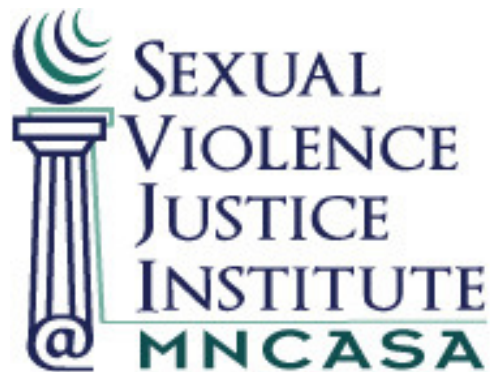

Expert Testimony Workbook *for Sexual Assault Advocates*



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INTRODUCTION

Welcome! We hope this workbook is a valuable tool as you prepare to provide testimony in criminal cases. Although many sexual assault advocates have the opportunity to observe or learn about what actually happens inside courtrooms, still they are often anxious about being called to testify. This anxiety is understandable, since the courtroom is a venue foreign to most people outside the justice system and different from what is portrayed on TV.

The purpose of this workbook is to help prepare sexual assault advocates to provide effective general expert testimony in adolescent- and adult-victim criminal sexual conduct cases. This workbook is intended to answer advocates' most frequently asked questions about what may be expected of them when preparing for and delivering testimony. This workbook is intended to assist any advocate who may be called to testify as an expert witness about victim behavior in a case that does not involve a victim with whom the advocate is working.

Limitations of this workbook

This workbook is not intended to provide a comprehensive overview of testifying, rather, just a place to start. This workbook is intended to be in conjunction with live-action testimony role-playing through the Sexual Violence Justice Institute's Testimony Institutes. We encourage you to supplement your training and practice in other ways.

Portions of this workbook contain questions that advocates may be asked by either the prosecutor or defense attorney when testifying. Some questions contain sample answers in order to better illustrate what an answer may be. Please note that the sample answers should not be interpreted as "correct" answers. Based on your experience, the issue in dispute and many other factors, the sample example answer may or may not be appropriate.

Finally, this workbook does not provide education or sample questions about testifying in sex abuse cases involving children or vulnerable adults. This workbook also does not address testimony about direct services provided to a victim, which may be protected by advocate privilege.

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SECTION 1: THE BASICS

What is the difference between criminal and civil court?

Examples of cases brought in criminal court include murder, criminal sexual conduct, child abuse, or arson. Someone charged with a crime is called a defendant. Because crime causes social harm through the violation of public rights and duties owed to the whole community, the State itself brings charges against the defendant. In criminal court, the State must prove beyond a reasonable doubt that the defendant committed the crime. A criminal court's function is to determine whether or not the State has proven a defendant's guilt beyond a reasonable doubt. If the defendant is convicted, the defendant may be required to pay a fine and serve time in jail or in prison. If jail or prison time is 'stayed' or deferred, the defendant is placed on probation, where they may be ordered to submit to counseling, complete community service, or fulfill some combination of these options.

In contrast, a civil court's function is to resolve noncriminal disputes. Examples of cases brought in civil court include personal injury, divorce, medical malpractice, or employment law disputes. In a civil suit, a plaintiff brings a complaint against a defendant. The plaintiff must show by a preponderance of the evidence that the defendant is responsible for the plaintiff's injury or loss. Preponderance of the evidence (usually referred to as "more likely than not") constitutes a lower standard of proof than is required in a criminal case. Noncriminal disputes cannot result in jail, prison or probation time for a defendant who is found responsible for the harm. Instead, the defendant is usually required to pay monetary damages or take other measures to alleviate the past or future harm.

Sexual assault cases are most often tried in criminal court, but on occasion, civil cases may also deal with sexual assault. For example, a plaintiff may choose to bring a sexual assault claim as a tort (wrongful act or infringement of a right) in civil court. Another example is a university's adjudication process for an assault that occurred on campus or an assault that occurred between students. The purpose of a university's adjudication process is to decide what measures must be taken on campus to alleviate the harm caused to the victim student, such as expelling the defendant student. A third example is a victim or victim's family suing a nursing home for damages associated with a sexual assault that occurred on the nursing home's premises by an employee. Sometimes, both criminal charges and a civil suit are the result of the same conduct by the defendant. In general, the criminal matter is resolved before the civil action moves forward.

Why are these cases sometimes referred to as rape or sexual assault cases and other times as criminal sexual conduct cases?

The terms rape or sexual assault are most commonly used by the general public or in everyday conversation. In Minnesota, however, the laws criminalizing rape or sexual assault use the term criminal sexual conduct. For example, a defendant in Minnesota may be charged with Criminal Sexual Conduct in the 4th degree. There are 5 degrees, or severity levels, of criminal sexual conduct under Minnesota law.¹ In this document, these cases are referred to as criminal sexual conduct cases.

What is the difference between a bench trial and a jury trial?

In a jury trial, the jury (consisting of six or twelve members, plus some alternate members) decides the issues of fact and the judge determines issues of law (determining issues of law means that the judge serves as the gatekeeper, determining what evidence will be heard and what evidence will be kept out). In a jury trial, the jury decides whether the defendant is guilty or not guilty. Alternatively, when a bench trial occurs the judge will decide both issues of fact and law. In a bench trial, the judge decides whether the defendant is guilty or not guilty.

Who is a witness?

Most witnesses, known as lay witnesses, are allowed to testify about their personal knowledge of what they saw, heard, or experienced. Usually, a lay witness is only allowed to give an opinion or draw inferences which are (a) based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Who is an expert witness?

Witnesses who are deemed to be experts are allowed to give their opinions because they have special training, education, and/or experience.² The expert's opinions help the judge or jury understand the significance of the evidence. Sharing of opinion by a sexual assault advocate serving as an expert witness about general victim behavior does not, however, include conclusions about whether a crime was actually committed or whether the defendant is guilty of the crime. The jury (or a judge in a bench trial) makes these fact-based determinations.

Sexual assault advocates will usually be accepted when their qualifications can be properly put before the court.

¹ See Minn. Stat. §§ 609.341 – 609.345 and Minn. Stat. § 609.3451.

² Minn. R. Evid. 702 (2006).

But I'm not an expert!

There is no set of requisite qualifications that you must have in order to testify as an expert. For example, to be an expert you are not required to have a specific degree. Instead, to qualify as an expert, a sexual assault advocate needs to only know more than the judge or jury about a particular subject based on experience and training (preferably at least five years worth).. As an expert, your testimony then aids the finder-of-fact (jury or judge) in making a decision.

What is credibility? How does it apply to me?

Credibility is the truthfulness, accuracy, or reliability of a witness. It is crucial for you to testify as accurately and precisely as possible. As a witness, once you have promised to testify truthfully (taken an oath) your credibility is up for debate. You, like all witnesses, will start out neutrally when you promise to testify truthfully, but ultimately this determination is left up to the jury to decide whether you have done so.

What should I wear?

It is important to dress professionally so that the jury's concentration is focused only on what you say. Dress as if you were going to a job interview, or an important work event. But, dress comfortably. It is very important that you look and are comfortable in the clothes you wear to court. If you do not dress comfortably, the judge or jury may be able to sense your discomfort, and you do not want them to assume it is because you are uncomfortable with providing testimony.

Take your time and clarify the question

Try to relax, focus and listen carefully to what is being asked of you. Answer only the specific question you were asked, and then stop talking. It is proper to take a moment to pause and consider your answer before answering a question. It is also acceptable to request to have the question repeated or restated by either the prosecutor or the defense attorney. For instance, it is acceptable to say any of the following:

- "Will you please repeat that question?"
- "I'm sorry, I didn't understand. Will you please rephrase that question?"
- "I was not able to follow your question. Will you please restate it?"

To whom do I direct my answer?

One word or short answers may be directed toward the person who asked the question. Longer, more narrative answers should be directed toward the finder of fact, whether that is the jury or the judge. If you find this difficult to accomplish, however, be patient with yourself. Even the most seasoned witnesses sometimes find it difficult to remember to direct longer, more narrative answers to the jury or judge.

What do I do if there is an objection?

During your testimony, an attorney may object to the question that the opposing attorney asked of you, or may object to your answer. The objecting attorney must explain the reason for the objection to the judge. The judge will make a ruling on whether the objection is overruled (refused) or sustained (honored). During this time, remain silent and wait for the judge's ruling. If the judge overrules the objection, you may answer the question. If the judge sustains the objection, you may not answer the question. A good way to remember this is that sustain = starts with the letter "s" = shut your mouth, and overruled = starts with the letter "O" = open your mouth and answer. If you find this difficult to remember or aren't sure, the best practice is to simply wait for direction on whether to answer the question or not. Either the attorney questioning you or the judge will provide that direction to you.

Use plain words

Remember that your role is to educate the jury or judge. With that role in mind, providing testimony is similar to speaking with a sexual assault victim requesting your support and services. Keep your answers simple and easy to understand. If you use technical words or acronyms, be sure to define them.

Remember the limitations of your role

Finally, it is crucial to remember the limits of your role as a sexual assault advocate. You are not providing a diagnosis or an explanation of the crime. Do not attempt to provide details or information that may be presented by a health care professional or other expert. Stay within the boundaries of your education and experience. Keep your testimony focused on general victim behavior. It is okay to tell the attorneys or the judge that you do not feel comfortable answering a question because it lies outside the scope of your experience.

SECTION 2: WORKING WITH THE PROSECUTOR

Who is the prosecutor?

The prosecutor is the attorney who represents the state or the community in a criminal case. Oftentimes, prosecutors are also known as County Attorneys or Assistant County Attorneys. The prosecutor doesn't represent the victim directly, but rather represents the community in the case against the defendant. This is why cases are titled *The State of Minnesota vs. Defendant*, and do not include the victim's name in the title. The prosecutor's role is to prove to the fact-finder that the defendant committed all of the elements of a particular crime beyond a reasonable doubt. If you have been asked to provide testimony in a civil case, you will not be working with the prosecutor, but rather with a plaintiff's attorney, or an attorney who represents the party bringing the lawsuit.

Initial contact with the prosecutor

The prosecutor issues a subpoena requiring you to appear in court and may have already spoken to you about being an expert witness. However, if you receive a subpoena from a prosecutor without having spoken to her or him it is best to go ahead and contact the prosecutor yourself so you are adequately prepared. Your testimony might not always be necessary; instead your expertise may be better directed toward assisting the prosecutor in better understanding certain dynamics of the case. This is why conversations with the prosecutor about the purpose of the expert testimony are so important.

Interacting with the prosecutor

If possible, you should make an effort to facilitate the prosecutor's understanding of the sexual assault advocate's role and the limitations of that role. The prosecutor should ask you to testify as an expert on common victim behavior only if you do not have a relationship to the victim in the case and preferably in a jurisdiction different than the one where you commonly work.

When on the stand, if you are asked whether you met ahead of time or prepared with the prosecutor, you should answer yes (if that is true). There is nothing wrong with meeting with the prosecutor ahead of time to discuss your testimony.

SECTION 3: WORKING WITH THE DEFENSE ATTORNEY

Who is the defense attorney?

The defense attorney represents the defendant, the party whom the criminal case is brought against. It is the responsibility of the defense attorney to represent his or her client's best interests. Therefore, at trial it is the defense attorney's goal to create a reasonable doubt in the minds of the jurors. This means the defense attorney will try and convince the jury (or judge when no jury exists) that his or her client might not be guilty.

Will the defense attorney call me as a witness?

It is possible, although rare, for the defense attorney to call you as a witness. For example, a victim of sexual assault may harm the assailant in self-defense and then end up being charged with a crime. You should carefully weigh how your testimony will be used and whether your testimony will be helpful. If you decide to move forward you should educate the defense attorney in the same manner as you would in situations where you are called by the prosecuting attorney.

Why would a defense attorney want to meet with me?

This is unlikely however you will be asked to prepare a summary of what your expert testimony will cover so that the prosecuting attorney can provide this information to the defense attorney prior to the trial. This prior notice allows the defense attorney to prepare for your appearance on the stand.

Working with the defense attorney

You should try to interact with both the defense and prosecuting attorney in the same way. So, your opinion or your demeanor should not change based on who you are talking to. It is important to remember that the defense attorney is a necessary and important part of the justice system. A good defense attorney helps promote public safety in the same way that the prosecutor does, by ensuring that the correct people are held accountable for violent crime. The defense attorney is not your enemy.

Be cautious, however, as it is the defense attorney's job to limit your effectiveness, cast doubt on your opinion, or discredit you or the importance of your testimony.³ A good defense attorney does these things in the pursuit of justice, and these tactics should not be taken personally. Always be courteous to a defense attorney, both in court and outside of court. You will lose credibility in the eyes of the fact-finder if you appear hostile, suspicious or mean in court.

³ *Id.*

You should interact with the defense attorney when asked to do so that the court does not raise a serious issue of bias that you have cooperated with the prosecutor, but refused to speak with the defense attorney. When on the stand, if you are asked whether you met ahead of time or prepared with the prosecutor or defense attorney, you should answer yes (if that is true). There is nothing wrong with meeting ahead of time with either or both attorney to discuss your testimony.

Although not at all common, it is possible for a defendant to represent themselves “pro se”, which means that they are acting as their own attorney in court. In such a case you must treat the defendant as though they actually are an attorney.

SECTION 4. QUALIFYING AS AN EXPERT WITNESS

To qualify you as an expert witness, it must first be shown that you possess knowledge, skill, experience, training, or education (or a combination thereof) to provide scientific, technical, or other specialized opinion about the evidence or a fact issue.⁴ To qualify as an expert, you will need to describe to the judge, through questioning, the knowledge, skill, experience, training or education that you possess. This process will be carried out at the beginning of your direct examination and will be the first questions that are asked of you. The party that subpoenaed you (usually the prosecutor) will be the one to ask the questions to qualify you as an expert.

A helpful way to prepare for qualifying as an expert is to practice reciting your credentials and background so that you are comfortable doing so in court. You will also find it helpful to be prepared to provide additional details about your professional background because there is a good possibility questions on this may be asked.⁵

Sample qualifying expert questions⁶

The questions at the beginning (the qualifying questions) will be about you because you must first qualify as an expert witness in order to give testimony as an expert witness. Not every question on this sample list may be relevant to your background. In preparing for testimony identify the questions that apply to your experience and education.

1. What is your full name and will you please spell it for the record? _____

2. Where are you employed? (*okay to say organization, city and state*) What is your title? _

 - How long have you been employed in that capacity? _____

 - What are the responsibilities of your position? _____

⁴ Minn. R. Evid. 702 (2006).

⁵ *Sexual Assault Forensic and Clinical Management Virtual Practicum DVD*.

⁶ Sample Qualifying Questions Compiled from: Jennifer Markowitz, *A Prosecutor's Reference: Medical Evidence and the Role of Sexual Assault Nurse Examiners in Cases Involving Adult Victims*, 26-27, AEquitas: The Prosecutor's Resource on Violence Against Women, (2010) and Jennifer G. Long, *Introducing Expert Testimony to Explain Victim Behavior in Sexual and Domestic Violence Prosecutions*, 61-63, American Prosecutors Research Institute, (2007). Both of these documents are available online through www.aequitasresource.org and www.ndaa.org.

- How long has the program you work for been in existence? _____

- How does an advocate become involved in a sexual assault case? _____

- What services does your program offer? _____

- Does your program provide also services to suspects or sex offenders? _____

- What is the total number of staff at your program? _____

- Do you train or supervise staff? _____

- Have you worked in the same or similar position elsewhere? Where? _____

- Have you had other relevant job experience with sexual assault victims? _____

3. Why are you here today? _____

a. I am here today to explain my role as a sexual assault advocate who has knowledge of sexual assault victim behavior in general. _____

b. I was subpoenaed to be here. _____

4. What is your educational background? _____

5. What is the highest degree you have obtained? _____

6. What was your area of concentration? _____

7. Did you conduct any field work or internships related to sexual violence? _____

8. Do you hold any licensures or professional certifications? _____

9. Do you belong to any professional organizations? Any related to sexual violence? _____

10. What are the names and purposes of these organizations? _____

11. Do you belong to any county, state, or national organizations that specifically address sexual violence issues? _____

12. What is the purpose of those organizations? _____

13. Are you involved with any committee work of these organizations? What is the nature of that committee work? _____

14. Are you a member (on behalf of your organization) of a Sexual Assault Response Team in your community? How long have you been a member? _____

15. Are you required to complete continuing education requirements to maintain those licensures or certifications? What type of continuing education have you completed? _____

16. What type of training have you received in your role as a sexual assault advocate?

Please describe that training. _____

17. Have you received any additional training in sexual violence issues? Please describe that training. _____

18. How many contacts in person do you receive yearly from individuals who identify as having experienced sexual assault? _____

19. How many contacts over the phone do you receive yearly from individuals identifying who identify as having experienced sexual assault? _____

20. What is the nature of your contact with victims? _____

21. How many crisis calls do you receive yearly? _____

22. What is the approximate period of time you have contact with an individual victim? _____

23. Does your program offer any other services? Are these services solely for victims of sexual assault? _____

24. Have you conducted any training yourself? What were the trainings about and who attended the trainings? _____

25. Have you attended any state or national sexual violence conferences? Please give some examples. _____

26. Who sponsored these conferences? When and where did they occur? _____

27. Have you conducted any workshops or presentations at these state or national conferences? _____

28. Have you conducted any research or written any articles or papers on topics related to sexual violence? Give some examples. _____

29. Have you previously testified in court? _____

- a. Was it a civil or criminal case? _____

 - b. How many times? _____

 - c. For the defense or the prosecution? _____

 - d. Has the defense ever asked you to testify as an expert? _____

 - e. If asked would you do so? _____

In Minnesota, once the prosecutor believes that sufficient expert foundation has been laid, they will proceed to the general, factual questions, and finally to your conclusions and opinions. If the attorney attempts to elicit an “expert opinion” that the other attorney wants to object to, they object at that time, and it is then up to the judge to either overrule the objection (finding that sufficient expert foundation has already been laid) or to sustain the objection. If the objection is sustained, the first attorney will have to try to lay more foundation with the witness, so that the witness can provide the requested opinion.

SECTION 5: THE IMPORTANCE OF YOUR CURRICULUM VITAE

What is a Curriculum Vitae or C.V.? How does it differ from a resume? What is my C.V. or resume used for?

A curriculum vitae is similar to a resume, but usually contains more detailed information than a resume. While a resume is intended to give potential employers the opportunity to quickly skim your experience or qualifications, a C.V. conveys much more detailed information about your education, publications, continuing education and job duties. Your C.V. will be the basis for the questions asked of you when you are qualified as an expert. A carefully organized, current, detailed C.V. will help establish your qualifications as a credible expert witness because it demonstrates in detail your specialized knowledge, education, and skills.

Regularly update your C.V. with:

- Number of years and months working as a sexual assault advocate
- Paid and volunteer experience
- Sexual assault presentations, trainings and conferences you have attended (keep a file of all completion certificates)
- Articles or papers you have written on topics relevant to sexual assault
- Statistics, like the number (but not names!) of individuals you have served (i.e., had contact with over 150 sexual assault victims since 2009)
- The name and duties associated with any committees, work groups or task forces on which you have served

Expert witness experience on your resume or C.V.

- Keep track of your past experience as an expert witness, by including the following information:
 - The name and location of the court (i.e., Olmsted County District Court, Rochester, Minnesota)
 - Type of case (i.e., criminal) and
 - The party for whom you testified (i.e., State of Minnesota)
 - Date (i.e., month and year)

To whom should I provide my C.V.?

You may provide your C.V. to anyone who requests it. Providing your C.V. to the prosecutor and/or defense attorney will help those professionals learn more about your qualifications and experience and will help them develop appropriate questions to pose to you.

Because you are providing a CV that contains a history of your prior appearances in court, be aware that your opinions and answers to questions in that trial are available for review. It is very common for a defense attorney to obtain transcripts of your prior court testimony to see if your opinions and conclusions remain consistent, or if they appear to change based on what is requested in each trial. There is nothing so damaging to the reputation of an expert than for a defense attorney to point out that in Trial A, your opinion was “x”, in Trial B, your opinion was “y” and now today, in Trial C, your opinion is “z”. This is not to say that the situations are the same, or that your opinions and conclusions can’t change, but you need to be prepared to explain what is different and why your conclusions and opinions may or have changed over time.

What should my C.V. look like?

A sample C.V. is contained on the following page. Please note that your experience and skills will differ; the most important thing is to include the information that will showcase your specialized knowledge and skill.

Sample C.V.

Name
Address
Phone Email

Education

09/95-08/99 Saint Cloud State University
Saint Cloud, MN
Bachelor of Arts

Professional Experience

1/00-5/05 Sexual Assault Advocate at Program X
6/05-6/08 Sexual Assault Advocate at Program Y
6/08-Present Director at Program Y

Relevant Research Experience

8/99 Senior Thesis : X

Volunteer Experience

9/96-1/00 Volunteer at Sexual Assault Program X
6/08-present Sexual Assault Multidisciplinary Action Team
9/11-present Board member at State Sexual Assault Coalition

Presentations/Publications

6/08-present Presented at five separate 40 hour trainings for volunteers at Program Y – topic areas include (list out)

Continuing Education

1/00 Required 40-hour sexual assault advocacy training
1/00-present Attended annual meeting and training symposia held by state sexual assault coalition in various locations statewide; workshops included trauma and sexual violence, volunteer management, serving male clients, etc.
6/08 Attended national conference on sexual assault in W city; workshops included working with GLBT clients, understanding neurobiology of trauma, etc.
9/11 Attended national conference on sexual assault in Z city; presented workshop on multidisciplinary teams

Professional Memberships

State Sexual Assault Coalition

Prior Expert Testimony

State v. Smith, October 2011, Big County, MN (criminal case, state witness)

SECTION 6: DIRECT EXAMINATION

What is direct examination?

Direct examination is the first line of questioning that you will encounter as a witness and is conducted by the party who subpoenaed you to testify (usually the prosecutor).

What is a leading question?

Leading questions are generally not permitted on direct examination except to alert the witness to a change in the topic of inquiry or to direct the witness to a specific date or topic. A leading question is one that suggests the answer.⁷ Generally, it is a question that could be answered by simply stating either “yes” or “no.”

- Example: “Isn’t it true that you conducted a sexual assault examination on February 1st, 2011?”
- Example: “Did you have the opportunity to conduct a sexual assault examination on February 1st, 2011?”

When should I expect leading questions?

Leading questions are allowed during cross-examination. Most defense attorneys will use leading questions as part of their strategy and so you should expect them to be used during your cross-examination. Some examples of leading questions are provided in Section 7, Cross Examination.

Sample direct examination questions⁸

1. Is your testimony today based on your experience, training, education and work with victims of sexual assault? _____

2. Have you provided advocacy services to the victim in this case? (*Note: Answer should be no*) _____

⁷ Black’s Law Dictionary 969 (9th ed. 2010).

⁸ Several sample questions from Long, *supra* note 11, at 65-67 (*adapted with permission from Herb Tanner, Jr., Violence Against Women Training Attorney Prosecuting Attorney’s Association of Michigan*) and other questions adapted from Transcript, *State v. Obeta*, July 6, 2010).

3. Are you familiar with the facts of the case? (*Note: Any information should be very general*) _____

4. Based upon your experience, training, education and work with victims of sexual violence, what are some common issues associated with victims of sexual assault? _____

5. Do you give presentations to civic groups, schools and other public forums on issues associated with sexual assault, or do you have other opportunities to talk with members of the public about those issues? _____

6. Have you found the public to be well-informed about sexual assault, how it happens and how victims react? _____

7. Does the public have misconceptions about sexual assault? _____

8. From your experience, how do most people develop these misconceptions? _____

9. What are considered some of the myths about sexual violence? _____

10. Are you familiar with any articles or books (or have you attended any trainings) discussing the myths versus the realities of sexual violence? _____

11. Based upon your experience, training, education and work with victims of sexual violence, what are some common victim reactions to assault? _____

12. Do all victims behave the same way? _____

13. Through your numerous experiences with sexual assault victims, have you gathered insight into the reasons why a victim may behave a certain way? _____

14. Based upon your experience please explain the reasons they might behave a certain way. _____

15. In your experience, do victims of sexual assault generally report that they have been sexually assaulted right away? _____

16. Do you or your staff work with victims of sexual assault if they do not report to law enforcement? _____

17. Do some never report or report months or years later? Why is that? _____

18. Is it your understanding that the initial response that a person receives from the people she consults with (a friend or family member, for example), can influence whether or not she goes forward with the police report? _____

19. What factors influence her decision? _____

20. Does the victim's relationship with the assailant ever play a role in her decision whether she wants to report to the police or not? If so, can you explain that point further? _____

21. Can you recall some common themes when it comes to the physical resistance a victim may or may not use while being sexually assaulted? _____

22. What are some of reasons why a victim might not physically resist a sexual assault? (Note: If the expert witness brings up frozen fear or tonic immobility, explain what this means but only within the scope of knowledge; a sexual assault advocate should not provide a scientific explanation). _____

23. Is it likely that a current sexual assault victim might have prior sexual violence in her background? And can that history affect how they respond on a new occasion? _____

Use of demonstratives/exhibits

It is unlikely in your role as a sexual assault advocate talking about victim behavior in general that you will need to use a demonstrative or exhibit to describe a concept to the jury or the judge. But, in the event that you do, any demonstrative you hope to use must be approved of ahead of time by the prosecutor, defense attorney or judge. If you believe that the use of a demonstrative could be helpful when explaining a complicated topic, alert the prosecutor as soon as possible. Be sure not to rely on the use of a demonstrative, however, since there is no guarantee that its use will be approved of by the judge. You should be just as comfortable describing the item in words as you are utilizing the demonstrative.

What if I can't remember my testimony? Will I be able to look at my notes?

The prosecutor, defense attorney and jury expect that you will arrive at court ready to present testimony based on your knowledge and experience. Prepare beforehand with questions that you expect will be asked of you (but don't become too pat with your answers). It usually isn't acceptable to read straight from your notes.

SECTION 7: CROSS EXAMINATION

What is cross examination?

Cross examination is the line of questioning that comes after direct examination has concluded. The attorney that did not call you as a witness performs this line of questioning. Thus, in the majority of criminal cases, the defense attorney will be cross-examining you. The purpose of cross-examination is to limit the effectiveness of your testimony or discredit your opinion or recollection.⁹ Despite this purpose, the defense attorney is not the enemy. Therefore, you should always be courteous and professional, and try not to take questions posed personally.

Tips on handling cross examination

- Listen to the question carefully.
- Stop talking if there is an objection to the question.
- It is common on cross-examination for questions to be leading. As a result, the questions may be confusing or difficult to follow. This is why it is important to make sure you never answer a question that you find confusing or guess at what the question may mean. If this occurs, you can ask for the question to be repeated. If you don't know the answer just say so.
- If a question makes wrong or erroneous assumptions, or assumes facts that are not true, you can point out those errors to the attorney and ask that the question be rephrased or restated.
- Be polite. It is important for the jury not to see you become flustered even if you feel that the defense attorney is trying to provoke emotion from you.
- Cross-examination is not a direct attack on you as an individual. Try not to take the questions personally.
- The prosecuting attorney may have an opportunity to clarify answers elicited in cross examination during re-direct.

Sample cross-examination questions¹⁰

Because leading questions are allowed during cross examination, many questions posed will not be questions at all, but rather statements to which you as the witness will be invited to agree with.

1. Do you think all victims that claim to be sexually assaulted are telling the truth? _____

⁹ Black's 433.

¹⁰ Some questions adapted from Transcript, *State v. Obeta*, July 6, 2010).

2. Isn't it true that as an advocate you believe all of your victims? _____

3. Are you or your staff ever allowed to challenge the accusation being made by the reporter? _____

4. Why don't you have specific certification as a sexual assault advocate? (*Note: Be sure to explain 40-hour training*) _____

5. If a woman was forcibly raped, wouldn't you expect to see injury? _____

6. Isn't it true that each time you have testified as an expert in sexual assault cases you always testified for the prosecution? _____

7. What is your agency's definition of sexual violence? _____

8. What is the range of time in your experience you have seen sexual assault victims wait to report to law enforcement? _____

9. If a woman who reports a rape acts in accordance with the common behaviors that most rape victims show, does that mean she was raped? What does it mean? _____

I can't believe the defense attorney went there! Dealing with particularly challenging questions

Many of the defense attorney's questions on cross-examination will be difficult and are meant to be, as discussed earlier in this workbook. However, there are some questions that may prove

particularly challenging. While it may be possible to avoid answering these questions based on the prosecuting attorney's objection, there is no guarantee that a judge will sustain the objection. It is a good idea to plan for this possibility by talking with the prosecutor ahead of time and thinking about your possible answers.

One question that raises concern is about the frequency of false reporting of sexual assault. For example, a defense attorney might ask about statistical rates of false reporting. Inferences could be drawn from these statistics about frequency and types of reports that may cause the fact-finder to make assumptions about victim credibility. If you find, however, that you must answer this type of question you can either say you do not have knowledge of specific research studies, if in fact you do not, or if you do know, provide very general information (i.e. studies generally show low rates) but do not try to get more specific in your responses.

The other challenging question is more personal. A defense attorney might ask if you are a victim/survivor of sexual assault. This question is not relevant to the case but it might be asked anyway in an attempt to show that you are biased toward the victim in the case – and all victims in general – and therefore cannot be a reliable expert.

It may be a good idea to talk about this matter with the prosecutor while planning your testimony. You do not need to disclose personal history right away but you might ask the prosecutor whether she or he thinks the defense attorney will ask you any personal questions and whether you will have to answer them. Note that a prosecutor may be required to disclose to the defense that you are a survivor if the prosecutor is aware of this information. If you are not comfortable with this possibility then testifying may not be a good idea for you. If you are comfortable, then consider how you would answer the question. For example, if you are a victim/survivor, you would answer “yes” and, if pressed further, that your background is part of the reason why you are interested in this issue. You could also state that you have now heard about so many different sexual assault stories through your extensive client work that you understand the issue from a variety of perspective that go beyond your own. It should not be necessary for you to go any further. You are not the victim in the case.

SECTION 8: REDIRECT

What is redirect?

A redirect is a second direct examination that is done after the cross-examination and ordinarily is limited to matters covered during cross-examination. The redirect will be carried out by the party/attorney that you are serving as a witness for. Re-direct is a chance to clarify something that wasn't explained well in direct examination, or something that was confused during cross-examination. Leading questions are not allowed on redirect examination.

Sample Redirect Questions¹¹

1. You were asked some questions about challenging reports that are made by victims. As an advocate working with a victim who is seeking assistance, do you consider yourself a fact-finder? _____

2. So do you have information upon which to reach your own decision about whether the report is true or not? _____

3. Is it your role to make a judgment? Please explain why or why not. _____

4. These issues that you have discussed such as the delay in reporting, the process of helping victims report, their lack of resistance during the assault, their lack of injury, their behavior – are these things that you observe in your work? Please explain further. _____

5. Do your peers in this state and in other states discuss their encounters with these issues? _____

¹¹ *Id.*

CONCLUSION

Thank you for your interest in testifying as an expert witness. Your years of experience in the field of sexual assault have given you special knowledge that will help educate a judge and jury. This workbook is just one tool in developing your expert testimony skills. Other tools are practice, talking with peers, attending trainings, and, of course, your day-to-day experience.

As mentioned in the Introduction, this workbook is intended as a place to start. You will encounter experiences in court that are not mentioned in this workbook – it is not possible to imagine every scenario that might come up. But we do hope this workbook will give you the background to help you feel confident in your abilities as an expert. And we hope that you will share with us your stories and feedback so that we can continue to improve this workbook and our training.

Good luck!