

# Testifying in Court

**W**hat makes an officer an effective witness in court? That was the question we posed to several experienced and highly regarded judges, prosecutors, private defense attorneys, and officers. Their answers, which are the subject of this article, were particularly interesting because they were so similar. There was virtually total agreement on what helps—and what hurts—an officer’s effectiveness in court. It was also interesting, but not surprising, that everyone we interviewed stressed one characteristic in particular that gives weight to an officer’s testimony: professionalism.

It is apparent that the qualities associated with professionalism in the courtroom setting can be developed. Although a particular officer’s personality may make him more likeable, the overall impact of his testimony seems to depend more on attributes that can be cultivated. In fact, the officers we interviewed—all of whom are known as effective witnesses—emphasized that they have worked, and continue to work, to develop their courtroom skills.

## Be prepared

Everyone we interviewed stressed the importance of preparedness. Said one 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 will depend on the complexity and seriousness of the case and the importance of the officer’s testimony. 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?” While such extensive preparation is not always necessary, there are certain things that every officer should do before taking the witness stand.

**READ POLICE REPORTS:** According to one prosecutor, “An officer can’t be an effective witness unless he has a command of the facts in his police report.” This does not mean that officers should be able to repeat everything verbatim. As one officer pointed out, “You

don’t want to memorize things like license plate numbers and quotes from the victim or the defendant. It sounds rehearsed. Phony. If somebody asks me to quote something the defendant said, I want to look at my report so the jurors know they’re getting exactly what he said, not my best recollection.”

A defense attorney told us that the most ineffective witness he had ever cross-examined was an officer who took the stand without even scanning his report. “He came in late, so the DA didn’t have time to talk to him. He kept confusing the facts in my case with the facts in another case. It wasn’t pretty.”

Note that an officer who is testifying in court may be permitted to review his police report before he answers a question if it would help refresh his memory. Officers must not, however, simply start reading the report whenever the answer to a question might be found there. Instead, they should ask for permission; e.g., “May I refer to my report?”

**READ TRANSCRIPTS:** If officers have given testimony in the case previously at, for example, a preliminary hearing or suppression hearing, they should obtain a copy of the transcript from the prosecutor and read it over carefully. This serves two purposes: It will help refresh their memory, and they may see something that was incorrect. If so, they should be sure to tell the prosecutor so that jurors will hear about the mistake from the prosecution, not the defense.

## Impartiality

An officer’s testimony will have significantly greater weight if he demonstrates an impartial, unbiased attitude. Conversely, an officer’s credibility will suffer if it appears he has a personal interest in the outcome of the case. This does not mean that officers should appear uninterested, bored, or passive. It simply means they should convey the sense that their only objective is to present the facts. As a 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—he won’t accomplish anything.”

This means, among other things, that officers must answer each question truthfully and completely even if it 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." Following up on this theme, an officer said, "Don't worry about the verdict. Your main concern should be your credibility. When I'd testify as a expert in a drug case, if the DA asked, 'In your opinion does possession of six rocks of cocaine indicate possession for sale?' I'd say no, even if it meant the possession for sale charge was lost." Another officer said, "A defense attorney will sometimes ask a hypothetical question that could be answered either A (which helps the prosecution) or B (which helps the defense). Some officers will only answer A even if A and B are both plausible. This causes a loss of credibility."

**EQUAL TREATMENT:** Officers can also demonstrate impartiality by treating the prosecutor and defense attorney in the same manner. A detective noted that officers sometimes appear friendly and relaxed on direct examination, "but then the cross-examination starts and they suddenly become defensive. There may be a change in the tone of voice. They 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 said he noticed that "some officers say 'yes, sir' to the DA, but with the defense attorney they'll say 'that's correct, counselor.' They're more stiff with the defense attorney." He added, "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 attempts to avoid answering an unambiguous question. Judges and jurors usually see this as an indication that the officer has an interest in the outcome of the case, and that the truth might 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 give me a straight answer."

**DO NOT VOLUNTEER INFORMATION:** Volunteering information, like trying to avoid answering a question, may hurt an officer's credibility because it may indicate to the jury that he is trying to "help" the prosecutor. According to a defense attorney, "An effective police witness just answers the questions then gets out. He doesn't get into long explanations. I like to think that when an officer goes beyond what is asked, I can accomplish something." A judge had this advice: "Don't overdo it. Answer the question, then stop. I truly feel that if an officer has three words to say it's better to say two than four."

**EXPLAINING AN ANSWER:** Although officers should not volunteer information which was not requested, they may seek permission to explain an answer if an explanation is necessary to prevent misunderstanding. Suppose a robbery victim told the officer that the perpetrator was "about six feet tall." He then looked closely at the officer, who was six feet tall, and added, "he was about two or three inches shorter than you." At the robber's trial, the defense attorney asks the officer, "Isn't it a fact that the victim told you that the robber was six feet tall?" Technically, the answer is yes. So, how should the officer respond? The people we interviewed emphasized that the officer should *not* say "yes," then quickly try to explain the rest of the victim's statement. Instead he should say something like, "The answer is yes, but with the court's permission I'd like to explain this answer to prevent misunderstanding." It would also be appropriate to simply answer "yes" and wait for the prosecutor to request an explanation on redirect.

**DON'T DEMONSTRATE ANGER:** Here is one of the most important things an officer can do on the witness stand: Don't demonstrate anger toward the defense attorney. It can be brutally difficult sometimes, but poise and self control are qualities that judges and jurors like to see in officers.

If the attorney is really obnoxious, here is something to keep in mind that might help resist the impulse to let it fly: Some defense attorneys will *try* to generate anger as a trial tactic. 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 now 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* win. Another judge put it this way, "If a defense attorney gets argumentative, keep cool. There's no point in having two fools in the courtroom."

**DON'T GET SARCASTIC:** Instead of demonstrating outright anger, officers will sometimes respond by getting sarcastic or irritable. This, too, must be avoided. "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've already told you.' Or, if the attorney asks a question like, 'Why did your partner go into the store?' answering, 'Well, I don't know. You'd better ask *him*.'"

**"I DON'T KNOW":** An officer who does not know the answer to a question should just 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'd been a lot of muggings in a park, so this officer was sent in as a decoy, dressed as 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 matter, 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":** Attorneys frequently ask confusing questions. Sometimes they do it on purpose to try to confuse the witness. An inspector pointed out that some officers will not say they do not understand a question because "they think it sounds foolish. They're concerned that the attorney will belittle them by responding, 'Well, what part of my question don't you understand?' or 'Will the court reporter please read back my question for the officer?' But it's still better to say 'I don't understand' than try to guess. Besides, the jurors probably didn't understand either, so the attorney's attempt to belittle the officer will usually backfire."

## Avoiding traps

There are various ways in which defense attorneys might try to reduce an officer's effectiveness as a witness. The following are fairly common.

**CROSS-EXAMINATION ABOUT POLICE REPORTS:** Defense attorneys often try to undermine an officer's credibility by pointing to differences between his testimony in court and something he wrote in his police report. Or they might note that the officer testified to something that was not included in his report. This happens a lot because police reports are not intended to provide a comprehensive narrative of something that happened or was said. As the Court of Appeal observed, "What trial judge cannot attest that officers often remember facts on the stand which they neglected to put in their police reports?"<sup>1</sup>

So when this happens the thing to remember is this: Don't become defensive. If there was an error in the police report, admit it. If something was inadvertently omitted, say so. It might be difficult to do this in open court, but it's a lot better than trying to cover up or make excuses. An inspector observed, "One of the hardest things for officers is to admit a mistake. Why? One reason is they're afraid the jurors or the judge won't believe anything they say. But everyone makes mistakes." 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.'" Another attorney said, "Of course officers don't put everything in their police reports. It's not meant to be a report of every jot and tittle that came along. I don't think an officer should be defensive about putting everything in."

An inspector noted that officers sometimes "lose it" when attorneys start questioning them about their police reports. "The attorney may say, 'Now you received training in writing police reports. This is a copy of your report. Can you show me where I can find the information you just testified to?' If it's not in the report and it's not vital information, I'll try to explain that the purpose of the report is simply to describe basically what happened, to provide enough information to establish PC or to get the case charged. And we put in enough so we can recall what happened." A judge agreed: "It's okay for an officer to explain that the purpose of a police report is to cover

<sup>1</sup> *People v. Wilson* (1986) 182 Cal.App.3d 742, 752.

the important details, not every conceivable detail. But if you really made a mistake, admit it. Everyone can sympathize with a mistake, but not a cover-up.”

“**DID YOU TALK TO THE DA?**” Some defense attorneys routinely ask officers if they talked to the prosecutor or other officers before testifying in court. They usually do this to suggest that the officer was coached by the prosecutor, or that he met with other officers to “get their stories straight.” Again, the thing to remember is don’t get defensive. There is nothing wrong with talking to prosecutors and other officers about a case. So if the answer is yes, say so—and do not feel compelled to offer any explanations or excuses. According to a defense attorney, “It’s okay to talk to the prosecutor and other officers about a case before testifying. There’s nothing sinister about it.”

**REPEATED QUESTIONS:** An attorney might try to cause an officer to give an inconsistent answer by asking the same question several times with minor changes. According to an inspector, “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.’”

**REPEATED ANSWERS:** An attorney might ask a series of questions which, for one reason or another, the officer cannot answer. In these situations, officers should try to avoid giving the same response to each question. For example, an officer who immediately responds “I don’t recall” or “I don’t remember” to a series of questions may be viewed as being evasive or uncooperative. Instead, officers should give each question some thought and try to respond as directly as possible. For example, instead of saying “I don’t recall,” they might say “I wasn’t looking at that.”

**SUMMARIZING PREVIOUS TESTIMONY:** Officers should be alert when a defense attorney asks a question that begins with a summary of their previous testimony; e.g., “Earlier you testified that . . .” The danger is that the attorney may deliberately or negligently misstate the officer’s earlier testimony. If so, and if the officer answers the attorney’s question, it may appear that he agrees with the attorney’s summary. As a prosecutor observed, “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 what I said.’ Don’t think, ‘Well, that’s close enough.’” An officer remembered a 1538.5 hearing in which he testified that he stopped a car because it matched the description of a getaway car in a robbery. “I had testified I stopped the car because it was a blue Cadillac with a red stripe. On cross-examination the attorney said, ‘You testified that you stopped my client because he was riding in a blue car.’ I responded, ‘That’s not what I said.’”

### Plain English

There is virtually nothing that turns off a judge or jury as much as hearing an officer testify in that stuffy, military-type style known as a “police-speak.” This point was raised—and emphasized—by every person we interviewed. It’s *that* important.

This manner of speaking is characterized by the use of words and phrases that are unnatural and too formal, in place of words and phrases that are simple and direct. Thus, in *United States v. Marshall* it was apparent that the judges who decided the case had become frustrated having to read a transcript filled with “police-speak.” Said the court:

The agents involved speak an almost impenetrable jargon. They do not get into their cars; they enter official 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 surveil. They never see anything; they observe it. No one tells them anything; they are advised.<sup>3</sup>

Some other examples:

- “I exited my patrol car.” (I got out of my car.)
- “I proceeded northbound.” (I went north.)
- “I activated my emergency equipment.”  
(I turned on my red lights and siren.)
- “I effectuated a right turn.” (I turned right.)
- “That is correct.” (Yes.)

As a judge pointed out, “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. An officer comes across as cold, lacking personality and feeling.” POV

<sup>3</sup> (9th Cir. 1973) 488 F.2d 1169,1171, fn.1. ALSO SEE *People v. Morrongiello* [nonpublished decision originally at (1983) 145 Cal.App.3d 1, 8 [“We do not know if the police academy teaches officers to speak in such stilted language or whether they are infected with a flair for the circumlocutory once they take to the field.”]. **NOTE:** This article first appeared in 1991 and was reprinted in 1997.