

Effective Courtroom Communication

I. Prior to Testimony

A. Prepare Yourself For This Case

- Look up background information on the subject.
- Write up a qualifications statement for the District Attorney.
- Write down the material you feel is most important in your testimony.
- Call the DA and arrange for a pre-trial conference.
- If a pre-trial conference is not possible, ask the DA if he wants a copy of your qualifications statement and your important testimony material. Try to give it to him during a recess.

B. Dressing For Court

- Remember that court is a formal proceeding. The court officials, the jury, the spectators and even the defendant expect you to be **clean, neat** and dressed in a suit or sport coat.
- In some areas of the state, a casual appearance is accepted.
- Unless there are compensating factors, a jury will “turn off” a witness not conforming to the prevalent local norms. This includes hair length and facial hair, as well as style of clothing. If you wish to be an effective witness, do not do things to detract from your testimony.
- Your knowledge is worthless if no one listens.

II. Courtroom Testimony

A. Court Manners

- Walk directly to the witness chair, turn toward the clerk, and raise your right hand to be sworn.
- On the way to the stand, do not speak to or smile at spectators, attorneys, etc.
- Look at the clerk during swearing in, state it distinctly, giving first name, middle initial and last name, then spell your last name.
- Court officials have titles to be used in the courtroom. The judge is “your Honor”; the attorneys are “Sir” or “Madam.” If that presents you with an internal conflict, “Counsel” or “Counselor” may be used. Never call an attorney by name in court. Outside the courtroom, and away from the jury, you may call them whatever you like.
- Do no talk to the defense attorney without first getting clearance from the district attorney or vice versa, if you have examined the case for the defense.

Never talk to a member of the jury. Not even small talk. If one speaks to you, other than a salutation, which you may return, say “excuse me, I am a witness”. Report the incident and each word to the DA. Further, do not discuss the case with anyone while at the courthouse, especially when jurors, the defendant, or his attorney might overhear your conversation.



B. Direct Examination

- The most important rule - **TELL THE TRUTH!**
- The second most important rule - **IF YOU DON'T KNOW THE TRUTH, SAY SO!** If you cannot recall, simply state that you do not remember. Above all, **DON'T GUESS** or engage in speculation.
- **LISTEN** to the questions asked of you. Make sure that you understand what is asked. Pause before answering and think about the question. This is especially important if a considerable length of time has lapsed since the events about which you are to testify. In such a case, if you answer too quickly, it may suggest that your answers have been memorized or perhaps are even contrived. Do not answer to your interpretation of a question. Tell the attorney that you don't understand the question; he will restate it in new terms.
- If time has elapsed between the question and the answer, for example, there has been an objection and a discussion, the district attorney may request that the question be read back. Do not volunteer that you recall the answer. The district attorney is having the question repeated for the jury. If an objection is made, wait for the court's ruling **BEFORE** answering.
- Only answer the question asked. **KEEP YOUR ANSWERS SUCCINCT.** Do not give a long, narrative statement unless specifically called for. Don't volunteer information. Remember also that you need not answer every question with a "yes" or "no". You may explain any answer, particularly if the answer you have given may be misleading because of the way the question was asked. If you have not come to some pre-trial agreement with the attorney about your presentation, there is only one way to give direct testimony. That is, to answer the question directly, **DO NOT RAMBLE.** Each item of information requires a question. If the district attorney overlooks a point, tell him privately at first opportunity, and he can work it in.
- Speak loudly enough to be heard by anyone in the courtroom. Sit up in the witness chair, and do not cover your mouth with your hand or engage in other nervous movements. These are distracting to the judge and jurors and detract from the testimony to the jury. Be certain you speak loudly enough for the furthest member to hear you clearly. The jury decides the case; therefore, they must hear the evidence.
- Keep your testimony in simple language. Speak in clear terms. Defining concepts and relating to something everyone understands; i.e., a gram—about 1/3 teaspoon—about the size of the end of my little finger (indicating).
- Demeanor. Be sincere, courteous, and impersonal; never let the defense attorney know by voice or actions that you are **ANGERED** or rattled; never be cocky, sarcastic, or make wisecracks. A trial is a serious affair and a man's liberty is at stake.
- Never try to memorize your testimony. Use your notes after requesting court permission. Have the facts clearly in mind and words will come naturally. Cross-examination will rip memorized testimony to shreds.
- Expect confrontation with earlier statements you may have made, whether recorded at a preliminary examination or from a written or oral report. If during cross-examination the defense attorney reads to you from earlier testimony or an earlier statement, listen carefully to what he reads before answering the questions. **DON'T** attempt to memorize earlier statements. If you made a mistake in an earlier statement, you have the right to change it. It is not perjury for you to change an earlier statement that is inadvertently inaccurate or mistaken (whether it was made under oath or not).
- Be frank and impartial. Answer without hesitation or evasion any questions that will benefit the defendant.



- Remember that there is a court reporter taking down the testimony. Nodding, gesturing, etc., can be misinterpreted, so speak with words.
- Be yourself, a false personality or an imitation of someone else's style can cause you embarrassment.
- Testify **ONLY** to facts directly within your own knowledge. Remember the Rules of Evidence and don't let your imagination or emotions color your testimony.
- Remember, you know more about the scientific aspect of this case than anyone else. You certainly know far more than the defense attorney. Keep your self-confidence and self-control.

C. Cross Examination

- Maintain the same calm, poised, impartial air as with the district attorney.
- Consider each question and answer deliberately. If the cross-examination becomes personal and abusive, the district attorney will usually come to your aid. Otherwise, ask the judge if it is necessary to submit to this manner of questioning.
- Do not let the attorney misquote you. Correct him at once to clarify and impress the true facts in the minds of the jury.
- Be alert for difficult questions. If the questions are long and involved, ask that they be restated. If "yes" or "no" answers are demanded, advise that the question cannot be answered unless rephrased. If subjected to a barrage of "yes" or "no" questions, add a descriptive word or phrase to break the rapidity. "Yes, Mr. _____; No, certainly not; This is correct" etc.
- The **WHY** question: Ordinarily, you cannot state your opinion or conclusion, but if counsel ever asks "Why did you do so and so, or what was your reasoning?" then you can sound off to your heart's content, lower the boom, and let him have it!

D. After Testimony

- At the conclusion of your testimony and there has been no request for you to stay, ask the judge if you may be **excused**. If so, you may leave the court and return to the office or home. If not, you must remain.
- Walk out of the courtroom in a direct manner, unless you have been told to wait. Breathe your sigh of relief after you leave.
- Still do not speak to jury members. Sometimes they will come up to you and tell you what a great witness you were. Tell them "Thank you", and leave the area.

III. Your Relationship with People in the Court

A. Note:

- The district attorney may seem to desert you. This may be his strategy in the overall case.
- Your testimony is only one facet of the entire case – not the key factor.
- You may be his star witness and his chance to show off. He knows you can take care of yourself.
- Don't blow up at the DA after the trial. If you are angry, go home and discuss the case later when you are more logical and can explain your points better.
- The case is not won or lost on the basis of one witness.
- Just do your job well; no more can be expected.



B. With The Court

- Be respectful at all time; address the judge as “Your Honor, if the Court please”, etc. **NEVER** show emotion at any decision the court may make.

C. With The Prosecutor

- Unless at his request, don't sit with him, confer with him or smoke with him in the hall during recess. This is especially important at jury trials since the jury may tend to associate your testimony more in the nature of prosecution than that of an impartial witness.
- He is your friend and will protect you. He is responsible for the integrity of your testimony and should defend you against impeachment or harassment.

D. With The Defendant

- Be absolutely impersonal in your attitude. Refer to him as “the defendant” and show no ill will.

E. With The Defense Counsel

- Maintain a courteous attitude under all conditions. He is merely carrying out his legal and ethical obligations.
- Cross-examination: no case is ever tried upon the **facts** as they actually occurred. It is tried upon the facts as they are made to appear, through the medium of human testimony. No two people see things alike--very few observe closely or see and hear perfectly—very few have any reliable sense of time, place or distance—some are so egotistic that they measure everything by their own rule. The task of the cross-examiner is to get at the truth **as near as possible** from this human jumble we call testimony.

