

# HOW TO BE A GOOD WITNESS

As a protective services worker you may often appear in court, either as a lay witness or as an expert. You may be nervous in anticipation of the experience. Such anxiety over a courtroom appearance is normal. The material that follows is designed to give you pointers on common concerns of witnesses.

## Preparing to Testify

1. Dress appropriately. Your personal appearance is important. Because courts tend to be conservative, you should dress in business rather than casual attire.
2. Prepare ahead of time. You know in advance when you will be called to testify. Use the time while you are waiting to refresh your memory and recall details about the events related to the case. Review these events in your mind; go over your notes. Don't expect to use your notes extensively at court, although they may be used, if necessary, to refresh your memory. A witness is generally expected to testify from memory.
3. Don't memorize your testimony. Review your expected testimony mentally. It is not a good idea to prepare a script; spontaneous responses are more believable and less likely to be shaken on cross-examination.

## How to Be Nervous and Not Show It

1. Expect to feel anxious. You will probably feel a sense of anxiety when you are called into the courtroom from the corridor. It is always a shock to see the judge, lawyers, and clients sitting in their respective places- and all of them will watch you as you enter. It is important to remember that the judge and lawyers observe every witness as he or she approaches the witness stand. This is not unusual or due to something wrong with the witness. It is easy, however, to feel stared down at this point. Just be prepared for the occurrence, making every effort to remember that this is how judges and lawyers view every witness, that it has nothing to do with any particular characteristic you may have. You should look directly back at the judge and lawyers- just as you would if you were speaking to them. Don't avoid their glance. You will find this approach relaxing.
2. Be prepared to answer the oath. The oath will probably be administered while you are sitting in the witness stand. Some jurisdictions, however, administer the oath while the witness stands before the judge's bench. Since your mind is apt to race ahead to the testimony, you may be startled unnecessarily by the bailiff's appearance to swear you to tell the truth. Remember to look for the bailiff and watch his or her signals so you know where to stand or sit while the oath is being administered.
3. Avoid the common signs of nervousness. You will feel a special kind of nervousness when you take the witness stand. At this point, the most common symptoms of

nervousness are: perceptual problems in the courtroom (especially of sight); lowering of the voice, speaking rapidly, or speaking in a monotone; slumping in the witness chair; inability to recognize anyone in the courtroom. To overcome these possible symptoms, take the following steps:

- If you are really nervous, the courtroom may seem huge and cavernous. You may experience tunnel vision where you see only the lawyer about to question you or your unhappy client- just as if they were at the end of a tunnel. To avoid the nervous overemphasis of the scene, you need to reorient yourself to the entire room and to the people in it. Therefore, any technique that serves to reacquaint you with the room and the people is helpful. A simple technique is to look at the wall to your left, to the back of the courtroom, and to your right.
- Everyone lowers the voice and speeds up the rate of talking when on the witness stand. What you should strive for is to speak somewhat louder and slower than you may think is necessary under the circumstances. Concentrate on making each word heard, but avoid long pauses between your words, phrases, or sentences. Moderation is the key word in your effort to overcome nervousness.
- Sit with your back straight, taking care not to allow your shoulders to slump or your body to slide down in the chair. If you begin the slumping and sliding process, the natural desire you have to get out of the spotlight will keep you slumping and sliding. Start out straight and you have a better chance of staying that way. A curled-up witness may not make as good an impression on the judge as a witness with erect posture.
- Although you may really know the lawyer and client, you may not recognize them. Look at each person in the courtroom separately.

### **How to Answer Questions**

1. Be sincere, dignified, and warm. Trials are inappropriate settings in which to inject humor or comic relief. The image you want to project is one of sincerity and dignified warmth. This case -as are all cases- is a serious matter. But it is also a human one in which you have a genuine concern for all of the people involved. Your projection of a humane attitude may assist the judge in evaluating your credibility in a positive manner. A concerned appearance on the stand usually makes a better impression than does a frozen or calculating one.
2. Speak clearly and distinctly. The judge, attorneys, and jury (if it's a jury trial) have to hear your response; also the court reporter if a record is being made of the hearing. So speak clearly and distinctly- in a voice that is probably louder than the one you use in ordinary conversation. You must give a spoken answer; nodding or shaking your head, gesturing, gasping, and other nonverbal communications will not be accepted as answers.
3. Use appropriate language. Use ordinary English words with which you are comfortable. Avoid slang, jargon, and words with unfamiliar meanings.

4. Answer the question that was asked. You must listen to each question so you know what information is appropriate. **For example:**

- Q.** "You stated that you are a licensed social worker. Where did you take your training?"  
That means formal schooling in social work- not the elementary and high schools you attended or the degrees you received that do not relate to your professional skills.
- Q.** "What did you and Mary Jones talk about during your first interview?"  
Give the time, date, and place of the conversation; then tell the substance of the conversation or topics discussed.

Ordinarily, you will not have to mention discussing such things as the weather, bus schedules, or other items that have no bearing on the professional contact. You might summarize these kinds of conversations by saying you "chatted briefly" or "discussed other matters" so the examiner can explore them if he or she feels they may be relevant.

Be alert to the kind of responses desired. Direct examination usually calls for narrative responses, whereas cross-examination normally asks for a "yes" or "no" or some other very short answer.

A common error of the witness is double-thinking or overthinking the question. To help you avoid this, pause before answering a question, and try to keep your brain from overextending the questioner's meaning.

Avoid offhand responses; likewise, too technical ones in attempting to draw meaning from the questions.

The English language does not change because it is spoken in a courtroom. For example, if the questioner asks: "Were you at the home of Mrs. Smith on August 20, 1989?" this does not mean: Were you in the home? or Did you remain in the home any significant length of time? It simply asks if you were at that house- inside, outside, or on the street in front of the house at any time that day.

5. Let the attorney develop your testimony. This applies to both direct and cross-examination. **For example:**

**Q.** "Do you remember an interview with Mary Jones on Monday, April 15, at 10:15 a.m.?"

The best response is "yes" or "no". In the next question, the examining attorney may ask you to narrate the substance or circumstances of the interview. The purpose of the first question may be to prepare a foundation before introducing the significant part of your testimony. This is the attorney's job; don't jump ahead.

6. If you don't know the answer to a question, say so. Don't guess. If you cannot remember, it is better to say so than to speculate. You may remember the answer later during your testimony; if so, the attorney questioning may re-ask the question. Do not rely, however, on the use of "I don't remember" or "I don't know" to avoid answering difficult or indelicate questions. If you are the eyewitness of child abuse, you will not be an effective witness if you cannot remember details.
7. Don't make your testimony conform to other testimony you have heard. You are called to testify regarding what you observed or what your opinion is. Different eyewitnesses can have different impressions of the same event. You are not expected to agree with or parrot someone else's testimony; the other person may be wrong. You can discuss discrepancies with your attorney, but this is done outside the courtroom.
8. When answering questions, look at the person asking the questions or at the judge. You are testifying in order to impart information to the judge or jury who will use it to determine the outcome. If you always look over at your lawyer before answering another attorney's question, it will look as if you are waiting to be coached. You are an impartial witness; you are not supposed to "win" the case for either side.
9. Tell the truth. Pure and simple. Let the chips fall where they may. Do not attempt to color your answers to fit the outcome of the case you believe is most fair or just. It is natural to feel like an advocate for a certain outcome; but you are a better witness if you are an impartial one. A slight shift in emphasis on cross-examination in an attempt to advocate a certain outcome can backfire; giving opposing counsel a basis to argue that you are biased. This may put a dent in your credibility. The lawyer is there to argue the case; you are there to report facts impartially to the judge. If a truthful answer seems to hurt the lawyer who asked you to testify, this should not be your concern. You are there to tell the facts.

## **How to Survive Cross-Examination**

All lawyers in the American system are required to cross-examine witnesses. Such cross-examination is not used against you personally; it is practiced on all witnesses and the more important the witness, the more vigorous the cross-examination.

**Here are a few points on cross-examination:**

1. State only what you remember. The cross-examiner may attempt to suggest details to you that you do not remember and that you did not state on direct examination. Do not follow the cross-examiner's leading question into an answer. For example, the cross-examiner may present a question in such a way that it seems eminently logical. If that is not what you remember, however, do not agree with the cross-examiner. Your suggestibility may cause you to change your answers without realizing it. **For example:**
  - Q.** "You saw blood flowing from the arm of Jane Smith after she was hit by the hammer, didn't you?"  
The witness thinks, Well, I saw Jane hit with the hammer. I don't remember the blood...but there must have been some. I'll say yes.
  - A.** "Yes."  
The witness in this example may, in fact, have been too far away to see the blood, and that is why the witness does not remember seeing any. This distance perception problem will be argued by the cross-examiner as impeaching the witness's believability. Or it may be that the skin was not broken because the force was not great enough. In this case, the witness will be impeached because a doctor will testify to the fact of no blood loss.
2. Be very careful what you say and how you say it. Even a friendly cross-examiner looks for inconsistencies by which to trip you whenever possible. Remember:
  - Listen to the question.
  - Make sure you understand what is being asked. If you don't understand the question, ask the questioner to rephrase it, or say you don't understand what information is being asked for. This situation can easily arise on cross-examination since leading questions (that is, questions suggesting the answer) are permitted. Leading questions are usually prohibited on direct examination of the witness.
  - Don't volunteer information that is not asked for. Volunteering provides the cross-examiner with additional opportunities to try to confuse you.
  - Don't explain why you know something unless you are asked.
  - The attorney offering your testimony has a chance to ask additional questions after cross-examination to clear up any problems.
3. If a question has two parts requiring different answers, answer it in two parts. Many times, cross-examiners ask compound questions. Do not answer a partially untrue question with a "yes." When responding to a compound question, divide the question

into parts and then answer it. **For example:**

**Q.** "Is it not true that you drove to the Smiths' home on August 16, 1995, stormed inside, and immediately picked up their child, Mary Smith?"

**A.** "There are three parts to that question, and each part has a different answer. I did go to the Smith home, but I spoke with Mrs. Smith on the porch for 15 minutes. Then we spoke in the living room for another 15 minutes. After that, she allowed me to take custody of Mary."

Do not begin your answer with "yes," because the attorney may cut you short and not allow you to complete your response, thus giving an erroneous impression of your actions.

4. Answer positively rather than doubtfully. Qualifiers such as:

"I think..."

"To the best of my recollection..."

"I guess..."

weaken the impact of your testimony. Be forthright if you know the answer. If you don't know the answer, say so.

5. Don't get caught in the "yes or no" problem. If on cross-examination the opposing attorney asks a question and ends it with "Answer yes or no," don't feel obliged to do so if you feel that such an answer would be misleading. Begin your answer with "Well, that needs explaining." The attorney may object and the court may even require you to give a yes or no answer; but the jury will understand your position and look forward to your explanation when your attorney clarifies the situation on redirect examination.
6. Admit your beliefs or sympathy honestly. Often, a witness will be asked a question regarding sympathy for one side or the other in the case. It would be absurd to deny an obvious sympathy, and honest admission of favoritism will not discredit a witness.

**For example:**

**Q.** "Do you have a feeling as to how you would like this case to come out?"

**A.** "Yes...I'm afraid I do."

**Q.** "You would like the State to get custody of little Mary and remove her from her mother, wouldn't you?"

**A.** "Yes, I feel that way. But I have answered all of your questions as honestly as I possibly could. I have told the truth."

This is very different from coloring answers because of favoritism.

When an attorney shows that a witness will change testimony because of feelings about a case, the attorney is showing that the feelings of the witness are affecting his or her testimony. This is bias that can damage credibility.

7. Don't get caught by a trick question. If you are asked, "Are you being paid to

testify?" remember that it is acceptable for experts to be paid and that, in most jurisdictions, lay witnesses receive statutory per diem and mileage allowances for the inconvenience. If you are being paid to testify, say so and explain. For example: "I am being paid a fee of twenty dollars." If the expert is being paid his or her normal consultation rate, the expert should state this. Of course, if the answer is no, say "no." To the question, "Who told you to say that?" you should state that you were told to tell the truth. You may be asked, "Have you discussed this case with anyone?" And since you naturally have discussed the case with the attorney for your side, say so. Also, name your supervisor and anyone else with whom you have discussed the case.