

## Principles of Testifying

+++ 알림 +++

- 여기에 올려져있는 웹논문 자료들은 저자의 허락을 받아 게시한 것으로 이 논문자료들을 저자 또는 PNS A&I INC.의 허락없이 무단도용하거나 무단번역하여 사용할 수 없습니다.
- 이 논문/자료 내용들은 저자의 주관적인 견해 또는 검증되지 않은 사항들이 포함된 것들도 있으므로 논문자료 내용이 반드시 올바른 것은 아니며, 따라서 여기에 게재된 논문자료들의 내용은 PNS A&I INC.의 공식입장과 다를 수 있음을 알려드립니다.

by Joseph E. Badger, Bloomington, Indiana

*Originally published in the ACCIDENT RECONSTRUCTION JOURNAL under the title "So You Want to Testify", July/August 1991. Revised and reprinted here with permission of the author. Although written primarily for law enforcement personnel, the principles apply to engineers or anyone else who must testify in a civil or criminal trial.*

During your recruit school or police academy training, you probably had someone from your agency's Legal Department give a lecture on Court Room Procedure. Perhaps an attorney, local prosecutor or judge explained what you should and should not do while testifying in court.

Naturally, it was training you for something with which you were unfamiliar and it may still be new to you. Some officers rarely have to go to court, others may climb onto the witness chair only a few times during their career.

Half way through my twenty years with the Indiana State Police, I became the state's first officially-designated, full-time Accident Reconstructionist and eventually discovered a significant percentage of my time would be spent in a court room. Before getting into accident reconstruction, I scarcely saw the inside of a courtroom except for a few arraignments and a trial now and then. Years ago, when the Justice of the Peace system prevailed, most misdemeanor cases were handled in a tiny office in a J.P.'s home. For major crimes, much of my time was spent in some courthouse anteroom or hallway and

when I eventually took the stand, it was for only a few minutes.

However, since 1978, I've testified and given opinion testimony as an accident reconstructionist 133 times in some 52 different counties and in more than 95 separate courts. Being on the witness stand for hours at a time and watching others testify has given me insight into some of the problems you may encounter.

#### WHAT TO WEAR

Your agency may have special policies or guidelines governing your appearance in court. Those policies may require the wearing of your uniform. Most prosecutors want you in uniform (gives an air of authority) but some Federal judges won't permit you to wear a sidearm or weapon and you might feel naked being in uniform without it. (The idea the judge has is that the defendant could claim he or she felt intimidated by the uniform, especially if there are several officers present.)

If you ARE in uniform, make sure it's a fresh one and that the brass is highly polished and that your shoes are shined. That probably goes without saying, but I've seen some officers who were an embarrassment to their agency.

Most "plain clothes" detectives should wear clothes that are indeed plain. Don't wear "loud" jackets or plaid ties with strange colors. Whether you are a police officer, civilian, a doctor, consultant, nurse, welder or teacher, dress as dignified as possible. Dark or medium browns, grays, or blues are acceptable. Look professional. Even if you are a truck mechanic or salvage yard operator, wear neat, clean clothes.

#### BE FAMILIAR WITH YOUR SURROUNDINGS

For most trials, there is a separation of witnesses. This means you have to wait outside the courtroom until you are called and you shall not discuss your testimony with other witnesses. Remember, the first impression the judge and jury will have of you is when you are called to the witness stand. You will be sworn in, then allowed to be seated.

As you enter the court room, walk briskly and with purpose. You should have familiarized

yourself with the layout of the court room ahead of time. Before trial, ask the prosecutor or, in a civil matter, the attorney who sent you the subpoena, where the judge prefers you enter the court room and where he or she wants you to stand for the swearing in.

Stand at attention! Look Sharp! Do not appear as though you have just gotten off night patrol (even though you probably did), and don't give the impression you'd rather be someplace else and that you wish this was over. If you're like me, you are positive the attorney checked your schedule before setting the trial date just so he could make you appear on your day off. (Chances are, if you fail to appear, the case could be dismissed.)

If you wear glasses, avoid wearing the type with tinted lenses. Unless absolutely necessary, do not wear sun glasses. If you must wear prescription sun glasses, put forth an effort to keep them nearby and have the prosecutor refer to special glasses you are required to wear. THEN, put them on. Some people are unnerved when talking with or listening to others wearing dark glasses. People like to see your eyes as you speak. If they can't see your eyes, they may feel you have something to hide. Sunglasses can give you a "gangsta" appearance.

Be comfortable, but do NOT slouch. Even if you have to sit for hours in a most uncomfortable witness chair, don't give the appearance of being ill at ease. You'll probably be nervous, especially at first. If your hands shake, don't worry about it. It's normal to be nervous. Being on the witness stand is like being on stage. Having the jitters is okay; you'll get over it in a few minutes. Generally, there is a ledge around the witness box, and if handed a document or photograph to examine and you still have the "shakes" merely place the item on the ledge and keep your hands out of sight.

#### PRESENTING YOUR TESTIMONY

In the case of a jury trial, you are there to assist the jury in making a decision. Talk to them. Don't talk down to them. If you have to get into a technical area, don't automatically assume the members of the jury haven't a clue what you're talking about. If your vocabulary is escaping the jury, the attorney should ask you to explain it in more simple terms.

As you are being asked a question, look at the person doing the talking, then pause a moment (this pause will be explained in a moment), and give your answer TO the jury. As you give your answer, maintain eye contact with each juror. Tell the truth! You've learned through experience to tell when someone is lying to you just by looking into their eyes and by observing body language. Let the jury know you are indeed telling the truth; let them read it in your eyes.

Now, about the pause: Some lawyers like to object a lot. An objection is valid especially if you are answering outside the scope of the question. Frequently, counsel puts on a performance for his client. Often, making an objection is merely a tactic. The attorney may know the objection will be overruled, but there is always that chance one will slip through. As we've all heard, they seem to teach law students in Circumvention of Law 101 that if you can't attack the evidence, attack the witness. So pause briefly after a question to allow the other attorney a chance to object. It is possible you could actually bring about a mistrial by blurting out an answer. If you have started an answer and someone makes an objection, stop immediately, even if in mid-syllable.

Some learned counselors haven't learned to stay away from convoluted questions. If the question seems to have several questions within it, ask the attorney to rephrase or simplify the question. If you don't understand the question, say so. If you didn't understand it, the jury probably didn't either. If you don't know the answer, say you don't know. Don't try to say what you think the attorney wants you to say. Let me repeat: If you don't know, say so. If you've forgotten something you knew at one time, say you don't recall.

If, during your testimony, something refreshes your memory and you recall an answer, say so. Should you inadvertently answer a question incorrectly and later realize you made a mistake, say so. It is no sin to admit an error. We all make them. Also, when asked a question, answer only that question. Pay attention now: Do not volunteer other answers or information. As you speak, keep in mind that your testimony must be heard by the jurors, the attorneys, the judge, and the court reporter. The reporter must make a record of everything said. This record may be transcribed later. A lot of us talk with our hands, but the court reporter cannot transcribe a gesture. You may read some trial or deposition testimony where the reporter writes: "Witness nods," or "Witness shakes his head." It is

preferable if you say "Yes" or "No."

If you have been on the stand for a long period of time and Nature calls, it is permissible to request a break. You may address the court with a phrase such as, "Your Honor, could we take a short break?" You may wish to say something to the attorney rather than the judge. If you have been testifying for a long period of time and need a drink of water, you might catch the eye of the prosecutor or, in a civil case, the attorney that called you and pantomime bringing a glass up to your mouth. If that doesn't work, simply state your mouth is quite dry and you need a drink of water. Occasionally, an attorney will try to make you mad or cause you to "lose your cool." Restrain yourself. I've had attorneys slam books on the table, shout, and pound his fists. The trick is to remain calm, consider the source, and then ask him to repeat the question. Many lawyers lose cases merely because the jury sees them as mean ol' rich attorneys picking on the poor innocent policeman. Do not argue with the attorney. You are supposed to answer questions, not get into a debate. If you keep it up, you may be admonished by the judge to "simply answer the question." If asked a "Have-you-stopped-beating-your-wife?" question, answer by merely stating you cannot answer the question as asked, or request the question be rephrased.

One thing adversary attorneys like to do is cross you up. If he or she has found an inconsistency in your testimony, look out. That inconsistency will be jumped on, picked at, and dissected. The best way to prevent inconsistencies in the first place is to tell the truth, the whole truth, and nothing but the truth. Don't exaggerate the truth, just tell it like it is.

For instance, accident reconstruction is gathering all manner of evidence - circumstantial, hearsay, physical - and piecing it together to get the facts. You are seeking the truth. As an impartial, unbiased investigator, you should not even care HOW it comes out. Let the chips fall where they may. Don't try to twist facts around to fit a foregone conclusion. Take the evidence for what it is and based on your training, education and experience, state your best conclusion. Don't fabricate evidence or assume things not in evidence. The adage "Honesty is the best policy" is never more applicable than as a witness in court. You'll never have to worry about perjuring yourself or getting out of a corner if you stick with the truth.

IT'S NOT OVER TILL IT'S OVER

If you have to get back to work following your testimony or if you merely want to leave, I find it helpful when I'm told "You may step down," to ask the judge, "Am I excused?" At this point, the judge will usually ask both sides if either has further need of your services. Unless one side or the other wants to use you on Redirect, Recross or Rebuttal, you'll be excused and allowed to leave. Once you finish your testimony, leave the courtroom unless you have been instructed otherwise. Customarily, the court permits the prosecutor to have an officer (usually the initial investigator) remain with him throughout the trial. If this is the case, you will be advised ahead of time that you may return to the prosecutor's table. If you are unsure, ask.

Remember, the members of the jury are human. It doesn't hurt for them to know you are merely mortal, too.