

# APS Professional as Expert Witness

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# Who Is Here (Poll Question #1)

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- ▶ APS Professional (Case Worker, Investigator)
- ▶ APS Supervisor
- ▶ Law Enforcement
- ▶ Prosecutor
- ▶ Other

# Speaker Introductions

- ▶ Jordan Ford – Financial Crime Prosecutor, NC Conference of District Attorneys
- ▶ Nancy Warren- Retired, NC Division of Aging and Adult Services, APS Program Administrator. Immediate past chair NC Partnership to Address Adult Abuse.
- ▶ Candace Heisler—Retired Assistant District Attorney, San Francisco, Trainer, Writer, Consultant

# Goals of Training

- ▶ As a result of this webinar you will be better able to:
  - Define the legal meaning of “expert witness”
  - Distinguish the role of an expert witness from that of a lay or occurrence witness
  - Identify at least 3 topical areas for which an APS professional may serve as an expert witness
  - Describe information an APS professional will need to collect and provide to establish their expertise when serving as an expert witness



# Have You Ever Served as an Expert Witness? (Poll #2)

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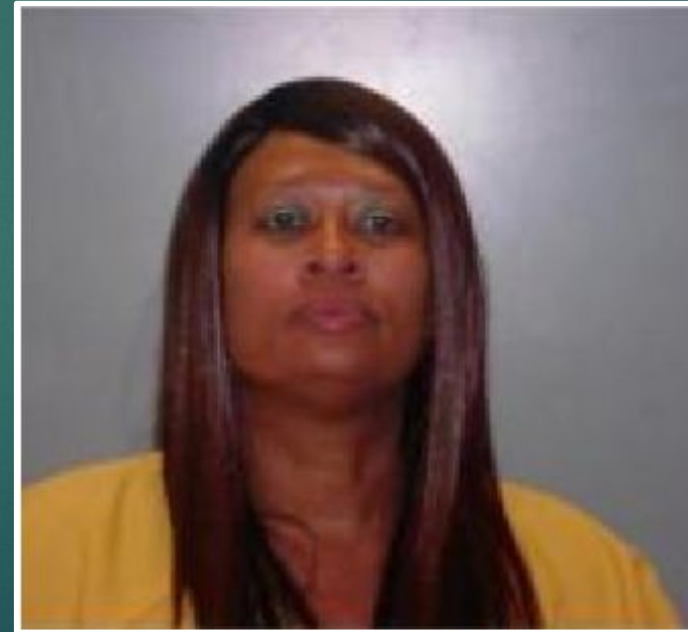
- ▶ Never
- ▶ 1-5 times
- ▶ 6-15 times
- ▶ More than 16 times

# New Question for Most APS Professionals

- ▶ May not have thought of yourself as an expert witness
- ▶ May not have considered the value of your knowledge and experience to prosecutors
- ▶ What expert information do you think you could offer in a case?
- ▶ What do you think the benefit(s) would be of providing expert witness testimony?
- ▶ Caveat: Assuming sufficient expertise, only you can decide when you are ready, if ever.

# Case Study

State of North Carolina v. Theresa Gardner  
Sanders Bynum





# Just The Facts

- **May 20, 1940** – Mavis Louise Howard Austin born in rural Eastern North Carolina

## **Who is Mavis Austin?**

- **December 1, 2014** – Defendant hired as caretaker for Mavis Austin

## **Who is Theresa Bynum?**

- **December 9, 2014** – Defendant makes first cash withdrawal for \$1,000

## **Is this Mavis or Theresa?**

- **January 15, 2015** – First report of suspected financial abuse (Wells Fargo)



# Just The Facts

- **February 18, 2015** – Second report of suspected financial abuse (Wells Fargo)

**Notice a pattern yet?**

- **February 19, 2015** – Adult Protective Services (APS) opens first investigation

**Chapter 108A, Article 6**

- **March 2, 2015** – First notice sent to District Attorney and Law Enforcement

**What does “notice” mean?**

- **March 9, 2015** – APS contacts Law Enforcement to share information

# Just The Facts

- **March 16, 2015** – Law Enforcement contacts the District Attorney's Office
- **April 16, 2015** – APS closes first investigation after victim declines services
- **June 11, 2015** – Law Enforcement contacted by PTO FCU
- **June 16, 2015** – Third report of suspected financial abuse (PTO FCU)

# Just The Facts

- **June 16, 2015** – APS opens second investigation
- **June 22, 2015** – Second notice sent to District Attorney and Law Enforcement
- **July 8, 2015** – APS contacts Law Enforcement to share information
- **July 8, 2015** – Law Enforcement contacts the District Attorney's Office

# Just The Facts

- **July 9, 2015** – Defendant charged and arrested for Exploitation of an Older Adult





# Case Study: Prosecutor Perspective

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- ▶ What issue(s) required an expert?
- ▶ Concepts that may be clarified to the jury by expert testimony
  - ▶ Undue influence
  - ▶ Vulnerability
  - ▶ APS process
- ▶ Why turn to APS to provide that expertise?
- ▶ What tools are necessary to be successful in utilizing local APS professionals as experts?

# Case Study: APS Perspective

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- ▶ APS role in case? Expectations?
  - ▶ Preparation began long before the case came to trial
  - ▶ Available for case consultation - how to maintain objectivity
  - ▶ Commitment to the process – not one and done
- ▶ How Became Involved?
  - ▶ Long term relationship with prosecutor's agency - NC Conference of District Attorneys
  - ▶ Seen and valued as an APS professional with expert knowledge and experience
  - ▶ Someone else's case
  - ▶ Multiple systemic failures
- ▶ Why was APS Involvement as an Expert Witness a good idea?
  - ▶ Shared vision of improved system of elder abuse prosecution
  - ▶ Trusted
  - ▶ Establish precedent

# Expert Testimony: This Case

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- ▶ When contacted to act as expert? By whom?
- ▶ Were you the case investigator?
- ▶ Did you review the file?
- ▶ Review any documents related to the file?
- ▶ Interview or speak to anyone about case? Client? A/P?
- ▶ Paid for your involvement?
- ▶ Meet with counsel? How many times?
- ▶ Any relevant agency policies or practices implicated by case?

# Poll Question #3

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- ▶ Have you ever discussed any of your cases with your local prosecutor?
- ▶ Yes
- ▶ No



# What is an Expert Witness?

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- ▶ Person with special training, education, experience, skill, or knowledge
  - ▶ Does not require an advanced degree
  - ▶ Need only fit into one category
- ▶ Who can provide information on a subject beyond common experience that will assist the judge or jury (trier of fact) in evaluating evidence relevant to a case

# Who Decides Someone is an Expert

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- ▶ Judge decides
  - ▶ If nature of case requires an expert witness
  - ▶ If the proffered testimony is relevant
  - ▶ If the witness has sufficient expertise to provide testimony
  - ▶ In a jury trial, admissibility usually decided in a pretrial motion or hearing outside the presence of the jury, in which the witness may have to testify
- ▶ If a jury trial, jury then decides the weight to assign to the expert's information

# Expert Testimony

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- Concepts that an APS expert witness may clarify for the jury
  1. Undue influence
  2. Vulnerability
  3. APS process
  4. Misconceptions about APS
    1. APS cannot act against wishes of a person with capacity
    2. APS services are voluntary

# Expert Witnesses

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- ▶ Unlike a lay witness an expert can rely on information from other sources in forming an expert opinion
- ▶ As an expert APS witness you are expected to be neutral and objective.
  - ▶ Serve as an expert for either side
  - ▶ May be expected to talk to other side about your findings, if asked
  - ▶ Must keep track of cases in which you are consulted, by whom, and when you testify



# Two Situations

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- ▶ Is this your case and you will provide information about your investigation (lay or occurrence testimony) and also offer expert testimony?
  - ▶ Do you have sufficient expertise?
  - ▶ Concerns about your bias as an expert?
- ▶ Is this someone else's investigation and you are addressing issues in a more general way as an expert?
  - ▶ May not review the file at all (how long APS can keep a file open, why an A/P not interviewed)
  - ▶ May be questioned about completeness or competency of the worker's investigation
    - ▶ Should an APS worker have ...(something not done) in a case of this type?
    - ▶ Systemic shortcomings/failures

# Working with Counsel

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- ▶ If you are asked to serve as an expert witness determine the nature of the expert testimony you are expected to provide
  - ▶ Assure that you are able to provide the needed expertise
  - ▶ Should you review the case file
  - ▶ Have confidence in relationship
- ▶ Any issues in the case you should know about
  - ▶ Court rulings on admissibility
  - ▶ Anticipated challenges to your testimony
  - ▶ Defenses
- ▶ Spend time preparing for your testimony with counsel before the trial begins

# Expert Testimony: Expertise

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- ▶ Education relevant to work
- ▶ Training relevant to work
- ▶ Experience—approximate number of cases, types of allegations
  - ▶ APS worker
  - ▶ APS supervisor
  - ▶ Other
- ▶ Have you provided relevant training to staff or allied professionals?
- ▶ Have you written relevant materials/articles for staff or allied professionals?



# Expert Testimony

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- ▶ Know state specific requirements for expert
  - ▶ North Carolina, the expert is required to prepare a CV and a report detailing their opinion. Both required to be disclosed to the defense
  - ▶ If every jurisdiction, if a criminal case, if a report is prepared and the witness is to testify, prosecutor will be required to provide to defense in discovery
  - ▶ If report contains exculpatory evidence prosecutor will have duty to disclose to defense, even if witness is not called
  - ▶ Expect that your CV will also be required to be provided to the defense of you will be called as a witness



# Sample Demo of Q&A Voir Dire

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- ▶ 3-5 minutes

# Trial Preparation: Prosecutor Perspective

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1. Organization is key.
2. Leave no stone unturned.
3. Recognize that some witnesses need you.
4. Decide which witness to use for each piece of evidence.
5. Communication

# What Happened--Case Outcome

**State of North Carolina v. Theresa Gardner Sanders Bynum**





# Finish the Job

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# Maintaining Your Expertise

- ▶ Your CV—create and update regularly
- ▶ Keep current on new laws and regulations/policies
- ▶ Keep track of all training attended and maintain any licensure requirements
- ▶ Track expert “credentials”
  - ▶ # times consulted
  - ▶ By whom
  - ▶ # times testified as expert—pretrial motions, hearings, trials, civil and criminal matters
    - ▶ Case/court/docket numbers

# Questions?

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Thank You!

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