the facts. Faking can be observed in ways during an evaluation. 1) Consistency of facts, 2) Clinicians withhold hints, 3) discrepancies between verbal and non verbal behavior, 4) clients tone of voice and facial expressions are revealing, 5) difference between clients wanting to make a particular impression and succeeding in making that impression (hang dog look and then flaring). Although any clinician has the potential of being fooled, the data were strong and clear that there is little likelihood that this client fooled me during my evaluation.

Research re: faking. While I agree about weaknesses of some studies, my findings are based on clinical work and document review with this client. If you have interviewed other witnesses such as family members, so state and then describe their contributions to the development of your findings.

Collaborative criticism. Acknowledge your field's shortcomings, but be poised to regain control. Example: analogy to meteorology and relying on the weather person.

Culturally different clients. Even though there are differences, most cultures document violence against women from killing girl children, to burning young women who have sex out of marriage, to clitorises being removed, to not giving women the vote, to making them veiled.

Your role. The role of a domestic violence expert is to examine for domestic violence findings which I do and I not to come to legal conclusions. Example: This woman has suffered violence at the hand of her abusive partner and defended herself from a beating in which she feared for her life, rather than she is not guilty of murder.

Examiner effects. While people respond differently to different people, they respond similarly to various examiners in many basic and important ways, but slightly different in other ways. A chameleon still looks like a chameleon no matter to what color it changes. While not a behavior principle, it is part of common sense. Our training helps us assess and plot on the Power and Control Wheel, Abuse Checklist, and Danger Assessment after taking a social history.

Attacking profession instead of you. Actually compliments you and so the field can be attacked. Semmelweiss was laughed about. Our field is relatively new and my clinical interviewing of woman left me with no doubt whatsoever that she is a battered woman.

Idealism hazard. Marriages / relationships do not have to be ideal (mutually respectful, mutually satisfying, growth promoting), a divorce can result when they are non respectful, unsatisfying, and growth stifling. However, they are really in danger when they are violent, abusive and controlling. Jurors in O.J. trial when interviewed stated that this kind of thing goes on in all marriages and killing is different.

Intimidation. Answer quietly, softly and evenly. Restate question to sort out the content from the attack. Is what you are asking is whether my not doing something is a lack of comprehensiveness on my part? In a history, I select relevant areas of the client's life on which to focus. A history can be so comprehensive that it includes a huge clutter of irrelevant information such as about clothing, furnishings, et cetera would be a wasteful and unnecessary accumulation. The Case History I took was designed to explore the person's life sufficiently so as to draw my conclusions responsibly.

Bias. If what your are asking is whether or not I use mysticism and voodoo as part of my evaluation, I can assure you I use well accepted methods and focus on relevant

areas of the client's history on which to focus. Or, if what you are trying to do is discredit me, you are giving the jury a perfect view of discounting by intimating that I am not professional in my evaluation and that I am making up things when there is clear, comprehensive, and compelling corroborating evidence of the case facts. [This is tantamount to collusion with the batterer.]

Push / pull agree more. You are not a PhD are you? No, and I am not an MD or a psychiatrist or board certified. Isn't validity a serious problem? Yes, and so are reliability, and objectivity. [Bite-mark story.]

Power and Control process by opposing counsel – time, eye contact and gaze, personal space. Following the unfolding of the cross helps to cope.

- Time. Deep breath.
- Break gaze with scan.
- Lean back to think, forward to answer.
- Eyes move, but not dart. Begin with looking at attorney and then scan. Look at the jury. Look at the audience.
- Talk to courtroom participants--observers, reporter, bailiff, all attorneys, judge and jury. Begin with looking at attorney and then scan.
- Palms up. Personal space. Good posture, lean toward attorney when answering.

Direct service workers as experts. They know the person better over time, but get into conflict over confidentiality and advocacy. Address further in Agency Policy Segment.

Transformative moments. These can be negative and cause credibility to evaporate. It is replying in such a way that cuts to the heart of the matter and cannot be planned. The ability to seize the presented opportunity is important.

Examples:

- A) Have you taken university courses in domestic violence? *Taught the first one in our state.*
- B) Isn't it true that the police aren't any better here than in Nicaragua in handling domestic violence? *Tracy Thurman received an award of \$3.2 million against the City of Torrington Connecticut Police Department for violating her 14th amendment right of equal protection under the law.*
- C) Do you have any possible explanation of his being in the house with no forced entry? *Yes, he changed the locks.*

Rumpelstiltskin. Know everyone's name. If you are testifying, it is a plus to give your card to the Court Reporter rather than making her/him struggle to spell your name.

I don't know. Say so or that is beyond the limits of your expertise or that question calls for a neuropsychologist.

Humor. A little humor goes a long way. I kept saying I did not know or I did not remember when being cross examined, then I made a statement that I was turning into Alberto Gonzales. This is not to suggest not taking the process as serious and formal. Example: Parental Abduction Expert's suggestion of dominatrix outfit.

What to wear. Be yourself in clothes that are familiar, comfortable and professional. Brown is *sincere*. I never go in pumps.

Take water. Have it in a non-spill bottle. Once I knocked over a whole pitcher. Another time, the bailiff brought me water in a container the size of a ketchup cup at Burger King. When you are nervous, you tend to get cotton-mouthed. On the DVD, you will notice my drinking. Drink not only when your mouth is dry or it will be a give-away.

Take notepad and writing instrument. At some point, you might need to write down something and you will have means. This usually occurs when the attorneys are fussing.

Focus on someone in the courtroom. It can be both lonely and daunting on the witness stand. If a colleague is there, he or she should hang on to every word you say as though you are casting pearls before swine. If no one you know is there, find a friendly face.

Bringing reports to court may be controversial. If I supply a report, then it usually goes to opposing counsel. Example: IRS: never take more than for what they ask. However, an accountant had me take other years in re: property taxes.

Invasive questions. When being examined Expert Witnesses have been asked invasive questions as to alcohol consumption, medications, marital status, who lives in their homes et cetera. If in court, ask the judge; depositions can be a free for all.

Brodsky offered two suggestions for replying to intrusive questions.

- A) Tell attorneys who ask that these are personal and private matters that you discuss only with valued family members and trusted friends.
- B) Answer that the information presented during the testimony and the related professional judgments were based only on the use of accepted, professional methods used as set forth by the witness's training, skills, experience, and background. The testimony was not based in any way on personal issues as implied in the intrusive questions that might affect ordinary lay judgments."

Suppose both of these methods of responding fail. What next? If ordered to reply to these offensive questions, the Witness should keep their answers minimal in length and respond in as neutral and comfortable a manner as possible. Do not over-explain why you are on any medication, psychotropic or not. The Witness' manner should be sufficiently composed to communicate to the jurors and the court comfort with personal histories and choices. If the court senses the Expert is upset and defensive, the admissions will take on exaggerated meaning. If the court recognizes that the admissions are not distressing, the admissions will take on diminished meaning.

After it is over. Be poised, careful and confident when you leave the stand. Hold yourself well, walk deliberately and comfortably, and exit with grace and dignity. Glance at the participants in a friendly manner and if warranted you can say good questions or interesting case.

Stumped. Write down all your mistakes. Think about and consult for answers. You are just about guaranteed not to make the same mistake again. You will never cease to find new ones, but you will grow better as you go. Doesn't he deserve his day in court? It might well have been his day in court if she had not defended herself. I would have been your witness instead of opposing counsel's witness. Women are just as violent as men and the breast cancer analogy. Feminist. Advocate or unbiased and objective.

Little rocks. So many of the women tear at their hands or tissues and I like artsy kinds of things. I took to decorating small rocks and giving one to a woman when she went to court. One can be in her pocket and she can feel it like a worry bead or she can glance at it and see a friendly face looking at her.

Realize your Contribution. Expert witnessing in domestic violence cases has taken some of the worst dangers that women face and put them in the courtroom. It is a natural that also puts the media there. We are educating the press and the media. When we are giving voice to one woman, it is helpful to all women.

** The previous information is taken from personal experiences of Toby Myers and the works of and training with Stanley Brodsky.*

Tragedies

- ◆ Williamson County. Firefighting Sue.
- ◆ Beeville. Nurse. Everything right. His family long there. She was new.
- ◆ Wichita Falls. Dog of a case. DA did not want it and gave it to a baby prosecutor. Public Defender worked his heart out as did his whole office. He was 44 years old and it killed him. He died shortly after.

Triumphs

In testifying for 30 years:

- ◆ Only 3 acquittals; one case dropped on strength of report
- ◆ Battered women say they did it
- ◆ Batterers deny it — Scott Peterson, Drew Peterson, and O.J. Simpson

Triumphs

- ◆ Albuquerque. Navajo in Federal Court. Good witness for herself. Directed verdict
- ◆ Woodville. Community did not know. Contact with Probations Office. He kicked glass out of police car
- ◆ Victoria. Teamwork. Better cases had worse outcomes. Attorney willing to learn and take direction for team. Later today, we'll watch a DVD with a portion of this trial.
- ◆ San Antonio. Federal Court. Charges dismissed on strength of report.