



8 TIPS FOR TESTIFYING ON THE WITNESS STAND

Trial can be a stressful process; it can become even more stressful if you are set to testify in front of a jury. If your attorney chooses to put you on the witness stand in front of a jury, it is because he or she wants the jury to know the facts of the case from your viewpoint.

As your case advocate, your attorney will ask you questions during a phase called “direct examination,” asking open-ended questions and allowing you to tell your side of your story. After your attorney completes his or her questioning, the other side also gets a chance to question you. This happens during a phase called “cross-examination.” Because trial is an adversarial process – with different sides advocating for their version of the facts – cross-examination can and does get intense at times, with the opposing side often attempting to distort the facts in their favor or attack your credibility.

While your attorney is present during cross-examination and can make objections if opposing counsel crosses the line, it is advisable to prepare yourself as best as possible for the stress that can come with taking the witness stand.

Here are some pointers to help you on the witness stand for both direct and cross-examination.

1. TELL THE TRUTH

It can be tempting to exaggerate or even make up facts to make your case appear more favorable for your side. Don't. One of the biggest factors in your case – in addition to the evidence that supports your claim – is your credibility as a witness. If you are found to be stretching the truth or creating facts, it will be difficult for a jury to believe you and your testimony. If your testimony is one of the strongest pieces of evidence in your case, the fact that you are no longer a credible witness will likely be problematic.

If you do not know the answer, you can say, "I do not know." You can get in trouble if you just take a guess. For example, if you did not actually see Mary talk to Bill, do not say, "Mary talked to Bill." Maybe you assume that because Mary said so, but make it clear then by saying, "Mary said she talked to Bill."

If you do not know exactly, but you do know an estimate, say so. For example, if you were asked how long it takes you to drive from home to work and you answered, "I do not know," the jury may think that you are being less than truthful. A better answer would be, "I do not know exactly, but I would estimate about 20 to 30 minutes;" you've told the truth and given a helpful answer to the jury.

If a question cannot be truthfully answered because of the way the question is worded – because of double negatives or because the statement the attorney made is so long that it is unclear whether or not a question was asked – say so.

If the question is confusing or can be taken two ways, answer that "I do not understand the question."

2. SLOW DOWN – LISTEN TO THE QUESTION

You can't give an accurate answer unless you understand the question. Be sure you understand the question that is asked before you attempt to give an answer. Listen carefully, stop, think, and then respond. There is no need for you to be a "machine gun" rattling back answers like you've seen in television shows. Give the question some thought and then answer.

3. KEEP YOUR ANSWER SHORT

The average person pays attention for only 90 seconds. Out of every 100 people, 50 want to hear only about 30 seconds at a time. Most commercials are only 30 seconds long, because experts know that the average listener only listens to the first 30 seconds and then starts to "tune out." So "keep it short."

When asked an open-ended question, keep the answer as brief as you can and stop talking. If someone asks what you did after you woke up in the morning, tell them you got out of bed, and stop. Don't ramble on to tell the attorney everything you did for the rest of the day. Trust that your attorney will ask for information needed to help your case, and don't give opposing counsel more than they asked for. The jury does not want to know everything you know. They just want to know what is necessary to decide the case.

4. DON'T WORRY

You will forget something. Trust that your lawyer will ask you about anything you forgot to say that the jury needs to know. If the opposing attorney starts to attack you on the witness, trust that your attorney will make the proper objections.

5. DON'T BE AFRAID TO CORRECT THE ATTORNEY

If a question is just simply wrong, or shades things incorrectly, ask for the question to be changed so you understand it, or make the clarification yourself.

For example, if you have testified that the distance between vehicles “was about 50 feet,” an attorney may say 15 minutes later: “You mentioned that the distance between Car A and Car B was less than 50 feet long; can you tell us what time you saw the cars?” If you answer with a time as requested by the second part of the question, the jury may think you testified the distance was less than 50 feet. Correct the flawed portion of the question, then answer accordingly: “I did not say that the distance was less than 50 feet; I said it was about 50 feet. Now, is your question what time I saw the cars?”

6. SPEAK WITH CONFIDENCE

There are two ways you can tell your story on the witness stand. One way is in a low voice, in a halting, hesitant manner, which makes the jury doubt that you are telling the facts. The other way is with a confident voice and positive manner, which makes the jury have faith in what you say. Remember that this is your opportunity to tell your story; speak with energy and confidence.

7. DON'T GET DISTRACTED BY PAPERS THAT MAY BE PUT DOWN IN FRONT OF YOU

Remember what you see on TV newscasts. The newscasters know how to communicate information. Never look down at papers and answer at the same time. If you are looking down, the jury will lose eye contact with you, and it will be harder for them to pay attention to what you are saying. This can sometimes go toward credibility as well; jurors may think the lack of eye contact means you are being less than truthful.

Never look at papers if an attorney is asking you a question. Listen to the question. You cannot pay full attention to the question if you are looking at papers. In fact, some lawyers try to trick you into not listening fully by putting papers down in front of you, and hoping you pay more attention to the papers than to the exact words of the question they are asking. Listen to the question, look at the record or your papers if you need to, then look back at the attorney to answer the question.

8. DON'T BE AFRAID TO ASK TO LOOK AT RECORDS OR PICTURES IF YOU NEED TO JOG YOUR MEMORY

Remember that it is OK to say that you don't remember a fact, as there are court processes in place that can help you jog your memory. If you are asked something and you don't remember, just say "I don't remember." If it is a fact important to your case, your attorney will likely do something to "refresh your recollection," which is simply court-speak for jogging your memory. This can be done with a writing, object, or even photos.

If your attorney presents you with a writing, object, or photos to refresh your recollection, do not look them and talk at the same time, and don't just read from the piece of paper. Again, this can go to your credibility in front of the jury.