

# Domestic Violence Expert Testimony: Legal Settings and Issues

by  
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NATIONAL CLEARINGHOUSE FOR  
THE DEFENSE OF BATTERED WOMEN  
Working for justice for victims of battering charged with crimes

# Domestic Violence Expert Testimony: Legal Settings and Issues

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# Preface

Between April 2013 and November 2016, the National Clearinghouse for the Defense of Battered Women conducted 15 webinars related to the use of expert witnesses. This paper is one (of four) papers based on webinars in that series. The other papers include:

*Advocates as Expert Witnesses: Weighing Benefits and Drawbacks* by Cindene Pezzell

*Domestic Violence Expert Witnesses: Tips to Help Prepare for Your First Case* by Scott Miller and Melissa Scaia

*Domestic Violence Expert Witnesses: Immigration Proceedings* by Noël Bridget Busch-Armendariz and Edna Yang

The webinar series included webinars on weighing possible benefits and drawbacks of advocates being experts, use of expert witnesses in immigration proceedings involving victims of battering, lessons learned from the witness stand, and the use of expert witnesses in civil legal proceedings.

Download the papers from this series and other papers on expert witness-related topics at <https://www.ncdbw.org/publications>

Find the expert witness series webinars at [http://www.ncdbw.org/experts\\_recordings.htm](http://www.ncdbw.org/experts_recordings.htm)

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# Introduction

Through our work at the National Clearinghouse for the Defense of Battered Women (National Clearinghouse), we have learned that domestic violence victim advocates and other potential expert witnesses may or may not be familiar with the mechanics of the different legal systems in which they may be called upon to participate. Some very knowledgeable potential experts have had little to no previous contact with the legal system, while others may be familiar with one area (e.g., civil court), but not

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## “Domestic violence” and “battering”

Often the domestic violence that comes to the attention of court systems is what has come to be known as battering in intimate partner relationships. Battering is characterized by its ongoing pattern of violence and coercive behavior, as well as its negative impact on the victim, including the level of fear it produces; risks to physical and mental health, overall well-being, and liberty; and its potential for lethality. While the terms “domestic violence” and “battering” are often used interchangeably in court systems, and by advocates, not all domestic violence is battering. It is often the task of an expert witness to make the distinction clear.

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example, the distinction between civil and criminal court is an area of confusion for many. We’ve also observed experts and other practitioners confuse the roles of fact witnesses and expert witnesses and what each type is permitted to testify to, particularly when advocates are called to testify.

This monograph provides practicing and potential experts with basic information about the role of expert witnesses, the types of expert testimony, and the fundamental mechanics of the court systems in which domestic violence experts are most routinely called to testify. This paper is not a guide on how to give testimony or how to qualify as an expert witness. For information that is outside of the scope of

others (e.g., criminal or administrative court). This unfamiliarity can create confusion. The goal, purpose, scope, and form of expert testimony can vary greatly, depending on the legal arena as well as on who is seeking to introduce the expert testimony.

Additionally, many new and experienced experts have told us that there was important foundational information that they wish they had known before starting to testify as an expert witness. Many incorrect assumptions can get made by lawyers, judges, and others about what potential experts do and do not know about the different legal systems. For

this discussion, please contact the National Clearinghouse or visit our website for publications related to the use of expert witnesses.<sup>1</sup>

Please note that our use of the word “victim” will always refer to victims of battering, regardless of what the victim’s role in the court proceeding might be. The term “victim” does not necessarily refer to a witness for the prosecution. Depending upon the circumstances, a victim of battering might be the defendant in a criminal case or the respondent in a civil or administrative proceeding.<sup>2</sup>

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<sup>1</sup> For example, see *Advocates as Expert Witnesses: Weighing Benefits and Drawbacks*; also, *Domestic Violence Expert Witnesses: Tips to Help Prepare for Your First Case*.

<sup>2</sup> Many community-based advocates and practitioners in the field reject the term “victim” and choose the term “survivor” to describe someone who has been battered. It is important to honor the resiliency of those who have, indeed, survived being battered. Because this guide is specific to the context of expert witness testimony in the legal system, however, we are using the term “victim of battering” or “victim.” Expert testimony is ultimately about establishing the ways in which a person has indeed been a victim of a specific kind of harm.

# Types of Witnesses

Many domestic violence victim advocates and other service providers are experts on battering and domestic violence. That is, they have specialized knowledge and/or skills in their field. An effective expert witness is someone who has content

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**Fact witnesses testify as to their observations and experiences – NOT their opinions or conclusions.**

**Fact:** “On December 12 at around noon, I saw my coworker, Denise, with bruises all over both of her arms.”

**Impermissible opinion:** “My coworker Denise is a victim of battering. I can just tell.”

Examples of advocates testifying as fact witnesses

- An advocate is called to testify about a victim’s attendance at a counseling group
- An advocate is called to testify about injuries that she observed on the complaining witness during shelter intake
- An advocate is called to testify about a threat she overheard a victim’s abusive partner make in the hallway outside the protective order courtroom

expertise and the skills to communicate that expertise effectively on the witness stand. To be allowed to testify in court, an expert witness must have expertise in matters outside the average person’s experience (among other requirements discussed below). In other words, expert testimony is not allowed to be presented about things most people are already familiar with.

In court, an expert shares her expertise in the form of *testimony* by answering questions after taking an oath to tell the truth. Expert testimony is sometimes compared to teaching a class, with the expert’s role one of educating the judge and/or jury. Giving testimony looks a lot different from teaching a class or giving a training presentation, however. For example, testifying experts don’t have free rein to discuss whatever

they feel is important to convey in the case. Rather, experts may be required to answer questions that don’t seem particularly on-point to them and may not be asked about things that they feel are crucial to convey. Experts generally don’t have complete control over the information they communicate to the judge and jury.

There are many rules that must be followed when a lawyer wants to present expert testimony. First, the subject matter must be “relevant” and “admissible.” These

concepts can sometimes be more complicated than they sound and the lawyer who is trying to introduce the expert testimony is responsible for convincing the court that the expert testimony would be helpful to the judge or jury (relevance) and wouldn't violate any rules of evidence (admissibility). A lawyer must also prove that the proposed expert is an expert in the subject matter being offered to the court and has formulated her professional opinions — i.e., her expert opinions — in a reliable way (more about this below).

Although there are general expectations for expert testimony across legal systems, how an expert interacts with the court players (attorneys, judges, juries, etc.) and court settings can vary greatly case by case. Even seasoned expert witnesses may have very different experiences from one case to the next and one court to the next. For example, an expert who is accustomed to an informal court setting might later find herself subject to strict rules and procedures that feel both unfamiliar and arbitrary when testifying in a more structured setting.

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### Examples of expert opinions

- “Based on my review of the accident scene, it is my professional opinion that the driver of the car was traveling at a high rate of speed when he or she crashed into the light pole.”
  - “In my experience, many victims of domestic violence don't call the police because they fear retaliation from their batterers.”
  - “The defendant and the victim are both excluded as the source of the DNA sample marked as exhibit P – 106.”
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## FACT WITNESS

Fact witnesses may be asked to give testimony about things they have observed and/or experienced which pertain to an issue being talked about in court. For example, eyewitnesses are fact witnesses. Fact witnesses are generally not allowed to give their opinions about things.<sup>3</sup> Sometimes advocates and other professionals will be asked to testify as a fact witness: i.e., they will be asked to give personal knowledge they have about the victim.<sup>4</sup> Advocates and others who give this kind of

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<sup>3</sup> Sometimes fact witnesses are permitted to give opinions that they have arrived at without the need for specialized knowledge. For example, fact witnesses may be allowed to give their opinion about whether another person was intoxicated if they based that opinion on observations that don't require any special knowledge to interpret (e.g., odor of alcohol, slurred speech, stumbling, etc.).

<sup>4</sup> There are many potential downsides to advocates testifying as fact witnesses, even when it seems like the advocate's testimony could be helpful. For more information, please contact the National Clearinghouse.

testimony may be experts in the subject of domestic violence, but they are not giving expert testimony.

## EXPERT WITNESS

An expert witness is someone who has knowledge not normally possessed by the average person concerning the subject she is to testify about. An expert opinion — or expert testimony — is a conclusion arrived at based on experience and specialized knowledge.

The words “fact” and “opinion” have different meanings and connotations in the legal context than they do in everyday usage. Facts are testified to by “fact witnesses.” Though we tend to think of “facts” as things that are proven to be true, “fact testimony” refers to a witness’s testimony about observations, events, perceptions, and experiences — *I saw . . . I felt . . . I heard . . . I did . . . I didn’t*, etc. — even if that testimony isn’t true. **Opinions** are given by expert witnesses, who are also called “opinion witnesses” in some jurisdictions. In the legal context, “opinion” doesn’t refer to a personal viewpoint or preference. Rather, “opinion” refers to a conclusion arrived at based on one’s training, expertise, and/or experience.

Again, experts aren’t allowed to be called to testify about things that most people already have knowledge about. Sometimes, the introduction of expert testimony on domestic violence is challenged by the other party or the judge because many people (including judges and attorneys) may think they and/or juries already know all they need to know about domestic violence. It is up to the attorney requesting the expert witness to argue to the court that the testimony will help the court make more accurate and fair decisions.

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### A note about advocate experts serving as “hybrid” witnesses

Under most circumstances, an advocate expert who has personal knowledge about a victim of battering (because that advocate has worked with her or otherwise knows her) and could therefore provide “fact” testimony should NOT serve as an expert witness in that person’s case. Doing so could result in:

- Vulnerability of the program’s and the victim’s records to subpoena
  - Eliciting testimony that is harmful to the victim’s case
  - Violation of the victim’s confidentiality
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## EXPERT WITNESS OR FACT WITNESS?

Advocates and other experts may receive requests to testify, or even subpoenas to testify, without being told whether they are being asked as an expert witness or as a fact witness. This is because attorneys sometimes ask advocates and others to testify without having a clear vision of exactly what it is they want from the potential witness or because they make rote assumptions about what a potential witness can and will testify to in court. Although the request might not always be clear, it is important for a potential witness to clarify exactly what it is that the attorney hopes the witness will do.

## FACT-EXPERT HYBRID

Sometimes, fact witnesses are also asked to provide expert testimony, and vice versa. In other words, there are circumstances in which someone involved in the investigation or preparation of a case also has expertise on domestic violence and/or sexual assault and is asked to give testimony based on their experience. For example, Sexual Assault Nurse Examiners provide expert opinions based on their forensic examinations and some are also asked to give general expert testimony about domestic and sexual violence. Some police officers who have direct involvement with a case (such as an arresting officer) may also be domestic violence experts.

# Types of expert testimony

In general, experts testifying about battering and domestic violence will provide one of two different types of testimony: victim-specific or general. There are many variables that determine which type of testimony is appropriate and/or preferable for any given case and this decision should be made by the attorney seeking to offer expert testimony. Some experts can provide either type of testimony, while others limit their testimony to one or the other.

Experts often have their own requirements about what they need to do to prepare a case. Attorneys may defer to these requirements, but it is important for the expert and attorney to be on the same page about what the expert can and will do in preparation. For example, an attorney may not want a written report or may want the expert to interview other witnesses or parties. There may be tactical or resource-based justifications for the attorney's preferences. At the same time, experts who feel that they cannot ethically and skillfully do their job within the attorney's parameters might decide they are not a good fit for that case.

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## Preparation

Even though an expert will not be giving victim-specific testimony, it is still important that the expert and the engaging attorney be on the same page about what case information the expert will and will not have before testifying. Many experts have their own preferences — and some have solid requirements — about what they need to prepare to testify. Lawyers may have strategic reasons concerning the level of details their experts have before taking the witness stand.

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## VICTIM-SPECIFIC

Experts providing victim-specific expert testimony answer questions about the individual victim involved in the case being tried in court. Experts providing victim-specific testimony are usually, though not always, qualified to conduct forensic interviews and may also be qualified to perform psychological tests.<sup>5</sup> Experts who offer victim-specific testimony tend to have a professional background, such as psychology or clinical social work, that the court will accept as a basis for an expert's qualification to evaluate the specific facts of a case. Many, though not all, domestic violence advocates do not have the background or training to offer victim-specific testimony.

Experts providing victim-specific testimony may do any of the following, and more, on behalf of the attorney that is engaging their services:

- Interview the attorney's client.
- Review all documents (e.g., police reports, statements, etc.) the attorney has about the case.
- Ask the attorney for additional information, such as hospital records, copies of protection order applications, etc.
- Provide a written report to the attorney and/or the court.
- Talk to other witnesses (e.g., friends, family) about the abuse.
- Administer psychological tests.
- Ask to interview the other party in the case.

Prosecutor reluctance to introduce victim-specific testimony is one illustration of the potential challenges related to victim-specific testimony. Expert testimony offered by the prosecution is almost never victim-specific, and for good reason. An attorney representing a victim of battering as a defendant or respondent in a court setting will have similar concerns, as well as different needs related to the client's situation.

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<sup>5</sup> A forensic interview is a formal, investigative interview with a fact-finding purpose and goal of obtaining as much accurate and reliable information as possible. Confidentiality is limited and it is usually recorded.

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### Examples of victim-specific testimony

**Q:** You just testified to the definition and symptomology of PTSD. In your expert opinion, did the defendant meet the diagnostic criteria for PTSD?

**A:** Yes, she did.

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**Q:** Did you reach any conclusions with regards Ms. Boswell's experiences of abuse?

**A:** Yes. It is my professional opinion that Ms. Boswell was a victim of severe physical and sexual abuse. Her coping strategies, both physically and mentally, can be characterized as typical of those employed by many victims of battering.

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- Even if an expert for the prosecution has specific knowledge about the complainant in court, asking about this specific knowledge could open the door to subpoenas for records, accusations of bias, and, at the least, invasive questioning by the defense.
- Interviewing the complainant/victim to formulate an expert opinion can and will subject the victim to examination by a defense expert.
- Experts aren't permitted to express an opinion on the guilt or innocence of the defendant or on the credibility of the complainant. Expert testimony about a specific victim can easily violate these prohibitions and result in a mistrial.
- In many jurisdictions, victim-specific testimony on behalf of the prosecution is expressly prohibited by law.

## GENERAL

### Example of general expert testimony

**Q:** Based on your professional experience, can you give some reasons why someone might not leave an abusive relationship?

**A:** Yes, I can. Sometimes victims find themselves in more danger once they try to discontinue a relationship with an abuser especially when there are children involved. Other victims have religious objections to divorce . . .

Experts providing general testimony talk about concepts relevant to, but not specific, to the case in court. Experts giving general testimony may be asked to explain certain principles and talk about opinions they've reached based on their experiences. In some circumstances, they may also be asked to respond to hypotheticals presented by the questioning attorney.

There is a range of practices when it comes to the amount of information about the case that an expert receives before taking the witness stand to give general testimony. Experts who give general testimony may have:

- Familiarity with every single document that the attorney has about the case
- No knowledge whatsoever about the case, other than the role of the attorney
- A summary of the case

## LIMITS ON EXPERT OPINION TESTIMONY

Though experts may be asked to give opinions about certain things, there are a few areas about which experts will rarely be permitted to testify, including:

- The truthfulness (or not) of a witness, including the complaining witness
- The guilt or innocence of the defendant and other “ultimate issues” in the case<sup>6</sup>
- “Hypothetical” situations that too closely mirror the case in court and in effect lead to an opinion on a witness’s credibility or guilt

Laws vary significantly from jurisdiction to jurisdiction about what kinds of opinions are admissible and it is important for experts to be familiar with the rules in the jurisdiction where they will be testifying. Lawyers who use expert witnesses should give them guidance about these rules.<sup>7</sup>

## EXPERT CONSULTATION

An expert may be hired as a consultant only. Experts acting as consultants don’t testify, but use their expertise to help the attorney prepare the case. Some attorneys prefer to hire experts only as consultants at first and determine later whether testimony will be required. In some cases, attorneys hire separate experts for the consultation and the testimony. Expert consultants can help attorneys in different ways. They can identify aspects of the case that might require expert testimony; advise the attorney about where investigation is needed; help dispel the attorney’s own myths and misconceptions about domestic violence and victims of battering; and help develop the case strategy.

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### Examples of permissible and non-permissible expert opinion

**Probably permitted:** There are many reasons why a victim of domestic violence might end up denying or minimizing the violence she has suffered, including . . .

**Probably not permitted:** Based on my experience, it is my opinion that the defendant assaulted the victim on the night in question and on many prior occasions and is guilty of second degree assault. I also believe he threatened her to keep her from showing up in court today.

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<sup>6</sup> An “ultimate issue” is an undecided issue in a case—such as whether the defendant engaged in a specific action (e.g., punching the complainant)—that the factfinder must decide to render a verdict in a case. Jurisdictions vary about what is considered an “ultimate issue” and when experts may offer an opinion on an ultimate issue.

<sup>7</sup> While it is true that all jurisdictions have rules that prohibit experts from giving certain kinds of opinions, these rules are sometimes stretched or even ignored. Experts must keep in mind that they may not have consistent experiences about what they are permitted to testify about, even within the same jurisdiction.

# Expert witnesses in three court systems

Testifying in court is not a “you’ve-seen-one-you’ve-seen-them-all” kind of experience. Experts can have very different experiences from courtroom to

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## Common questions about court systems

Many readers will already know the purposes and features of the different courts. Over the years, however, the National Clearinghouse has learned that it is important to not make assumptions about what people know or don’t know about court systems, regardless of how experienced they might be as expert witnesses. Some of these questions we have been asked include:

- Why do batterers get free lawyers so often, while victims rarely do?
- When he was found guilty of assaulting her, why didn’t the judge take away his visitation of the children?
- The victim wants to drop the charges. Why is she being told she cannot do so?
- Why does she have to testify about being assaulted by her partner so many times, in front of so many different judges?
- He got a protection order against her, but then she was acquitted of assaulting him. How can this be?

We hope that including information about the role and function of different court systems can help to resolve such questions.

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how each court system functions can help an expert provide the most relevant and helpful information and assistance.

courtroom. Since even seasoned experts can find the differences confusing, it helps to have information about a specific court’s mechanics, role, and function. This discussion covers three kinds of court systems that experts are most likely to encounter — criminal, civil, and administrative — and outlines the features of each system. This kind of basic information can assist experts in understanding what their role within a case is going to be and what to expect as the case progresses.

All expert witnesses benefit from having a working knowledge of the legal systems in which they will testify. Domestic violence experts need to know the mechanics of the different systems. Victims of battering often are involved in several court systems, sometimes simultaneously, where an expert witness may be called to testify. The issues victims are dealing with and the outcomes they are trying to achieve in each system can overlap significantly or can be quite different. Understanding

## THREE AREAS OF LAW, THREE COURT SYSTEMS

In general, laws are societal rules that are grouped according to distinct legal areas, each with its own court system. Different areas of law have different purposes and functions. For example:

1. Criminal law: Enforces and punishes violations of rules prohibiting certain conduct that the government deems harmful and against the public good.
2. Civil law: Enforces and determines remedies for violations of rules governing the rights of private citizens.
3. Administrative Law: Governs the administration of rule-making bodies or agencies, such as Immigration and Customs Enforcement (ICE), Housing and Urban Development (HUD), worker's compensation boards, unemployment compensation agencies, professional licensing boards, etc.

## CRIMINAL

In a criminal case, a government (state, federal, tribal, etc.) accuses a person or persons of violating one or more criminal laws established by its legislative body. A violation of a criminal law is considered a crime against society. Anyone charged with a crime is entitled to have a trial and require the government to present proof that the person charged committed the crime. The defendant can present his or her own proof in defense to the accusation of that crime, if they wish. If the judge or jury finds that the government has proved the defendant's guilt, the defendant may be subject to punishment, such as incarceration or probation.

Because the consequences of being found guilty of a criminal offense can be so severe (imprisonment or even death), prosecutors are required to present a high level of proof before a defendant can be convicted. The level of proof required in criminal court — the standard of "beyond a reasonable doubt" — is the highest of any court system.

## FEATURES OF CRIMINAL COURT

In criminal court, a government is the accusing party; the defendant is the party accused. The title of a case can sometimes reveal which prosecuting government is involved. For example:

- *Oregon v. Lisa Barry*
- *United States v. Steven Sams*
- *Saginaw tribe of Chippewa Indians v. DeRight*

However, the accusing party (the prosecuting government) is not always clear. For example:

- *The People v. Sue Patel*
- *State v. Rick Rundy*

Defendants may be accused of committing crimes against other people. Even though these accusations are that the defendant harmed an individual (the complainant), in the criminal system the actions are still considered acts against society. Though a prosecutor may take a complainant's wishes about how to resolve a case into consideration, a complainant cannot herself decide to "drop" a case.

In almost all criminal cases, defendants are entitled to representation by an attorney and they have this right even if they cannot afford to hire one.<sup>8</sup> Indigent defendants receive lawyers at the expense of the government that is prosecuting them. Complainants (and other witnesses) are not entitled to an attorney because they are not a party to the case and do not risk loss of liberty or other legal punishment by the court.

Judges often have considerable discretion when imposing sentences, but are limited to the punishments and conditions allowed by law. Complainants may hope for outcomes that the criminal court may not have the legal authority to impose, such as a finalized divorce, a grant of property, or a lifetime protection order.

Domestic violence experts may be called on behalf of the prosecution or the defense. Prosecutors often present expert testimony in domestic violence prosecutions when they believe there are aspects of the case that the judge and/or jury won't fully understand without expert assistance. Prosecutors may also call domestic violence experts to rebut expert testimony offered by the defense, though this is less common. As explained earlier in this paper, prosecutors rarely use victim-specific testimony.

The defense may call an expert witness if expert testimony on battering and its effects would support the defense theory of the case or help to explain behaviors of the victim-defendant that the judge and/or jury might otherwise interpret as evidence of guilt. The defense may also call an expert to rebut expert testimony presented by the prosecution. Expert testimony on behalf of the defense may be either general or victim-specific, depending on the legal strategies involved.

No two criminal cases are the same and different cases may require different areas of expertise. Experts are not "one size fits all," so it is crucial that attorneys and experts have a meeting of the minds about the expertise required for a case, the purpose of the expert testimony, and whether the expert is otherwise a good fit for the case.

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<sup>8</sup> There are some minor offenses that do not entitle indigent defendants to state-paid counsel if there is no risk of incarceration upon conviction.

## EXAMPLES OF EXPERT WITNESSES IN CRIMINAL COURT

Called by the prosecution	Called by the defense
<p>The complaining witness refuses to come to court and testify against her abusive partner. There is other evidence against the defendant and expert testimony may help the jury understand the many reasons why a victim of battering might not appear for court.</p>	<p>The defendant struck her abuser in self-defense. The defense wants the jury to understand how her experiences of abuse informed her reasonable fear of her abuser (the complainant in this case).</p>
<p>The complainant is going to testify that she lied to the police about her husband hitting her on the night he was arrested. The prosecutor wants the jury to understand why victims of battering sometimes change or recant their stories.</p>	<p>The defendant participated in a robbery under duress by her abusive partner. Expert testimony will help the jury understand how her partner's threats affected her state of mind and how it was reasonable for her to believe she would be seriously harmed or killed if she didn't comply.</p>
<p>The complainant couldn't immediately give investigators certain details about her experience of sexual assault and the defense will argue that she is lying. Expert testimony about marital rape, sexual violence, and the dynamics of battering could help the jury understand there may be other explanations for her failure to immediately give a clear picture of what happened to her.</p>	<p>The defendant appeared distant and unremorseful after she killed her abusive partner in self-defense and the prosecution is portraying her as cold and calculating to undermine her defense. Expert testimony may help explain how sometimes trauma can cause people to dissociate.</p>

## CIVIL

Civil courts are set up to settle disputes between private individuals and/or private or public entities regarding their rights and responsibilities towards one another and to determine which private remedies the prevailing party is entitled to (e.g., money, an injunction, custody of a child, ownership of property, etc.). Certain conduct can be

the basis for both criminal and civil cases. For example, a person could be accused in criminal court of assaulting someone and be sued in civil court for the same conduct.

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### General goals of a civil court proceeding

Typically, one or more of the following:

- Determine whether a party has been unlawfully harmed by the other party and, if so, order a remedy that makes the harmed party as “whole” as possible.
- Come up with a fair solution to a problem that the parties cannot solve by themselves (e.g., child custody).
- Stop a person or persons (or entity) from doing something illegal.

There are different kinds of civil cases, and there are several in which expert testimony about domestic violence and battering may be used.<sup>9</sup>

Examples include personal injury or property damage cases (torts), protection order hearings, child protection / dependency cases, divorce, and custody.

Civil court is where disputes are settled. Unlike criminal court, punishment is not a primary function of civil court, although sometimes liable parties are ordered to pay money to the other party as punishment (these are called punitive damages).<sup>10</sup> The kinds of remedies a civil court proceeding can provide are wide and varied.

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### FEATURES OF CIVIL COURT

- There is no prosecutor in civil court.<sup>11</sup>
- Each party is responsible for getting their own attorney, if they want one.
- Incarceration is not a possible direct outcome of a civil case.
- The party who brought the case into court is the “plaintiff.” The other party is the “defendant” or the “respondent.”
- Defendants can “counter-sue,” meaning they can sue the plaintiff at the same time the plaintiff is suing them.
- In many jurisdictions, there’s no right to a jury trial for certain kinds of civil cases (such as divorce cases).

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<sup>9</sup> “Family law” cases (such as divorce, custody, paternity, etc.) are civil in nature, even though many jurisdictions set up separate courts to handle these matters.

<sup>10</sup> There are also civil proceedings that are “quasi-criminal” in nature. This means that although the case itself is civil, one or more parties may be subject to a sanction that is criminal in nature. For example, parties are sometimes incarcerated for failing to pay child support or for violating a civil order for protection.

<sup>11</sup> However, there’s at least one state — Texas — in which prosecutors can act as counsel for people seeking protection orders.

## EXPERT WITNESSES IN CIVIL COURT

The content of an expert’s testimony in civil court will vary greatly, depending on the type of case and the attorney’s goal in presenting the testimony. An expert might be called by either or both parties. Experts in civil court may be asked to give general testimony or case-specific testimony.

A divorce proceeding	A dependency / CPS court trial	A protection order hearing	A personal injury case
<p>The defense is arguing that the plaintiff lied about being battered by the defendant in her complaint for divorce. The defense cites the plaintiff’s full-time job and school board membership as evidence that she isn’t a victim of domestic violence and argues that she is lying because she is “out to get” the defendant. The plaintiff calls an expert witness to testify about the diversity of battered women’s experiences.</p>	<p>A battered woman facing removal of her children for “failing to protect” them from her abusive partner’s violence calls an expert witness to talk about how the woman’s actions and/or inactions may have been protective of the children and any other course of action would have escalated the abuse.</p>	<p>A battered woman seeking a protection order two weeks after her ex-boyfriend raped her calls an expert to talk about various reasons a victim of sexual assault may not immediately report the assault to the police or tell anyone about it.</p>	<p>A battered woman sues her ex-husband for the cost of medical bills that she incurred due to his assaults of her. She also sues him for intentional infliction of emotional distress, and she calls an expert witness to give case specific testimony about all the non-physical impacts of the defendant’s abuse, including PTSD (post-traumatic stress disorder).</p>

## ADMINISTRATIVE

Administrative courts (or panels or boards) serve an oversight function in that they are tasked to ensure that federal, state, and local governmental agencies follow their own rules and give individuals a chance to have their side of the story heard.

Administrative courts may be called upon to settle disputes about people's rights and benefits. Immigration court is probably the administrative proceeding with which advocates are the most familiar. Other examples of administrative courts and their functions, include:

- *Public Housing Authority Board*: Prevent wrongful eviction from public housing; settle landlord/tenant disputes.
- *Department of Social Services*: Reinstate erroneously withheld public benefits; allow applicants to apply for extension of benefits.
- *Employment related*, such as unemployment benefits, worker's compensation, and Social Security disability: compensate for lost wages and secure long-term income support.

### FEATURES OF ADMINISTRATIVE COURT

- There won't be a jury.
- The proceeding may be presided over by a judge, a hearing officer, a panel of appointed officials, or another kind of officiate.
- Administrative proceedings tend to be less formal than civil and criminal courts (i.e., the rules are usually more relaxed).
- The various kinds of administrative proceedings can be quite different from one another. An immigration proceeding probably won't look or sound anything like a worker's compensation appeal.

Since administrative courts can be less formal and have more relaxed features, it can be a good place for new experts to step in and gain experience. At the same time, the stakes can be high for plaintiffs, including deportation or the possible loss of housing, income, health benefits, child care, employment licensing, and economic stability. Experts must be as prepared as they would in more formal court settings.

### EXPERT WITNESSES IN ADMINISTRATIVE COURT

Domestic violence experts can be helpful to victims involved in administrative proceedings when their expertise will help the decision makers understand the victim's actions, circumstances, and behaviors as they relate to the proceeding. Sometimes evidence of domestic violence plays a direct role in the proceeding, such as when a domestic violence victim is seeking a U-Visa and needs to prove, among other things, that she's a victim. In other proceedings, however, evidence about

domestic violence isn't required by the court but is offered to support the victim's position, such as when a victim seeking a professional license must explain her arrest record.

Expert Witnesses in Administrative Court			
Immigration case	Housing authority hearing	Hearing related to public benefits	Professional licensing board
A battered immigrant seeking a U-Visa calls a domestic violence expert to help establish that the applicant did in fact suffer substantial physical or mental abuse, which is one of the requirements applicants must show to be granted a U-Visa.	A victim of ongoing battering is challenging her eviction from public housing, arguing that she is being evicted because of her abuser's violence towards her, in violation of the Violence Against Women Act. She calls an expert to help the hearing officer understand the many reasons that the victim "chose" to remain in a relationship with her abuser.	A victim of battering is appealing the denial of a state public benefits program. This program has an employment requirement, but she can't work because her prior experiences of abuse have caused significant physical and mental health issues. In addition to a medical doctor, she calls a domestic violence expert witness to testify generally about ways in which the effects of battering can be ongoing and debilitating.	A victim of battering is challenging the revocation of her cosmetology license, which she lost when she was placed on probation for simple assault. She calls a domestic violence expert to help contextualize the use of force that gave rise to that conviction; she was defending herself against her abusive partner, but was convicted anyway.

### Why do experts need to know how court systems work?

The following chart summarizes some of the key differences of the three systems discussed in this paper. Experts and potential experts benefit from having a working knowledge of the legal systems in which they testify. Knowing the functions and unique features of different court systems makes it easier for experts to move from one system to another. Experts who are comfortable will appear more credible and

better prepared. The more information an expert has before getting on the stand, the more she'll be able to focus and be clear on why she is there. In short, experts who know the language, culture, and purposes of the court systems in which they are asked to testify — and their role within each specific case and court — will be more effective in providing expert testimony.

<b>Differences Between Court Systems</b>			
	<b>Criminal</b>	<b>Civil</b>	<b>Administrative</b>
<b>Subsets of cases in the court system</b>	Misdemeanor court, felony court, drug court, veteran's court	Family court, small claims, torts	Immigration proceedings, worker's compensation hearings, licensing boards, public benefit appeals
<b>Kinds of laws involved</b>	Laws designed to protect the public good	Laws designed to protect individuals or entities	Laws that guide government agencies
<b>Goal(s) of the court proceeding</b>	Determine whether the defendant is guilty of a crime and figure out appropriate sanction.	Determine if defendant is liable, make harmed party "whole," order the cessation of illegal acts, solve problems parties can't solve alone, and alter a legal status.	Administer rights/benefits and resolve disputes related to denial of rights/benefits.
<b>How a case begins</b>	Government initiates. Case can only be brought if "probable cause" exists that defendant broke the law.	Individual initiates. Party files paperwork requesting the court hear their complaint and compel the participation of the other party.	Individual or agency initiates.

Differences Between Court Systems			
	Criminal	Civil	Administrative
<b>The parties</b>	Government v. Defendant	Person/Entity 1 v. Person/Entity 2	Person and Agency
<b>Attorneys</b>	Prosecutor represents government; defendant has right to counsel. Government must pay for defense counsel if defendant can't afford to hire counsel.	Each party may hire counsel. There's no right to free counsel for indigent litigants.	The rules vary depending on the agency involved, but there's no right to free counsel for indigent people.
<b>Fact finders</b>	Judges and/or juries. Defendants and sometimes governments have the right to a trial by jury (if the crime is punishable by more than six months of incarceration).	Judges and/or juries. Parties can request a jury trial in many types of civil actions, but not all. This varies tremendously from state to state.	Depends on the agency and type of proceeding. There are no juries in administrative courts, but there may be panels of people or an "administrative law judge" or similar position.
<b>Burden of proof (what the party bringing the case must show to "win")</b>	Government must show guilt "beyond a reasonable doubt." This is the highest standard in the law.	Party must usually prove its claim by a "preponderance of the evidence."	Depends on the agency and type of proceeding.

Differences Between Court Systems			
	Criminal	Civil	Administrative
Possible outcomes	Defendant is convicted, acquitted, or charges are dismissed.	Party is held liable or not liable; court order granted or denied; injunction or other civil remedies granted or denied.	Application is granted or denied; relief is granted or denied.

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Comments or questions? Need more information? Please contact the National Clearinghouse:

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