

Instructions for Witnesses*

- You, as a witness in a lawsuit, have a very important job to do, since, in order for a jury to make a correct and wise decision, it must have all of the evidence put before it truthfully.
- You already know that you take an oath in court to tell nothing but the truth. But there are two ways to tell the truth: one is in a halting, stumbling, hesitant manner, which makes the jury doubt that you are telling all of the facts in a truthful way; the other is confident and straightforward, which makes the jury have more faith in what you are saying. You help yourself, the party you are testifying for, the judge and jury by giving your testimony in this last way.
- To assist you, here is a list of time-proven hints and aids which, if followed, will make your testimony much more effective.

Suggestions To A Witness

1. As a witness to an accident, try to visit the scene before the trial. Stand on all corners and become familiar with the place. Close your eyes and try to picture the scene, the objects there, and the distances.
2. Before you testify, visit a court and listen to other witnesses. This will make you familiar with a court, and help you to understand what will happen when you give your testimony.
3. Wear clean clothes in court. Dress conservatively.
4. Do not chew gum while testifying or taking the oath.
5. Stand upright when taking the oath. Pay attention and say "I do" clearly.
6. Don't memorize what you are going to say.
7. Be serious at all times. Avoid laughing and talking about the case in the halls, restrooms, or any place in the courthouse.
8. Talk to the members of the jury. Look at them most of the time and speak to them frankly and openly as you would to any friend or neighbor. Do not cover your mouth with your hand.

Speak clearly and loudly enough so that the farthest juror can hear you easily.

9. Listen carefully to the questions asked of you. No matter how nice the other attorney may seem on cross-examination, he may be trying to hurt you as a witness. Understand the question. Have it repeated if necessary; then give a thoughtful, considered answer. Do not offer a snap answer without thinking. You can't be rushed into answering, although, of course, it would look bad to take so much time on each question that the jury would think you were making up an answer.

10. Explain your answers if necessary. This is better than a simple "Yes" or "No." Give an answer in your own words. If a question can't be truthfully answered with a "Yes" or "No," you have a right to explain the answer.

11. Answer directly and simply only the question asked, and then stop. Do not volunteer information not actually asked.

12. If your answer was wrong, correct it immediately.

13. If your answer was not clear, clarify it immediately.

14. The court and jury only want facts; not hearsay, or your conclusions or opinions. You usually can't testify about what someone else told you.

15. Don't say, "That's all of the conversation," or "Nothing else happened," Say instead "That's all I recall," or "That's all I remember happening." It may be that after more thought or another question you will remember something important.

16. Be polite always, even to the other attorney.

17. Don't be a smart aleck or a cocky witness! This will lose you the respect of the judge and jury.

18. You are sworn to tell the truth. Tell it. Every material truth should be readily admitted, even if not to the advantage of the party for whom you testify. Do not stop to figure out whether your answer will help or hurt your side. Just answer the questions to the best of your memory.

19. Don't try to think back to what was said in a statement you made. When a question is asked, visualize what you actually saw and answer from that. The jury thinks a witness is lying if his story seems too "pat" or

memorized, or if he answers several questions in the same language.

20. Do not exaggerate.

21. Stop instantly when the judge interrupts you, or when the other attorney objects to what you say. Do not try to sneak your answer in.

22. Give positive, definite answers when at all possible. Avoid saying "I think," "I believe," "In my opinion." If you do not know, say so; don't make up an answer. You can be positive about the important things that you naturally would remember. If asked about little details that a person naturally would not remember, it is best to just say that you don't remember. But don't let the cross-examiner get you in the trap of answering question after question with "I don't know."

23. Don't act nervous. Avoid mannerisms which will make the jury think you are scared, or not telling the truth or all you know.

24. Above all—this is most important—do not lose your temper. Testifying for a length of time is tiring. It causes fatigue. You will recognize fatigue by certain symptoms: (a) tiredness, (b) crossness, (c) nervousness, (d) anger, (e) careless answers, and (f) the willingness to say anything or answer any questions in order to leave the witness stand. When you feel these symptoms, recognize them and strive to overcome fatigue. Remember that some attorneys on cross-examination will try to wear you out until you will lose your temper and say things that are incorrect or that will hurt you or

your testimony. Do not let this happen.

25. If you do not want to answer a question, do not ask the judge whether you must answer it. If it is an improper question, your attorney will take it up with the judge for you. Don't ask the judge for advice.

26. Don't look at your attorney or at the judge for help in answering a question. You are on your own. If the question is improper, your attorney will object. If the judge then says to answer it, do so.

27. Do not "hedge" or argue with the other attorney.

28. Do not nod your head for a "Yes" or "No" answer. Speak out clearly. The court reporter must hear.

29. If the question is about distances or time and your answer is only an estimate, be sure that you say it is only an estimate. Be sure to think about speeds, distances, and intervals of time before testifying, and discuss the matter with your attorney so that your memory is reasonable.

30. When you leave the witness stand after testifying, wear a confident expression, not a downcast one.

31. There are several questions that are known as "trick questions." If you answer them the way the other attorney hopes you will, he can make your answer sound bad to the jury. Here are two of them:

(a) "Have you talked to anybody about this case?" If you say "No," the jury knows that is not right because good lawyers always talk

to a witness before they testify. If you say "Yes," the lawyer may try to infer that you were told what to say. The best thing to do is to say very frankly that you talked to whomever you have—lawyer, party to suit, police, etc.—and that you were just asked what the facts were. All you do is tell the truth.

(b) "Are you getting paid to testify in this case?" The lawyer asking this hopes your answer will be "Yes," thereby inferring that you are being paid to say what your side wants. Your answer should be something like: "No," I am not getting paid to testify. I am only getting compensation for my time off from work, and the expense (if any) it is costing me."

32. Except in a few situations, an insurance company cannot be joined as a defendant, and if anything is said that will let the jury know that an insurance company is actually defending the case, the judge will declare a mistrial. The jury will be discharged, and the case started all over. Therefore, be careful not to mention insurance.

33. Go back, now, and reread these suggestions so you will have them firmly in your mind. We hope they won't confuse you. We hope they will help. They aren't to be memorized. Ask us about anything you don't understand. You will find there is really no reason why you should be nervous while testifying. If you relax and remember that you are just talking to some neighbors on the jury, you will get along fine.

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