Throughout our nation's history, the public schools have been called upon to address social ills. Perhaps more than any time in history, however, today's schools carry responsibility for managing matters of suicide and violence, drug abuse, child neglect, and child pregnancy—situations that ultimately may lead to litigation. Counselors, as school staff members, are most likely to work with children and their guardians on sensitive issues, and are finding themselves increasingly facing legal responsibility both for their own actions and for the actions of their clientele (Davis & Ritchie, 1993). As citizens rely more heavily on the court system to resolve civil matters and as child involvement in crime increases, the likelihood of the school counselor serving as a witness rises. Counselors may find themselves rendering testimony in matters of personal injury, divorce, wrongful death, special education placement, child abuse, or child custody (LaForge & Henderson, 1990; Remley, Jr., 1985).

Testifying in court can be a frightening prospect (Brodsky, 1991; Krieshok, 1987). People having little or no court experience may rely on idealized notions of the legal system to form their expectations of testimony (Mac Hovec, 1987). Although the ultimate objective of the judge and jury is truth and resolution, practically speaking, the courts are a forum for conflict. The language of the courtroom is that of debate, argument, and persuasion. Each attorney tries to present: the winning argument and discredit opposing litigants and their witnesses (Mac Hovec, 1987). Mental health professionals by training encourage communication, offer support, reach compromise, and Change notions of a troublesome external situation to reduce internal turmoil. Even the counselor's vocabulary connotes possibilities, tolerance of discrepant viewpoints, and invitation to build relationships. Although middle ground ultimately may be reached, it is no wonder that the counselor may be particularly uncomfortable in a setting where the litigants' goal is resounding victory, not peaceful resolution (Remley, Jr., 1991). It is the purpose of this article to inform school counselors of what they may encounter as witnesses, thereby enhancing preparation, comfort, and performance on the witness stand.

**TYPES OF WITNESSES**

The courts recognize two kinds of witnesses: the expert witness and the general or "fact" witness. "An expert is any person who, by virtue of his or her training or experience in a science, a trade, or an art, has information that is not likely to be known by the average juror" (Blau cited in Krieshok, 1987, p. 69). It is the function of the expert witness to educate the judge and jury in any adversarial procedure, be it civil, criminal, federal, state, or local court. Trial judges use personal discretion to ascertain the qualifications of the potential expert. No encompassing set of standards exists to measure degree of experience or expertness; therefore a witness may be challenged in court by others with the same or greater level of expertise (Remley, Jr., 1985, 1991; Weikel, 1986). A school counselor could be called upon to serve as expert in matters of standardized testing, child growth and development, effective parenting, or emotional needs of children (Remley, Jr., 1985). Expert witnesses should come to court with a solid knowledge base in their field of expertise and ready to render an opinion based on their knowledge of the topic (Remley, Jr., 1985; Weikel, 1986). When a witness renders an opinion, it "derives from analysis of the case, including a review of relevant facts and case records, drawing the requisite inferences, and making appropriate interpretations" (LaForge & Henderson, 1990, p. 456). School counselors serving as experts should possess professional credentials qualifying them to serve in that capacity.

Expert witnesses are advised to be impartial (Weikel & Hughes, 1993). As an expert with knowledge of a psychological, technical, or specialized nature, the counselor-expert is asked to impart data to the judge and the jury in precise, neutral, and understandable terms (La-Forge & Henderson, 1990; Weikel, 1986). The expert's case presentation should be organized using fact, logic, and a specific theoretical framework (Miller, Kaplan, & Gardner, 1994).

In addition to serving as an expert, witnesses may also act in a "lay" or "general" capacity wherein they relate information but not opinions about the circumstances of a particular situation (Mason, 1992; Remley, Jr., 1991).
Because school counselors are more likely to be called as general witnesses, the remainder of this article focuses on the school counselor as a witness of fact. Counselors desiring additional information concerning expert testimony are advised to consult Brodsky (1991), Krieshok (1987), LaForge and Henderson (1990), Mac Hovec (1987), Weikel and Hughes (1993), and Wills (1987).

PRELIMINARY CONSIDERATIONS

Professional preparation for school counselors is undergirded by a knowledge of the counselor’s role and the ethical standards accepted by the profession. Whether or not a school counselor ever testifies in court, familiarity with the American School Counselor Association role statement and statement of ethical standards (ASCA, 1990, 1992) and the Ethical Standards of the American Counseling Association (ACA, 1993) form a groundwork for development of professional relations with parents, students, and colleagues. Successful counseling programs and services are based on this foundation. For example, school counselors recognize that they generally do not have the time, resources, or training to enter into long-term therapy with students. Rather, the counselor makes a referral through the child’s parent or guardian, perhaps to a mental health counselor or agency. Operating from this procedural base, counselors will know how to respond, for example, when asked by parents to serve as an expert witness in a child custody or abuse case.

By knowing one's professional obligations and limitations, the school counselor might avoid inappropriate entry into court by explaining that a mental health professional specializing in impartial family evaluations may be a more appropriate expert witness. This clear communication regarding professional roles corresponds to the statement in the proposed revision of the ACA ethical standards that professional counselors “are accurate, honest, and unbiased in reporting their professional activities and judgments to appropriate third parties including courts” (ACA, 1993, p. 19).

A second factor to be considered is record keeping. School professionals should keep in mind both the Buckley Amendment, which gives parents access to student records, and the fact that a court may subpoena a counselor's records (Remley, Jr., 1991, 1993). Careful records can prevent lawsuits against the counselor or the school when, for example, they record the onset and nature of the problem, consultation and treatment strategies, and referral or problem resolution.

Personal notes, as distinguished from school records, are intended only for the counselor's eyes, but nonetheless should be written using factual, concrete, and behaviorally oriented language (Arthur & Swanson, 1993). Personal impressions should be identified as such, and conclusions should be supported by critical incidents or behavioral observations (Snider, 1987). Most case notes will not be called into court; however, it is a wise practice to keep them. To avoid their becoming part of a student’s permanent record, however, notes are best stored in a separate location where privacy is ensured.

PREPARATION FOR TESTIMONY

A subpoena is "a court document served on an individual or entity to appear at a proceeding for the purpose of giving testimony" (Weikel & Hughes, 1993, p. 5). Before requesting a subpoena, the interested attorney often makes preliminary contact with the witness by telephone. When such a call arrives, Mac Hovec (1987) recommended recording the time, date, attorney's name, and details of the conversation for future reference. The subpoena itself orders the counselor to appear and testify or to bring documents relevant to the case, such as files or case notes (Davis & Ritchie, 1993). At this point the prudent counselor will seek legal advice. Although the school attorney may be con-suited, it is important to remember that this attorney represents the school's interests, but not necessarily the counselor's. In circumstances in which the counselor may have liability, an attorney representing the counselor is the best source of information concerning how the counselor should proceed (Remley, Jr., 1991).

If records or notes are requested, the counselor should consult an attorney to determine if the documents are protected by privileged communication (Remley, Jr., 1991). School counselors should not assume that they are exempt from testifying in cases involving students. Some states recognize the school counselor-client relationship as privileged, but most do not (Davis & Ritchie, 1993).

It is also important to know the client's wishes regarding counselor testimony and release of records. Parents who desire counselor testimony may request and sign release forms permitting the counselor to give information to their lawyer and to the court. In other circumstances the counselor may contact the student or parents to discuss matters of confidentiality. It is worth remembering, however, that most often the child is the client. The counselor is ethically bound to judge what is in the child's best interests, regardless of the parents' views (Miller, Kaplan, & Gardner, 1994).

If clients desire confidentiality, counselors may choose to explain their code of ethics to the presiding judge and ask
that privilege be extended to them (Sheeley & Herlihy, 1987). The judge's order, however, takes precedence over an ethical code. The counselor must abide by the judge's order or risk being charged with contempt of court (Remley, Jr., 1985).

What to expect in the way of courtroom procedures is another matter for discussion. The attorney may ask witnesses to wait outside the courtroom until asked to appear; to avoid contact with jurors, other witnesses, and litigants; and to leave the courtroom after testifying (Weikel & Hughes, 1993; Wills, 1987). The counselor will want to meet with the attorney who initiated the subpoena to discuss and review anticipated questions in both direct and cross examinations (Dorn, 1984; Remley, Jr., 1985). In addition, this pretrial conference is the time to negotiate dates and times for the counselor's court appearance to minimize time spent away from school. Many a time, all witnesses are subpoenaed to be at court at the same time, usually at the beginning time for the trial or hearing. Since all cannot testify concurrently, the counselor may request appearance at a time closer to that when he or she actually will be needed.

Before the day of testimony the counselor has homework to do. Because the first questions asked will establish witness credibility, the counselor should be prepared to recall degrees, licenses and certifications earned; dates and places of graduation; relevant continuing education credits; work experience; presentations; and publications. In addition, it is helpful for the counselor to review the details of the case in order of time (Remley, Jr., 1991). Client records will augment a careful review, but they should not be brought to court unless they are subpoenaed (Dorn, 1984). Any item brought to court is subject to being placed into evidence and may be scrutinized by both attorneys.

A counselor can also prepare by reviewing ethical codes and pertinent current and classical literature. In a sexual abuse case, for example, a counselor may want to review indicators of sexual abuse and read journal articles on the subject. If the case involves special education, the counselor should be familiar with legal requirements, assessment procedures, and interventions. When reporting test results, the counselor should be prepared to explain the validity and reliability of the instrument as well as its appropriate use with various ethnic groups.

**THE COUNSELOR'S TESTIMONY**

As a witness, the counselor may be asked to give a deposition either before or in lieu of actual court testimony. A deposition is "a sworn statement similar to court testimony . . . an information-gathering process for the lawyers on both sides. It is a process that enables a lawyer to gather sufficient: information on which to build a case and to decide whether to take the case to trial" (Dorn, 1984, p. 119). A deposition is often taken in an attorney's office without the judge present, although a court reporter is usually present to prepare an accurate transcript of questions and answers.

Whether testifying by deposition or in person, the counselor should appear comfortable and professional. The following recommendations apply to testimony in direct examination, that is, questions proffered by the attorney requesting your appearance.

1. Take time to think before answering questions (Weikel & Hughes, 1993).
2. Testify only within your role or area of expertise (Weikel, 1986). If asked a question you are not qualified to answer, say so.
3. Answer questions directly and honestly in a clear, audible voice (Dorn, 1984; Mac Hovec, 1987). Do not evade difficult answers. Rather, answer directly and without added emphasis.
4. Use ordinary language, avoiding professional jargon (Weikel & Hughes, 1993). The judge and the jury must understand what you are saying before they can determine its meaning in deciding the case.
5. When questions are confusing, ask for clarification (Dorn, 1984). Don't be afraid of seeming to be stupid. If you did not understand the question, the jury probably did not either.
6. If you are unsure of an answer, "I don't know" is an acceptable response (Weikel, 1986). In fact, many times that is the only honest answer.
7. Relate information objectively, avoiding personal interpretations (Remley, Jr., 1985).
8. Answer only what is asked. Avoid embellishments. (Weikel & Hughes, 1993). For example, if asked if you are aware of the child's academic record, the answer should simply be yes or no. Do not begin recounting that history unless you are specifically asked to do so.
9. If need be, refer to notes made ahead of time (Mac Hovec, 1987). Warning: If you do, the attorneys probably will ask to see those notes.

Most professionals report that cross-examination is the most challenging element of testifying (Brodsky, 1991). In cross-examination the opposing attorney has the opportunity to discredit the counselor's testimony by pointing out inconsistencies, inaccuracies, and biases. The following suggestions may lessen the difficulty of cross-examination:

1. Be calm, polite, and professional (Dom, 1984).
2. Ignore rude comments (Remley, Jr., 1991).
3. Do not take personally any challenges to your testimony (Weikel & Hughes, 1993). If an attorney implies that you are biased or unqualified, it does not mean the judge or jury will believe that you are. Your response will be the more important factor in their decision.

4. Use your own words, not the attorney’s (Mac Hovec, 1987).

5. Be cautious in answering suggestive or “what if” questions. Ask for more information if the question is equivocal or confusing (Mac Hovec, 1987).

6. Respond as objectively and definitively as possible (Weikel & Hughes, 1993). Make eye contact with the questioner while the question is being asked. When answering, make eye contact with the persons you want to convince—the judge and jury.

7. Avoid the appearance of bias in either direction (Brodsky, 1991). An attorney may attempt to affiliate you with one side or the other. If you appear to be trying to help one side, your apparent bias may actually weaken your testimony.

CONCLUSION

For the school counselor, the prospect of testifying in court on school related matters is a growing one. The counselor’s clear understanding of professional roles and ethical standards is a starting point for development of a proactive stance toward participation in court proceedings. Counselors may testify in a variety of circumstances; therefore, preparation and consultation with an attorney are essential preliminaries to appearance in court. Moreover, because each situation, case, court, and state is different, the information contained in this article should serve only as a general practical guide.

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