

Expert Witness:
Understanding the Role of
Expert Witness

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Margaret Bassett, LPC-S

Deputy Director and Director of Expert Witness Program
The University of Texas at Austin, School of Social Work
Institute on Domestic Violence & Sexual Assault

+ What is your role

- Judge
- Attorney
- Law Enforcement
- Mental Health Professional/Therapist
- Community Based Expert Witness
- Medical Expert/SANE, EMT, Dr., nurse, PA
- Researcher

Thank You

- What we do is hard
- What we do is important
- What we do is meaningful
- What we do has impact

+ Training Expectation

- Active learning and engagement
- Useable, helpful take-away/skills
- Strategies for being or for using an expert witness
- Networking with others doing this work

Learning Objectives

- Increase understanding of sexual assault and domestic violence in court and criminal justice settings and the use of expert witnesses
- Identify alternative explanations for ‘puzzling’ victim behavior
- Increase the skills of participants to provide expert witness testimony
- Educate experts on how to address tough case elements and case facts

Cases and Circumstances for Expert Involvement

Criminal Cases (Prosecution and Defense)

- e.g., murder, drug possession, sexual assault, strangulation, self-defense

Civil & Tort cases

- e.g., custody, divorce, property, personal injury

Parole Hearings

Immigration Cases

Legislative Committees

Licensing Boards

The Role of Experts

- To inform trier of fact, often involving
 - Contextualizing physical, emotional, and mental abuse
 - The various impacts upon the beliefs, perceptions, and behavior of victims
 - The common strategies and value systems of batterers/offenders
- Educate on another issue not fully understood and relevant to the case – the impact of trauma
- To provide an unbiased, informed, professional opinion
- Consideration of all evidence
- Triangulate information

+ How Do Experts Help Juries?

- TRANSLATOR for the jury
- NORMALIZE behavior that might otherwise be misinterpreted
- CONVERT OBSTACLES into evidence
- CONNECT the dots
- Turn DOUBT into CONVICTION

Common Rule of Evidence for Experts

The Judge as Gatekeeper

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

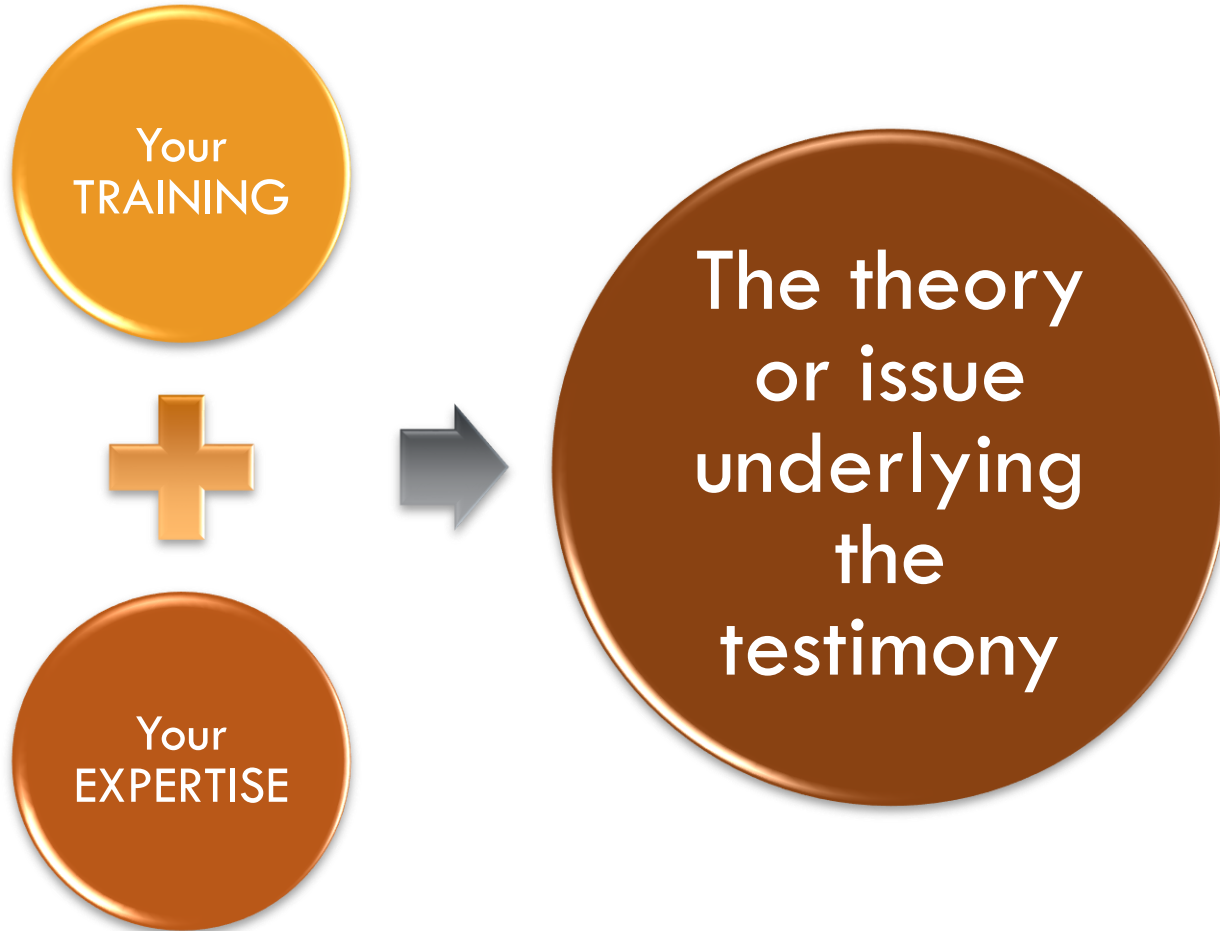
+ Experts

- Depending on the case, the expert *may or may not be*
 - a fact witness
 - have any direct knowledge of the facts at hand
 - be asked to opine whether the victim “fits the profile” or the violence actually occurred, etc.

Threshold Requirements of Admissibility of Expert Opinion



There must be a “fit” between your background and your testimony



My Cousin Vinny



Expert Witnesses

Background of Experts

Educational

- Ph.Ds
- M.Ds
- Degreed & licensed counselors
- SANE

Experiential

- Therapists
- Advocates
- Shelter employees, Director
- Police
- Nurses

What might an expert testify to?

Sexual Assault

- Submission as strategic
- The impact of trauma
- Predatory behavior
- To explain “consent”
- Role of drugs & alcohol

IPV

- Reasons she stays &/or returns
 - Internal & external constraints
- Recantation/denial/minimization
- Practices of batterers
 - Power & control
 - Gaslighting
- Role of drugs & alcohol

+ Various Types of Interpersonal Violence

Domestic Violence

- Male-on-female adult
- Female on male adult
- Same sex couples
- Child abuse
- Matricide/patricide
- Elder abuse
- Teenage dating abuse

Sexual Assault

- Physically violent rape
- Coercive rape
- Child sexual abuse
- Issues of consent
- Statutory rape
- Sexting
- Stalking

Terminology and Definitions: Consider the Words you Choose

“Domestic Violence” or “Intimate Terrorism”

“Rape” or “Sexual Assault”

“Battered Woman’s Syndrome”

“Victim” or “Survivor”

Male Privilege

“Choking” or “Strangulation”

Strategic Use of the Cycle of Violence



Strategic Use of Power and Control



Elements of “Successful” Testimony

- Simple, clear, *compelling* language
- Relatable metaphors
- Sound bites vs. full explanation
- Be thorough and accurate
 - Don't hesitate to say “*I don't know*” or “*that is beyond my expertise*”
 - Determine with counsel beforehand whether it is better to bring documentation as a reference
- If you expect to refer to academic literature or studies, review them before your testimony so that you can cite it accurately

Considerations of Expert Testimony

- Answer the questions asked
 - Ask for clarification when a question is confusing
 - Pause and think if you need to before responding
- Have a **conversation**, that is, teach your audience
- Don't **battle** during cross examination
 - Be calm—don't lose your composure
 - Expert's job is to inform the court/jury so they can make decisions
 - Understand that opposing counsel may use the power and control model to divert you
- Make **eye contact** with factfinder

For Experts:

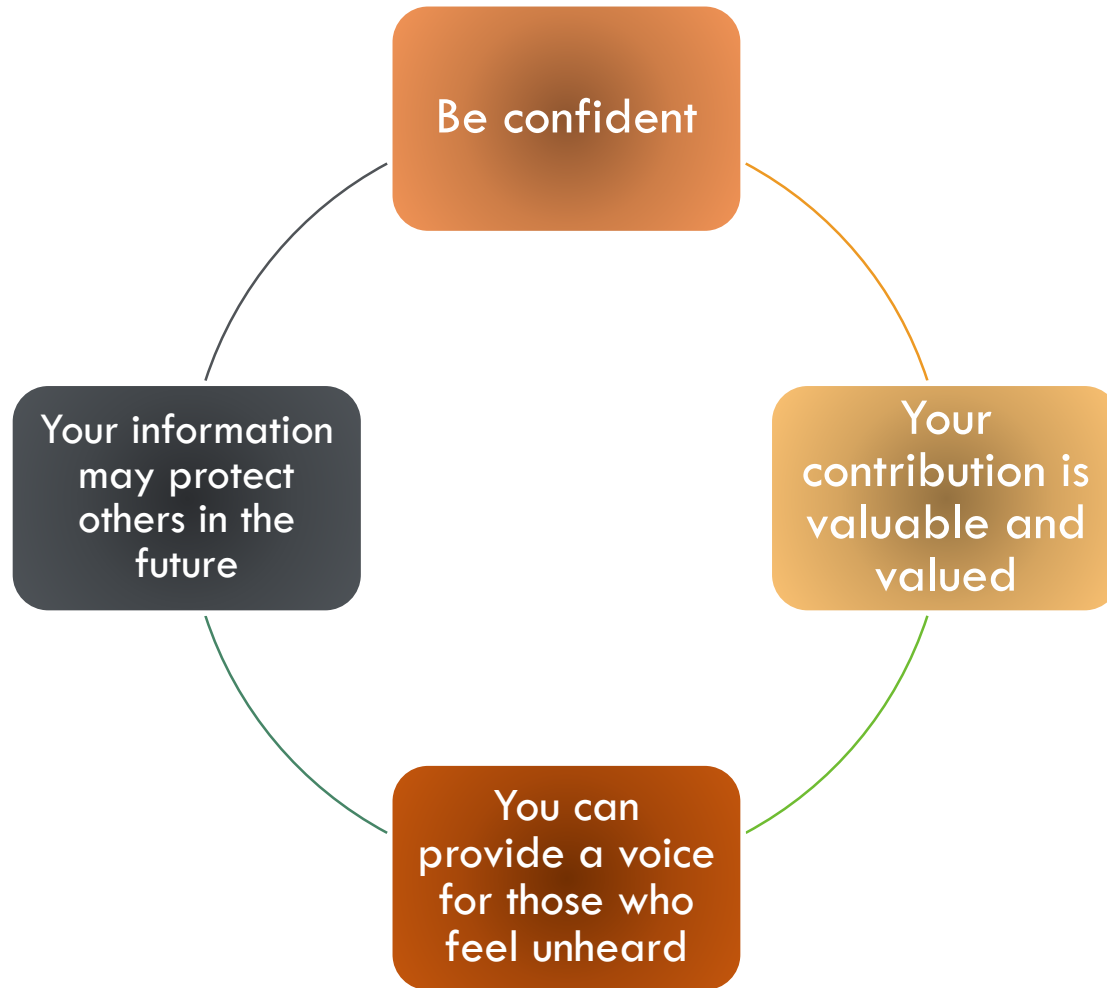
Considerations Before Taking a Case

- Preparation time needed
- Type of expertise needed? Do you have the expertise?
- Review of documents? Which documents?
- With or without a written report?
- With or without interviewing the client? Or collaterals?
- Expectations of court testimony?
- Trial date, schedule?

+ Tough Elements and Case Facts

- Lack of forensics or documentation
- Substance use/abuse by victim and/or offender
- Close or very close relationship between victim and offender
- Reporting (lack thereof, delayed, etc.)
- Inconsistencies about what happened
- Minimization and lack of identification as a victim
- Victim behaviors/responses that may be puzzling
- Issues of race, class and ethnicity, immigration status

In the End...



Contact Information

margaret.bassett@austin.utexas.edu

<http://sites.utexas.edu/idvsa/>

- Blueprint for Campus Police: Responding to sexual assault (2016)
- Statewide Sexual Assault Prevalence Study (2015)
- Statewide Domestic Violence Prevalence Study (2011)