

TIPS FOR TESTIFYING AS A WITNESS

The prospect of testifying as a witness is nerve wracking for anyone. This fact sheet will discuss some ideas for knowing what to expect that may help you be more comfortable on the witness stand.

Before the day you testify:

- **Meet with the advocate.** Meet with your advocate to review this fact sheet and what you can expect as you prepare for and ultimately testify during the trial in your case. Advocates are familiar with your rights as a crime victim and can help set up meetings with other professionals that might be helpful in your preparation. If you have not been working with an advocate, go to www.mncasa.org/seek.cfm to find the phone number of a sexual assault program in your area. They will connect you with the advocate that can help to prepare and support you during the trial process. Keep in mind that trials in real life are different than those shown in television shows. If you can, take advantage of the help that is available to you.
- **Meet with the prosecutor to get acquainted.** Many prosecutors will meet with sexual assault victims just to get to know them – not necessarily to discuss the case. Ask your advocate for assistance setting up such a meeting.
- **Anticipate continuances.** It is a rare case that proceeds from the first hearing to the trial date without ever changing a hearing date or having “continuances.” “Continuances” are when the court permits the court date to be delayed or rescheduled due to a scheduling conflict of some kind. Your case might be one of many cases scheduled for trial on the same date – so in many counties, a case might be scheduled for two or more trial dates before it reaches the date when it is actually tried. Your victim advocate can help keep you informed about any changes in court dates as they arise.
- **Meet with the prosecutor to prepare your testimony.** This meeting may occur close to the day of trial, so that your review is fresh in your mind when you do testify. Your advocate can assist in scheduling such a meeting and can talk with you about what to expect. Think of the questions you might have about what to expect at trial, such as whether you can sit in to hear other testimony at trial before or after you testify.
- **Review the transcripts of your formal statement to law enforcement.** Most law enforcement agencies tape record witness interviews, so you may have a chance to review transcripts of your statement. This is to refresh your memory, not to memorize your interview – it does not come across as well for you to memorize your statements. Again, your advocate can help you with this process if it applies to you and your case.
- **Arrange to have appropriate clothing.** The only thing the judge and jury will know about you is what they see and hear of you in the courtroom. It is a good idea to wear clean clothing that you might wear to a job interview or to make a good impression. Examples of this are shirts with no words or graphics, no hat, long sleeves and pants or a skirt, modest necklines, hemlines, and shoes, little makeup, no bra straps showing, and men should shave or trim their beards.

	<ul style="list-style-type: none"> • Know where you go to testify. Get directions to the courthouse and the courtroom before the day of your testimony. Be sure you know which staff person from the county attorney’s office you should meet with, and know that your advocate can most certainly attend the trial with you. Ask about mileage reimbursement and a witness fee – you should be provided both. If you want to see a courtroom in advance, ask your advocate to arrange it. • Voice any special needs. If you have a medical condition that creates special needs for you – such as, for example, hearing assistance, or the need for frequent bathroom breaks, please let your advocate or the county attorney’s office know about it. If you are truly frightened about being in the same room with the defendant or having to be near him/her, voice that as well, and the table arrangements in the courtroom could be modified to deal with that. You will have to testify in the same room with the defendant, however.
<p>The day of the testimony:</p>	<ul style="list-style-type: none"> • Arrive at court on time or even early. Sometimes the witnesses who go before you will testify faster than the prosecutor anticipated, so if you are early, it avoids longer delays between witnesses. However, the more likely scenario is that you should be prepared to wait. If you are a victim of a crime, your advocate can assist you with waiting in a separate waiting area outside the main hallway. • Spit out your gum. Do not chew gum or bring a beverage or food into the courtroom. Water will be provided for you at the witness stand if you want, and you will also be given tissues if you need them.
<p>While testifying on direct examination:</p>	<ul style="list-style-type: none"> • Be on your best behavior. You will likely have a lot of emotions leading up to the trial and on the day you testify. While your advocate and other professionals have gotten to know you over time, the only time the judge or the jury will get to know you is while you are in the courtroom. You will help them to focus on the right things if you can remain calm and quiet in the courtroom and in the hallway – even if someone says something that upsets you. Leave it to the prosecutor to clarify misinformation or misleading testimony by someone else. The whole time you are at the courthouse – even while on the elevator, smoking outside, or in the bathroom – a juror or court personnel could be nearby. If you have supporters in the courtroom, they should remain calm, too. • Your first and foremost role in testifying is to TELL THE TRUTH. You know everything you need to know to testify – you are a witness because you know some information about a crime. If you don’t know everything about it – don’t worry about that! You can only answer to what you do know and what you can recall in response to the questions asked of you. • If “I don’t know” or “I don’t remember” is the truth, so be it. Testifying is not a quiz where you <i>have</i> to pick an answer – a, b, or c! If you are asked a question you don’t know the answer to, say so – because that is the truth. • Be fully truthful. If something involved in this crime is embarrassing to you, or you did something you regret – tell it anyway. A good prosecutor will know how to deal with information that might seem negative – and often, it is the embarrassing behavior like using drugs that make a person vulnerable to a person who wants to commit crimes such as sexual assault. So, don’t cover it up – go ahead and tell the jury the full story and let the prosecutor handle it

	<p>from there. Please be sure the investigator or prosecutor knows of this information long before trial!</p> <ul style="list-style-type: none"> • Clarify confusing questions. If you are at all unclear about a question – which timeframe is the prosecutor referring to, which person she is asking about, or just what was that word she used – feel free to ask the prosecutor to rephrase the question. You have every right to understand a question before you answer it – so let the prosecutor know that you need clarification. You certainly can take a breath or think about your answer before speaking – there is no rush. • Be confident in what you are testifying about. When you relay information that you <i>do</i> remember, be confident! State your testimony clearly, with your head held high and looking at the jury. Speak into the microphone if there is one and use a tone of voice that shows you know what you are talking about. • Give answers that fully answer the question, but do not run on and on. Especially when people are nervous, they sometimes want to ramble and describe the entire incident in one paragraph. Try not to do that. The prosecutor’s questions should break up the events into smaller bites so that you can describe it piece by piece – not in one chunk. If the prosecutor needs you to move onto another segment of the event, she will ask about it! • If the judge or an attorney interrupts you with a comment or objection, stop immediately. Don’t worry about objections – they involve the question by the attorney, not your answer.
<p>On cross examination:</p>	<ul style="list-style-type: none"> • Yes, the defendant’s attorney will likely ask questions of you. This is called cross examination, or “cross.” Again, you can only answer what you do know and should not worry about whether you won’t know the answer – once you have reviewed the transcripts and testified on direct examination, you have gone over your testimony pretty thoroughly. • All attorneys must sit and be respectful during questioning. On television, attorneys go up and lean on the witness stand, or point their finger, or yell at the witness. This is not allowed in Minnesota. The rules of courtroom decorum require that attorneys stay seated at counsel table unless they are walking an exhibit up to the witness. You should be addressed as Ms. Jones, or Mr. Smith, and should be treated with respect – partly because the judge will require it, and partly because the jury will not appreciate an attorney who yells at a witness. In real life, courtrooms are actually pretty quiet, boring places to be most of the time! If the defense attorney does get angry or flustered – let him! That makes him look bad – not you. • Clarify confusing questions. This applies on cross examination at least as much as on direct – do not answer a question about which you are confused. Do not be misled by the defense attorney. If you are uncomfortable agreeing with what the attorney asks you to agree with, say so. A tactic of cross examination is to say something like “Ms. Jones, surely you agree that red is blue, don’t you?” You should think about the question and do not say you agree with it if you don’t. • Stay calm and confident. The jury and judge will be watching your demeanor, and even if the defense attorney really offends you, your best bet is to take the high road and remain calm. There is no benefit in arguing, getting sarcastic, being tough, crossing your arms or pouting – in fact, it could make a bad impression on the jury. You are just there to tell the truth as you

	<p>recall it, and the defense attorney can ask all the offensive questions he wants – that does not change what you know to be true. Be confident but not angry in your answers.</p> <ul style="list-style-type: none"> • Look at the jury. Even in response to questions from the defense attorney, try to remember to look at the jury. They are deciding on your credibility – show them you can look them in the eye and be sure of what you are saying. • Your answers do NOT have to be “yes or no.” Defense attorneys sometimes insist that answers on cross examination must be either “yes” or “no” – but this is not always possible. If you truly feel you cannot give a one word answer to a question, even if the defense attorney insists upon it, look at the judge and say that a truthful answer to the question cannot be stated in only one word. • The prosecutor will follow up the cross examination. After the defense attorney is done with cross examination, the prosecutor can and should “re-direct” to follow up on and clarify information that might have been confusing in the cross examination. Thus, you do not need to argue or insist with the defense attorney – the prosecutor can give you a chance to more fully explain your answers.
<p>After You Testify</p>	<ul style="list-style-type: none"> • Leave the courtroom—take time for yourself. Going through a jury trial is demanding, so you deserve to take a short walk or sit and be quiet for awhile. If you would rather be alone, let your supporters know that. If you would rather process through what happened, you have the right to ask for support. • Check in with your advocate. She can help you deal with the emotions you have from testifying, and might be able to answer questions if parts of the experience were confusing. • Be ready to return for a verdict. Make arrangements for how you can be contacted to be present for or informed about the jury’s verdict and discuss what will happen next. • Regardless of the outcome, you have contributed enormously! Whether the defendant in your case is convicted or not, and whether your case goes to trial or not, by reporting sexual violence you have taken a brave and important step. Most victims of sexual violence do not take that step, so your effort has contributed to your community and you have done everything you could to hold the offender accountable for victimizing you. Give yourself credit for a job well done!
<p style="text-align: center;"> Sexual Violence Justice Institute Minnesota Coalition Against Sexual Assault 161 St Anthony Ave Suite 1001 St Paul, MN 55103 651-209-9993 or 800-964-8847 www.mncasa.org Updated April 2010 </p>	