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**How to be a Good Trial Witness**

*Please note that, while this article accurately describes applicable law on the subject covered at the time of its writing, the law continues to develop with the passage of time. Accordingly, before relying upon this article, care should be taken to verify that the law described herein has not changed.*

**Suggestions on Effective Trial Testimony**

In twenty five years of litigation work, I have observed certain things that make a person a better witness in a trial or arbitration. As a caveat, these tips will not, in my view, help someone who is untruthful perpetrate a fraud in their testimony. However, applying some of these suggestions will often help a truthful witness more successfully persuade a judge, jury or arbitration panel of the trustworthiness of their testimony.

**Preparation for Trial.**Your preparation is very, very important.

Read and re-read the relevant documents in your case in the weeks leading up to your trial to refresh your memory. Then, read them again.

The more you review the documents, the better witness you will make.

If you know the documents, you will be less likely to make a harmful mistake.

Also, the more you know the documents the more confidence you will have and exude as a witness.

Do not allow yourself to be impeached with your own document solely because you had forgotten a document you had authored or been a party to previously.

**Attire.**For men, wear a dark conservative suit, white shirt, and conservative tie. The suit does not have to be expensive but should be conservative.

Wear black dress shoes, not boots, sneakers or sandals.

For women, dress appropriately for the seriousness of the occasion. Avoid revealing clothing and avoid designer clothing.

Do not wear any jewelry other than a watch and wedding ring.

Regarding your wardrobe, remember you are trying to be non-offensive to anyone, and not play into anybody’s stereotypes. The best witness attire is one that nobody remembers the next day.

It does not matter if you wear the same suit every day. It is better to look respectful of the process and humble, than to show you are a fashionable dresser.

**Testimony.**Credibility and likeability are the keys.

Think carefully at all times before you speak.

Answer with words, not gestures. Yes/no, not nods or “un-huhs.”

Speak up so that you can be easily heard.

Speak in a low, clear and calm voice.

Keep your hands and feet still.

Put your hands in your lap, if necessary.

Do not be too animated in your testimony or gestures.

If you come across as too assertive, you may not engender sympathy.

Avoid any attempts at humor as they do not come across right in such a situation.

Consider all remarks on the record.

Talk directly, plainly, respectfully and fully responsive to all questions asked of you by any attorney or the judge when you are on the stand.

Sit up very straight. Never slouch.

Speak up so you can easily be heard. Don’t get yourself in a situation where the court reporter, the judge or someone else asks you to speak up. It plays into the old stereotype that someone whose voice tapers off or is too soft on the stand is not telling the truth.

Do not speak too fast.

Do not use any slang or profanity of any kind.

Do not act irritated by the opposing attorney’s questions. Answer them straightforward and respectfully. It is better to act like you do not even know the attorney is being disrespectful to you.

When testifying, do not take the bait if the attorney examining you is trying to “push your hot button”. Keep your cool. It is much better to win by the trial outcome than to have a momentary sense of satisfaction of standing up to the attorney in the back and forth dialogue.

It is often easier to deal with truthful, although bad, facts than the loss of credibility caused by untruthfulness.

If you are caught in a lie, it could mean complete disaster for your credibility and case, so do not lie.

Maintain a pleasant demeanor at all times.

Act naturally. Be yourself.

Listen to each question.

Think about where the question is leading to?

Think about your answer first before blurting it out.

Remember, opposing counsel knows where he or she is going; you probably do not.

If you do not know the answer, please say so.

Do not guess or speculate on any question asked of you.

“I do not know” answers virtually never hurt unless they are overused.

Do not speculate, guess, assume, estimate, exaggerate or state opinions.

* "I assume so"
* "I guess ..."
* "If you say so ..."

If you don’t know the answer, please just say so: “I don’t know.”

Avoid beginning phrases such as:

* “In all honesty”
* “Truthfully”
* “Frankly”
* “Honestly”

Remember, you are already sworn to tell the truth. These kinds of comments are often interpreted as indicators you might be following them with a lie.

Do not respond to pregnant pauses or silence. (Some attorneys will use this technique because many witnesses, already nervous, feel the need to fill in the silence by adding to their last answer.)

Respond only to questions, not to statements.

When questioned about a document, ask to read it before responding. (Taking time to carefully read a document allows you time to anticipate questions, formulate answers, and avoid mistakes that occur because of nonawareness of all information in the document.)

Never assume that a quoted statement is actually in a document, or that the document says exactly what the opposing attorney says in his question. He may be putting his spin or interpretation on it.

Do not be evasive. If there is a factual point that cannot be reasonably disputed, let it come out in a way that appears you have no hesitation about telling the truth.

**Conduct During Trial.**While the trial is going on, be sure to eat breakfast and a light lunch. Have blood sugar in your body so your mind is as sharp as possible.

Do not be late getting back from any court breaks. Always be at your chair when the judge wants to resume session.

Do not let your cell phone go off in Court. It is viewed very disrespectfully, and jurors will resent you because they are often not allowed to keep their cell phones with them.

On court breaks, do not go out and smoke. Some people are anti-smokers and look unfavorably on smokers. Some non-smokers view it as a character weakness. Some may be on your jury. You can go without if it means a good trial outcome.

On breaks, do not use your cell phone. Do your calls at night. It is a bad message to send to the jurors that your attention is anywhere other than in the courtroom, even during breaks. No business or personal call is that important. I would leave your cell phone in your car every day.

It is important for you to remember that jurors are watching you at all times. They are making decisions about you when you are not testifying as much as when you are testifying. So, even if another witness is on the stand, sit up in your chair, pay respectful attention, and show no emotion. Do not shake your head if you do not like a witness’ testimony. It is better that you remain “poker face” so that the jury thinks you probably do not agree, but you are respectful of the process.

Do not bring food or your own drink into the Courtroom. Judges are very protective of their courtroom. Sometimes a judge will invite parties to bring their own bottles of water or colas into their courtroom, but that is rare. I have also been reminded that since jurors usually do not get to bring their own drinks into Court it would be bad form for you to do so as a party or counsel.

When sitting at the desk with your attorney, do not react to testimony in a way that will tell the jurors the testimony got under your skin or made you uncomfortable. Sometimes if I do not like what a witness is saying I wait a few minutes to write a note to myself because I don’t want to send the message that the testimony bothered me. It is a good idea to write notes evenly, quietly and not animated.

Do not constantly tug at your attorney’s coat. Better to quietly slip him a note. Let him concentrate. You will have breaks to discuss questions or concerns.

As the days go on, do not get comfortable in the situation or lower your attention to the above details. You have too much riding on the situation. A judge, juror or arbitrator could make up his or her mind at any time during the process.

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