Testifying in Court

What makes an officer an effective witness in court? That was the question we posed, in 1991, to several respected judges, prosecutors, defense attorneys, and officers. Some of them have since died, most of the others have retired. One sits on the Court of Appeal, and another sits on the California Supreme Court. Having decided to cover this subject again, we thought about revising it, maybe getting some new ideas. But, after giving it some thought, we decided against it. This was not because we thought the members of the original panel might have covered every conceivable quality of effective police witnesses. It was because we were certain they had.

Be Prepared

Everyone we interviewed stressed the importance of preparedness. Said an officer, "I think many of the problems with officers' testimony are caused by the officers themselves—they're just not prepared." The amount of preparation that is necessary will, of course, depend on the complexity and seriousness of the case and the importance of the officer's testimony. In murder cases, for example, a homicide detective said he routinely takes his case files home at least one week before trial and reviews everything. A robbery detective said he likes to study the file and "try to plan how to respond to questions I think will be asked. It's like chess: What move is the defense attorney going to make?"

At the very least, being prepared means carefully reading police reports because, as a prosecutor explained, "An officer can't be an effective witness unless he has a command of the facts in the report." Another officer added, "When you're reading your police report you don't want to memorize things like license plate numbers and quotes from the victim or the defendant. That sounds rehearsed. If somebody asks me to quote something, I refer to my report so the jury knows they're getting exactly what was said, not my best recollection."

Impartiality

An officer's testimony will have significantly greater weight if he or she demonstrates an impartial, unbiased attitude. Conversely, an officer's credibility will suffer if it appears that he or she has a personal interest in the outcome. This does not mean an officer should appear uninterested or passive. It simply means that the officer should convey the sense that his or her only interest is to present the facts. As one judge suggested, "Just state the facts and let the chips fall where they may." Another judge said, "Don't go into the courtroom carrying a torch or a spear. Just tell the truth. If an officer sticks to the truth, a defense attorney can cross-examine him until the building falls down, but he won't accomplish anything."

This means an effective police witness will answer each question truthfully, even if the answer might hurt the prosecution's case. Said a prosecutor, "If an officer fudges on something he thinks will hurt the case, it will probably come out from other witnesses. Then the officer's credibility is shot."

Treat the DA and defense attorney alike: An officer can also demonstrate impartiality by interacting with the defense attorney and prosecutor in the same manner. A DA's investigator noted that an officer will often appear friendly and relaxed when he or she is being questioned by the DA, "but then the cross-examination starts and he immediately becomes defensive. There may be a change in the tone of voice. He may move around in the chair, sort of squirming. This is body language. Don't do this. Speak to the defense attorney with the same demeanor and attitude as the DA." A judge agreed: "Some officers say 'Yes, sir' to the DA but with the defense attorney they say 'That is correct, counselor.' They are more stiff. And if the DA misstates something, the officer should correct him just as he would correct the defense attorney."

Don't be evasive: An officer's credibility may also be hurt if he or she attempts to avoid answering an unambiguous question. Judges and jurors

usually see this as an indication the officer has an interest in the outcome of the case, and that maybe the answer would help the defense. As a defense attorney explained, "If I'm trying to get an answer out of an officer and he won't give me one, he's doing me a favor." Another defense attorney said, "When an officer is evasive, he looks defensive. I will keep asking the question until I get a direct answer. I've asked the same question four times in a row. Eventually I'll get an answer, but it makes a bad impression when an officer won't answer a simple question."

DON'T VOLUNTEER INFORMATION: Just as an attempt to avoid answering a question may hurt an officer's credibility, an attempt to volunteer information may also indicate that the officer is trying to "help" the prosecution. According to a defense attorney, "An effective police witness just answers the questions and gets out. He doesn't get into long explanations. I like to think that when an officer goes beyond what is asked, I can win. I can accomplish something. It also makes it look like he's not neutral. If I think an officer is susceptible to volunteering information, I'll take him on, try to impugn his credibility."

DON'T GET ANGRY: There are two reasons that officers should not demonstrate anger toward the defense attorney. First, the officer's image as an impartial witness will be damaged. Second, the officer's anger may make it difficult for him to think clearly and to respond effectively to the attorney's questions. On the other hand, if the officer successfully resists the impulse to demonstrate anger—no matter how obnoxious the defense attorney—the officer's image as a professional will be strengthened. Poise and self-control are qualities that judges and jurors like to see in an officer.

Note that some defense attorneys will *try* to get officers angry on the witness stand. In the words of a judge, "Don't ever get angry with a defense attorney. They're doing this for a purpose. They're trying to bait you." Said another judge, "When an attorney is making you mad, don't give in. He's going to manipulate you by building on your emotions. Your anger will keep you from thinking clearly. If he can get your goat, he's winning. But if he gets angry and you don't, you really win."

Officers should also never become sarcastic or irritable. "Where officers get into trouble," said a judge, "is when they start answering a defense attorney by saying something like, 'Of course I did,' or 'As I already told you . . . .'" Another judge warned, "If an officer gets smart, I let the attorney go at him. But if the officer keeps his dignity, I'll tell the attorney to be civil, or there will be hell to pay."

"I DON'T KNOW": An officer who does not know the answer to a questions should say so. There is nothing wrong with answering "I don't know," or "I can't remember." As a judge explained, "Some officers I don't trust. Others I tend to trust because they've said 'I don't know' or 'I didn't see it." A prosecutor put it this way: "There's a myth that an officer on the stand has to answer every question, has to know everything." A defense attorney agreed, saying, "I remember a case where there had been a lot of muggings in a park so this officer was sent in as a decoy, dressed like a bum. He was leaning against a tree when my client grabbed a $20 bill from his pocket. I didn't have much of a defense, so at the trial I asked him, 'You say you were leaning against a tree. *What kind of tree was it?* It didn't make any difference, of course, but instead of just saying 'I don't know,' he became totally unglued and stammered, "It . . . it . . . it was a *wooden* tree!"

I DON'T UNDERSTAND THE QUESTION: Attorneys frequently ask confusing questions. Sometimes they do this on purpose to try to confuse the witness. An inspector pointed out that some officers don't like to say they do not understand a question because "they think it sounds foolish. They're concerned that the attorney will belittle them. But it's still better to say 'I don't understand' than try to guess. Besides, the jurors probably didn't understand the question either, so the attorney's attempt to belittle the officer will probably backfire."

Avoiding Traps

There are various ways that defense attorneys may try to reduce an officer's effectiveness as a witness. Here are some common tactics:

CROSS-EXAMINATION ABOUT POLICE REPORTS: Sometimes there are inconsistencies between an officer's testimony in court and what he wrote in his police report. Or the officer may testify about something

that he did not include in his report. Defense attorneys commonly point out such inconsistencies in an attempt to create doubt about an officer's testimony. When this happens, do not become defensive. If there was an error, simply acknowledge it. As an inspector observed, "One of the hardest things for officers is to admit a mistake. Why? One reason is they're afraid that jurors or the judge won't believe anything they say. But everyone makes mistakes. It's only human." A defense attorney put it this way, "All important facts should be in the police report. If not, it may look like the officer is inventing it. If something was omitted which turned out to be important, be humble. 'I screwed up.' But as a defense attorney, I'd rather have the officer try to cover up, to patch it up somehow."

REPEATED QUESTIONS: An attorney may try to cause an officer to give an inconsistent answer by asking the same question several times. As an inspector observed, "Some attorneys will ask a question three or four times. Essentially it's the same question but there's a little change in the language. They're trying to get a 'yes' answer to a question which was previously answered 'no.' You've got to pay attention.

SUMMARIZING PREVIOUS TESTIMONY: Officers should be especially alert when a defense attorney asks a question in which he or she summarizes the officer's previous testimony; e.g., "Earlier you testified that . . . ." The danger here is that the attorney may deliberately or negligently misstate the officer's testimony. Said a prosecutor, "A defense attorney will sometimes paraphrase what the officer said earlier, but it's somewhat incorrect. So listen carefully and, if he misstates it, say, 'That's not exactly what I said.' Don't think, 'Well, that's close enough.'"

An officer remembered a suppression hearing during which he testified that he stopped the defendant's car because it matched the description of a getaway car in a robbery. "I testified," said the officer, "that I stopped the car because it was a Cadillac and it was blue with a red stripe. On cross-examination the defense attorney said, 'You testified you stopped my client because he was riding in a blue car.' I responded, 'That's not what I said.'"

DID YOU TALK TO THE DA? Some defense attorneys routinely ask officers if they talked to the DA or other officers involved in the case before testifying in court. Usually, the purpose of the question is to suggest that the officer was coached by the DA or met with the other officers "to get their stories straight." When an officer is asked such a question, it is important not to get defensive. There is nothing wrong with talking to the DA and other officers before testifying. Prosecutors are *supposed* to talk with officers before going to court, and it is only natural for officers to talk amongst themselves about their cases and their experiences. So if the answer is yes, say so and do not feel as if you need to provide an explanation or excuse. According to a defense attorney, "It's okay to talk to the prosecutor and other officers about the case before testifying. There's nothing sinister about it. Might as well say so; the ceiling won't crash in. Sometimes it's significant. But mostly it's not."

Officers should, however, be careful if they are asked whether they talked to the DA or other officers "about your testimony," or "about how you are going to testify. These questions are different because a yes answer is more likely to be interpreted as an indication the testimony was rehearsed. Consequently, a prosecutor advised, "Don't fall for that trap, 'Did you talk to the DA about your testimony?' One way to answer that question is, 'If you're asking whether we talked about *how* I was going to testify, the answer is no.'" An officer explained, "When I'm asked whether I talked to the DA or other officers about my testimony, I usually say something like, 'We didn't talk about how I was going to testify. We talked about the facts of the case.'"

REFRESHING YOUR MEMORY: If an officer does not know the answer to a question because he forgot it, he or she may be permitted to review the police report if the officer thinks it would refresh his memory. Officers should not, however, simply start reading the police report whenever the answer to a question might be found there. Instead, ask for permission from either the judge or the attorney who asked the question: "May I refer to my police report?"

Plain English

There is hardly anything that turns off a judge or jury as much as hearing an officer speak in that stuffy, military-type style that has unfortunately become associated with law enforcement. This style of speaking is characterized by the use of words and phrases that are unnatural and overly formal in place of words and phrases that are simple and direct. Some examples:

"I exited my patrol vehicle." (I got out of my car.)
"I proceeded northbound." (I went north.)
"I effectuated a right turn." (I turned right.)
"I entered the residence." (I went inside.)
"That is correct." (Yes.)

Some other examples were cited in a case from the Ninth Circuit:

> The agents involved speak an almost impenetrable jargon. They do not get into their cars; they enter government vehicles. They do not get out of or leave their cars, they exit them. They do not go somewhere; they proceed. They do not go to a particular place; they proceed to its vicinity. They do not watch or look; they surveille. They never see anything; they observe it. No one tells them anything; they are advised. A person does not tell them his name; he identifies himself. A person does not say something; he indicates. They do not listen to a telephone conversation; they monitor it. An agent does not hand money to an informer to make a buy; he advances previously recorded official government funds. An agent does not say what an exhibit is; he says that it purports to be. The agents preface answers to simple and direct questions with 'to my knowledge.' They cannot describe a conversation by saying 'he said' and 'I said'; they speak in conclusions.

Testifying like this causes problems because it makes the officer appear cold and overbearing. "This type of language sets up a barrier between the officers and the jurors," said a judge. "What you really want is to convince the jury you are just like the guy who lives next door." Another judge said, "It helps if an officer is relaxed on the stand, talking like a real human being. Jurors don't warm up to officers who talk in this strange language." A prosecutor pointed out, "That stilted language causes jurors to concentrate on the phrasing of the officer's testimony rather than the testimony itself." An officer put it this way, "Police jargon is fine for TV and movies. But when accuracy is important, when you want to communicate with judges and jurors, it's terrible."

Other Suggestions

Here are some miscellaneous suggestions that were mentioned by the people we interviewed:

- "When the court clerk asks you to state your name, just state your name. Don't give your title and don't spell your name until the clerk asks you to. 'Officer John Doe, D-O-E.' It sounds showy, and makes the officer appear self-important."
- "Appear interested in the questions as opposed to just saying 'yes' or 'no' in a flat monotone. Make your testimony come alive for the jury."
- "Don't lounge in the chair. Sit straight or lean slightly forward. It shows you're interested. And don't act cocky."
- "Don't worry when you can't figure out what the defense attorney is trying to accomplish on cross-examination. A lot of them are asking questions which are really meaningless. They're doing it for affect or because they don't know how to cross-examine a witness. Meanwhile, the officer is worrying, 'What's going on here? What's he up to?'"
- "Don't make statements that are merely conclusions like 'I had probable cause' or 'He didn't see me.' Instead, give the facts that caused you to reach this conclusion like 'I believed I had probable cause because . . . .' or 'I don't think he saw me because . . . . "
- "It's okay to be nervous. I've been a cop for 20 years and I still get nervous. It gives you a competitive edge, gets the adrenaline going."
- "There's nothing wrong with having a sense of humor in court. Let the jury know you're human. It's okay to laugh at yourself." POV