



COURTROOM TESTIMONY

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Contents

Introduction	1
I. THE BASIC PROCEDURE	1
A. Direct Examination.....	1
B. Cross-Examination	1
C. Re-Direct Examination.....	1
II. YOUR MAIN GOALS.....	1
A. Get The Jurors To Like, Trust And Respect You.....	2
1. The Jurors Will Like You If You Like Them	2
2. To Appear Honest, You Must Be Honest	2
3. Gain Respect By Showing Respect	2
B. Be The Same Person On Direct and Cross	3
III. SPECIFIC RECOMMENDATIONS	3
A. Your Actions Should Fit The Jurors' Expectations	3
1. Jurors Expect Dignified Behavior.....	3
2. Serious But Not Grim Fits the Circumstance.....	4
3. Be Prepared And Thoughtful.....	4
4. Watch The Trial, Not The Jurors	4
5. Remember, The Jurors Are Always Watching You.....	4
6. Plan Ahead If Nervousness Might Be A Problem	4
B. Communicate With Your Eyes, Face And Body.....	5
1. Look At The Attorney When They Ask Questions.....	5
2. Face the Jury, Make Eye Contact And Use "Friendly" Body Language	5
3. During Cross-Exam, Don't Look At Your Attorney	5
C. Take Your Time.....	5
1. Listen To The Question	5
2. Think Before You Speak	6
3. Speak Slowly And Pause Often	6
4. Review Documents And Exhibits Before Commenting On Them.....	6
5. Do Not Talk When Others Are Talking.....	6
6. Be Quiet And Prepare During Objections	7
7. Don't Fill Silences.....	7
D. Answer Accurately.....	7
1. Answer The Question That Is Asked	7
2. An Accurate Answer Is Your Best Recollection	7
3. Stay With Your Best Recollection.....	8
4. Estimate Don't "Guestimate"	8
5. Do Not Answer When Confused, Ask The Attorney to Re-Phrase	8
6. Correct Misstatements During Your Testimony	8
E. Answer Concisely.....	9
1. Direct Answers Help The Teamwork Between You And Your Attorney.....	9
2. Emphasize But Don't Exaggerate Good Facts	9
3. Be Very Concise During Cross-Examination	9
4. Tell the Bad Facts Quickly In a Matter of Fact Manner	10
F. Review This Document Before You Testify.....	10
G. A Note on Deposition Testimony	10

INTRODUCTION

This paper provides general suggestions that all witnesses will find helpful. *You and your attorney should tailor the suggestions to fit your circumstance and personality.*

The first section, Court Procedure, describes the three formats in which you will answer questions: direct, cross and re-direct examination. The second section, Main Goals, describes the key characteristics of an effective witness and the attitudes you must have to show those characteristics. The third section, Recommendations, describes actions that will show those attitudes during your courtroom appearance. The Contents page summarizes all of the recommendations.

I. THE BASIC PROCEDURE

A. DIRECT EXAMINATION

Direct examination is your first opportunity to tell the jurors your side of the story. Your attorney asks the questions during direct exam. Your attorney can only ask questions that are open to many possible answers. For example, “What time did you go to work that day?” “What happened next?”

You should use the questions your attorney asks as prompts or reminders and in the back and forth of question and answer get your story before the jury in your own words. While you should always answer directly, you can and should give longer answers during direct than during cross-exam.

B. CROSS-EXAMINATION

The attorney for the other side conducts cross-examination. Opposing counsel may ask leading questions, which usually limit you to a brief answer, often nothing more than “yes” or “no.” For example, “You got to work at 8 o’clock that morning, didn’t you?” “And then you saw Mr. Smith leave the building with this document in his hand?”

As the example suggests, leading questions do not let you tell the story in your own words and do not give you much opportunity to explain. Leading questions frustrate many witnesses. Some lose their patience and start arguing. Just the reaction opposing counsel wants.

Relax. You will get another chance to explain fully, and your attorney is listening and preparing for your second opportunity. Trust your attorney to do their job, while you concentrate on doing your job. Listen to the question. Stop, think, and formulate your response. Keep your poise. Give a short accurate answer, and then wait for the next question.

C. RE-DIRECT EXAMINATION

Re-direct is a second direct examination. It gives you a second chance to explain. Re-direct comes *after* the opposing attorney’s cross-exam. You and your attorney use re-direct to clear up any important points that got confused or were not fully explained during cross-exam.

II. YOUR MAIN GOALS

What jurors remember most about your testimony is how they *felt* about you. If they like and trust you, the good things you say stand out in their minds. Consequently, how you come across is as important as what you say, because *how the jurors feel about you shapes what they think you said.*

A. GET THE JURORS TO LIKE, TRUST AND RESPECT YOU

You will make an effective witness if the jurors feel that they *like, trust* and *respect* you.

1. THE JURORS WILL LIKE YOU IF YOU LIKE THEM

To get the jurors to like you, focus first, foremost and only on how you feel toward the jurors. Everyone wants to be liked, including jurors, and the simple fact is we like people who like us.

If you have a caring, respectful attitude toward the jurors, that feeling will flow through your non-verbal behavior and manner of talking and the jurors will like you in return

Public speaking frightens some people. They think of the audience as strangers and fear the audience won't like them. Effective public speakers think of the audience as their friends and concentrate on treating their friends well. This way of thinking makes it easier to feel confident.

Look upon the jurors as your friends. Like you, they have mothers, fathers, wives, husbands, children. Imagine you have know and like each one of jurors.

This is harder than it sounds. It's natural to feel nervous or afraid when people are going to make a judgment about us. When we're afraid, we get angry. When angry, we attack, often by ridicule.

If you have sat at the table for the whole trial, by the time you testify you may have decided the juror in the back row should go on a diet, the guy in the front row is stupid, and the woman next to him wears too much make-up. You may suspect particular jurors favor the other side. If you think about the jurors this way, it will be very hard to get up on the stand and like the people in the jury box.

Have some compassion. Your friends and family have good points and bad points. So do you, and so do the jurors. Don't be harsh or judgmental. Rather, imagine you know and like each one of them.

2. TO APPEAR HONEST, YOU MUST BE HONEST

There are many reasons to tell the truth in court. First, you are under oath and it is your duty. Second, trustworthiness is a key characteristic of an effective witness. Third, the judge will instruct the jury that if they believe you lied about anything, they can disregard *everything* you say.

To appear honest, *you must have a sincere, internal commitment to tell the truth*. If you do, that attitude will flow through your body, facial expression, and style of answering.

Jurors *try* to believe witnesses who they *feel* are telling the truth. They get this feeling from your non-verbal behavior. Your facial expression, body posture and hand movements need to show honesty. They also get this feeling from the way you answer questions. Indirect, evasive or vague answers suggest dishonesty. Brief, direct answers seem honest.

However, simply answering in a particular manner or having a particular expression, body posture or hand movement is not going to convince the jurors of your honesty. A polished face won't hide a cheating heart. You must have a sincere desire and intention to tell the truth.

3. GAIN RESPECT BY SHOWING RESPECT

You gain the jurors' respect by respecting the demands of the situation. The jurors will decide the case. Respect their role. During your testimony, you are *expected* to address your statements to the jurors. If you don't look at and talk to the jurors when you testify, they will react poorly.

It is *extremely* helpful to imagine that every question coming from either lawyer was actually written by someone on the jury. All the attorney is doing is reading from a list of questions supplied by the jurors. Each attorney is just the “temporary spokesperson” for the jury.

When answering, look from one juror to the next, trying to find the juror who wrote the question, making sure that juror understands your answer. Opposing counsel may “read” the question with a nasty tone, or thunder the question, or lace it with sarcasm. Ignore all that. Inside that tone, underneath the sarcasm, lies a question one of the jurors wants answered.

If you look at it this way, you treat every question with respect. And address every answer to the jury.

B. BE THE SAME PERSON ON DIRECT AND CROSS

From direct exam to cross-exam the *only* thing that should change is the length of your answers. Continue talking to the jury. Treat opposing counsel as respectfully as your own attorney.

Opposing counsel will try to show the jury you have testified inconsistently. They do this by getting you to *act* inconsistently. If you act inconsistently, it won’t matter if you say the same things. Show the jurors a split personality and they will find your testimony contradictory.

You must remain consistent. Opposing counsel will try to rattle your consistency. It’s not personal. It’s their job. The jurors look at it this way. You should too. As they see it, the attorney’s job is to ask, often rudely. Your job is to answer, always politely. You want the jurors to conclude opposing counsel treated you *too* rudely, while you remained patient and polite.

Opposing counsel will try to make you think you should prove to *him* you are telling the truth. It’s his job to disbelieve you. Don’t try to convince him, match wits or argue with him. You will only get frustrated and look inconsistent. Most important, it distracts from your real job.

You are there to talk to the jurors. Opposing counsel is just the temporary spokesperson. Ignore him and ignore the style with which he asks questions. Answer to the jurors, not to him.

III. SPECIFIC RECOMMENDATIONS

A. YOUR ACTIONS SHOULD FIT THE JURORS’ EXPECTATIONS

1. JURORS EXPECT DIGNIFIED BEHAVIOR

Courtrooms are like churches. The greatest degree of dignity and respect is the routine. Expect that tradition and respect it. The jurors certainly expect it.

Dress conservatively and be well-groomed. Do not wear flashy jewelry. Do not wear overly expensive clothing. Whenever the judge enters or leaves the courtroom, stand until you are told to be seated. If there is a break in the proceedings, be back early. Don’t ever be late.

When testifying, speak loudly enough so everyone can hear you. Jurors get annoyed if they have to struggle to hear you. Don’t chew gum. Keep your hands away from your mouth so you can speak distinctly. Speak up so the court reporter can hear. You must give an audible “yes” or “no” answer. “Yes” or “No” sounds *much* better than “uh-huh” or “yeah.”

2. SERIOUS BUT NOT GRIM FITS THE CIRCUMSTANCE

Humor is out of place in a courtroom. It's a rare joke that fits the circumstance, so don't try. Remain serious. However, if something funny happens *and* everyone laughs, join in; you don't want to be seen as humorless. After the laughter, quickly and completely get back to the matter at hand.

3. BE PREPARED AND THOUGHTFUL

Jurors know the trial did not just "come up at the last minute." They know everyone has been getting ready for months. They will not understand if you are unprepared. They will see it as rude, incompetent, or evasive. Know the contents of your own deposition and the contents of key documents. Review dates, times, names, and conversations *before* you go to court.

Take the time to prepare each answer. *Pause* before answering and *pause* during your answer. Give your mind a chance to form the next thought and the next phrase.

4. WATCH THE TRIAL, NOT THE JURORS

Do not look at the jurors while you sit at the table with your attorney. The jurors do not like eye contact at that time. They feel it's an improper and heavy-handed attempt to influence them.

You may nod "hello" and "goodbye" when the jurors enter at the start of the day and when they are excused at the end of the day. Otherwise, unless you are testifying, watch the trial, not the jurors.

5. REMEMBER, THE JURORS ARE ALWAYS WATCHING YOU

Make no mistake. The jurors *will* watch you. They will watch in the courtroom *and in the courthouse*. Always act as if there is a juror close enough to *see and overhear*.

Whenever you are in the courthouse or the courtroom, except when you are on the stand, you should remain stone-faced, impassive and respectful. Never show anger, frustration or surprise. If something bad happens, showing emotion only draws the jurors' attention to the bad fact. Act as if whatever happened, however damaging, was routine, completely expected and unimportant.

On the stand, *never* show anger at opposing counsel. However, you may show your feelings when *describing* something emotional. At that time, you need not hide your feelings, but don't exaggerate them. Authentic feelings touch the jurors. Forced emotion is phony and looks it.

6. PLAN AHEAD IF NERVOUSNESS MIGHT BE A PROBLEM

Nervousness and lying share many of the same behaviors. People who are nervous and people who are lying tend to: avoid eye contact; fidget or make a lot of gestures; make large changes in the tone of their voice or their rate of speaking; tremble; perspire; and stammer. A nervous person has trouble concentrating and loses their train of thought. A liar fills out their story as they go along, mentally trying out one version then another. As a result, both often speak in jumbled sentences that start off with one thought and then change to a different thought.

If you expect nervousness will affect your testimony, mention it to your attorney before trial. Practice brings confidence, so your attorney may suggest practicing your testimony. You may also visit a courtroom, preferably the courtroom where the trial will be held.

If you go when the courtroom is empty, sit in the witness stand. Walk around the room. Sit in the jurors' box. Sit in the judge's chair. Stay until you feel comfortable with the surroundings.

If you go when the courtroom is in use, sit in the gallery and watch. You will notice some of the following: 1) It's not uncommon for people to be nervous when they take the stand; 2) They usually get over it in a few minutes; 3) No one makes fun of them or criticizes them for being nervous; and 4) Everyone gets off the stand alive.

If you unexpectedly become nervous when you take the stand, and if it doesn't pass in a few minutes, then let the jurors know you are nervous. ("May I have some water? I'm so nervous my throat is dry.") Better the jurors know you are nervous than think you're a liar. Also, many times just admitting we are nervous in a situation helps the anxiety go away.

B. COMMUNICATE WITH YOUR EYES, FACE AND BODY

1. LISTEN BUT DON'T LOOK AT THE ATTORNEY WHEN THEY ASK QUESTIONS

The jurors must believe you understand the question. Listen. But don't always look at the attorney. Look more in the direction of the jury. Take in what the attorneys say through your ears, not your eyes. Formulate your answer. Then look at the jury and give your answer to them.

2. FACE THE JURY, MAKE EYE CONTACT AND USE "FRIENDLY" BODY LANGUAGE

The jury is the audience, not the attorneys. Good public speakers always face the audience. Set your chair so it faces the jury and turn your head sideways to get the question from the attorney.

When answering, keep your feet on the floor. Look directly at the jurors. Lean forward slightly. Keep your arms down and slightly away from your body, hands open, palms up, thumbs out. This position communicates, "I am being open and honest with you." Don't cross your arms or legs, and don't gesture too much with your hands.

Practice speaking in this "open and honest" body position before you get to court. It must feel natural to you for it to seem natural to the jurors.

3. DURING CROSS-EXAM, DON'T LOOK AT YOUR ATTORNEY

During cross-examination, if you look at your lawyer before answering or look for approval after answering a question, the jurors will notice it and conclude you are being coached.

C. TAKE YOUR TIME

The jurors appreciate when you give your testimony the care it deserves. It takes time to be careful. Listen, understand the question, pause to give your mind a chance to form an answer, begin to answer, and pause often during your answer to form the next phrase.

1. LISTEN TO THE QUESTION

The process of thoughtfully answering questions begins when the attorney asks the question. Listen to the question and be sure you understand *before* you try to answer. If you did not hear it, ask to have it repeated. If you do not understand it, ask to have it explained.

Many people don't listen well. Instead of listening, they are thinking about what they are going to say. Take it one step at a time. While the question is coming, don't think, listen.

2. THINK BEFORE YOU SPEAK

The importance of this recommendation can not be over-estimated. Once you understand the question, think about your answer. Think before you speak. Don't think out loud. Give the question as much thought as required to understand it and form your answer. *Never* give a snap answer.

3. SPEAK SLOWLY AND PAUSE OFTEN

Most people talk far too fast. The courtroom is not a place for this kind of communication. SPEAK SLOWLY AND PAUSE AT THE END OF YOUR PHRASES AND SENTENCES. By pausing at the end of your phrases and sentences, allowing time for the next thought to form into a phrase, you speak, literally, in a thought-full manner. It seems to take a certain boldness to talk as if you have something important to say. Be bold enough.

It also takes practice to speak thoughtfully and have it feel natural. To begin getting a feel for it, read the following lines slowly and out loud, pausing for at least two seconds between each line.

Thoughtful people speak slowly.
They pause at the end of their sentences.
The pause gives their mind a chance to form the next thought.
This allows them to express their thoughts in well-formed sentences.
We like listening to these people.
We experience them as thoughtful.
The courtroom is a place for thoughtful speaking.

Read it a few times until you feel the rhythm. Then try telling someone a story using this cadence.

4. REVIEW DOCUMENTS AND EXHIBITS BEFORE COMMENTING ON THEM

If you are asked about documents, photographs or exhibits, first examine whatever item the attorney is asking you about. If the lawyer has not already shown it to you, ask to see it. For documents, take the time to read the relevant section. No one expects you to have a photographic memory, and your careful attention to documents will create a favorable impression on the jurors.

You may have seen the document many times. Look at it anyway. If for no other reason, it gives you a chance to take a break, slow down the cross-examination and collect yourself.

5. DO NOT TALK WHEN OTHERS ARE TALKING

The jurors can not follow two people talking at the same time.

If you interrupt or start answering before the attorney has finished, you are not listening to the question and not considering your answer. Listen to the whole question. *Pause* before answering.

If an attorney interrupts you, stop and be quiet. Don't try to stop him by talking faster or louder.

If your own attorney interrupts, he did so for a reason. Stop answering and listen to the new question.

If the opposing attorney interrupts your answer, stop answering but pay *no* attention to the new question. Instead, concentrate on what you were about to say. When the attorney finishes, firmly but *very* courteously say, "Pardon me, I wasn't through with my last answer. May I finish?" Most judges will direct the attorney to let you finish. If the judge tells you to answer the new question, accept that in a calm, matter-of-fact way. Ask to have the question repeated, then answer.

6. BE QUIET AND PREPARE DURING OBJECTIONS

Silence is required when attorneys raise objections during testimony. Don't testify if an attorney objects. If you have already started, stop and wait until the judge tells you what to do. If the objection is "sustained" it means you should not answer the question. If the objection is "overruled," you must answer. If you have any doubt about whether you should answer, ask the judge not the attorney. Once it is clear you must answer, ask to have the question repeated. Listen. Then answer.

Keep a respectful, impassive expression on your face no matter what the objection and no matter how nit-picky it might seem. Don't roll your eyes or express irritation at the objection or during discussion about the objection. The jurors will see it as inappropriate.

When the judge tells you to continue, don't make any comments about how you didn't understand what the lawyers just said. Or that this legal stuff is new to you. No one expects you to understand. Certainly, don't say it all seems kind of trivial. You may be right, but it's not your place.

Do not try to figure out an objection raised by opposing counsel. Let your attorney handle it. Do listen to objections raised by your attorney. If your attorney objects to a question, saying it is "vague," "compound," "mischaracterizes the testimony" or is an "incomplete hypothetical," he may be telling you the question is confusing. If the judge overrules your attorney's objection and tells you to answer, you should ask to have the question re-phrased if you find it at all confusing.

7. DON'T FILL SILENCES

If you have finished answering and the attorney doesn't say anything, don't fill the silence. Just sit quietly and wait. For many people, every silence is an awkward silence. Attorneys know many people feel this way, and they use that knowledge. They ask a question, get an answer, and then stand there looking at you expecting more. This is an invitation to fill the silence. Don't do it. Just wait.

D. ANSWER ACCURATELY

1. ANSWER THE QUESTION THAT IS ASKED

Listen, pause, think, prepare and then answer the *exact* question asked. Jurors feel trials take *WAY TOO LONG*. They get bored or irritated when a witness does not answer the question or wastes their time with wordy, imprecise answers.

Witnesses who know the case well or who try to outwit the lawyer, often try to guess where the lawyer is going with a line of questioning. The jurors don't know where the questioning is going. When you anticipate, all the jurors see is that you didn't answer the question you were asked.

2. AN ACCURATE ANSWER IS YOUR BEST RECOLLECTION

If you do not remember something, say, "I DON'T REMEMBER." If you do not know something, say, "I DON'T KNOW." You may be embarrassed. You may feel you should be able to remember, but unless you really do remember, DO NOT GUESS.

Strictly speaking, you cannot describe what you *did* yesterday, what you *saw* yesterday, or what you *heard* yesterday. You can only testify to what you *remember* doing, what you *remember* seeing, or what you *remember* hearing.

When asked a question, give your mind a moment to scan through your memory. If you get a *clear* image or recollection of what you saw, heard or did, then relate that. If you get only a vague or hazy recollection, you should say, “I don’t recall clearly.” Don’t give the partial memory. Don’t speculate on what you “probably would have done.” Either you remember clearly, or you don’t.

Opposing counsel may try to “fill in the blanks.” For example, he asks, “What time did you go to the store?” You remember being in the store, but you can’t remember the time of day. You answer, “I don’t remember.” The attorney then asks, “Well, could it have been 3:00?”

He’s inviting you to guess. Don’t accept the invitation. Sure, it could have been 3:00. It could also have been four or five o’clock. You have no idea because *you don’t remember*. If you don’t remember, that’s what you say. Memory doesn’t improve just because the attorney keeps asking.

3. STAY WITH YOUR BEST RECOLLECTION

If you have testified to your best memory or given your best estimate, opposing counsel may try to “muddy-up” your testimony by asking whether things could be different than the way you recall.

For example, opposing counsel asks how long it took you to go the store. You say, “a half-hour.” He asks whether it could have been 45 minutes. *Don’t agree*. Just say, “My best recollection is that it took a half-hour.”

Things could always be different from how we remember or estimate. But your job is to give your best recollection, estimate or interpretation and let the jurors decide whether things could be different. This may not satisfy opposing counsel, but it *will* satisfy the judge and the jury.

4. ESTIMATE DON’T “GUESTIMATE”

Be careful if you are asked to estimate something. In court, the definition of “estimate” is stronger than the definition we use everyday. For example, imagine you and a friend both witnessed an accident. Your friend was looking directly at the approaching car. You were looking in a different direction and only saw the car out of the corner of your eye. You are both asked if you can estimate the speed of the car. Your friend can. You can’t.

In court, estimation assumes you got a good enough look or feel for the thing to give a *confident* estimate. Anything else is just a guess. When you estimate, remind everyone it is just an estimate.

5. DO NOT ANSWER WHEN CONFUSED, ASK THE ATTORNEY TO RE-PHRASE

If a question confuses you, don’t answer it. Ask to hear the question again or ask the attorney to rephrase it. Do not guess what he is trying to ask and do not try to clarify the question for him. Don’t ask, “Do you want to know if?” It is the attorney’s job to formulate an understandable question, and it’s your job to answer. He won’t do your job for you. Don’t do his job for him.

6. CORRECT MISSTATEMENTS DURING YOUR TESTIMONY

If you give incorrect testimony, straighten the matter out during your testimony. For example, either lawyer may ask a question that makes you realize you made a mistake answering a previous question. Don’t make matters worse by giving an answer consistent with the mistake. Rather, answer the question, and then say, “Excuse me, I just remembered that earlier when you asked me X, I answered Y. I was mistaken, I should have said Z.”

E. ANSWER CONCISELY

Your oath to “tell the whole truth” is a promise that what you say is the truth. It is *not* an instruction to blabber on endlessly telling everything you know about every question that is asked of you.

1. DIRECT ANSWERS HELP THE TEAMWORK BETWEEN YOU AND YOUR ATTORNEY

During direct examination, you have more room to elaborate. However, make sure you directly answer the question. Rambling answers and over-explanation breaks down the team work between you and your attorney and makes you look unresponsive. After all, there must be something wrong if you can't give a direct answer to a question from your own attorney.

2. EMPHASIZE BUT DON'T EXAGGERATE GOOD FACTS

You can brighten and become animated when you talk about something favorable to your side. However, don't exaggerate. If you are a party or a witness on behalf of a party, the jurors expect some bias. However, factual exaggerations suggest your bias overrides your ability to tell the truth.

3. BE VERY CONCISE DURING CROSS-EXAMINATION

During cross-examination, your answers should be brief and direct. Listen carefully to the question, think before answering, turn to the jury, and give answers that are short, precise and to the point. When you have answered the question, STOP.

Do not volunteer information not required by the question. Say only what is *minimally* necessary to answer the question. Then stop. Giving more just gives the opposing attorney more to work with.

When answering during cross-examination, it's a good idea to pick from the following list:

1. “Yes”
2. “No”
3. “I don't know”
4. “I don't remember”
5. “I don't understand. Could you re-phrase the question?”
6. Briefly state your best recollection or understanding; or
7. Re-state your best recollection or understanding.

If you feel confident the answer is “yes” or “no,” then answer that way and stop. Jurors recognize when a question can be answered “yes” or “no” or otherwise has a simple answer. They will see you as evasive or uncooperative if you consistently fail to give a simple answer to a direct question.

Some questions call for a “yes-no” answer but the wording makes you feel you must explain. If you explain or if you add explanation after you answer, opposing counsel may object. The judge could rule your explanation “non-responsive” and tell the jury to ignore it. It makes a bad impression if the judge repeatedly tells the jurors, in effect, to ignore you because you are not answering the questions.

In this situation, you have two options. The safest option is to say, “I can not answer ‘yes’ or ‘no.’ I have to explain.” In this way, you tell the jurors you know the question calls for a “yes-no” and you are trying to be responsive. The second, and bolder option, is to simply restate your best recollection. The judge will often permit this if your answer responds to the question.

Your choice depends on the situation. Some attorneys object whenever you don't answer "yes-no" and some judges call it strictly. Others are less strict, and much depends on how directly or evasively you have answered to that point.

4. TELL THE BAD FACTS QUICKLY IN A MATTER OF FACT MANNER

Generally, the most you can hope for in cross-examination is that you don't lose ground. Your chance to gain ground comes during direct and re-direct. So get on with it and get it over.

Don't make a bad fact worse by making it a big deal. Just state the fact in a routine, matter-of-fact way. If opposing counsel has to drag it out of you, you will just make it seem all the more important. What could have been over and done in one minute now takes twenty.

Guard against the temptation to memorize a "pat" answer to explain difficult parts of your testimony. Jurors know "coaching" when they see it. Carefully prepared lines usually sound phony. They often come across with a cadence and rhythm different from your normal style.

F. REVIEW THIS DOCUMENT BEFORE YOU TESTIFY

Reread these instructions before trial and use the Contents page as a quick review. These suggestions will help you. If you relax and talk as you would to neighbors or friends, you will make a favorable impression when you testify.

G. A NOTE ON DEPOSITION TESTIMONY

In most trials, each side takes the deposition testimony of most witnesses before trial. This is a standard part of discovery, allowing each side to learn the evidence before trial. The testimony you give in a deposition will always be transcribed by a court reporter. In some cases, it may also be videotaped.

If your testimony will only be transcribed, then you don't have to concern yourself with your appearance. All that matters is the content of your testimony. Take the time to get the content of your deposition testimony correct, using as few words as possible. Take it very slow. Listen carefully to the question. Stop. Think. As briefly as possible, answer the precise question asked. Stop.

If your deposition is going to be videotaped, then you should assume that the videotape will be shown to a jury. In that case, your appearance does count, and the manner in which you give your answers must be considered along with the content of your answers. While short yes-no answers are often best in a written deposition, on videotape, answering frequently in this fashion makes you look like you don't know much or that you are being evasive. In a videotape deposition that will be shown to a jury, you should take the appropriate opportunity to give a full explanation to the jury of your position on the issue that you are being asked about.
