

Tips for Testifying

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Most police officers would rather have a root canal than testify in court. It often involves depositions, pre-trial conferences, defense attorneys, reluctant prosecutors, impatient judges, and most of all, a lot of wasted time spent waiting – often being told to go home and come back tomorrow. Cops despise the courtroom experience because they're subjected to microscopic scrutiny of their credibility, competence and conduct. As a law enforcement official, your role is essential to our criminal justice system. However, the sad truth is a cops' conduct, from their first day to retirement, can be called into question, even without merit. Therefore, presenting your position in an organized, thoughtful and compelling fashion makes the process much less painful.

Since I taught trial practice for over a decade as an adjunct professor at both Loyola School of Law and Northwestern School of Law, I'm very aware of the mistakes witnesses make on the stand. I wrote this article in the hope that you can avoid these mistakes.

Preparation

Preparation begins long before you take the stand. You first need to assess your role. Are you merely an investigating officer providing background testimony or is your conduct potentially being questioned? If it's the latter, then you should contact the FOP to ensure your rights are protected before giving any testimony. If you've never testified before, you should visit the courtroom to listen to other witnesses to familiarize yourself with the process.

Your report, and any other records, will be the centerpiece of your testimony. Only under the scrutiny of cross examination will an officer learn the importance of accurate documentation. As such, you should ask the prosecutor, or whoever is representing you, what are the significant portions of the records in order to best anticipate areas of potential cross examination. Also, you should determine whether this is a body camera incident and, if so, review any relevant video footage.

The more you prepare, the more comfortable you'll be on the stand. This should include reviewing prior statements, depositions, physical evidence, possibly visiting the scene during your tour before court, and meeting with the prosecutor, if necessary.

Demeanor

Your demeanor will be the prism through which the jury views the credibility of your testimony. Although it often appears the jury is not paying attention, nothing could be further from the truth. In fact, they pay close attention to your demeanor, not only in the courtroom, but also as you enter and exit the courthouse.

You should remove whatever garment is covering your uniform before entering the courtroom. Although it's often without merit, some judges get quite upset if an officer enters the courtroom wearing a White Sox or Cubs jersey.

Make certain your cell phones are turned off, because even a muted ringtone will be disruptive if it's vibrating while you're on the stand. Also, try to avoid texting or emailing while in the courtroom. If you need to use your phone, exit the courtroom before doing so. Also, try to avoid terms that only fellow police officers understand because they will likely confuse jurors.

The jury's impression of you is essential to establishing your credibility. Therefore, your demeanor should be open, friendly and respectful. I've often told my witnesses that they should behave on the stand as if they were talking to their neighbor over the fence - comfortable, open and unwavering.

Please remember that you are testifying to the jury and not whatever lawyer is asking questions. As such, you should look at the jury when answering and feel comfortable making eye contact with the jurors. Most importantly, remain poised, confident and always address the judge as "your honor".

Don't Get Stuck in the Mud

There's an old expression about a witness who argues with a lawyer during cross examination, "it's like wrestling with a pig, you both get dirty but the pig likes it." This quote is helpful because it underscores how dangerous it is for a witness to argue with a lawyer. It's acceptable to firmly disagree but not to be argumentative. You should avoid getting upset or angry even in the face of unfair questioning or even baseless accusations. Only through remaining calm on the stand, even if the attorney's conduct does not deserve respect, can you maintain your credibility.

Enjoy the Ride

If you have properly prepared and reviewed the records, you will be comfortable testifying. Try to avoid jumping ahead or anticipating questions. Answer questions in a clear and concise manner and do not start answering until the question is completely finished. In fact, it's helpful to pause for a couple seconds after a question to allow you to compose your thoughts before answering.

You are allowed to reference reports on the stand so feel free to bring those with you. It's better to admit you don't remember something and ask to see the report rather than guessing incorrectly. If the question asks for specific answer like a precise time or distance, make it clear that you are estimating. Similarly, if you don't know the answer to a question, simply admit that you do not know the answer. Finally, veteran officers and detectives are great resources that you should consider reaching out to for guidance before testifying.

If you follow the above tips, your next trial testimony will be less painful than a root canal.