Child Welfare Court Improvement Project Training Series

TESTIFYING EFFECTIVELY FOR CASAs

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Transcription:

What we're going to talk about today is what it might be like for a CASA worker to have to testify. The first PowerPoint presentation has lists of the kinds of hearings where a CASA worker might end up testifying. This is the screen that says that:

Hearings where a CASA might testify

What is the difference between an appearance and a hearing? When would I just talk/report/answer and when would I testify?

Permanency Hearings
Modification of Violation Hearings including requests to remove children

"TPRs" Fact Finding and Dispositions
Freed child reviews/Permanency Hearings for freed children

The first thing I want to talk about is the difference between an Appearance in Court and a Hearing. When would you be present in Court and be talking or reporting or answering questions and when would it be that you would actually end up testifying.

An Appearance means that the case is on the Court calendar – everyone *appears*, but there is no expectation that someone's going to be taking an oath and taking the stand. Most times in a situation in Court, you're just there for an Appearance. A case is just on, everyone's going to report about what's going on. In that kind of situation, the Court or someone else might ask a CASA Worker to report on something that's happened on a particular issue of an update. That's not testifying – that's just answering questions. Of course, much of what we're going to say today applies to that kind of a situation as well. That you would want to speak loudly, tell the truth, etcetera.

But there is a difference when you testify: the difference when you testify is when you would literally take the stand, go up on the witness chair, sit down, swear to tell the truth and answer specific questions put to you by all of the lawyers that were present and --in some instances-- the Judge as well. And we're going to talk about what that's going to look like, but I want to make sure everybody is clear: the vast majority of times that a CASA Worker is in Court they're there to either hear what's going on (be brought up to date) or to talk about and report questions that are being asked. A very small minority of times is a CASA Worker is actually formally subpoenaed to testify and to take the oath actually and answer questions that way. The kinds of hearings in which a CASA Worker would testify are listed on the screen:

Hearings where a CASA might testify

What is the difference between an appearance and a hearing? When would I just talk/report/answer and when would I testify?

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In *general*, you would know in advance that you were going to testify because *in general* the person who wants you to testify would subpoena you and would have that information in advance that you would know you were going to testify. It is *possible* that you could be making an appearance and somebody taking the position that they want you under oath to answer questions, but the much more common experience would be to know in advance that you were going to testify via a subpoena —– and I'm going to get to subpoenas in just a minute. One of the questions was asked in a way that implied that perhaps it was the CASA Worker who would decide when they were going to testify ... that would never happen. While a CASA Worker might let people know that they were willing to testify, it would never be the CASA Worker's decision to testify. It would be a lawyer —– one of the lawyers involved in the case —– that would have to subpoena a CASA Worker to testify.

The types of hearings where a worker might testify would be:

A Permanency Hearing – those are the hearings in which I think would be the most common for a CASA Worker to testify. Permanency Hearings is the ongoing hearing that are handled by the Court to overview the child status when they're in foster care. The first one happens after a child's been in care 8 months or no longer than 8 months and at least every 6 months thereafter. These are very common experiences for CASA Workers to make appearances in and sometimes the Permanency Hearing might become more formal. If you want, you can discuss with your local group whether or not your Permanency Hearings are more formal or less formal. Some parts of the State have much more formal hearings than others ... and when I say 'formal', I mean hearings where people would actually take the stand and testify. But, many of our Judges and many of our Court attorneys hold Permanency Hearings in a more casual way where everyone comes into the Court and reports, but no one really ends up taking the stand.

Another situation in which a CASA Worker might testify could be a hearing that happens after the Court has adjudicated abuse or neglect and something is going on with the Court's order. The Order needs to be modified in some way or someone is claiming that the Order has been violated including situations where perhaps children having been in one home or have been left home and now subsequent to the original concerns, someone's making an argument that children need to be moved in some way or removed.

It could happen that a CASA Worker has been following the matter and now one of these issues is coming back into Court and that CASA was involved in some way directly, perhaps, by observing something or getting an admission –somebody's made a statement to a CASA Worker about something that's going on and that could be a way that a CASA Worker might end up testifying in a Modification or a Violation Hearing.

It is also possible, I think less common, that a CASA might be involved in a Termination of Parental Rights procedure. Termination of Parental Rights is broken down into two different types of hearings:

> The Fact Finding Hearing is to whether or not the ground exists to terminating parental rights; and the
>
> Dispositional Hearing - on the issue of what should happen –that is, should the child be freed for adoption or not.

A CASA *could be* in a situation where they have some knowledge about the facts and the TPR. For example, a CASA might be aware that although they were assigned to a case and the parent had their number, that the parent never contacted them and the issue may then come up in an abandonment termination. Did this parent reach out to *anyone* involved in the case including the CASA Worker and that might make a CASA Worker a witness.

A Dispositional Hearing might be a situation in which a CASA Worker is able to provide some testimony about the relationship. For example, what they have observed between a parent and a child.

Another spot where a CASA Worker might end up testifying are Freed Child Reviews or sometimes referred to as Permanency Hearings for Freed Children. These are the Permanency Hearings that happen on an ongoing basis once a child has been freed for adoption. A CASA might be assigned to a case where a child has been freed for adoption perhaps helping and assisting to find an adoptive home for the child. And, again, these Permanency Hearings tend, in most cases, to be casual. That is, that you would appear in Court and there would just be some report or some answering of questions.

But it is possible for the Courts to hold these in a more formal way where the CASA Worker might end up actually testifying, taking the stand and answering pointed questions.

Let's talk a little about some of the basics – what actually goes on in Court in our Child Welfare Cases.

Some Basics

- **Levels of Proof - preponderance, clear and convincing, beyond a reasonable doubt**
- **Burden of Proof**
- **Who could and who is "calling" you?**
- **Subpoenas of a person, "duces tecum" subpoenas of records**
- **Remember that you should always be honest with people that you can be subpoenaed and there are no "secrets" — no "confidentiality"**

The first thing that you should be aware is that different types of cases and different types of proceedings require different levels of proof. I'm not talking about levels of truth —something is either true or it's not. But there are levels of proof if you think about it. Proof having to do with the sureness of things; you are more sure about things that you are about other things. You can be pretty sure Upstate New York's going to get snow in the winter, but you might be less sure about how much snow.

Levels of Proof have to do with how much sureness a Judge has to have to make certain decisions. For example, in most cases involving abuse or neglect,the Court has to be sure on a level that's known as preponderance. Preponderance means more than half. It doesn't mean the Judge weighs things and says, "*Hmmmm, a little bit more here than there*." It means a Judge looks at all the ways something could have happened and says, "*I am more than 50% convinced that it happened this way*." That's the level of proof that's needed in abuse and neglect cases and in most of the procedures around enforcement of abuse and neglect modifications, for example. Clear and convincing proof — a larger level of proof. The Judge is clearly convinced that something is so is a level of proof that is needed in Terminations of Parental Rights matters in other kinds of cases that are handled in Family Court. If I had to grade them and I think of things in the ways of grades and not stars, I would say that preponderance is a passing grade, clear and convincing is a B+. It's a much higher level of proof.

And then we have highest level of proof called Beyond A Reasonable Doubt. Beyond A Reasonable Doubt is not a common level of proof used in Child Welfare other than with children who are part of the Indian Child Welfare Act. That's their level of proof for a termination. It's the level of proof that's needed in our TPRs, and it's needed in our PINs cases in some instances and it's also a level of proof that some Judges use in the context of making decisions about whether someone's violated an Order and demand being placed in a jail ...incarcerated, in fact. The level of proof then is something that the attorneys are very conscious of because it means how ***much*** they have to demonstrate to a Court that something is so or not so. Combined with that is a concept known as Burden of Proof. The Burden of Proof is who is ***responsible*** for reaching the level of proof and the Burden of Proof has to do with who's going to be bringing on the evidence and who's going to be able to demonstrate it is so. In many cases, the Burden of Proof is essentially brought upon by the person who is

asking the Judge for something. So, if the Department of Social Services or ACS is claiming that mother has neglected her child, then they're responsible for showing that mother has neglected her child on a level of proof that is preponderance.

If the Department is alleging that parental rights should be terminated, then the Department has the Burden of Proof then that level of proof for them is clear and convincing ... that there is clear and convincing proof that the parent has, in effact, done or failed to do the things that would allow her child to be returned. The Burden of Proof really lays at the feet of the person who's asking for something to happen. So, if the child's attorney or the parent's attorney is in Court asking the Judge to change something – give them more visits, things like that– then they would have the Burden of Proof.

From your perspective what's really important to (almost perhaps somewhat unique) about a CASA Worker testifying is that ***any*** of the attorneys can subpoena you to testify; and, that becomes really important because the person who's "calling" you, who's subpoenaed you, generally believes you have something to say that supports their perspective. If they didn't think you had something to say, they wouldn't want you there. If they think you don't help their case, well then generally they're not going to subpoena you.

Unlike what some people think that the lawyers want the truth to come out in Court; lawyers want their client's position to come out in Court. The Judge is the one who decides what the truth is. So, it's not a case of someone asking me questions I got in advance – it's not a case of "*I have important information and I'm going to tell everybody that when I testify*." The attorneys will decide whether you have important information from their perspective and will subpoena you to testify. I recommend that you request subpoenas. Perhaps this is a policy issue and your Boards might want to make individual decisions, but I think the proper position to take for you is that you should have a subpoena to testify so that it's clear that you're being ordered to do this and you're really staying 'above the fray,' so to speak, you're not offering yourself to someone – you're being ordered to do it.

There are 2 types of subpoenas: your **person** can be subpoenaed. That generally happens when the person who's subpoenaing you believes you've seen something, you've become aware of something, you have heard something and they think that the Court should hear what you have to say about that because it would be helpful to their position.

Often times, what you will receive is a subpoena "duces tecum" –– it says that it right on the subpoena form: Subpoena duces tecum. Lawyers just love Latin, essentially, what subpoena duces tecum means is: I want your records. Most times, a subpoena that you get would be a subpoena of a person and a subpoena duces tecum – they want you and they want your records. Now, it may seem to you: "*Mmmmmmmm, I don't want that!*" Mmmmmm, generally actually you do want that because you want your records to help assist you in court and backing you up. In fact, I would recommend to you if you receive a subpoena, that you contact the attorney and ask "*Hmmmmmmmm, I see that I'm being subpoenaed, but I don't see that's it a subpoena* ***duces tecum****. So, you're not subpoenaing our records?*" That would put you in a bit more of an awkward position because now it would become a lot harder for you to use the records in Court to refresh your recollection. Subpoena duces tecum usually would say: both records and person on it. If you just got a subpoena that says "Records Only," again, I might suggest you call the lawyer that subpoenaed, "*Are you sure this is what you want – my records, but not myself?*" They may want the records ...there may be some argument about putting the records into evidence ––that can be done, but usually someone from the agency has to testify that they're the actual records. And the records themselves wouldn't go in without the person.

Remember that it's very, very important in your work to make sure that you are clear with everyone, honest with everyone, that you can be subpoenaed – that there's no way to prevent that, that there's no "secrets", so to speak, and that there can't be any "confidentiality" between you and essentially anyone that you talk to as it concerns this particular case. I don't know why that would be a policy that you would want to pursue since you can be subpoenaed. But, I can imagine perhaps some parents in particular thinking that they were telling you something and it was a private thing and that you didn't have the ability to tell other people. So, I think you'd want to make sure you have made it clear to parents in particular that anything they say is something you might have to report on and you might be, in effect, forced to report it if you're subpoenaed.

Some basic rules to be aware of:

Rules of Evidence

- **Witness must be competent to testify - can understand, respond to questions, can recall past events, knows difference between truth and falsehood, significance of the "oath"**
- **Different Hearings have different rules about what type of evidence is admissible:**
  - **Material - relates to the issues**
  - **Relevant - tends to prove or not an issue**
  - **Competent - rules of evidence and not hearsay if not permitted**

We speak of witnesses as being 'competent.' There's a concept in law that says for a person to be able to take the witness stand, they have to have some basic abilities to understand questions, to be able to respond to questions——you couldn't put a baby on the witness stand because it couldn't understand and answer questions. A person has to have a basic ability to recall past events and to know the difference between truth and falsehood and the significance of taking an oath. That's why a 3-year old, for example, wouldn't be called to testify in Court – even though they might be able to answer questions - they probably can't distinguish between truth or falsehood or the significance of taking an oath. I assume that everyone's who's a CASA Volunteer is more than competent in that particular area of understanding those differences. We also use the term competent when we're talking about different types of evidence.

Different hearings at Child Welfare have different rules about what's admissible or not. I think folks who are new to Child Welfare are sort of shocked about this. *"Hey, I was allowed to say this in this time frame, but in another time frame I wasn't allowed to say the same thing"* — that's because different hearings have different rules about what a Judge can listen to. For example, emergency type hearings involving children having to be taken out of a home, the rules are quite relaxed and a lot more stuff is admissible than would be admissible in a formal Fact Finding as to whether or not a child has been abused and neglected.

There are three different types of qualities about evidence that lawyers refer to: they talk about whether a piece of evidence or a piece of information is Material or Relevant. *Always*, in all the hearings that we have in Child Welfare, a piece of evidence must be both material and relevant to be admissible. Material means it's a piece of information that relates directly to an issue the Court has. Lots of times, I'll bet, there's lots of information in a CASA Worker's file ——and the notes that the CASA Worker has taken ——that is very important and critical to the CASA Worker understanding certain issues. Perhaps, for example, mother has shared with you that her parents were alcoholics and that she struggled as a child with that issue. If the Court's questions are focused in a Modification Hearing are about whether or not the mother should have more visitation, the fact that she has shared with you that she grew up in an alcoholic household is not material and actually is not relevant either— it's important information, but it does not relate to the issue that the Judge has. So, although it's the truth, it would not be *admissible*. Information must be material, relate to the issue the Judge has, and relevant, that it's something that a Judge would use/could use in weighing the issues that the

Judge has to weigh. It's not that it's the truth, it's related to the information.

The most common argument that lawyers and Judges will make in the Court has to do with the competency – whether or not the information is coming from the right source. And in general, the biggest issue in the competency area is the concept of hearsay.

Hearsay means that someone outside of the Courthouse has said something and now someone *different* is on the witness stand and wants to repeat what that person said as a way of proving that it was so. For example, let's say that the CASA Worker has talked to dad and dad has admitted he fell off the wagon and used drugs this weekend when the child was visiting —– an incredibly important piece of information. Now, the CASA Worker is on the stand and someone is asking about whether or not they had a conversation with father and what did father say. You didn't use drugs with him this weekend. You don't know whether or not he used drugs. You want to allege that he's used drugs or you want to help prove that he's used drugs by saying: "*The man told me that he used drugs*". You know, it's a pretty good evidence, isn't it? It's unlikely he'd say such a thing if it wasn't true. It might be actually a little bit less than how much actually occurred, but you are speaking about hearsay. You're repeating what somebody else told you as a way of trying to prove the drug use happened. In some situations you're going to be allowed to repeat that. The particular example that I gave you is a hearsay exception called an Admission. An Admission by one of the parties in the case can be testified to even though it's hearsay.

Some hearings allow hearsay regardless. You can repeat what other people said: "*The doctor said this, the teacher said this, the Substance Abuse Provider told me this...*". In other kinds of hearings, you cannot repeat what people said unless there's a noted exception to it. A witness actually doesn't need to know any of this detail —– it's the lawyers that are arguing about this, but when you're a witness it can be very frustrating to think, "*I have this piece of information that I know is very important for people to hear. Why am I not being asked about it?!*" or "...*Why is everyone dancing around?! They asked me if I have talked to dad, but they didn't ask me what he has said to me*" and some of these rules may apply or not. You never have to apply the rules. When somebody asks you the question, you don't say, "*I think that's hearsay and I don't think I can answer that*." The witness never says that. It's the attorneys that will make the argument about whether or not something has to be listened to or —– excuse me —– whether something *can be* listened to or whether the Court is not allowed to listen to it based on the rules of evidence.

Basic Testifying

- **Know your record, organize it, prepare with — be ready to "refresh recollection" with it**
- **Deal with your anxiety; case is not about you — it is about the child; focus on the goal**
- **Professional appearance — clothes, grooming and body language, no gum!**
- **Loud. Clear. Slow**
- **Do not guess or speculate, ask for clarifications**
- **Always polite tone, positive look, respectful to all**

The most important information, I think, that a CASA Worker needs to understand about testifying is how critical, how incredibly important your notes are. They become everything about testifying. You want to make sure that you've done everything you can to keep your notes accurate and up to date. They're the thing that is going to be your best friend in getting ready to testify. You're going to want to read over your record; you're going to want to have it organized in a way that you're going to be able to use it – make it 'user friendly' to you to be able to use it in Court. Because you're going to be allowed to look at your record if you need to. You're going to want to help prepare yourself with it. It's the most important thing because you're often going to be testifying about something that happened in the past ... might be easy - maybe it's something that happened a couple of days ago. But for Permanency Hearings, Termination of Parental Rights you could be testifying about something that happened *months ago* – it could literally even be *years ago* and most of us simply don't have that kind of recollection.

Your *notes* – the primary use for you – is that your notes should help the 'movie' flood in your brain again. Nobody can write everything down that happens ... it's just not going to be possible, but if your notes are detailed enough, they should make the 'scene' come back in your mind again so that you will be able to answer the type of questions that you have to. We allow open-book exams when people testify. You can 'Refresh your Recollection.' What that basically means is that you can look at your notes anytime you want to, to help you answer a question. So the question is: "*When did you make that third home visit to the Smith house?*" and you're thinking: "*Uh, I dunno... that was a year ago ... I don't know*!" You know it's in your notes —– you wrote down the date —– and you answer a question like that by saying: "*I'm not sure of the exact date, but if I could please refresh my recollection...*" Even if you can't remember the famous 'refresh my recollection' – which is just like "Mother May I?" -- you don't have to use those words. You can say "It's in my notes if I could look at them?" or "May I check my notes?" You do have to say *something* —– you cannot simply pick up your notes and look at them. You must acknowledge in some way that you're going to need to use your notes. Someone will nod to you, the Judge will say '*go ahead*' or the attorney will gesture in some way. You'll know that you are being allowed to look at your notes. You look at your notes, you find the answer, and then you look back up and now you can answer the question. You don't read your notes —– there would be an objection if you read your notes, but you're

refreshing yourself by looking. "*Oh yes, now I remember. It was May 3*." It seems a little bit artificial to you, but it's because generally speaking, testimony is admissible if a witness remembers things. We're just allowing people to look at some things to remember those things.

Now, also in this way, one of the things you want to do is organize your record in ways that will assist you. Some common techniques I've seen over the years: some people take a record and they use little tiny Post-It notes stickers and they put them on the edge of the page —— like an index ... putting dates or, you know: "When I Saw Mom Fall Off the Couch". You know, little comments on the side that would help you find things in the record —— makes you look very organized too to anyone who's taking a look at things. Other people have done things like: taken their record and used a highlighter to highlight things they think they might be asked about on the stand – make it easier to find. It's probably also how you studied in college to make you remember things. If you're really having a complicated issue, you could take multiple colored highlighters, assign them some significance: blue-*When I made home visits*; yellow-*Whenever I talked to a Substance Abuse Counselor* ... and you can use colors to highlight. Careful: if you're using a written note and you're highlighting – I'm sure you've had this experience – that can then xerox as black. So, I do not recommend that you use highlighters on written notes. Obviously, if you've got things on your computer, you can print them off and that would be fine to do it that way.

A third method that I see some people use –and I recommend if you've been involved in a case for years – and I certainly know that many CASAs could be in a case for a long time! This might be a situation where you might want to make yourself –what lawyers call- a cheat sheet. Don't use that word in front of the Judge, but we all know what that means ... in front of the Judge you can say that you've created an outline. But a cheat sheet is essentially is like a chapter heading for you. Suppose you had, you know, that amount of paper! You've got this level of notes! And you're about to be asked a determination about a whole bunch of things that have gone on for about a year. You're going to feel like you've got to page through all these things. What you might want to do is take a sheet of paper or two, divide it up – maybe by months for example: January, February...; make little boxes and put in the box: January-*Some mother twice, page 67, page 182*. And you could use the cheat sheet to answer the questions in Court: "*Did you have any involvement with mom in January?*" "*May I refresh my recollection, please? Yes, I saw mom on two occasions in January.*" "*What happened on the first occasion?*" "*May I refresh my recollection, please? Hmm, page 67.*" Pick up the notes, look at page 67: you've got...

It sounds rather elaborate, but two things: It will increase your confidence tremendously and that is a ***huge*** part of testifying effectively; second thing, believe it or not, you look fabulous when you do this. You might think, "*I'm going to look like I'm a little over organized...*". Hm, no, you'll look really good. In the event anyone dares to, like, roll their eyes or snicker, the bottom line is: you're here because it's so important and it's so important that you be truthful that you need accurate information to do that with. So, there's lots of different ways to do it. By the way: notes, cheat sheets ... anything that you use in Court to refresh your recollection is fair game for any attorney to ask to see it. No problem, there's nothing in there that you should have any worries about anyone seeing. It's accurate, truthful information and you're there to talk about it, but be careful – don't do anything odd or unusual [like] make some little

comment: "*Wish we had the other Judge...*" or something in your notes that could make the situation embarrassing.

You want to try to deal with your anxiety. One of the things that I say to folks is the case is not about you ... I know it feels that way, but the case is really about that child and you need to focus on that as the goal. You obviously want to have, it goes without saying, a professional appearance: you want to wear clothes —– interview-type of clothes, body language, no chewing gum ... all of those things. Speak loud, you need to be clear, and you need to speaker slower. Louder than a normal tone of voice, slower than the normal way we have conversation. The Judge has to watch a "movie": here's the question, here's the answer, here's the question, here's the answer. If it goes too fast, the Judge can't follow it.

Don't ever guess at a question – even if it appears as though someone's trying to get you to guess/speculate. If you're not sure what you're being asked, it's okay to ask for clarification. Always watch your tone when you do that in: "*I'm sorry I don't understand your question. Could you re-phrase that please? I'm not sure what it is you're asking me*." Those kinds of ways. Notice my complete poker face as I say it. No attitude, no snottiness when you do that. Polite, positive, respectful tone and I don't mean like 'Eddie Haskell respectful' ... for those who are old enough! I mean, you know, you're using a tone that shows that you're there just to give basic information. I think this is even more key with CASA than other people. Because you really need to be seen as: I'm here to speak for this child's best interests. I'm not taking sides, so I'm not being snotty with a particular attorney showing that I am sort of sided with someone else.

Other Basics

- **Stop if there is an objection, wait for the ruling and remain silent**
  - **Sustained — "SU" or Overruled — no "SU"**
  - **Ask for question again if you need to**
- **Opinions are your "professional" ones — not your personal ones**
- **Remain calm, no emotions, no "attitude"**
- **Judges can ask questions of witnesses as well**
- **TELL THE TRUTH**

Other basics: make sure you're careful about the objections situation. If the attorney says "Objection!", they're not criticizing you. Generally speaking, they're criticizing the other attorney. They're like saying "foul" on the other attorney, but sometimes the lawyers are very clever about how they do this: they look right at the witness and they shout, "*OBJECTION*!" Like, "*You're objectionable*!" – I know, that's how it feels. For you, objection just means to immediately stop talking or to not start and to do nothing. It is not your problem. The lawyers have to figure out what to do: what they're going to argue, and the Judge is going to make the decision. You're going to listen for one or two words. The Judge is either going to say 'sustained' or 'overruled'. Because I was convinced when I was a new lawyer that I'd misinterpret them and forget what that means, I told myself this: *Sustained* starts with a S-U ... it means Shut Up, do not answer the question; *Overrule*, no S-U ... no Shut Ups —— not Syracuse University, though it could be —— it's *Shut Up*.

If you are listening, "*Objection!*" happens, and they go on and on in a discussion, the Judge goes "*Overruled*!" and you're sitting there thinking, "*I have no idea what that was*." Somebody did a study once and said about a quarter of the time after the argument that the witness has no idea what they were originally asked. It's okay, just ask again. Apparently, it was an important thing because they had a big fight about it. So, make sure you know what it is that you are being asked. If you're asked your opinion about something, they mean your professional opinion – not your personal opinion. Okay? You're going to be calm, no emotion —— Poker Face is really the best —— no attitude in how you're answering questions.

Unusual for most Courts. Family Court in New York State, Judges can ask questions of witnesses as well because there's no jury. Some of our Judges love to do that. Some of them will actually sort of cut off the lawyers and just handle the whole thing themselves.

Should go without saying, but it needs to be said: tell the truth. Absolutely. It's never going to help the child– even when you think a white lie might help, you'll never help the child because if there's any suggestions or suspicion whatsoever on the Court's mind that you've done a little twist or just kind of said it in a different way that you think would make it better, the Judge can disregard your whole testimony. And I know — I always think this when I talk to people who've testified before — they always hear that part and they're always saying to themselves, "*Oh, I would never do that, never do that*." I've to tell you I think there's a huge, a *huge*

pressure because so often we can see what we think is best for this child and "*If only I just say it this sort of way ...*" and it's like "...*my intentions are good ...*". You can't let that happen, you can't let that happen.

Successful Direct

- **Case is won on direct — Judge is won over by a witness on direct**
- **Attorney cannot lead or suspect — will ask "w" questions designed to help tell the story**
- **PREPARE — file and if possible with attorney**
- **Week before**
- **Night before**
- **Clothes, bathroom**
- **Initial Appearance**
- **Taking the oath**

Ok. Direct Examination. Usually, the case is won on Direct. In other words, the Judge is won over on Direct. The Judge decides, generally speaking, whether your information is valuable or not on the Direct. Most Judges won't say that to you, but it's absolutely true. The Cross for most Judges is the 'frosting'. They've already decided, usually, whether or not they believe what you have to say and your information is credible. They watch the Cross to see if there are other points that need to come up, whether or not everything's come out that needs to come out because they like to see a witness ... they like to validate their opinion about your information, your competency by watching you under a more stressful situation. But, you're never going to convince the Court about what happened on a Cross. So, the Direct is always ten times more important than the Cross even though I think for most people when they testify they're so fearful of the Cross that that's where their energy goes. Also, my experience is that when you do a Direct well, you sail into the Cross so much better. Because now the Judge is won over, now the Judge is on your side during the Cross and also you ***feel*** ten times more competent. If you sail into that Cross Examination knowing that the Judge heard what you had to say and found your information credible, it makes it a lot easier for you to handle the Cross.

In Direct Examination, the biggest challenge for lawyers and witnesses is that attorneys can't lead or suggest the answer to you in their question. They're going to ask you more open-ended, who-what- when-why type of questions designed to help you tell the story in this very slow way. But, it is simply not the same as when we have a conversation with each other. It's a much more concrete scenario and I can't suggest an answer. For example, if I ask you — just as I met you in the hallway — "*Did you talk to your mother last night?*". You would launch into the conversation that you had with your mother: "*Oh yeah. If I had to listen to one more story about what color she's going to paint the kitchen...that was my mother last night ...blah-blah-blah-blah...*". But on the witness stand, "*Did you talk to your mother last night?*" is 'yes/no/I don't recall' — nobody asked you what they've said. Sometimes I think our clients and children are better witnesses because they have that more concrete kind of view of things. You need to be careful and listen for that. Remember, in some instances, I might ***not*** be able to ask you what you said to your mother. I might only be able to establish that you've

talked to her. That's why the question might come in that way. Also, it's not the regular way also- again - it's not the regular way we talk. So, if I came in to you today and I said, "*Wow, we still really have a lot of snow on the ground, don't we!?*" You wouldn't think of that as a Cross Examination question. That's a perfectly pleasant question, but it's leading and suggestive. I just told you what I expected you to say back to me.

So, on Direct Examination I have to sound pretty stupid to say something to you like, "*Uh, what's the weather out today?*" I can't talk the way I would –– it makes it a more stilted conversation. You need to not worry about what it is the person is trying to ask you –– you need to simply listen to the question and answer the question. The attorney will know how to lead you: "*Uh, what's it like out today?"* "*Well, we have a lot of snow."* "*Would you say we have more snow than usual?*" Maybe I'm trying to get you to that point, but I might have to ask three questions in a direct way before I can really get that.

In order to do a successful Direct, you really, really, really have to prepare. And here's the problem, I think, that you're going to have most in this area as a CASA Worker: no one is your lawyer, no one owes you anything to help you prepare.

Now, a good lawyer does not want to put a witness on the stand without knowing what that witness is going to say. Okay? But, all of the other 'players' in Court have their own lawyers: mom has a lawyer, dad has a lawyer, the child has a lawyer, the Department has a lawyer. Now, you may have some opinions about which of those lawyers are better or not better and some of them probably complain about preparation by their lawyers, but all of those lawyers owe their client help in preparing. You don't have a lawyer so there's no one you could go to and –– hands on hips–– and go, "*Uh, when will you be preparing me for Court?*" If they're calling you as a witness, they probably <u>*do*</u> want to prepare you, but there's no obligation on their part to do that. It would be perfectly appropriate for you to say, "*Mr. So-and-So/Ms. So-and-So, I got your subpoena. Do you want to talk to me a little bit about what the testimony is?*" My guess is they know something about what you're planning on saying or they wouldn't had subpoenaed you. It's appropriate for you to do that. How much you can get from that lawyer to help you prepare? You can only ask.

One thing you want to understand is that your review of your records and your understanding of the details of what happens they can't do for you anyway. They didn't go visit mom and find her one day asleep and the kids playing in the traffic...<u>*you did*</u>. So, you have to read over those notes and get that 'movie playing again' so that when you get asked the question: "*What happened on the visit on May 3?*" "*Well, I came in and she was asleep on the couch.*" "*And then what did you see?*" "*I heard noise out in the street, I ran out, the traffic had stopped, Johnny was...*". <u>*You*</u> need to read over your notes to be able to get that 'movie playing again. You want to start that within a time frame that will be helpful to you which maybe as much as a week beforehand. Night before is not a good time to be going over your notes –– that makes me think of college and, you know, staying up all night –– probably not going to be helpful. More helpful to be calm the night before and get a decent night's sleep. Make sure that you wear something you're going to be comfortable sitting in if you think you might be on the stand for a while - check it out once before you get on the stand and stop worrying about it. I always tell people use the bathroom before getting on the stand as well, another way.

Remember that your initial appearance can be a big deal. They call your name and you start walking up and all of a sudden it feels like everybody's looking at you because everybody's looking at you and they are assessing your appearance. You need to have that calm, polite, pleasant face on that I mentioned a little bit earlier –– do not look like you're walking to the gallows. Also, a big grin is a bit much, too. It's just a calm, pleasant, professional face. *You* have no reason to be nervous; *you're* not there to tell a lie; *you're* not there to try to show your competence ... It's not about you and you want to have that pleasant competence.

Take the Oath, make sure you're thinking about which is your right hand, which is your left hand. Don't do the traffic thing when you get up there. Speak up when you say it ... all this stuff counts when they're assessing your competence level. It's not "*Yeah!*" when they ask if you're going to tell the truth. You want to make sure that takes on that kind of an appearance.

More On Direct

- **Sitting, body movements**
- **Voice**
- **Watch the lawyer**
- **Listen to the question — take two beats — can't lead you**
- **Be visual — make the movie play — Judge does not usually know the story**
- **Refresh whenever you need to do so**
- **Ask for a rephrase or a repeat**
- **Objections**

You sit back in your chair. I often recommend sitting back as far as you can. If you're short like me, that might not be very far for your legs will dangle and that kind of looks weird, too. But back in the chair actually, literally, helps you with nervousness because it keeps your chest open which helps you breathe and sometimes when you're really nervous you stop breathing in a way that's gonna make you be gasping up there when you're talking.

Keep your voice up and, generally speaking, watch the lawyer who's asking questions. Particularly, on Direct, the lawyer will – by their body movements, by their facial movements – sort of let you know how things are going. If the lawyer is looking at you, pleasant look, listening and then asking other questions, things are going well. If the lawyer is cutting you off and has a more disturbed/panic look on his face, things are not going well; and, you may be giving too much material and you may need to slow down what you're doing.

Listen to the question, take a couple of beats and then answer it —– it's not *Jeopardy!*. You don't win points for answering it quickly. In fact, it's harder for the Judge to process it when you do that. Listen, make it look like you are thinking and then answer the question...couple of beats. You want to be as visual as possible, you need to make the 'movie play'. Rarely would the Judge have any of your notes or anything in front of him or her and very often the Judge will not know, *really* know what you're there to testify about. Now, you may say, "*Oh,*

no, no, no, the Judge knows." [tisk] The Judge might have known three weeks ago when you were involved in a discussion in Court and now he or she's probably totally forgotten what case this is even. So, you have to be very visual, assume the Judge knows nothing about the information, be very basic.

Refresh, look at your notes whenever you need to —— that's a positive, it's not a negative. Anytime you're not sure what's being asked, ask for it to be rephrased or repeated in some way. And remember, Objections, you need to stop talking. An Objective-filled Direct can be very rattling to someone. "Every time I tried to talk, that lawyer was up and screaming 'Objection!'" It is a technique that some lawyers will use. Frankly, it's a technique they'll use particularly if they think you're being very effective. They're trying to get you to be rattled. You need to take a deep breath, take a sip of water, let your mind go elsewhere and listen for that 'sustained' or 'overruled.'

Yet even MORE on Direct

- **Watch your slang**
- **Handling jokes**
- **Certain types of direct questions**
- **Let the lawyer develop the story**
- **Get your position in before the cross — take your time**
- **Correct mistakes**
- **INTERVIEW for the job of "Best CASA Ever"**

Watch any kind of slang. In the Child Welfare area, we always use all these kinds of terms and initials. The Judge may or may not really know what those are. If there's a joke, be very careful. If the joke comes from any one of the lawyers, I think it's generally nice to smile and not become overly hysterical laughing and falling off your chair. If the Judge tells a joke, again, nice to do that. But be careful do not crack jokes ever, ever, ever — save it and tell everybody in the office later. Because someone undoubtedly will say to you "*What, do you think this is funny?! My client is losing their child and you're laughing?*". It's important to be careful that you treat it like the serious thing that it is.

Certain types of Direct questions. In your handout materials I have given you the basic questions and basic answers that a witness needs to give to get an exhibit into evidence — that would be a piece of something — I used the example of a belt. A business record which would mean helping an attorney get your notes into evidence; also how to get a picture/photograph in evidence, maybe you took a photo of the child; as well as the basic question-and-answer derail that happens when you need to look at your notes. It says, "*What If I Forget An Answer?*" you can look at those at some point in time, they help you realize the key questions lawyers ask in those types of duress. In general, what you are doing on Direct is helping the lawyer develop the story, but it's a slower pace than you're used to in having conversation. You want that to happen, you want it to be slow, you want it to be methodical because you need the Judge to be on your side and understand what you have to say before the Cross happens.

If you feel that you have made a mistake, then you need to correct it. I say that you always have to answer questions, but there's one exception to the rule: it suddenly occurs to you that you've made a mistake. Okay? So, you're describing a situation: *"Mom was in the kitchen, dad was on the porch and mom was telling me blah, blah, blah, blah, blah..."*. Three questions later, you're on a totally different issue and you suddenly realize dad was not on the porch, he was in the livingroom. You want to — on the next question regardless of what it is — say, "*May I correct something I said before? I mentioned blah, blah, blah... Now, what's your next question?*". Just shove it in there when you get the chance –– if you don't realize that you've made a mistake until, unfortunately, they throw it in your face on Cross, remember the Politician's Rule: No explanation, just an admission. No explanation, just an admission. So, when they say, "*You know, you told me this thing about dad being on the porch; that wasn't true at all – he was really in the livingroom...*". Don't launch into an explanation: "*I've been busy, I'm trying to keep things in order, I have a lot of cases, I didn't think that was important...*". Nothing. Just: "*...you are right –– that's not what ....I made a mistake. He <u>was</u> there*" and move on. It's the best you can do. Hopefully, it's not a mistake over something huge, but don't fight or provide a lot of reasons why you think you made the mistake.

Generally speaking, on Direct Examination, you want to think of yourself as being on a job interview: you're doing everything you can –– even though you are nervous –– to put yourself forward as the best person possible for this job. The job is: witness who has a CASA position and you want the Judge to say, "*Wow, best witness I saw in that position.*" You're putting yourself forward in a positive way. You're not giving false information which could submarine you in a job interview, but you are putting yourself out there in a positive scenario.

What about Cross Examination?

- **Won't this be just awful?**
- **And awful times TWO or MORE?**
- **Who will cross you and who will really be friendly fire?**
- **Know the reason behind cross — usually either trying to point out you do not know the whole story and/or that you have things to say that will help "their side" — can lead, suggest, do yes/no only**

What about Cross? That's what everybody is really worried about. Isn't this going to be terrible and isn't it worse than ever in a Family Court situation? Because in a Family Court, you're going to get Cross Examined by more than one people. Usually on TV, there's just one big Cross Examination ... you know, the one where the witness starts crying and admits they're the one that abused the child? This is not going to happen to you, okay? Witnesses, in general, who are professional and the kinds of rules you have are not going to be bursting into tears and admitting that they did something. Alright? But it is true that you are going to be Cross Examined by more than one person. In a typical case, there could be probably three people that are going to Cross Examine you. Let's say that the Department of Social Services is putting you on the stand: you will be cross examined by mom's lawyer, dad's lawyer, and the child's lawyer.

Some of the people who Cross you though will not be Cross Examining you in a hostile way; they'll be Cross Examining you in a way that lawyers call 'friendly fire' -- meaning they're going to be using the Cross Examination style, but they're on your side. For example, perhaps the child's attorney agrees with your position or is very close your position although they'll be cross examining you because the DSS attorney put you on the stand, they may do it in a very positive way. So, isn't it true that you are the most fantastic CASA Worker ever and that you are handling this case on a daily basis? (I'm being silly), but I mean they can ask you in that Cross-style in a more positive way? And, I use that as an example, but of course anyone can put you on the stand. If the child's attorney puts you on the stand, they have to ask Direct and now DSS and the parent's attorney will get to Cross you. But do you see, because we're trying to have this dimension––multidimensional, there's probably at least one person in the group of 'Crossers' who's kind of more on your side and will be very helpful to you.

Generally speaking, a Cross Examination is either focused on trying to point out there is some things you don't know –– and there <u>*are*</u> things you probably don't know –– and others at times they might try to point out that there are some things that you know that will be helpful to them: "*Even though you've testified about the fact that you do not think that mother has resolved her alcohol problem, isn't it true that she has always cooperated with you, doesn't she always come to see you and to talk to you about her issues*?" They might try to use you to demonstrate some positive things. In this scenario, the truth is going to set you free: the more you can shout "*I have positive things as well as negative things to say,*" that's going to be helpful to you. They can lead in their questions; they can suggest in their questions; and they can do the infamous questioning where they only let you answer 'yes-or-no'. Sometimes

it's very difficult for us to do this kind of work.

Keep these things in mind when you're being Cross Examined: you're probably not the only person with the weight of carrying this information forward on you. The attorney is not really trying to discuss the case with you or debate the case with you. The attorney has one vision for what they want for the client's goal and they're not gonna allow you to persuade them. I think, especially as professionals, we think "There must be something magic I'm going to say that's going to make this attorney say 'Oh, you're right!'". You probably can't give the 'right answer' because if you're testifying in a way that is not supportive of their client's position, nothing you say is going to be dealt with as right. They're always going to argue that whatever you're saying is incorrect or wrong.

The best you can do is take control of your own emotions. Realize you're not in a debate and you're going to win here. You're just answering questions and use stress management techniques to make sure that you're not showing a lot of emotion or anger while this is going on. You're really sort of egging on a Cross Examination if you get overly emotional about it.

Two things that can give you away: Your eyes. Meaning that you're avoiding looking at the person asking you questions or that you're looking for someone else in the audience that you think is going to help you. You're being Cross Examined by mother's lawyer. It's brutal and you let your eyes go over to the DSS attorney, "*Please help me.*" Losing eye contact like that is a cue for the attorney that you are now 'on the hooks' and they're going to go for you more. Generally speaking, you want to look at the person who's Cross Examining you. If you are finding it hard - that's causing you more stress- then I recommend you pick a spot right above their head; or if it's a male attorney, the bottom of their tie [knot], there's another one. Pick a spot that looks like you're looking at them, but you are not really looking at them and that might help you with a confrontation scenario by the way. Most attorneys find it very distracting to realize you're not really looking at them.

Watch your tone of voice. That can sometimes give you away as being more emotional than you want to appear.

Also remember:

- **Watch your body movements**
- **Don't "lose it" or "get attitude"**
- **Don't joke or spar with the attorney**
- **You do not have to prove or explain on cross — you did that on direct**
- **Keep it simple — the answer probably is yes or no**
- **This isn't about you — check your ego**
- **There's always redirect!!**

Watch your body movements --you know what I'm talking about that 'neck thing' that some of us do when we get really annoyed. You don't lose it, you don't get attitude; and, you don't try to spar. Some of us think: This lawyer is so stupid, I can 'best him'. That doesn't help. Even if you're more clever than the lawyer is, all the Judge is going to think is: "*Wow, she'd be/he'd*

be a good lawyer!" That isn't what we want. Lawyer equals Liar. [Audience laughs] Okay? That isn't what we want. We want him to be saying –– the Judge to be saying, "*What a great CASA Worker even when put under the microscope of Cross Examination, they stayed professional and gave me accurate information."* You don't have to prove anything, you don't have to explain anything. You already did that under Direct. You're just there to survive, really ...simple ... and answers probably *can be* given 'yes-or-no'. That isn't about you. You're not trying on Cross to convince anybody anything...you're just trying to get through it.

And remember: if there are major issues that they touch on in Cross, there's a redirect coming. The attorney that had you up there is going to get up and ask the questions. And before someone says, "*Yeah, I've been there. They don't come up and ask the questions.*" Tsk, I'll bet you your ego got involved...You'd *like them* to come up and ask questions because you think you have more to say to show how great you are. The attorney that put you on the stand might be like, "*No, you did everything you needed to do. You didn't need to be asked any more questions...you're just upset about it.*"

Make sure that you have discussed that issue, by the way, with any attorney that's putting you on the stand that's friendly. In the sense of an attorney who gives you a lot of help and assistance. You can have an agreement with that attorney: "*The last question that you ask me, please could it be '...and do you have anything else you would like to add that we've not discussed?'*" That may be a way to get in something that you're worried has not come out.

In the context of Cross Examination —— I'm looking at my time and I'm just going to tell you a few of these ... mostly because they're funny —— and I'll move through them quickly because I want to give people time to ask a few questions.

Some sneaky cross styles

- **Note Steal**
- **Rapid Fire Attack/Badgering and Belligerent**
- **Condescending/Incredulous Counsel**
- **Overly Personal**
- **Mispronouncing Name**
- **Officer Friendly**
- **Leading Around the Barn**

I've done the terrible thing and am going to list for you some of the sneaky things that lawyers do on Cross. It's like these folks who do magic and decide to tell the audience what the magic tricks are. You better not tell any lawyers that I told you these sneaky things. What I want to tell you about is *some*, some techniques that *some* lawyers do on Cross and maybe some ways for you to deal with that. And one thing that I think that happens is that sometimes you're just realizing they are using a technique is enough to take a bit of the shine off it. Do you know what I mean? "*Ah, I know what this person is doing!*" Makes it a little bit easier for you to deal with.

Note steal:
A technique that some lawyers do: they're allowed to look at whatever you're holding in your hands. I mentioned that before: making sure it's professional. A technique that some lawyers do on Cross: they come up, they ask to see what you're looking at, they take it away from you, they look at it, and then they just kinda leave it on their table. If you've had your notes taken away from you, don't act panicky — it's not Linus' blanket — you can keep going. But the next time you need your notes you say so in a calm way, "*I would need to refresh my recollection to answer that question. May I have my notes back, please?*" That's fine.

Rapid Fire:
Asking you questions very, very quickly in a badgering or belligerent way. This is the way, I think, a lot of people *think* Cross will happen. It doesn't always happen this way, but what happens when you do this is what I call 'mirroring-and-matching'. This is what we do as human beings: they're talking fast, so we talk faster; they're raising their voice, so we raise our voice. They're trying to get you to act like that and that's not how we want it. The more you're getting this, the slower you're talking, the calmer you're talking. You know what I'm talking about: you've probably done this in some way and really annoyed someone in your own life who wants to fight with you and you won't fight back. Slow .... I don't mean snotty, I just mean slow it down: "*Um, sorry I didn't finish the answer to that question*". "*Go on*." "*Now, what was your next question?*" A little control there...calm in your voice. [If they are] condescending or incredulous – just don't mirror-and-matching. I find that older men do this more than anyone else, particularly with women: they'll use this tone like, "*You poor little thing ... you really didn't know what's going on...*". Now that I'm an old lady, I do this to young men ... it's very fun! You need to, again, just watch yourself back that there's no mirror in your matching. It's very easy to do; it's easy to give a snotty tone back to someone who's doing that.

Overly Personal:
Another very clever technique: "*How many children do you have?*" "*Do you use any kind of corporal punishment?*" " *Do you believe in that?*" Remember that when you're being asked personal questions, pause: there might be an appropriate Objection coming. If there isn't an Objection, do everything you can to keep yourself calm and answer in a non-personal way, okay, as in: "*Do you use any kind of corporal punishment?*" "*Um, I believe that corporal punishment is inappropriate*" —— as opposed to "*Yes, I've spanked my kids!".* Try to keep your answer less personal.

Mispronouncing Your Name:
Ridiculous. Lawyers think this is very amusing. I say, if you correct the person once on your name, and they continue to mispronounce it, just ignore it. That's it, it's over ... If they are so stupid they can't learn your name, forget it.

Officer Friendly:
Some people use this technique that I think people find surprising – I call it: Officer Friendly. I know you can think of lawyers that you've probably met who use this very effectively in Cross Examination. They couldn't be nicer or politer to you. And you're thinking, "*Huh, this is nothing! Why did they tell me Cross was so bad!?*" And all of a sudden there you are jabbering away maybe saying things not quite the way you would've like them said. Be careful! Even if they're being Officer Friendly, some people will move into Officer Flirt, you keep yourself in a professional tone.

Leading Around the Barn:
That's what I call doing everything they can to basically tell you what to testify to. Don't over think this. This is what people do who make a mistake. The attorney says, "*Isn't it true that when you talked to mother on that particular day, she told you that she was trying very hard to resolve her problems and that it was difficult because Johnny had had some real behavioral issues – you know that thing where you ...*". It's this overly elaborate question where they basically tell you what they want you to say ... and the problem with that kind of situation often is that you want to go on and on with an answer and then over think: "*He wants me to say 'X' but he's the enemy so I can't agree with 'X' – I have to say 'Y' but maybe he <u>knows</u> that I know that he's the enemy and so he's asked about ...*". You're over thinking the question. Listen to the question and just say, "*What is the person asking me?*" and answer it. Try not to get into, what is their motive behind the question, what is it they're trying to get me to say.

Even more fun

- **Infamous Yes/No Question**
- **Reversing/Misstating**
- **Broken Record**
- **Who's the Real Liar?**
- **Overly Complicated, Multifaceted Questions**
- **You Don't Like 'Em**

A couple of other problematic questions:

Infamous Yes/No Question:
The one that I think is the most problematic for most professionals is the infamous question that goes on and on and on and on and then the last word is YES! or NO! or YES OR NO! They're shouting at you that the end of this elaborate question must be 'yes or no.' Believe it or not, that's a suggestion – it's not an order. A lawyer can't order you to answer a question. You can simply ignore that and launch into your long answer. If they interrupt you again: "Is *it NO! or YES! or YES, YES OR NO!"* You can say, "*I can't answer that question truthfully with just 'yes or no'. I can't give you a complete answer with just 'yes or no'*." Don't take a breath and start launching into the rest of your explanation. The only person who can tell you to answer a question 'yes or no' is the Judge. Now, if the attorney turns to the Judge and says, "*Your Honor, instruct the witness to answer 'yes or no."* and the Judge says, "*Please answer 'yes or no,'* please, please, please give it some thought. I'm going to tell you that almost always the answer is 'no'. Okay? And the reason I say that is because these questions work like this: the lawyer asks you a series of questions within the question and you're listening ...."*Uh-huh, yes, yes, yes, no!, yes*" and you want to answer the question "yes", but this little piece "no", right? Uh-uh, the answer to that question is 'no'. If you're forced to choose, it's almost always 'no'. At least think about it: if you really can't answer *'yes or no,*, then say that to the Judge as well.

Reversing/Misstating:
Sometimes the question will reverse or misstate something you said earlier and they kind of don't say what you said correctly, but then they ask another question. Always correct the question if it repeats something about what you said inaccurately.

Broken Record –
Is a silly thing —– very effective. They ask you a series of questions that have the same answer: "*yes, yes, yes, yes*" then all of a sudden they slip one in there that's really a 'no' and you say 'yes' again. Amazing how often that will happen. So, the answer to that one is carefully listen to each question.

Who's the Real Liar?
Another one that could be problematic is accusing you or asking you why your information is different than someone else's: "*Were you present in the Courtroom when Officer So-and-So said he didn't think mother was intoxicated?*" or "*Did you know that the Case Worker told us that mother was holding the knife in her right hand and you've testified it was in her left hand?"* Basically asking you: who's lying?! You never comment about what someone else has testified on. You only know what you know —– maybe that Case Worker doesn't know her right from her left —– you only comment on what you know: I saw this, I heard this, I believe this.

Overly Complicated, Multifaceted Questions:
The question that has three questions in it, do this: "*That has three questions in it. Let me answer your first one. Now, what's your next question?*" Calm. No attitude.

You Don't Like 'Em:

The last one is a little difficult, I think, for us who care so much about these cases is the You Don't Like 'Em kind of question. Making it seem like you have a personal attitude about this particular client. This can be exacerbated if you have been unfortunate enough to comment in your notes somewhere in a way that would be inappropriate. Or, let's say —— also does happen, all those hallway conversations we all have together —— you make some comment, "*Yeah, we call him Stinky in the office because he comes in and smells up the place.*" There's no "off the record" really with a lot of laywers, and now you're getting something else on the stand that's going to make it look like it's kind of personal. Generally speaking, you try to avoid a personal answer: "*You don't like my client because she spanks her children*." Don't be answering *that*! Your answer can be: "*I am concerned about the appropriate use of discipline in the household.*" Make it more professional in less of a personal way.

Okay, we're running out of time here. Just a couple of comments about what you should do after you testify.

Afterwards

- **Talk to the attorney about how you did**
- **Talk to your director about your ongoing relationships**
- **Find out the ultimate result**
- **Ask if you would be permitted to see a copy of any written decision**

Talk to the attorney about how you did:
See if the attorney will give you a few minutes to give you some information about how you did. It's a skill — you can get better at things. Like you can get better at interviewing people, you can get better at testifying. Ask if there's any recommendations. Often, people think they did really bad and the attorney's like, "*No, you were great.*" They think they did bad because it just doesn't feel that great to have another professional particularly Cross Examining you.

Talk to your director about your ongoing relationships
Maybe the Director was in the Courtroom and can give you some ideas as well. There's nothing wrong with someone watching if you're not also a witness. Usually, the Court will allow that. Also talk to the Director afterwards about ongoing relationships. You know more about this, surely, than I do, but I perceive that this could be an issue for you, that you've had to testify in a way that discloses information that might not have been so positive to this parent or the Case Worker and now you have to continue to deal with these folks - how will that be handled.

Find out the ultimate result:
See if someone is willing to talk to you about what the ultimate result was: what actually happened?; what did the Judge rule? If there's a written Decision, ask whether someone would be willing to let you see it. It will be helpful, I think, for you to get some feedback about how your testimony was dealt with.

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