EXPERT WITNESS TESTIMONY IN DOMESTIC VIOLENCE CASES

A multi-disciplinary approach to systems change and offender accountability

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WHO ARE EXPERTS?

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.”


- Counselors / therapists
- Advocates
- Social workers
- Psychologists
- SANE nurses
- “Formal education … is not a prerequisite for expert status” (Commonwealth v. Goetzendanner)
THE ROLE OF EXPERT WITNESS TESTIMONY IN DV CASES

- The primary role of an expert witness is to educate the jury, not take sides.
- To explain what is perceived as “counter-intuitive” behavior on the part of the victim (greater understanding → greater credibility)
  - “Why did she stay?”
  - Minimizing
  - Recanting
  - Delayed reporting
  - Anger, defensiveness on the part of the victim
  - Past behavior like not showing up to court
- General education on dynamics of DV
  - To explain that DV doesn’t end when a relationship does
  - To explain the psychological and emotional effects on survivors
  - To correct assumptions and myths about DV
- Expert witnesses use their own direct experiences with victims to guide their testimony
THINGS TO CONSIDER

- Whether expert witnesses should come from within your own community or outside of it
  - Will the perception of bias be an issue for your community / juries?
  - What about conflict of interest?
  - How far will you go to ensure that the expert has no interest in the outcome of the trial?

- How much information the expert should have about the case before testifying

- Fees for expert witness testimony

- Batterer accountability doesn’t always line up with victim safety
  - For recanting victims, what is the impact of providing expert testimony?
PREPARATION

- Attorney and expert witness should discuss what subject matter the expert will be qualified in
  - “domestic violence and its effects” or “impact of domestic violence on victims”
  - NOT “battered women syndrome” or “counterintuitive victim behavior”
- Discuss qualification questions
  - Expert can provide a list of questions that can be used to establish their expertise
- Attorney should share with expert the purpose and focus of testimony, as well as any issues that are most critical to the case
- Attorneys can help prepare experts for cross-examination, including a mock cross-examination
“Special Victim Prosecutors familiar with victim behavior understand that victims have individual responses to trauma that are often counterintuitive to public expectations, but may be unable due to limitation within the law to explain this to the jury. Explanations of common victim behaviors by experts assist jurors in sexual and domestic violence prosecutions by countering the common myths and stereotypes that consistently hampered these prosecutions. Their testimony is invaluable to jurors who often find it difficult to put themselves in the shoes of a victim. Expert testimony helps jurors to be able to relate and understand where a victim is coming from and why she behaves in the manner in which she does.

As an Assistant Prosecutor for Oakland County specializing in special victim crimes for the past 16 years, I have never heard anything but positive from a jury regarding expert testimony in the area of domestic violence or sexual assault. Jurors appreciate and embrace the insight that an expert is able to provide.”

Tricia Dare, Special Victims Section Leader
Oakland County Prosecutor’s Office
OTHER BENEFITS

- Increase in guilty pleas
- Increase in conviction rates
- Multi-disciplinary collaboration sends a message to the community that these crimes will be taken seriously
- Juries = General public
OTHER COLLABORATION POSSIBILITIES

- Assisting prosecution in crafting voir dire questions for the jury
- Providing behind the scenes expertise and insight to help attorneys / prosecutors understand dynamics of DV/SA
- Assistance in developing case strategy
- Writing a report to outline the arguments to be made
- For victims charged with crimes, connecting the defense to resources to aid them in their defense strategy