

THE TRUTH NEVER CHANGES

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I. INTRODUCTION:

Your stomach tightens as you walk into the prosecutor's office realizing that you will soon face the task of testifying. You know that you did well and you are on the right side of the law. Yet, something is just not right. Many law enforcement professionals experience this very feeling time and time again making courtroom testimony a negative aspect of the job. This article addresses the causes for your discomfort and suggests ways to become a good witness.

After twenty years in law enforcement, as an officer and a prosecutor, including testifying hundreds of times, and asking thousands of questions, I have devised five simple rules which will guide you through testifying in court: know the facts; act in accordance with the respect that your position deserves; listen carefully; think out your answers; and speak clearly, intelligently and directly to the jury. These rules do not arise through some stroke of brilliance for which I can singularly claim credit. Rather, the rules are based on common sense and insightful suggestions from many different people.

I will first address the courtroom setting from the perspective of control, because you must first understand how control affects your ability to be a good witness. Having addressed control in the courtroom, I will discuss the application of the five rules. This discussion involves some rules of evidence and how they effect your testimony. Finally, I will address how your credibility follows you throughout your career.

II. Control and the courtroom.

Control is an essential element in being a good witness. From the very beginning of your career you are taught to always maintain control. You control an encounter by dictating if a person sits or stands, talks or is otherwise restrained. It is common for you to use the phrase "I ask the questions and you answer them." In the courtroom setting, this is all reversed. I am sure you have had the uncomfortable feeling that you are not in control in the courtroom. This arises from the fact that you perceive that you can no longer choose the setting, adjust your physical stature or select the language to be used in the courtroom.

The difference between the streets and the courtroom is not as drastic as you may think. By changing the way you view the court and the manner in which you testify you can attain a higher level of comfort. First, you must understand the dynamics of the courtroom and the benefits of applying the rules to your testimony.

A witness must understand that the courtroom does not belong to the judge or the lawyers. It is an institution used by our society to dispense justice. The judge controls the proceedings and the lawyers represent distinct positions. However, the witnesses bring the facts which are necessary for a just decision. As a witness, you bring crucial information, and while you cannot control the manner in which you are questioned, you can exercise some control in the courtroom. You must always testify truthfully and completely, and effectively. When you are on the witness stand, you are presenting essential information which is necessary to the proceedings. Thus, you are on center stage and to do the best possible job you must be a good witness.

III. The Rules.

1. Know the facts.

Having a strong grasp of the facts is the first step in exercising control and there is no substitute for knowing your facts. While testifying you must always keep in mind why you are in the courtroom. You have important information that jury needs to make a just decision. This does not mean glancing over your reports minutes before you testify. It means taking the time to sit and digest the facts which you took the trouble of recording when they were fresh in your mind. Use good study techniques in your review. Try underlining or highlighting copies of your report showing important areas which effect your testimony. If it is a complex or lengthy report, tab the portions that are relevant to your testimony, so that you can retrieve them whether at a pretrial meeting with the attorney or while you testify. Remember, you were there and you are the best person to explain and describe in your own words what you observed. This is only possible if you properly prepare and know the facts.

2. Act in Accordance with the respect your position deserves.

Walk tall and proud for the badge that you wear and not arrogant for the power you think you have. Testifying truthfully and completely is not necessarily enough if your presentation takes away from the information presented. A good presentation comes from properly exercising control. Control is essential to both the trial attorney and the witness. Being in control tells the jury "listen to me because I am the one who knows what happened and can lead you to a just result." When you maintain control and dignity, you are telling the jury that your information is essential and trustworthy.

3. Listen Carefully.

You do not want to be caught in the position where your answer misses the point of the question. Do not start thinking of an answer while you are still listening to the question. Let the attorney finish the question and then think about your answer. If you do not understand the question or even a part of the question, say so. If you were not paying attention, say so. You need simply state "I was distracted could you repeat the question." There is no need to be embarrassed as the jury will have greater appreciation for a witness who is careful and deliberate. Being careful and deliberate shows control. Likewise, if you are asked a question which was not expected just answer as best as possible. Do not look at the attorney with a dumbfounded expression or worse with anger in your eyes.

The direct examination is usually done with open-ended questions. Open-ended questions merely ask for information and do not suggest the answer. Cross examination is done with leading questions. Leading questions suggest the answer in the question itself. "Your name is John Doe is it not?" is a leading question. "State your name?" is not a leading question. The purpose of direct examination is to solicit a direct answer. The attorney is looking for specific information that fits into his or her theory of the case. The attorney is also looking for sufficient facts to allow the jury to understand a situation and focus on the necessary facts. You may not share the same theory of the case but you will not be arguing the case to the jury. Restrict

yourself to listening to the question and providing an appropriate answer.

The rules of evidence prohibit some forms of multiple questions. If you are asked a question which is made up of many different questions then ask the attorney to please separate the questions so you can answer each question directly. You must answer a question from your personal knowledge unless you are called as an expert. You cannot be asked to speculate nor should you place yourself in the position of speculating. Ambiguous or confusing questions are inappropriate. This type of question is capable of being understood in more than one sense. Likewise confusing and unintelligible questions are inappropriate. These questions can involve unfamiliar words, disjointed phrases or confusing facts or other evidence.

You should also be aware of the type question which literally put words in your mouth. One favorite such question always starts as "Would you agree" When asked such a question, you should disagree if you do not agree with what is being suggested. The trick to this type of question is in the context of the question. You may agree with a general proposition but would have to disagree when raised in the wrong context. It is best to answer the question in your own words.

4. Think Out Your Answers.

The best possible answer is one which directly and succinctly answers the question. First you must follow rule 3, listen carefully, and then apply this rule. Thinking about your answer involves the old maxim "engage your brain before your mouth." Taking your time in thinking about your answer allows you to exercise control in the speed of questioning. Thinking out your answer does not call for an inordinate amount of delay, but will allow the jury to see you as thoughtful and careful. It is always important not to volunteer information which does not directly relate to the question that you are asked. As stated by Calvin Coolidge "You never have to explain something you never said."

Under any circumstance, answer questions directly and to the best of your ability. You must testify truthfully as to any and all matters. This includes information which you perceive may harm your case. If you have such information testify directly and do not lower your head or otherwise show that the information is harmful to the case. A common occurrence involves unrecorded information. You may have forgotten to put some important facts in your report but later remember it for your testimony. If asked if you neglected to place this in your report simply answer "yes." It, like all other information, is relevant and necessary for the jury to hear.

Although direct examination requires open questions, one that asks for a narrative is inappropriate. A narrative answer allows the witness to ramble about in the facts. Narrative answers are easily avoided by answering in a direct and succinct manner. The problem with a rambling answer is that it makes you think while you are talking. You should never volunteer extraneous information. No matter how badly you want to explain an answer, don't. Only explain answers when specifically asked to do so. Remember: the direct and cross examinations are only two phases of your testimony. The attorney who called you as a witness will be allowed to conduct a redirect examination and will, if appropriate, ask you to explain answers. Waiting until the redirect examination allows to you explain an answer without opening other areas for cross examination.

Always give positive and definite answers. Avoid saying things such as "I think" or "I believe" or "in my opinion." If you know, say so. If you don't recall say, you don't recall.

Answering in this manner causes you to be precise and deliberate. Not answering in this way allows you to be picked apart on cross examination. You must always know what you are saying or you should not say at all. When asked if you have spoken with anybody about your testimony, you must answer truthfully. Attorneys always speak to witnesses before they testify. There is nothing wrong with this. Many police officer witnesses have fallen victim to these very questions. "Officer Jones, have you spoken with the District Attorney before your testimony here today?" Officer Jones: "No, no I wouldn't do that." You may feel that such a question suggests that your testimony has been created for you. However, it is important for attorneys to know the answer to any and all questions that they are asking and the only way they can know is by talking to the witness before hand. Finally, never substitute your ideas or rules of evidence for that of the attorney.

5. Speak Clearly, Intelligently and Directly to the Jury.

The manner in which you present testimony has a great effect on how it is received by the jury. Common sense and good manners dictate that when you are speaking at someone that you look directly at them. This is no different in a court proceeding. When you are asked questions by an attorney look at that attorney until the question is complete. Once you have formulated your answer, then turn and look at the jury while giving your answer.

Cross examination is an attorney's tool to ascertain that all testimony can withstand scrutiny. It is every attorney's job to cross examine witnesses. It should never be a personal attack by an attorney but rather an extremely important facet of any court proceeding. You carry with you into any courtroom a level of respect generated by your position. Nothing will lose that respect faster than becoming angry or smart with an attorney under cross examination. It is important to maintain your composure at all times. An attorney who attacks a witness will not look good in front of a jury. Finally, it is never a good idea to look to the prosecutor when asked a question under cross examination. When you testify, you are on your own and you must do so by telling the truth and remaining composed.

IV. Conclusion.

You should understand that your credibility is an essential part of your profession and should be protected. Increasingly prosecutors are required to seek out evidence which would show that prosecution witnesses' credibility can be questioned. There is a new federal policy requiring that investigative agencies inform the U.S. Attorney's Offices of information on their employees which would indicate lack of truthfulness or dishonesty. Upon receiving such information a prosecutor is duty bound to release the information to the defendant.

Testimony is an essential part of your job. Prosecutors cannot follow-up on your field work without your support in the courtroom. By following the rules set out in this article, and having faith in yourself, you will be a good witness. When you are a good witness, you are doing justice to your colleagues and your own excellent field work. Your job is to tell the truth. The truth never changes, but the manner in which you present it truly affects the final outcome. When you walk into the prosecutors office, you should feel confident and look forward to telling what you know because it is the final reflection of your professionalism.