

## **Legal Letters by Andrew Agatston Legal List: 10/22/12**

### **With a History Like This, No Need For ‘Chips on Shoulders’**

I can see it from a million miles away. I am involved in a civil case where a defense expert in his deposition has offered his critical opinions of children’s advocacy centers. Without going into great detail, he opines that CAC forensic interviewers are biased because they, typically, specifically search out information in the course of their interaction with children who allege abuse that will tend to confirm that abuse, in fact, has occurred.

Fine. I can live with that. Because with opinions, it is said, everyone has one. There is no need to walk around with a chip on my shoulder when it comes to people taking their shots at CACs. But you have to realize the reason for not having to walk around with shoulder chips. And the reason boils down to one thing: Credible and accurate information!

Notice that I didn’t merely write “information.” Information regarding CACs is out there for the world (and jurors) to see, both positive and negative, accurate and inaccurate. And we of course realize that sometimes there is negative information about CACs in the public sphere that is accurate. But we can always march forward in the face of the various attempts to minimize or denigrate the critical roles played by CACs, particularly at trial, when we can strip down to find the community CAC’s core purpose, and explain that to the individuals -- the jurors -- who have to make the ultimate decision.

Lawyers like to lay the foundation for a witness’s credible testimony. Part of that foundation can absolutely be providing the jurors with a brief but potent description of the CAC movement. The extent of this foundational testimony will vary depending on the issues in the trial, but generally laying the foundation to define and explain CACs is relevant because it helps the jurors establish an understandable framework to consider the testimony of the various CAC professionals who will testify. The manner in which this information might be presented to the jury is going to be decided by the prosecutor or Plaintiff’s lawyer who calls you as a witness.

Ultimately, it is important for those CAC professionals who testify to have a superior understanding of the basic tenets of the CAC movement as it has evolved from 1985.

Why? Because you are “alligators” of course!

Recently, I was fortunate to meet with the CAC pros at the Julie Valentine Center in Greenville, SC. Prior to our training, I did a bit of research on S.C. law related to CACs, and ran across a 58-page outline prepared for the South Carolina Public Defender’s conference that was based upon a paper titled, “Beware of Alligators: Confronting Forensic Interviews, Limiting Expert Testimony, and Blocking Improper Vouching in Child Sexual Abuse Cases.”

Such a provocative title might have some folks minimizing the information contained in the paper, much like the provocative title of the 1995 book, “Jeopardy in the Courtroom.” However, if your CAC’s lawyer reviews the Alligator paper and the 58 pages, she’ll find that the paper is heavily supported with South Carolina statutes, case law and other information that the S.C. defense bar can readily cite in support of a client’s cause. (Same with the Jeopardy book.)

It is one thing to be called an “alligator,” but it is quite something else to be called an “alligator” when it can arguably be backed up by persuasive legal authority.

And that is how it should be! That is the legal process, and Legal Eagles must be comfortable with being called “alligators,” whether or not backed by legal authority.

How? Know the other side of the coin. Learn the arguments that side of the coin is advancing. And then be confident both with your professionalism and with the CAC model.

Starting from 1985 and the CAC movement, what is the No. 1 goal for a Children's Advocacy Center? I often ask this of the CAC professionals whose CAC's I visit. Sometimes when I'm with a group of CAC pros, I give them index cards and have them write down their answers. Each time, their various answers have validity in one form or another.

But what I'm looking for is the essence of the CAC's No. 1 goal, and in order to find that, we have to review the history of the movement and figure out why that first CAC in Alabama was established in the first place.

That principle -- that No. 1 reason established in 1985 -- is set in stone, and cannot be changed by alligators, or defense experts, or defendants, or you for that matter. So what is it? What is your answer on your index card?

Here is an answer -- and as a full disclosure it is not my original thought. It, as the pros at the NCAC like to say, was a collaborative effort of many just like everything in the CAC movement:

"To coordinate the multi-agency investigation and intervention of child abuse allegations in a child-friendly manner; thus reducing the number of forensic interviews, improving the quality of forensic interviews and medical services, reducing any trauma associated with the investigation, improving the experience of children and families affected, improving the quality of mental health services, and overall improving the quality and effectiveness of intervention in these cases."

Do you think that jurors will see any alligators lurking there? Do you think any jurors will see jeopardy in the courtroom in such a definition?

Further know the history: the concept as set out in that description has been fully embraced by the U.S. Department of Justice. That is the U.S. of A. And of course, it has been embraced by

law enforcement departments, prosecutor's offices, governor's offices around the country, and in legislation in many states around the country.

This, of course, is one side of a coin. That stack of books on my desk represents the other side. Jurors are instructed to give each side review and consideration before they decide the case. Be confident of yours.

Best regards.

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