

The Art of Testifying

Offering testimony before a judge and jury is a natural and understandable cause for anxiety. Witness testimony is often the cornerstone of a case, and the witness's desire to be believed and understood sometimes leads to behavior that has the opposite effect. Like anything else, delivering strong, effective testimony requires knowledge of some basic precepts and techniques.

There are two basic principles that must be adhered to in order to ensure that testimony is delivered as effectively as possible.

Honesty

The first deals with the issue of honesty. Even beyond the actual content of the truthful testimony, it is imperative that a witness *appear* honest. People can often tell when a person is attempting to be someone whom they are not. If a witness attempts to conduct himself in a manner that is unnatural, the jury may observe this and question the individual's credibility. To avoid this, witnesses should talk and act as they would in a semiformal social setting.

Putting forth too much effort to appear calm and focused will cause a witness to look stale and stiff, thereby lowering his credibility with the judge and jury.

There is no need for a witness to use technical jargon or a complicated pattern of speech unless they have been specifically called upon to do just that. However, when simply stated, even complicated issues can be understood by laymen.

Not enough emphasis can be placed on the importance of preparation—reviewing and rehearsing one's testimony prior to appearing before the court. Attorneys count on their witnesses to know what to say and when to say it. Recognizing both attorneys' strategies and the essential elements necessary to prove or disprove the case will highlight the necessary components of the testimony, which must be clearly presented. Pretrial meetings with counsel, however, have their limitations. It is not always possible to predict every question or change of strategy that may be used during cross-examination. Sometimes the course of the trial may change in such a way that the previously planned testimony needs to be omitted.

In these situations, it is again absolutely crucial that the witness remains honest. Even when under pressure from an attorney, an honest witness realizes that he is the one in control of the testimony. If a witness is placed in such a situation, he should take the time to recall the answer, as opposed to making one up or guessing at the answer. There is no shame in saying, "I don't know." It does a disservice to the justice system to give testimony that may or may not be accurate, but is only the result of panic under pressure.

Act Naturally

The second basic principle is to act naturally. If a witness is asked about a particular set of circumstances, he should relate his recollection of those circumstances in the way he would to an inquiring friend or family member. A certain amount of detail is required, of course, but careful word choice and avoidance of excessive use of description when it is not relevant to the case is prudent. Care must be taken to avoid the use of interjections such as "uh," "um," "well," and "like" as they tend to detract from the clarity of the testimony. Questions should be answered clearly, concisely, and accurately, but the witness should not expand upon the answers unless prompted to do so by the judge or an attorney, whose job it is to explore the witness's testimony by asking the appropriate questions. The witness must rely on the attorneys to repair problems or ask the proper clarifying questions, rather than being unresponsive to the question asked.

Witnesses must also be aware of their body language. Putting forth too much effort to appear calm and focused will cause a witness to look stale and stiff, thereby lowering his credibility with the judge and jury. The three aspects to be especially mindful of are facial features, posture, and gestures. A witness should always look at the person or persons with whom the dialogue is taking place, looking at the attorney when being asked a question, and the jury when giving an answer. It is also expected that a person's facial expression will alter during the course of his testimony, as it naturally does when recalling and relating facts and events. Witnesses should avoid slumping or twisting in their chair, sitting instead with their back straight, yet not in an obviously uncomfortable position. This has the added benefit of making the voice clearer and more distinctive. A witness's hands need not be in his or her lap throughout the testimony, as

by Douglas E. Wicklander and David E. Zulawski



Wicklander and Zulawski are partners in the investigative and training firm of Wicklander-Zulawski & Associates, Inc. (www.w-z.com). They are also the authors of *Practical Aspect of Interview and Interrogation* 2nd Edition, CRC Press, 2001. They can be reached at 800-222-7789 or dwicklander@w-z.com and dzulawski@w-z.com.

occasional hand gestures are a natural part of the human speech pattern, yet fidgeting with such things as pens, pencils, and fingers should be avoided.

The Effective Witness

A witness is called upon to give testimony, that is, to give an honest account of something about which he has first-hand or expert knowledge. Any case will have strengths and weaknesses, which the attorneys will attempt to exploit. The effective witness remembers it is the attorneys who must ask the correct questions to elicit the answers that they seek. The most effective witness is honest with himself about his unique position and with the court's desire to consider what they know, not what they have memorized. A good witness remembers that they are being called because of who they are and what they know. He is honest, relaxed, and confident, because he realizes that he only has to be himself. ■

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various constructive actions, which might include the following:

- Proactive recruitment of minority associates at all levels, especially in loss prevention.
- Retailers should appoint citizen review panels or independent ombudsmen to provide advice and oversight over the actions of store LP.
- Retailers should publicize toll-free telephone numbers, allowing shoppers to anonymously report instances of racial, gender, or age discrimination.
- The retail LP profession should take a public stance against the hiring of off-duty police officers in lieu of in-house store security personnel. We must recognize that often the common denominator in these problem cases has been the use of part-time, off-duty police officers as in-store security personnel.

Currently, allegations of racial discrimination are far too widespread. Public sensitivity to this problem is not just going to go away by itself. In fact, anti-retail sentiments seem to be getting worse. The solution is going to require coordinated and direct action on the part of the entire industry. Retailers cannot afford to just ignore sincerely held concerns among a significant segment...and soon to be the majority...of the shopping population. ■

Your corporate **culture**
Our corporate **character**

Defining a winning team!
It just doesn't get any better than that.



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