

Preparing Child Witnesses – A Primer in Compassion

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A beautiful ten-year-old boy sits in front of me. He is all smiles. I smile back. His attorney is sitting beside me. “Do you know why your whole family is here meeting with Mr. Jason and me today?” He says triumphantly, “Because of the trial, Miss Katherine!” I nod and smile at his attorney, Mr. Jason – clearly this boy has been well prepared for meeting with a trial consultant about testifying. I say, “That’s right. Because of the trial. What is the trial for?” He looks a little stumped. Being the brilliant intuitive I am, I assume I have asked the question stupidly, so with great compassion I say, “I know you know that the trial is about how your mama was killed by the train and how your sister is in the wheelchair – but –” I stop short. His body is shaking. His eyes are huge. He seems to have stopped breathing. “Oh my God, baby,” I whisper. “Have you never talked to anyone about what happened?” He slowly shakes his head and tears begin streaming down his face. I look at his attorney who seems shell-shocked and whispers to me, “I never knew – I guess I assumed –”

The first rule of preparing a child to testify is that you can’t assume. You are, most likely, this child’s attorney. You are not allowed to assume that someone else has told this child what the case is about or why this child has to testify. In the case of this ten-year-old, his family told me later that day that they hadn’t told the boy anything about the facts surrounding his mother’s death or his sister’s confinement in a wheelchair in the two years before I met him because “he never asked.” They weren’t bad people – they loved him very much – but they didn’t know they were supposed to talk to him. They didn’t know any better. But his lawyer’s duty was to know better. His lawyer’s duty was to give him the information.

- I helped his lawyer do this through a series of questions:
1. “Do you have any questions about what happened?” (“Yes.”)
 2. “What’s your first question?”

The attorney was able to “tell” his child client all about the case through simply answering his questions as he asked them one at a time. When the child didn’t have any more questions and there was still important information that the attorney needed to give the client, the attorney (with my coaching) then asked:

1. Do you have any more questions right now? (“No.”)
2. Good. I have a question for you. Can I ask it? (“Yes.”)

And so the attorney “gave” all the information in a series of questions.

Asking a child witness questions serves another purpose. You are also practicing what your relationship will be in court. You will be asking questions and the child will be responding to the questions. Just like any other attorney and witness.

What should your demeanor be when asking these questions? You need to be the trusted friend and confidant that you are. You must look completely non-judgmental. You will smile openly and you will look sad in a compassionate manner. You know – like you would have liked someone to have looked and acted with you when you were ten years old. Not like a parent, not like a teacher, not like any other adult you had in your life then – but someone who would really be in your corner. A true advocate.

Who should be in the room with you and the child? Other than your team members (paralegal, co-counsel, trial consultant)--no one. And even then, for a period of time, you should be completely alone with this child – just as you would be with any other client. Why? So you can explain to the child that you are this child’s attorney. That you share a relationship that is so sacred it goes past the grave. In this case, our ten-year-old boy understood that Mr. Jason was his attorney when he was told that he could tell Mr. Jason anything, and that Mr. Jason would take it with him to the grave unless our lad gave his permission to tell

other people about it. He really relaxed and breathed a sigh of relief when he was promised he could call Mr. Jason any time of the day or night and talk to him about any questions he had about the case. The child proudly put Mr. Jason's business card in his backpack with all the phone numbers on the front and hand written by his attorney on the back "Your Lawyer". They shook hands.

"Are you ready to talk with Miss Katherine about your mama now?" his attorney asked the child. Solemnly the child nodded and turned to me. I smiled and said, "Tell me about your Mama."

Now – that was a child well represented. Why? Because he knew it. Because he felt safe and secure in the attorney-client relationship. Because he was ready to talk to a stranger about the most difficult time in his young life with the kind of confidence a person can only have when they feel protected. Because, finally, he had a lawyer.