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So You're Going to be a Witness

A LAWYER GIVES YOU POINTERS ON HOW TO ACT IN COURT

By Sydney C. Schweitzer

Bill Smith told a straightforward story of the accident to his wife. He described in detail how she fell down the store stairs, how a defective step had caught her heel. But when the opposing counsel asked him:

"Did you discuss this case with anyone before coming to court?" he blurted an emphatic: "No, of course not!" The answer cast a fatal shadow over the plaintiff's case, because once the cross-examiner extracted the truth, he was able to discredit Smith in the eyes of the jury.

"A witness who lies about such obvious matters," he hammered with telling effect, "is likely to have lied about everything!" And Bill Smith (that wasn't his real name but it will serve to illustrate the point) found himself in trouble on the witness stand. You can profit by his mistake if you are ever called, as you might very well be, to testify as a witness.

Don't dodge the witness chair!

Let me say right here: a witness does not always have a happy time, but-for your own sake, don't ever flee your responsibility as a witness! It may not always be convenient for you to leave your job or home and spend a day in court. But remember this: Someday the shoe may be on the other foot. You may find the fate of your own case hinging on the willingness of someone to come forward and tell what he knows. People who refuse to volunteer as witnesses for others are, in the last analysis, injuring themselves!

Your first impulse when asked: "Did you talk to anyone about this case?" is to give a defensive "No." But common sense will tell you that a lawyer must talk to his witnesses before trial. No attorney in his right senses would put a witness on the stand "cold."

Here is another type of question: "When did you slow down to the legal rate of speed?" or "In what month did you stop cheating your partner?" This is a familiar pattern of question, trite perhaps, yet it has a thousand variations that still trap unwary witnesses.

"Are you being paid for coming to court?" Watch out for this question. Never forget that it is perfectly proper for you to receive a witness fee for appearing in court as a witness-more than that may raise a suspicion of "bought testimony," unless of course, you are what the courts know as an "expert witness," entitled to special fees. A witness in court often is like a mouse caught in a trap. His answers may be blocked at every turn by lawyer's objections, or twisted into something different from what he intended. Quite often he will find that the simple truth is completely by-passed-in the law's zealous insistence on compliance with the rules of evidence. A properly prepared witness is better able to meet the impact of a withering cross-examination. That's why able trial lawyers carefully instruct each witness on proper courtroom behavior.

Here are ten golden rules for you to follow if you're summoned to court. They may make the difference between your success or failure on the witness stand.

1. *Never argue with opposing counsel, or flare up in anger, no matter how strong the provocation.* You're as helpless as a fish in a barrel the moment you lose your self-control.
2. *Talk slowly on the witness stand- no matter what your natural bent in speech.* There's nothing more disconcerting to a rapid-fire cross-examiner than a slow spoken, deliberate witness, who will not be stampeded or diverted into dangerous side paths-and there's nothing more dangerous to you than quick-triggered answers.

3. *Never guess at the meaning of a question.* Too many people dislike to show signs of ignorance. If a question is ambiguous, there's a good chance you're being baited for a contradiction later on. Don't be ashamed to state frankly: "I don't know what you mean."

4. *Don't be long-winded Give no more information than is asked. It can't help you and may hurt you, by baring new matter for cross-examination.* Brief, to-the-point answers have their own rewards. Lawyers remember the classic story about a gateman called to testify about a collision between a train and an automobile. The plaintiffs' attorney tried vainly to shake the witness' story that he stood at the crossing, swinging a lantern as the train whistle sounded in the far distance. The gateman's story impressed the jury who found against the injured party. A friend later asked him: "Bill, you didn't say whether that lantern was lit." Said the gateman: "I wasn't asked."

5. *Stick to the facts.* You're on safe ground so long as you tell only what you saw-not what you think happened, or what you heard someone else say took place. The latter form of testimony is not only objectionable as hearsay, but makes you highly vulnerable in the hands of a skilled cross-examiner. Don't be flippant. Leave puns and wisecracks to the story-tellers. Never forget that your examiner is in control.

6. *Refuse to be shamed or shouted into an answer you never intended to give.* It's as dangerous to glibly guess that a corner is the "northeast" one, as it is to let the other lawyer put the answer into your mouth. Seventh or Eighth Avenue? Mary Williams was positive an accident happened on Eighth Avenue. Later on, when the cross-examiner casually asked her: "Now, Miss Williams, will you please tell this jury on which side of Seventh Avenue the cars collided?" She replied the "north side," missing his substitution of avenues. It was too late to explain. No amount of later explanation could fully remove the doubt thrown on her testimony.

7. *Never hesitate to admit frankly you don't remember certain physical facts such as measurements, distances and colors.* "Do you mean to say, Mr. Jones, that you don't remember the color of the defendant's car? Is that what you want this jury to understand?" Even if the lawyer sounds incredulous, don't weaken your testimony by hazarding a guess!

A common variation of the same question is one like this, asked in a belligerent tone: "Do you want us to believe, Mr. Jones, that you remember the distance of the cars from the corner at the time of the collision, yet you can't tell us their speed!" Don't be afraid to say quietly: "Correct."

8. *Never memorize a story- for two sound reasons!* First, it will sound too pat; second, the moment a slight dent is made, the whole structure will collapse.

9. *Beware of questions that seek to force a "yes" or "no" answer.* An X-ray expert was asked: "Have you ever seen a fracture in an X-ray just like this one?" He had diagnosed hundreds of fractures-but precisely like this one? He tried to explain. "Answer the question-yes or no," pressed the cross-examiner. "But I can't, in just that form," the witness said. The judge supported the witness, and directed the question be reworded. So remember-if you're asked a question that you can't honestly answer by a mere "yes" or "no" say so, and ask that it be reworded.

10. Finally, and remember this above all else, take pains to listen attentively to each question. Never forget that the aim of the cross-examiner is to question your testimony before the jury. The most innocently worded questions may be laden with dynamite.

Such a question

A woman testified in one suit about the events preceding the collision of two automobiles. Her story held up under long cross-examination until she was asked: "You're sure you heard the crash?" She nodded firmly. "I certainly did." The examiner then asked quietly: "And you're also sure it was this crash that first drew your attention to these vehicles?" Her answer came quickly and unthinkingly. "Of course." This was enough to make a gap in the plaintiff's case, as the lawyer was able to make it appear that everything preceding the collision was born of her imagination or another's suggestion. In conclusion, let me repeat: no court system can work without witnesses. You are simply weakening a system of justice that protects you if you try to avoid testifying in court when you possess valuable evidence.

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