



CENTER PIECE

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SANE Testimony in Child Sex Abuse Cases: Shedding Light, Dispelling Myths for Justice

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Introduction

Sexual Assault Nurse Examination (SANE) is a relatively young discipline that has served as one of the biggest leaps in criminal justice and the proper treatment of victim survivors in decades.² In recent years, certification for SANEs has grown to include a specialty in pediatric examinations as well, allowing for a formal designation for SANEs specifically recognized as experts in conducting exams on children.³ This development is especially crucial given that incidences of child sexual assault in particular are often underreported,⁴ and even reported cases often don't get charged or tried by prosecutors lacking in evidence to prove the allegations.⁵ A 2007 study indicates that Forensic Nurse Examiner (FNE) programs are having an impact, however, and raising prosecution rates where they are implemented.⁶

The purpose of this article is to provide some practical insight and testifying tips and strategies to both Pediatric SANEs and prosecutors who will utilize this crucial expertise. Additionally, it's useful to discuss how Pediatric SANEs should best view themselves in terms of their interaction with the criminal justice system.

What Pediatric SANEs are (and are not) from the legal perspective

From the prosecutor's perspective, Pediatric SANEs, like SANEs who provide care to adults, serve three somewhat interconnected but very different functions to the cause of justice in child sexual assault cases.

First, Pediatric SANEs provide comfort and care for children who have been sexually abused or assaulted, almost always in a private setting and in a manner far more

sensitive and comprehensive than in the days of general emergency room response to sexual assault. As with all persons to whom they provide health care, Pediatric SANEs view their child victims as patients.⁷

Second, Pediatric SANEs provide consistent and competent evidence collection to ensure that the young patient's body is treated as a crime scene and properly processed as such. While useful forensic evidence is fairly rare in child sexual assault cases, it can sometimes be gleaned from the body. Usually, this happens in cases where children report immediately, where the abuse is discovered as it is happening (or very soon afterward), or where chronic sexual abuse has left lasting physical evidence such as scarring or anatomical degradation. As a part of this crucial function, they also understand that part of this duty means being available and willing to testify in court regarding this process.

Third, Pediatric SANEs are scientific and medical experts who make observations about human anatomy and tissue, and can be called upon to testify as experts in courts of law.⁸ Pediatric SANEs must remember that they are not advocates, either for the child victim or for the guilt of the accused. Pediatric SANEs do provide compassionate care, including sensitive, age-appropriate comfort and reinforcement to child victims within the scope of the nursing role.

However, they must remain objective as they perform all three of these functions. In this way, their expert testimony will have greater weight in court, as they will avoid being seen as biased tools of the police and prosecution. This difficult balance, between remaining an objective forensic professional but also a compassionate medical professional, makes the work of a SANE one of the most difficult and taxing imaginable.

UP COMING conferences

When Words Matter
July 12-15, 2010

Location: Savannah, Georgia

When Words Matter is a 4-day National Conference hosted each year in a state that has implemented the ChildFirst® Forensic Interview Training Program. This year it will be held in beautiful Savannah, Georgia. *When Words Matter* brings together nationally recognized experts from all areas of the child protection field for this informative and innovative conference. The topics covered will be useful for prosecutors, law enforcement officers, child protective service workers, forensic interviewers, child counselors/psychologists, medical professionals, victim advocates, and anyone else who interviews children or prepares them for court.



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Duties of the Pediatric SANE: Before the Litigation

The primary duty of a Pediatric SANE before the litigation commences is very similar to the duty of any medical professional. The primary difference between a medical professional and a forensic medical professional is that the latter does her work with one added burden: She must perform all duties with an eye toward an eventual examination and testing of that expertise in a court of law. That examination and testing by the legal system, after all, are what distinguish forensic professionals from others. There are many doctors and nurses who abhor dealing with subpoenas, lawyers, or testifying in court. Those individuals can be wonderful care providers, but they cannot be forensic professionals. Forensic professionals do what is medically appropriate for their patient first, as always. But they do so with an understanding that their work will become part of a legal case, tested by the system and utilized by a lawyer in whatever way seems legally advantageous to the case.

The first rule mirrors good nursing practice: Be careful and be thorough. Since everything the nurse does with regard to evaluating the patient and gathering evidence will be examined and tested in court, meticulous attention to detail is crucial. All evidence must be handled carefully. Containers, slides and

swabs must be labeled and packaged correctly, and in strict adherence to protocol. Attorneys attempting to cast doubt on the results of a lab test will often seek a weak link in the chain by examining closely how the examining SANE gathered, labeled and packaged the evidence. If there are any irregularities—even ones that do not necessarily impact the evidence being challenged—those irregularities can be used to cast doubt on the SANE's entire evidence collection process. For instance, if a chart is marked incorrectly, even with regard to a minor point (such as a date recorded or even a spelling error), that error can be used by a skillful attorney to cast doubt on the entire collection process. It might also call into question the SANE's competence and professionalism generally. This is unfair and can put added stress on the SANE, but it is how the job works. The SANE should work slowly and methodically, and double-check everything as circumstances allow. Moving quickly through an examination might be necessary due to the child's condition or other circumstances. But attention must be paid to every detail before the kit is submitted. The report, moreover, must never be rushed. A little extra care at the beginning of the process will save untold amounts of heartache, anguish and serious cost to one's credibility later.

The hospital, clinic, CAC or other facility where the SANE works should have protocols to follow with regard to the examination and treatment of children whose chief complaint is sexual abuse. The SANE should know what these protocols are and should follow them strictly, unless a diversion is medically appropriate and carefully documented (including the reason why). Attorneys can and often do subpoena or receive protocol information in discovery. An unexplained diversion from protocol can damage a case and the SANE's testimony.

Interaction with Attorneys: Pretrial

Ideally, Pediatric SANEs should view all attorneys the same way. Attorneys are simply the legal practitioners who will utilize the evidence that the Pediatric SANE produces. In a criminal trial, where SANE evidence is most often utilized, one attorney (the prosecutor) represents the

government (or community, state, or people). The other represents the defendant. Many Pediatric SANEs are tempted to identify with law enforcement and with the prosecution. This is because, for one, they naturally see these individuals as assisting the victim in the case and attempting to see justice done against a sex offender. For another, most Pediatric SANEs will be witnesses for the prosecution, meaning that the prosecutor will seek to elicit and utilize the SANE's evidence, supporting her as a prosecution witness and key part of the proof of the case. Conversely, the defense attorney is usually the attorney who is challenging the Pediatric SANE and the evidence she is called to bring forth. For this reason, SANEs tend to gravitate toward a position of trusting and working easily with the prosecutor, but distrusting and working tensely with the defense attorney.

These tendencies are understandable, but they should be resisted. No one is expected to be neutral about child sexual assault, and Pediatric SANEs are not expected to be robotic forensic examiners, viewing the child's body as if it were a non-living piece of evidence. However, the Pediatric SANE must accept that the evidence she gleans might be useful to either party, and that she might be called as a witness by the prosecution, the defense, or both. Simply put, she does not collect evidence and make observations for either side. She makes them for the court, to be utilized in the case by either side or both as a part of the ultimate search for truth.

That being said, most Pediatric SANEs, particularly earlier in their careers, are usually called by the prosecution and challenged by the defense. For that reason, it is appropriate to discuss interaction with attorneys in terms of the usual situation, that of a Pediatric SANE being called by a prosecutor and challenged by a defense attorney. Still, it is important to stress again that SANEs should not align themselves too closely with the law enforcement, advocacy or prosecution functions. While they are an appropriate part of the community response to child sexual assault and often serve on the MDT (multi-disciplinary team)⁹, they must maintain a sense of objectivity so they can work with and even testify for the defense in appropriate cases.

Working with the Prosecutor

When a Pediatric SANE examines a child in a sex assault or sexual abuse case where the police are involved, she will normally turn her report and the evidence kit over to the detective who has the case. He or she will get these things to the prosecutor so that the case can be prepared for trial or the possibility of a plea agreement. If the case is going to trial, the prosecutor should reach out to the Pediatric SANE at about the time that a subpoena is issued to her. Pediatric SANEs who receive a subpoena (usually through their hospital or clinic's Risk Management or Legal Office) should receive a call from that prosecutor beforehand or shortly thereafter. If a Pediatric SANE has a subpoena in hand from the prosecutor and has not yet heard from him or her, she should reach out by phone to that prosecutor. She should explain to the prosecutor that she's received a subpoena, and ask about what is expected with regard to testimony, and when they can prepare. Remember, ideally this is not the SANE's job. It is the prosecutor's job to determine what testimony will be needed, and how best to prepare the Pediatric SANE as an expert. But, in the case where an ADA is perhaps overworked or just not accustomed to working with Pediatric SANEs, it's better to be proactive so that the expert will not be called to testify 'cold' and with no preparation.

Many SANEs ask whether it is appropriate to reach out to a prosecutor, particularly in smaller jurisdictions where the players in the system are all identifiable, to ask about the status of a particular case they worked on. For instance, a Pediatric SANE who examines a child in January and makes compelling physical findings, may wonder what happened to the case and why she was not called to prepare or testify. In such a case, it's advisable for the SANE to inquire with the detective or child protection worker who brought the case to her rather than the prosecutor himself/herself. This lessens the appearance of bias and an overly close relationship between the SANE and the District Attorney's Office.

When contact has been established with the prosecutor and it's clear that SANE testimony will be elicited at trial, the prosecutor should be willing to thoroughly and carefully prepare the SANE as he or she would any witness. Ideally, the prosecutor should be willing to come to

the hospital or clinic where the SANE works. This is best practice, as it allows for face-to-face preparation time in an environment that is comfortable for the expert. It also allows the prosecutor to see the environment where the exam takes place as well as the tools that are used.

During this meeting, the Pediatric SANE should educate the prosecutor on the examination, the anatomy involved, and the protocol followed. She should not assume that the prosecutor has in-depth knowledge of the anatomy and physiology involved. The SANE should take the prosecutor step by step through the examination process, and how all of the steps are memorialized in the report. This is a particularly good time for the SANE to check the report for any previously missed errors, as the prosecutor should be focused on all the report entries. The Pediatric SANE should help the prosecutor anticipate the issues. What will be challenged here, and how? Imagine, for instance, that the Pediatric SANE detected a hymenal abnormality (a notch or apparent incision for instance) that in her judgment is supportive of the child's history of digital, vaginal penetration because it mimics the type of injury one would expect to see through that kind of activity. The SANE should carefully explain this to the prosecutor, and also explain how her conclusion could be challenged by the defense attorney or a defense expert.

Also at this meeting, prosecutors should ask about (and Pediatric SANEs should be forthcoming about) any personal or professional 'landmines' (unfavorable facts about the expert) that might be explored on cross-examination. While these things are not often seen or expected, it is crucial for the prosecutor to know anything unfavorable to the SANE the defense might uncover through investigation. If the Pediatric SANE has ever had her nursing license suspended, or formal complaints filed against her, or trouble with the legal system, etc, the prosecutor should know about these things. With lead-time to file motions, some of these facts (particularly personal matters) can be excluded ahead of time from mention at the trial. Even if they can't be excluded, with preparation the prosecutor can fashion questions and truthful responses that explain the facts in a way that minimizes the effect on the rest of the testimony. The crucial thing is to know up front what to expect. Surprises are great in courtroom dramas. They should be avoided at all costs in real life.

Working with Defense Attorneys

Attorneys who defend individuals accused of child sexual assault and/or child abuse have an extremely taxing, difficult, and often thankless job. Schools of thought and styles of litigating cases differ between defense attorneys (as they do with prosecutors), and the tact and skill they bring to the task of defending their clients and interacting with prosecution witnesses will differ as well. Some defense attorneys have confidence in well-developed, respected SANE programs and will even call upon SANEs to consult in appropriate cases. Some are unfairly prejudiced against any program and assume that SANEs are biased and unreliable. Most will deal honestly with all witnesses as officers of the court. But, it is important to remember that defense attorneys, since they personally represent the defendant in a criminal case, are bound by ethical rules to defend their client in such a way that requires every element of the case against the defendant be established.¹⁰ This means that, while they must be honest, they cannot overlook mistakes made, things stated incorrectly, or anything else that can be capitalized on in their effort to block an expert's effectiveness as part of defending the case. SANEs and other experts should not take this personally, even when it seems personal. It is simply a part of the process, and the main reason why attention to detail and preparation are such a key part of the life of a forensic medical professional.





When the Pediatric SANE is subpoenaed by the prosecution and expected to testify for the government, then it is usually the case that the defense attorney is adverse to her, meaning that his or her job is to challenge and limit the effectiveness of the SANE's medical testimony. Sometimes, however, particularly when the evidence is neutral and does not appear to favor either side, the SANE might be subpoenaed by both parties. In that case, the Pediatric SANE should feel responsible to prepare both attorneys equally, and help each anticipate the issues that the medical evidence might produce. In some jurisdictions, both the prosecution and the defense will meet at the same time with the SANE, but in most places meetings will take place separately. It's important to remember, of course, that the SANE's opinions based on the evidence are what they are. They will not change regardless of whom is asking the questions.

However, in the more typical situation where a Pediatric SANE is preparing to testify for the prosecution and will be challenged by the defense, it's good to be careful so that the SANE's testimony and findings are not unfairly compromised by lawyerly tactics. Generally, a good defense attorney will reach out to the Pediatric SANE after receiving her report and the results of any scientific tests as a part of the discovery process. Remember, in virtually all jurisdictions, everything recorded by the SANE will be turned over to the defense attorney in discovery. Most of the time, the defense attorney simply needs to know what the SANE is expected to say and why. This is a basic part of the job. However, as a lawyer adverse to her (in the sense that he will

cross-examine her), he or she will also be looking for inconsistencies in how she describes findings, or errors she's made in any part of the process. When interviewing her, the attorney might attempt to lock her into statements that don't fairly describe her findings. Some experts would prefer not to speak to adverse attorneys for this reason, but it's required in many jurisdictions, and always much better practice to do so. With this in mind, it's good to observe these guidelines:

- 1. Request meetings in person and on your 'turf.'** Unless circumstances like distance or remoteness won't allow for it, Pediatric SANEs should seek to meet with defense attorneys at their clinic or office. This allows for the SANE to be more comfortable and more in control of the meeting. All attorneys, prosecutors and defense, should show deference to the Pediatric SANE as an expert by being willing to come out to where she works in order to interview her. Resist requests to leave your office or meet in some neutral place like a café. It's important that you are able to spread out materials and speak freely about sensitive subjects like child genitalia and other things.
- 2. Avoid fragmented or incomplete meetings or phone conversations where the lawyer wants "some information now, and maybe more later."** This is dangerous because it increases the chance that you will inadvertently state the same thing in two different ways (for instance, a cut versus an incision). While the two may be interchangeable from a medical standpoint, the use of different terms might be something that the attorney seeks to capitalize on in cross to demonstrate that you're inconsistent and unsure. It seems silly, but trials often turn on smaller details. In general, be aware of your word choices, and keep them consistent.
- 3. If you are new, consider having a supervisor or a more experienced SANE present to sit in on the interview.** If nothing else, the feedback is very valuable. The more experienced SANE may be able to help you understand, based on the interviews, the areas defense counsel will likely challenge you if the case comes to trial.

- 4. Never, ever assume you're "off the record" with any attorney.** The expression has no legal weight whatsoever, and even if you answered a question to an attorney "off the record" he or she has every right to demand the answer in a later cross-examination. If an attorney asks you how you view the case "off the record," you should very politely respond that you don't speak off the record. You're findings are what they are, and your description of them is always on the record.

While these guidelines are useful in dealing with adverse attorneys, it should be noted that a Pediatric SANE should be cautious when dealing with any attorney. Further, prosecutors should be willing to observe these guidelines and extend the same respect and courtesy that the expert can and should demand from a defense attorney. Over time, as trust is earned, these guidelines can be relaxed with prosecutors and defense attorneys alike.

The SANE at Trial: Preparing for the Day of Testimony

Court, and the testifying process, is scary, and there is nothing shameful about being nervous when contemplating it. However, there are things that can be done to reduce the stress of it, and preparation is the biggest. The Pediatric SANE should review her report, both on her own and with peers or a supervisor, until she is thoroughly familiar with every page and every entry. In most jurisdictions the SANE will be allowed to take the report with her to the stand so that she can refer to it if need be. Still, the report should be all but memorized so that reference to it is minimal, and can be done quickly. Remember as well that any materials that the witness refers to while on the stand will usually have to be identified, and shown to the court and the opposing attorney on request. Accordingly, if the SANE is carrying a report to the stand that she's marked up, she should know the comments will be seen by others. Finally, the SANE should practice saying any tongue-tying or difficult-to-pronounce-words, like colposcopy or Latin terms for anatomy, etc. It is a sad but true fact that juries will sometimes unfairly judge an expert witness who has trouble pronouncing words used in her area of expertise.

One of the most effective things that a Pediatric SANE can do to prepare for court is to practice reciting the answers to the 'qualifying questions' asked when the SANE is being offered as an expert. In the typical case, the first questions asked by the prosecutor will pertain to her current position, the definition of a SANE and pediatric sexual assault examination, her educational background, experience, and number of examinations she's performed. For more experienced experts, most prosecutors will also ask how many times they've been received as experts in courts of law. These questions are asked by the prosecutor so that he or she can lay a proper foundation for the acceptance of the Pediatric SANE, usually in the area of pediatric sexual assault examination and the involved anatomy and tissue. At the end of the prosecutor's questions, the defense will have an opportunity to 'voir dire' or ask questions to the SANE about her expertise, if he or she wishes to challenge it. Usually the expertise will not be challenged, but some questions might be asked anyway. The important thing is for the SANE to be able to answer those questions (about her education, background, etc) smoothly and comfortably. Practicing the answers to these basic questions does three important things:

1. It puts the expert in testifying mode, and gets her prepared mentally to talk to the judge or jury about the findings she made.
2. It impresses both the judge and jury from the start with how comfortable and commanding a grasp the expert has on her own professional background. This seemingly insignificant detail is still a very important and often overlooked one. Many experts assume that they'll have an immediate recall of their career details and background. But as our careers grow longer this is harder to do quickly. Juries will judge experts on the smoothness and confidence of their testimony, even the seemingly minor aspects.
3. It bolsters the witness' own confidence as the first questions are answered smoothly, comfortably and accurately. She can now focus on the more difficult substantive testimony before her.

Pediatric SANEs should also observe how they will be perceived by both jurors and the court. They must be aware of dress, demeanor and tone of voice. Dress should be conservative. Demeanor should be friendly, but businesslike and detached. From the time the expert parks her car in the courthouse garage (or even while on the way there, in smaller jurisdictions) she should have a 'game face' on and be ready to carry herself like an expert. It is human and understandable to be arguing with one's spouse on a cell phone or cursing a heretofore unseen dent in the car, but the morning of trial at the courthouse is not a good place to do so.

While in the courthouse, it's crucial to remember that jurors on the case could be anywhere. Bailiffs and court personnel also circulate frequently, and they usually have the judge's ear. Pediatric SANEs as testifying experts must carry themselves carefully, and not get pulled into joke sessions or involved conversations with police officers, advocates, or other law enforcement affiliated personnel while waiting to testify. If the Pediatric SANE sees the child victim in the case, it is okay for her to briefly and politely greet the child, but she must leave the care of the child to the family and the advocates, social workers, or others whose responsibility it is to care for the child.

While on the Stand

Pediatric SANEs must remember to listen carefully to the question that is being asked, both on direct examination and in cross-examination. It is easy, once the questioning starts, to let nervousness and a desire to do well lead one into tripping over words, anticipating the questions, and overall trying to speed up the processes. She can avoid this by listening closely to each question and not answering until she is fully ready to answer truthfully and accurately. If, for any reason, the SANE does not fully hear or understand the question, she should never hesitate to ask for it to be repeated. This is not unusual or inappropriate.

Experts should speak slowly while answering questions, especially questions asked to the jury on direct examination. It is advisable to speak just slightly slower than one would in normal conversation. This will not sound pedantic; it will sound

clear and will better explain the points being made. And, the witness will avoid interruptions from the court reporter for speaking too quickly. She should remember to project, and to answer questions on direct to the jury. It's important to make eye contact, and be conversational and friendly with them. She should lift her chin slightly and project, so the answers can be heard loudly and clearly. Jurors appreciate this and will get more from the testimony when the expert witness seems engaged with them.

For Pediatric SANEs, testifying as to physical findings on a child's body or ano-genital area can be made much more effective through the use of a large diagram, usually mounted on an easel, that the SANE can mark on during her testimony. This is an example of demonstrative evidence. If both the Pediatric SANE and the prosecutor agree that a diagram would be useful during testimony, the SANE should practice beforehand with the prosecutor. During the testimony itself, the diagram will normally be on the easel but covered. When the prosecutor reaches the part in the direct where the diagram will be referred to, he or she will ask the judge's permission to allow the witness to step down from the witness stand and approach the diagram. Armed with a marker of some sort, the expert can then explain to the jury what the diagram depicts, how it relates to the child she examined, and what findings she made.

Surviving Cross-Examination

Understandably, most expert witnesses dread cross-examination. The process is designed to challenge the expert's conclusions given on direct, and can also have the perverse effect of simply making the expert look and feel foolish or unprepared. While no set of rules will make cross examination a pleasant experience for a Pediatric SANE or any expert, a few guidelines will help to make the experience less miserable and less damaging to the direct testimony.





First, experts should prepare for cross with the attorney who will be calling them on direct, usually the prosecutor. A conscientious and skilled prosecutor should have at least a broad idea of where the cross will go. For instance, imagine that the Pediatric SANE has made a finding of a suspicious notch on the hymen of a prepubescent child. In the SANE's opinion, this notch represents a healed tear. However, the possibility of the notch being a normal anatomical variation was discussed and peer-reviewed. This was revealed when the exam findings were discussed between the Pediatric SANE and the defense attorney. Although the final opinion is that the notch is not a normal variation, it is highly likely that the defense attorney will cross-examine the expert on the possibility of the notch being something other than a healed tear caused by trauma. The prosecutor should play the role of the defense attorney here so that the expert can best think through a thoughtful, truthful and definitive answer.

Second, it's always advantageous for the expert to maintain a calm, pleasant and polite demeanor throughout cross, no matter how it unfolds. There are many different schools and styles of cross-examination, each modified and made unique by the personality of the attorney conducting it. Some are immediately aggressive, some deceptively friendly, some rambling and awkward. The expert can't control how the attorney behaves, but she can control how she responds. It is often the case that the attorney's goal on cross will be to get the expert frustrated, tired, and more easily led into verbal traps. Emotions can run high on cross-examination as this process unfolds. It's crucial for the Pediatric SANE to remain calm and never appear defensive.

In fact, calm, polite responses in the face of particularly aggressive cross-examination always reflect well on the expert and badly on the attorney, who in contrast looks cruel, untrustworthy and inept. What's most important for the Pediatric SANE to demonstrate is that she has no 'ax to grind' with any particular case. She is there solely to give her opinion as best she can. There are two standard attacks often experienced by Pediatric SANES:

The expert is "just" a nurse. In order to attempt to undermine the SANE's opinion, many lawyers will elicit responses that focus on the SANE's education, and lack of a MD. It's important never to act defensively about this. Pediatric SANES when experienced and well-trained, are more qualified than most physicians to do sexual assault examinations on children and adults. When an attorney "reminds" a SANE that she's not a doctor, the best response is a polite, "Yes, that's correct." The message will be clear: The nurse is a confident, trained professional with nothing to prove. The attorney will look more like a bully for pursuing that kind of questioning, and he or she will usually quickly move on.

The Pediatric SANE is "working for the police." Suggesting a bias on the part of any expert is a tactic often used to undermine the expert's opinion. Many attorneys will attempt to do this by suggesting that Pediatric SANES are inextricably connected to law enforcement, or that they are zealous crusaders whose sober scientific opinion cannot be trusted. It's important for the expert to stress her independence from law enforcement, and to make it clear that even as a part of a MDT, she is not an advocate for the guilt of the defendant or for the child at the center of the case. In preparation for this type of questioning, it's a good idea for the Pediatric SANE to understand and be able to explain exactly how she is independent from law enforcement, such as knowing how exams are funded, who she reports to, actually works for, etc. Pediatric SANES must also be careful not to agree, without reflection, to a defense characterization of their job on cross-examination. For instance, if the attorney says "Your primary job is to gather evidence for the police and the prosecution in suspected child sexual abuse cases, correct?" One good response, delivered politely, would

be "Incorrect. My job is to gather and observe whatever evidence there may or may not be, and to testify on it truthfully on behalf of whichever side calls me."

Third, the Pediatric SANE should, just as in direct, listen closely to the question that is being asked on cross and absorb it fully before answering. Many lawyers get tongue-tied themselves when asking questions on cross, and some questions come out horrendously awkward, compound and indecipherable. If the expert doesn't understand the question, she should politely ask that it be repeated. Some attorneys will also try to trap an expert by demanding that a complicated question be answered "yes or no." If the SANE encounters such a question and doesn't feel like a simple "yes or no" will yield a fair answer, she can (always politely) tell the attorney or the judge that the question really can't be answered "yes or no." Some judges will ask the attorney to rephrase. Some will simply tell the expert to do the best she can. Remember, re-direct examination will follow, and this is the prosecutor's opportunity to cover what was elicited on cross so that the SANE can fully explain her answers. In order for re-direct to be effective, however, the prosecutor must be in tune with the Pediatric SANE. He or she must be listening carefully for clues as to what should be revisited on re-direct and in what order. This is a difficult task, and prosecutors differ in their ability to execute it. But here again, thorough preparation will assist both parties in delivering effective testimony.

Conclusion

Pediatric SANES should be proud of their work and their expertise, and confident in their opinion once they've reached it. Once a Pediatric SANE has arrived at an opinion, peer-reviewed and to a reasonable degree of medical and scientific certainty, she should stick to it. It's important not to let creative or aggressive questioning break down that opinion. Part of this is simply confidence, which understandably takes some time to acquire. But all Pediatric SANES should remember that, if they are qualified to be received as experts in courts of law, they are extremely valuable to the system and more knowledgeable in their subject area than anyone else in the courtroom.

Pediatric SANEs should also remember that, while their role is of considerable importance in a child sexual assault case, it is one of many. No one person is responsible for the outcome of a case, and no case is worth a Pediatric SANE's professional reputation or sense of wellbeing. Experts must remember that, in almost all cases, a verbatim record of the proceedings is being kept. An answer not fully thought through or blurted out in the heat of the moment can haunt an expert for the rest of her career if it is exposed as reckless or indefensible. The most important rule is to be thoughtful and unwaveringly truthful at all times. Pediatric SANEs, like all experts, will at times disappoint themselves and make mistakes. Adverse attorneys must do their jobs in capitalizing on these mistakes, and hopefully they'll do so with fairness and tact. SANEs must be prepared to accept the bumps and bruises that come with criminal litigation. Being honest and

forthright will guarantee that the expert returns to fight another day.

Pediatric SANEs contribute a tremendously valuable service to the cause of justice in child sexual assault and abuse cases. They do incredibly difficult and emotionally taxing work that involves compassion and the hands-on care of a nurse, but also the forensic evaluator's ability to remain objective and unclouded by emotion. This balancing act is rewarding but incredibly difficult. In order to ensure that solid, thorough and valuable work in the examination room is not unfairly compromised in the courtroom, Pediatric SANEs must work to develop the skills to interact with the legal system as well as with patients and the health care system. With the same dedication and determination that made them experts in the first place, the skill of providing expert testimony will quickly follow.

End Notes

- ¹ Highly Qualified Expert, United States Army Legal Services Agency, Trial Counsel Assistance Program.
- ² Canaff, R (2009). Nobility in Objectivity: A Prosecutor's Case for Neutrality in Forensic Nursing. *Journal of Forensic Nursing*, 5, 89-96.
- ³ International Association of Forensic Nurses. (2010). Certification Credentials, accessed February 4, 2010 at www.iafn.org/certification.
- ⁴ Finkelhor, D. (1984) *Child Sexual Abuse: New Theory and Research*. New York: The Free Press, p 232.
- ⁵ Cross, T., Walsh, W., Simone, M. and Jones, L. (2003). Prosecution of Child Abuse: A meta-analysis of rates of criminal justice decisions. *Trauma, Violence and Abuse*, 4, 323-340.
- ⁶ Patterson, D. and Campbell, R. (2009). A Comparative Study of the Prosecution of Childhood Sexual Abuse Cases: The Contributory Role of Pediatric Forensic Nurse Examiner (FNE) Programs. *Journal of Forensic Nursing*, 5, 38-45.
- ⁷ Canaff, at 89.
- ⁸ Id.
- ⁹ *The Benefits of Working As a Multi-Disciplinary Team, Investigation and Prosecution of Child Abuse* xxix-xliv (3rd Ed. 2004).
- ¹⁰ American Bar Association *Model Rules of Professional Conduct* Rule 3.1, *Meritorious Claims and Contentions*, accessed February 4, 2010 at www.abanet.org/cpr/mrpc/rule_3_1.html.

For More Information

The National Child Protection Training Center (NCPTC) at Winona State University provides training, technical assistance and publications to child protection professionals throughout the United States. In addition, NCPTC assists undergraduate and graduate programs seeking to improve the education provided to future child protection professionals. In partnership with CornerHouse, NCPTC also assists in the development and maintenance of forensic interview training programs utilizing the RATA^C forensic interviewing protocol. For further information, contact NCPTC at 507-457-2890 or visit our website at www.ncptc.org. For information about NAPSAC, call 651-714-4673 or visit our website at www.napsac.us.

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