Clinical Perspectives

Mock Testimony Simulation: Innovative Teaching Methodology for Forensic Nurses and Prosecuting Attorneys

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Abstract

Mock testimony is a novel approach to the education of medical professionals who testify in legal proceedings. It allows peer to peer and interdisciplinary education with, about, and from attorneys and forensic nurses. Forensic nurse faculty created a mock testimony simulation in conjunction with attorneys to educate novice forensic nurses. It serves a multitude of purposes including providing a psychologically safe space for forensic nurses to learn key legal concepts while not impacting the criminal trial or patient outcomes.

Keywords: Mock Testimony Simulation, Forensic, Sexual Assault Nurse Examiner (SANE), Expert Witness, Education

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The forensic nurse incorporates information from nursing science, forensic science, and the legal arena. In 1990, Virginia Lynch proposed forensic nursing as a new nursing subspecialty in her seminal thesis to address the unique needs of persons who experience trauma. Forensic nursing is both a nursing and a forensic specialty (Valentine et al., 2020). One subspecialty role is sexual assault nurse examiners (SANEs) who care for persons who experience or perpetrate sexual violence. Forensic nurses may be called to testify in criminal, civil, and military proceedings. However, many are concerned they do not have the educational preparation to be effective fact or expert witnesses (Gary et al., 2023).

Mock testimony is an imitation trial that allows professionals to actively hone their testimony skills (Federal Bar Association, 2024; Werner, 2023). As with any clinical skill, testimony requires refining, but there are few opportunities for mock testimony experiences. Some state boards of nursing or other governmental agencies require courtroom observation hours or courtroom testimony to maintain SANE certification. Texas, for instance, requires state-certified SANEs to complete 12 hours of courtroom observation (Texas, 2020). To meet the requirement, a mock testimony simulation course was created.

Background and Need

The principles of legal testimony are not components of most academic nursing programs. Yet, nurses may be subpoenaed to testify in criminal proceedings. In response to this education gap and feedback from SANE coordinators, the authors designed a two-day mock testimony course (Gary et al., 2023). Content consisted of one day of classroom and one day of mock testimony simulation. The District Attorney, Assistant District Attorneys, Victims' Assistance Coordinator, and forensic faculty created content. Lead attorneys had a minimum of 8 years' experience as prosecutors, and the forensic faculty each had over 20 years' experience as expert witnesses.

Pilot Day One Classroom Content.

Initial classroom content included the following topics, as well as a mock sexual assault case report:

- Court processes and the criminal justice system
- Importance of accurate medical forensic record documentation
- Medical legal ethics
- Laws affecting medical testimony and the expert witness
- Testimony preparation
- Self-care/burnout

There was also a mock sexual assault case report. An example of the sexual assault documentation record is shown in Figure 1. Participants created a curriculum vitae (CV) to use in the mock trial. All participants testified to the same case during the mock trial.

Figure 1.
Mock Sexual Assault Documentation Record

Pilot Day Two Mock Testimony.

The in-person simulation began with a pre-trial meeting with the prosecuting attorney in preparation for testimony. Attorneys described their legal strategy. Nurses asked questions and educated the attorneys about anatomy, physiology, and medical terminology; they also highlighted important case information. Participants were pre-briefed about the process and expectations before dividing into two courtrooms. One forensic faculty and 3–5 attorneys staffed each courtroom. Attorneys portrayed prosecution, defense, and the judge, and rotated roles throughout the day. After pre-trials, one group were qualified as experts while the second group experienced direct and cross-examination. In the afternoon, the groups switched so each participant had the opportunity to answer qualifying questions based on their CV (voir dire), direct examination questions, and cross-examination questions.

a) Qualifying as an Expert Witness.

Participants were individually qualified as expert witnesses. Federal Rules of Evidence 702 requires an expert witness to possess "scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue" (2023). Expert witnesses are qualified as experts by testimony that establishes their "knowledge, skill,

experience, training, or education" (Federal Rules of Evidence 702, 2023; Texas Rules of Evidence 702, 2020). Once witnesses qualify as experts where they are providing testimony, they may give testimony in the "form of an opinion or otherwise" (Best, 2022, p. 25). While one participant was qualified, the other participants portrayed the jury. Everyone provided and received immediate feedback from forensic faculty, attorneys, and peers on their presentation style, language choices, and physical presence. Focus was placed on positive feedback since encouraging, frequent feedback facilitates learning (Bradshaw & Hultquist, 2017). Quality peer learning occurs when interactions provide substantive information that the participant can immediately integrate into practice (Bunting & Williams, 2017). Self-reflection and real-world opportunities to integrate learning into practice, as well as competence demonstration assist adults to learn key concepts (Kuh & O'Donnell, 2013). Participants were encouraged to self-reflect while faculty and attorneys aided peer feedback, therefore creating a ripe learning environment.

b) *Direct and Cross-Examination.*

Participants experienced direct examination and cross-examination. They testified to the mock patient's reported history of sexual assault, physiological findings, and evidence collected. Attorneys' questions included the patient's history, physical examination, evidence collected, and photography. The mock scenario was written with potential oversights in documentation, which not only aided participants in their testimony, but reinforced potential consequences of incomplete or incorrect documentation. Sample questions are shown in Table 1.

Table 1.
Sample Questions

Sample Questions

Voir Dire

Prosecution

- How long have you been a registered nurse?
- What is a forensic nurse or sexual assault nurse examiner?
- What kind of education is needed to be a forensic nurse?
- What does a sexual assault examination entail?
- Walk the jury through the sexual assault examination process. Is it invasive?

Defense

- Are you being paid to be here? Who is paying?
- Do you work for law enforcement?
- You said you advocate for your patient, so you are an advocate, and you are here for the patient? Are you here to say whatever the patient said is true?

Mock Case

Prosecution

- How did you get involved in this case?
- You said there are no injuries. How is that possible?
- Please tell the jury about the female genital anatomy.
- Walk the jury through evidence collection. What does that look like?

Defense

- You said there were no injuries and that can be consistent with sexual assault. Can no injuries also be consistent with 'nothing happened'?
- You were not there when this alleged assault occurred, right? You are just reporting what the patient said to you, right?

Testifying to oversights or inconsistencies enlightened the participants, promoting the importance of documentation and forensic nursing processes. Each participant's testimony is built upon previous testimony. For example, participant one fielded questions about forensic nursing process and this mock patient's history of sexual assault, then the next participant answered questions about the head-to-toe examination, and evidence collected. Finally, another participant answered questions about the anogenital examination process and anogenital evidence collection. Participants provided feedback that the experiential learning was valuable, and observing their peers influenced their learning.

Contributing Factors

Forensic nurses have extensive education on the treatment of persons who experience or perpetrate violence, state and federal rape, and/or sexual assault laws impacting their practice, and legal processes, since they may be involved in federal, state, or tribal jurisdiction cases. Typically, SANE education includes a minimum of 40 hours of continuing education contact hours on sexual violence, the characteristics of perpetrators and those who are victimized, forensic nursing, laws, collaboration with community partners, medical forensic history-taking, and physical assessment. SANE education includes evidence collection and preservation, photography, sexually transmitted infections testing and prophylaxis, pregnancy risk testing and prophylaxis, documentation and photodocumentation, discharge planning and follow-up care, and courtroom testimony (IAFN, 2022). Nonetheless, there are few opportunities to hone forensic nurse testimony.

History

IAFN published SANE education guidelines, which indexed training pertaining to the forensic nurse's role in judicial proceedings (2022). However, most SANE education does not provide experiential learning opportunities. The single, traditional, classroom teaching mode is less effective than using multiple modes of teaching (Jaffy, 2017; Tang, 2021). One mode is experiential learning which is learning by doing which requires personally experiencing situations, self-reflecting on actions, and actively doing (Kolb, 2015). Simulation is an effective learning-by-doing teaching strategy.

Potential Impact on the Forensic Nurse

"Moot court" is routinely utilized in law schools to educate law students on court proceedings (Nesbitt Cosby, 2018). Moot court is typically a competition mock appellate court proceeding without witnesses or a jury. Mock testimony is also frequently used by disciplines who regularly testify in court, such as law enforcement and forensic analysts (Mitchell et al., 2021). An adapted education course for health care professionals who commonly testify was created for nurses to put their knowledge of patient care and forensic science into action, without impacting a criminal case or a patient's health. Typical mock court educational events are participant-centered and are guided by expert attorneys (Tang, 2021). The translation of information from course content to active testimony is a talent that requires practice and constructive feedback. Learning is a process; knowledge is constructed, rather than passively received, therefore adult learners must be able to comprehend and apply their knowledge (Bain, 2004). Adults learn by doing, they need to make sense of the newly acquired concepts. They require "experiencing, reflecting, thinking, and acting" in a recurring process (Kolb & Yeganeh,

2011, p. 4). Firsthand learning in a simulated, safe environment solidifies the theoretical content obtained from the virtual course (Jaffy, 2017). Health care simulation standards were followed to ensure learning outcomes were achieved by participants (INACSL Standards Committee, 2021 a, b, c, & d). Therefore, the concepts of adult learning theories, pre-briefing, and debriefing were threaded throughout the simulation. Since testifying in legal proceedings is an important aspect of forensic nursing practice, moot or mock court can be used as a safe learning environment where nurses may hone their testimony skills.

Discussion

As with actual criminal court proceedings, participants experienced direct and cross-examination by attorneys with varying levels of experience. Robust discussions resulted regarding the witnesses' understanding of the questions, and ways to communicate any lack of understanding. Post-activity participant comments included feeling less intimidated by criminal court, having an increased awareness of criminal court processes, and reported feeling better prepared for testimony. Participants reported the critique by attorneys who questioned them was helpful to their learning.

Education of the Attorneys

An unforeseen but positive result was the cross-training of the attorneys. Just as nurses may find the thought of testifying in court intimidating, attorneys may find the thought of questioning expert witnesses to be daunting (Mitchell et al., 2011; Tang, 2021). Lack of familiarity with health care practice, standards of care, and medical treatments may lead some attorneys to not utilize medical forensic experts well in their cases. For evidence, whether medical forensic or forensic science, to be effective and useful by the trier of fact, jurors must be able to understand it (Eldridge, 2019). Jurors may be left with incorrect beliefs about medical treatment, medical symptoms, and patient care if they cannot understand the evidence presented. These incorrect beliefs may result in an injustice to both the defendant/the accused and those who were victimized.

In the course, attorneys with more than eight years' experience were paired with less-experienced attorneys. The senior attorneys were able to provide feedback to the participants and the less-experienced attorneys. Participants were given the opportunity to be questioned by both a senior and less-experienced attorney and provide insight into how they could direct younger attorneys into more effective presentations of evidence. Attorneys with all levels of experience reported enhanced understanding of health care processes, including anatomy, the sexual assault examination, and normal healing processes. Additionally, younger attorneys reported the mock testimony simulation improved their witness-questioning skills and enhanced their confidence in questioning expert medical professionals.

Recommendations

The participants completed anonymous course evaluations within three days of course completion. These evaluations, coupled with verbal feedback during faculty and attorney-guided group debriefs, were utilized to improve future simulations. Faculty utilized INACSL best practices including facilitation (2021a), preparation and pre-briefing (2021b) of faculty, attorneys,

and participants, and the debriefing process (2021c). From the initial cohort, there was a registration waiting list, highlighting the demand for this content.

Ample Time for Direct, Cross-examination and Redirect

The pilot cohort was capped at 20 participants to assess processes, although the plan was to have larger cohorts to address the waiting list. Limited faculty and attorneys, as well as the finite number of available local courtrooms, impacted the size of cohorts. Minimizing the number of cohort participants allowed sufficient time for direct, cross-examination, and redirect, which decreased the participants speaking more than the attorney requested. Subsequent simulations were capped at 16 participants to allow more time for participants to testify at length, and ensured adequate individualized feedback from peers, faculty, and attorneys.

## Pandemic Considerations and Ongoing Course Progression

The global pandemic caused faculty to pivot from the initial 100% in-person course to 100% virtual course. Early on, two face-to-face courses were presented, then six completely virtual courses were completed. After pandemic restrictions were lifted, faculty and attorneys, with participant feedback, pivoted again to a hybrid course format with a virtual classroom component that is completed before the in-person mock testimony day (Figure 2).

Course Progression Over Time

There was minimal attrition due to work or family emergencies, loss of internet connectivity, and weather-related issues (one disconnected mid-simulation to take cover for a tornado warning. Participants unable to complete the course initially were encouraged to enroll in the next mock testimony simulation to finish content. The mock testimony simulation course routinely had a waitlist from positive word-of-mouth recommendations.

Figure 2.   *Course Progression*

2019: In-person classroom & mock testimony → 2020-21: Virtual classroom & mock testimony → 2022: Virtual classroom & in-person mock testimony
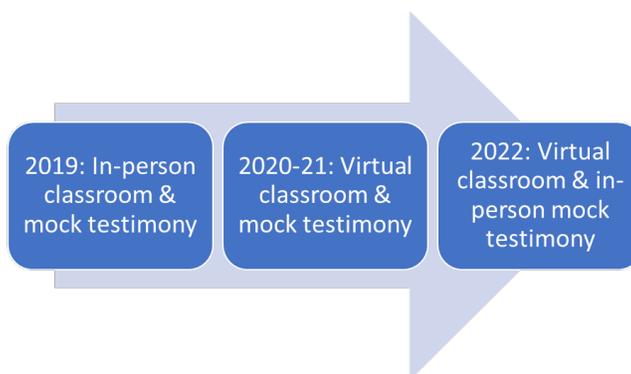
Pandemic Adaptations

During the pandemic, faculty reconstructed the course from completely in-person to entirely virtual using a learning management system and video conferencing software. The first day classroom content was flipped to a virtual, on-demand program where participants had three weeks to complete. The mock testimony day schedule remained the same with participants accessing the virtual courtroom through video conferencing software. As pandemic restrictions

began to lift, and based upon participant feedback, the course was again retooled to a hybrid (virtual content and live mock testimony) course.

Current Hybrid Format

Participants completed the 13-hour virtual content on a learning management system prior to the 8-hour, in-person mock testimony day at the courthouse. The virtual classroom content was available for three weeks prior to the mock testimony day. Content was expanded from eight to 13 hours following faculty, attorney, and learner feedback via guided debriefing and course evaluations. Participants completed several modules created by the forensic faculty, attorneys, and a victim advocate, including:

- Court process and the criminal justice system
- Bias
- Laws affecting medical testimony and expert witnesses
- Forensic nurse role in court proceedings
- CV preparation
- Records and documentation
- Medical legal ethics
- Teaching attorneys and jurors
- Self-care/burnout
- Case scenario and testimony preparation
- Pre-trial preparation and video
- Qualifying an expert witness video

The hybrid course delivery format was maintained after pandemic restrictions were lifted, since evaluations were overwhelmingly positive about the format. Participants create their CVs, and forensic nurse feedback was provided. Additionally, each participant attended a virtual videoconferencing pre-trial with faculty to discuss the case, their CV, and to learn the expectations of the mock court day.

Next Steps

Since most participants are early in their forensic nursing careers, they may not testify for weeks or months after attending the simulation. That extended time may impact memory and retention of key concepts. An expert witness textbook may refresh the participants' memory of said concepts. A mock testimony computer-based learning course may be an excellent resource to refresh forensic nurses' memory on court procedures and allow them to practice their testimony skills prior to testifying in actual legal proceedings. Forensic faculty are collaborating with others to create such a course that could be accessed remotely and on-demand.

Conclusion

Simulation is an extremely useful learning modality for health care professionals. It allows participants to learn skills in a low-risk, safe environment with expert faculty and peer feedback. A forensic nurse mock testimony simulation may provide participants with the needed abilities to effectively testify in legal proceedings. Additionally, the mock testimony simulation initially created to fill the gap in nursing education was also found to increase attorney knowledge of

anatomy, physiology, and medical terminology. The mock testimony simulation supported interprofessional teaching and learning.

Funding

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