

When Lightning Strikes Article Series

“Preparing To Interview A Witness, Ten Easy Steps” *by Lawrence W. Daly*

Shocked, feeling numb? Child protective services take your children? Have you been accused of a serious sexual assault case? Have you turned to the yellow pages and the attorneys and investigators all look the same? What should you do?

Confused and feeling helpless? If lightning was to strike in your life, would you know what to do? Who to call? How to protect your rights? If you don't know what to do, then you need to know the impact of what it means when lightning strikes in your life.

Call us today at Systematic Investigations. We not only know the answers to those questions when lightning strikes in your life, we have the know how and can resolve your problem in a positive fashion.

Preparing To Interview A Witness – Ten Easy Steps

Step One:

The first consideration in preparing for any interview is that you must use critical thinking. This means that you not only must possess all material relevant to your case, but you must also examine and organize the material in such a way that every piece of information sharpens the focus of your analysis. Such an analysis either strengthens your client's case or provides alternative hypotheses to that thesis proposed by the Opposition. Or, conversely, if the pieces form a picture that shows your client to be guilty, it is your duty to report this as well. Remember: Our job is to seek the truth.

Step Two:

Simply put, the following areas must be addressed in some fashion during the interview. It is not a laundry list. Each item will be addressed at the proper stage of the interview. These areas of questioning are as follows:

- **WHO?** There are several examples of "Who" that can be asked in an interview, e.g., Who saw the incident, Who did you tell; Who was the first person you turned to for help; Who else was involved?

- **WHAT?** There are several examples of "What" that can be asked in an interview, e.g., What happened when he first touched you? What did you do when he began touching you? What did the other witnesses do when they saw him striking you?

- **WHEN?** There are several examples of "When" that can be asked in an interview, e.g. When did the incident occur? When did you tell someone? When did you get home?

- **WHY?** There are several examples of "Why" that can be asked in an interview, e.g., Why did he stop hitting you?

Why were you alone with him? Why would he lie about the allegation?

- **WHERE?** There are several examples of "Where" that can be asked in an interview, e.g., Where did he strike you? Where did he touch you? Where was it that he took you to touch you? Where was his other hand?

- **WHAT?** There are several examples of "What" that can be asked in an interview, e.g., What were you feeling at the time of the incident? What was he wearing? What was he doing before he hit you? What were people saying that were present? What was he saying before, during and after the assault?

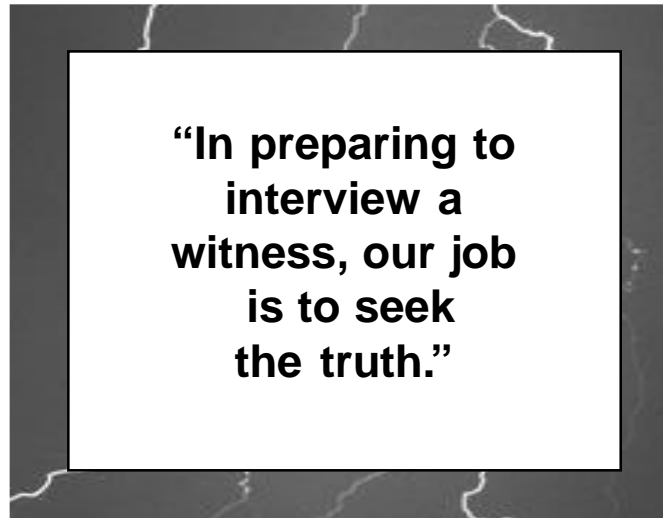
- **WHICH?** There are several examples of "Which" that can be asked in an interview, e.g., Which hand did he touch you with? Which weapon was used to make you obey his commands? Which car did he take you in?

- **HOW?** There are several examples of "How" that can be asked in an interview, e.g., How was the act accomplished? How many times did he hit you? How many times did he tell you to stop screaming?

Step Three:

Resources available to the interviewer should include the following:

- All prior statements
- Comparison of those statements – consistencies and inconsistencies
- Counseling records
- School records
- Child Protective Service Records
- Professional Evaluations



- Observations made by others

Step Four:

This information should give you five basic areas of exploration when conducting the interview:

- Past Conduct
- Past Statements
- Historical Information - Autobiographical
- Prior Allegations
- Similar Allegations – Break down of all allegations

Step Five:

Alternative Hypotheses

In conducting the interview, you must have several alternative hypotheses for the allegations being alleged and the motive behind the allegations. In reviewing discovery, you should generally form two or three that you could sell to a jury. The bottom line is always this: What is reasonable and logical? Next, after reviewing all of the materials, interviewing the client and thinking about what most likely happened, you are now in the position to begin preparing your questions.

Step 6:

Creating Your Own Folder

Use a one inch three ring binder to organize important documents. Note: I organize documents by date and generally prepare my questions in a similar order. In my questioning, I will note the document, paragraph and line number of where I extracted the information. This is very important for many reasons. The most important is that you may have to confront a person you are interviewing, and by having citations for various documents or exhibits, you can direct the subject of your interview to the document in order to impeach or challenge particular statements.

Generally, the following documents should be included in this folder:

- All Statements Made By the Witness
- Any Background Information that you will need to ask the interviewee about during the interview.
- Autobiographical Information.
- Counseling Information
- School Records
- Child Protective Service Records
- Any collateral statements made by other witnesses
- Any demonstrative evidence, i.e., photographs, drawings and so forth.

Remember that these documents simplify the interview process. They eliminate the need to take four three-ring binders to an interview. They allow you to isolate what the witness is responsible for in his or her testimony.

Step 7:

Conducting The Interview In A Hostile Environment

Most of the State's witnesses will request to be interviewed at the prosecutor's office, with the prosecutor present. You should welcome this, since the prosecutor has limited information about the case or the evidence that might bring the truth to the surface. Take advantage of the opportunity to conduct interviews in the presence of State workers. It allows you the opportunity to identify the competent and incompetent individuals on the opposing side in the case. It also allows the State to observe what a properly conducted interview looks like. If your client is innocent, then this technique for interviewing is beneficial, but if he or she is guilty, you are doing nothing more than educating the prosecutor. So before you conduct interviews, attempt to confirm the innocence of your client.

Step Eight:

Questions Must Be Relevant And Material

Questions asked must be relevant to your case. This evidence rule is viewed by some to be too general and sometimes a prosecutor will attempt to stop you from asking relevant and material questions. If the witness refuses to answer a question, note the question that the witness refused to answer and ask the attorney you are working for to file a Motion to Depose, which will compel the subject to answer your questions.

Prosecutors and/or opposing counsel rarely sit back and remain quiet. If they interfere, you simply have to explain that their interference will not be tolerated and end the interview. A motion will have to be filed by the attorney you are working for to compel the State and/or opposing counsel to keep silent. Remember: They had their opportunity to interview witnesses; now it is your turn.

Step Nine:

Ask Open Ended Questions

No matter how much you prepare, you will forget to ask a question or find yourself leading the witness instead of obtaining free recall information. Remember that open-ended questions allow a witness to answer in their own words what happened. After you have asked the open-ended question

and you believe that the witness has provided all of their free relevant to that question, then you can move to more specific, but non-leading, non-suggestive questioning.

Step Nine: Utilize All Resources During The Interview

Utilize all of resources at your disposal to obtain as much information as is possible about the witness you are interviewing.

Step Ten: You May Only Get One Chance To Interview A Witness

Being prepared and thorough will make you a successful interviewer. Remember that you need to get it right the first time, because courts generally do not allow second interviews.

“Listen to advice and accept instruction, and in the end you will be wise.”
Proverbs 19:20