

# TESTIFYING IN COURT

The Truth, The Whole Truth and  
Nothing but the Truth....

# WITNESS CREDIBILITY

- ◉ Demeanor
- ◉ Bias or Neutrality
- ◉ Knowledge of the Subject
- ◉ Consistency
- ◉ Common Sense

# DEMEANOR

- ◉ Begins when you leave for court
- ◉ Body Language
- ◉ Nervous? Bored? Defensive?
- ◉ Rehearsed v. Ummm... Ummm

# BIAS OR NEUTRALITY

- ◉ What is your role? Should you be biased?
- ◉ Use of Terminology
- ◉ Admitting alternative theories

# KNOWLEDGE

- ◉ Be Prepared - Know your case
- ◉ Know what you are testifying about
- ◉ Know your purpose

# CONSISTENCY

- ◉ Uncontested Facts
- ◉ Internal - Other Evidence Presented
- ◉ Other Hearings
- ◉ Common Sense - Explain!

# COMMON SENSE

- ◉ It's Ok to Say - "I Don't Know"
- ◉ Don't Go Out on a Limb
- ◉ Use Plain Language
- ◉ Don't Fight the Defense
- ◉ Resolve Differences with Prosecutor

# LAY V. EXPERT WITNESS

- ◉ Lay witness: testifies to personal experience
  - what they saw, heard, felt, smelled, etc.
- ◉ Expert witness: renders an opinion or gives the jury information that helps them evaluate or understand the evidence



# WHO IS AN EXPERT?

## VIRGINIA CODE SECTION 8.01-403

*...If scientific, technical or other specialized knowledge, will assist the trier of fact to understand the evidence or to determine a fact in issue,*

***a witness qualified as an expert by knowledge, skill, training, or education may testify thereto in the form of an opinion...***

# WHO IS AN EXPERT?

Conley v. Commonwealth, 237 Va. 554 (2007)

*Generally, to qualify as an expert the witness needs only to have a degree of knowledge of a subject matter...*

*...so that the witness' opinion will have value in assisting the trier of fact in understanding the evidence or determining a fact in issue.*

# WHO MAKES THE CALL?

*Whether to permit a witness to qualify as an expert on a given subject matter is an issue submitted to the **discretion of the trial court** and on appeal the trial court's ruling will not be reversed unless it plainly appears that the witness was not qualified.*

# WHAT MAKES YOU AN EXPERT?

- ◉ Educational Background
- ◉ Specialized Training
- ◉ Practice Experience (# of cases handled)
- ◉ Length of Practice
- ◉ Recognized in other Jurisdictions
- ◉ Anything else that establishes witness has more experience than “the common person”

# BASIS OF OPINION

- ◉ Personal knowledge of facts disclosed in his/her testimony
- ◉ Based upon facts in evidence assumed in a hypothetical
- ◉ Based upon the witness' prior experience and education
- ◉ *VIRGINIA CODE SECTION 8.01-401.1*

# SCOPE OF THE OPINION

- ◉ The witness is lying
- ◉ The witness is telling the truth
- ◉ Child's behavior is diagnostic of abuse
- ◉ "Childhood Accommodation Syndrome"

# SCOPE OF THE OPINION

## STATUTORY

### ***Va. Code § 8.01-401.3***

*. . . The exceptions to the “ultimate fact in issue” rule recognized in the Commonwealth prior to enactment of this section shall remain in force.*

***\*\*Expert cannot testify to ultimate issue in criminal case\*\****

# STATING THE OPINION

- ◉ *THE EVIDENCE IS CONSISTENT WITH . . .  
BASED UPON MY TRAINING AND EXPERIENCE  
or;*
- ◉ *THE EVIDENCE IS INCONSISTENT WITH . . .  
BASED UPON MY TRAINING AND EXPERIENCE*
- ◉ *To A Reasonable Degree of Medical  
Certainty...*



# PERMISSIBLE EXPERT TOPICS

- ◉ Delayed Disclosure / Recantation
- ◉ Inconsistent and Tentative Disclosure
- ◉ Memory and Suggestibility
- ◉ Emotional Attachment to Offender
- ◉ Age-Appropriate Sexual Behaviors
- ◉ Post-Traumatic Stress Disorder
- ◉ Lack of Medical/Physical Evidence
- ◉ Dynamics of Abuse
- ◉ Linguistics (Age Appropriate Questions)

# REDUCE THE CHANCES OF A KILLER CROSS-EXAMINATION

- ◉ Documentation
- ◉ Well-Trained
- ◉ Know Protocols and Procedures
- ◉ Thorough Investigation
  - Corroboration
  - Witness Interviews
  - Suspect Interview

# MEETING WITH THE COMMONWEALTH - THE DEFENSE?

- ◉ Don't be afraid to ask for a meeting
- ◉ Pull entire case file - including pictures, charts, etc.
- ◉ Ask about expectations and expertise
- ◉ C.V.
- ◉ Contact Info
- ◉ Visit the Courtroom

# “TENDER YEARS” HEARSAY EXCEPTION

**§ 19.2-268.3.-**

**Admissibility of statements  
by children in certain cases**