The Art of Law Enforcement Testimony: Fine Tuning Your Skills as a Witness

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Testifying is not natural – even for the most experienced law enforcement witness. Relating information from a witness stand is neither conversational nor comfortable. While some people are more content than others as the center of attention, few feel at ease while being judged and attacked on such personal issues as their job performance and their credibility. Memories of past unpleasant courtroom experiences can increase stress. Adding to the negative psychological impact of the experience is the feeling of helplessness; knowing you are not in control of the courtroom, that you must simply do what you are told without argument, makes most people feel powerless and frustrated.

But the good news is, testifying can be a positive, satisfying and (almost) fun experience. With a few additional skills and some groundwork, you can be effective and entertaining on the witness stand without sacrificing the most important aspect of your testimony: the truth.

Prior to Testimony: Preparation is Key

Testimony is like most any other experience in one way: the more prepared you are, the better you will perform. Preparation will also relieve some of the nervousness felt prior to court, which in turn will make you a better and more reliable witness. Past testimony, whether positive or negative, can and should help relieve stress, if you can be objective in your evaluation of the experience.

Know the Facts

Preparation entails two key components. The first is a thorough review of the facts of your case. Do everything you need to do to ensure your memory peaks the moment you take the oath. Read the case file, review the evidence, visit the scene – remember, *you must be the smartest person in the courtroom on the facts about which you are testifying.* A defense attorney should never know the facts or the contents of your reports better than you do. This may sound patronizing, but a surprising number of law enforcement witnesses are tripped up by defense counsel on the details of their own reports and investigations.

Meeting with the Prosecutor

The second key component of preparation is to meet with the attorney who is calling you as a witness. For criminal prosecutions, of course, this will be the prosecutor. Prosecutors usually have a number of other priorities before trial, so do not expect them to schedule a meeting. You may need to make the first call.

The prosecutor's role in the meeting is to listen to your facts, choose the material facts to include in your testimony, and give guidance as to the best way to present those facts, given various legal and strategic considerations. The prosecutor will not tell you what to say; she will tell you how to say it. She should also answer whatever questions you may have so that you become more comfortable and familiar with the events about to transpire in the courtroom.

Therefore, in addition to the necessary review of facts and exhibits, consider asking these important questions:

- How does my information fit into the prosecution's theory of the case?
- Which are the key questions you will ask during direct examination?
- What predicate questions will you ask to introduce evidence?
- What type of evidence presentation system will be used?
- Has any evidence been suppressed, or has the judge ruled any evidence or topic inadmissible?
- Do you know of any other information you do not want me to mention, or you want to save for redirect examination?
- What is the defense to the charge, and how might that be advanced during my testimony?
- Do you know of any information, evidence, or witness that contradicts my testimony?
- How does this judge behave during trial? Does he ask questions of witnesses? Is she generally rude or polite? Does the court allow jurors to ask questions? *(this is a growing trend)*
- What is the defense attorney's style?

- Are you aware of any impeachment materials which may be used during my testimony, such as my personnel file, divorce pleadings, or social media accounts?

- Has the defense team requested or received any such personal information about me?

- *What story do I need to tell?*

Direct Examination: Be a Storyteller

Of course, your "story" is not one of fiction. But it does need to be as entertaining as the facts and circumstances allow. Even the most impactful facts are worthless if no one is listening. Being a person to whom others want to listen is itself an art, and being that person in the stilted environment of a courtroom can be even more challenging. But it can be done.

Direct examination is the framework of your story, meaning that you must be directed through your testimony by a series of open-ended questions. Part of your success will be dependent upon the abilities of the questioner. However, meeting in advance and becoming familiar with the questioner's style and goals for your testimony will help both of you effectively communicate facts to the jury.

Credibility

To be an effective witness-storyteller, you must be credible. At the heart of credibility is truth. Law enforcement witnesses must be fair, objective and impartial throughout all their interactions in court. They must value truth above any desire to see a particular side prevail, and the judge, jury and parties should be made to feel that from them. Impartial witnesses refrain from exaggeration of any kind. Credible witnesses do not lie, attempt to "gloss over" any unpleasant fact or subject, tell a half-truth, or omit a material fact.

Not only can lies end an officer's testimony, they can also end his career. Lies on almost any subject – told before or during testimony, under oath or during casual conversation, even during previous divorce proceedings or on social media – could be used to impeach an officer and damage her case. Defense attorneys are becoming adept at researching officers' personal pasts, their social media presence, and their personnel matters in search of ammunition. Remember that prosecutors are not your legal representatives. They have an obligation to provide to defense counsel any information which could be used to impeach the credibility of any witness. This includes false or inaccurate information provided during trial preparation, even if it occurs in the privacy of the prosecutor's office.

Assuming no such impeachment evidence lurks in their files, law enforcement witnesses generally begin their testimony with the assumption of credibility. It may not appear that way in light of recent negative press, but most people still respect law enforcement witnesses. They find your profession interesting and they want to be a part of the action. Consider the popularity of cop shows throughout the decades of television. Most of those shows depict honest, hard-working and intelligent law enforcement professionals, and viewers want to relate to them. Innately, citizens want to trust law enforcement officers, given the amount of power they wield as well.

Thus, jurors often relax somewhat from their truth-detecting vigilance when an officer takes the stand. They expect the officer will tell the truth. But when expectations are high, the potential fall- if the officer fails to meet expectations- is long and uncomfortable. A single witness usually cannot win a case, but can, in fact, lose one.

People judge credibility on many levels. What people say and how they say it, as well as their mannerisms, attitude, facial expressions, even general appearance all factor into the assessment process. Remember, judges and juries usually have a very short period of time to evaluate a witness, so every little factor presented to them becomes larger in importance than perhaps it should. Don't underestimate the importance of the "little things," like how you take the oath, your posture, or attention to professional appearance. *Jurors watch everything*, and every detail could affect their perception of trustworthiness, on either a conscious or unconscious level. For example, jurors may not believe you are careful in preserving evidence when you have visible food stains on your uniform; slouching witnesses do not display confidence in the facts to which they are testifying.

To maintain credibility, officers should appear calm, patient and mature regardless of the behavior of others, including defense counsel and the judge. In other words, officers should "be the adult" in every relationship that develops in the courtroom. Body language, tone, and temper should remain the same regardless of who is addressing you. While you are not technically in charge in a courtroom, your presence should have an air of calm authority.

Avoid careless use of absolutes such as "always" and "never." If you don't know an answer, or understand the meaning of a word, you must say so directly and confidently: a simple "I don't know" is an excellent answer. If you say it with confidence, the jurors won't be concerned that you don't know the answer. Never attempt to bluff or guess your way through any answer. Pride and embarrassment undermine credibility.

Telling the Story

Direct examination is your opportunity to tell your story in a way that engages and captivates the courtroom. It is essentially adding dimension and detail to the four corners of your report. Consider how you would describe your experience to your spouse or child without police jargon or technical terminology. In a successful direct examination, jurors will imagine themselves at the scene with you, and they will form a bond with you. To do that they need detail.

Telling your story chronologically, using thorough descriptions of places and people, will greatly assist listeners in picturing themselves with you – a vital step in the bonding process. Instead of saying, "we entered the building through the front door..," you could articulate the general appearance of the building, who was there with you, how long it took to walk to the door, whether the door was open, closed, or locked, or how much effort it took to open. Describe colors, shapes, sizes and distances. While these details may not seem important to the case, they are crucial in allowing the listener to imagine the scene. Do so carefully, however, to ensure accuracy. Practicing your description with the prosecutor before testimony will help you stay out of trouble on cross examination.

Photos and videos are also great descriptive tools when used properly. If an image is worth admission into evidence, it is also worth more than a cursory display on the juror's screen. Photos and videos introduced at trial should be explained through the eyes of the witness when possible – "this is what I saw when I opened the door…" Not only will these imageries help you to bond with the listener, they also promote credibility and trust because they corroborate your testimony. Before meeting with the prosecutor, you should examine the available images and be ready to recommend which ones best help your narrative.

Every witness is different, and each brings their unique personality to the stand. Anyone facing the prospect of testimony should honestly and objectively evaluate themselves, their personalities and their strengths and weaknesses as a presenter. Personalities can and should shine through, because jurors want to know you as a person. No one should attempt to be something they are not. Those who are quiet in nature should not attempt to appear aggressive, and vice versa. Jurors could translate this behavior as insincerity. Every personality type has value. Accentuate your strengths.

Work on your presentation weaknesses, too. For example, if you are one to use "word whiskers" such as "I guess" or "I think," or insert "ummm…" or "so…" into sentences, work on eliminating such habits in your everyday conversations. Consider your voice and personal way of communicating. Do you speak softly or

loudly? Do you use inflection or are you monotone? Do you have a natural smirk, or smile at inappropriate times? Even more important, if you tend to easily anger or take offense, it may be time for that meditation class. More on emotions later.

As you testify, make periodic, quick eye contact with jurors (never stare at a jury, they hate that). Jurors are often stoic and hard to read, which is normal and should not concern you. But they also may reveal clues to their feelings and receptiveness in their body language. Look for gestures, in the form of slight nods and smiles, or leaning-forward, arms-open attentiveness. If you see a different scene from the jury box, you need to adjust something. Frowns, closed posture, or indications that they do not understand should prompt you to alter your strategy. The problem could be simple to fix; for example, jurors can't hear you well and you need to speak up. If the issue appears to be a credibility issue, a quick self-evaluation of your tone, attitude and posture may be necessary. On the other hand, you may simply be involved in a bad case, and cannot impact the jurors' attitudes with a self-correction. It happens. Change what you can, and leave the rest to the prosecution team.

At the end of direct examination, jurors should feel as if they were there with you, chasing the bad guy through traffic, examining the crime scene, collecting evidence, spending hours poring through documents. Jurors should have connected with you, and if they did, you will reap the benefits during cross examination.

Cross Examination: The Virtue of Patience

If you have successfully bonded with the jury and gained their trust, you will begin cross examination with jurors wanting you to succeed. They may also feel personally offended if defense counsel attacks you. Beginning in this position gives you a decided advantage over defense counsel. If counsel has been paying attention, he will know this, and should tread lightly until and unless he is successful in undermining your credibility. In the process, he may be nice to you, and pretend to be your friend. He is not your friend.

Tactics and strategy vary greatly from case to case and attorney to attorney, so ask questions and prepare for your specific situation, as discussed above. Not all cross examinations are angry or even unpleasant. If you have information favorable to the defense, they may be downright jovial. Generally speaking, however, the rule is this: the worse you hurt their client, the harder they will be on you. Please remember it is not personal. They do not hate you, and often they don't believe you performed your job poorly. They simply have a job to do. Remembering that will help you hold your temper, which is crucial to surviving cross examination with your credibility intact.

Feeling anger, frustration, annoyance, impatience, discouragement or self-condemnation will show on your face and in your body language, and very quickly will shatter your credibility. Control your emotions until you have completed your testimony. Take a quiet, deep breath or a sip of water if you need a moment.

You can help yourself stay in control by treating defense counsel as your peer, not someone to be feared or scorned. They are not better or more important than you are. Greet them politely when they first address you. Also, consciously set your own pace and voice volume in answering the questions – do not let counsel's speed or inflections dictate your own. In fact, taking control of the tempo of cross examination will help shift the power to you.

Technique and Tempo

During cross examination, most questions asked are leading questions – questions which imply the answer in the question (i.e., *"Isn't it true that…"* or *"You said…, didn't you?"* or *"Would you agree with me that…?"*) As opposed to direct examination when your answers are detailed and descriptive, cross examination answers should be short and to the point. Your tone, emotional state and attitude should not change, but your technique should. Answer leading questions with as few words as possible. Example:

> *"Mr. Smith's head hit the cement when you tackled him to the ground, didn't it?"*

Assuming all that is true, you may be tempted to answer:

> *"I tackled Mr. Smith because he tried to punch me!"*

However, the better answer is:

> *"Yes, it did."*

This answer does several things. First, it illustrates your commitment to truth.

Second, it shows the jury you are taking responsibility for your actions and not attempting to rationalize. If you are defensive about the question, the jury will assume you did something wrong.

Third, the first answer example*, "I tackled Mr. Smith because he tried to punch me!"* could buy you many more unpleasant questions on that topic. Counsel will likely move to the next topic if you simply agree to a true statement. But arguing and rationalizing provides more fodder to make you look bad:

"Officer, are you testifying, under oath, that smashing and bloodying my client's head on cement, causing a gash which required 40 stitches and still causes him to suffer from frequent migraines and ringing ears, was a rational response to a mere attempted punch, even though he was unarmed, you are bigger than he is, and other officers were close by to assist you?"

You have no good answer to this question. Certainly, these combative questions could be asked regardless of your answer, but they will appear far less justified, and you will have the advantage, if you did not start the fight.

Cross examination questions are often long and complicated. Do not simply agree because most of the question is correct. Listen to every part of the question, and if *any* part of the question is incorrect, your best answer is, *"No, that is not correct."* This answer gives the questioner two choices. She can simply move on to the next question, or try to figure out what part of the question was incorrect.

If the questioner does the latter, she will likely need to ask you a non-leading follow-up question, such as, *"What part of that was not correct?"* This is an open-ended question that gives you the opportunity to repeat key parts of your testimony and thus reinforce facts with the jury. Because repetition is generally discouraged in court, these opportunities can be rare, so pounce on them if offered. Consider this exchange:

Q: *"Mr. Smith's head hit the cement when you tackled him to the ground, didn't it?"* (leading question)

A: *"That is not correct."*

Q: *"Are you saying his head did not hit the ground?"*

A: *"No, ma'am, I am not saying that."*

Q: *"Then what are you saying?"* (open-ended question)

A: *"When the defendant broke free from Officer Peterson and took off running south on Main Street, I chased him, just a few feet behind, yelling Stop! Police! The defendant did not stop, but kept running until he hit a pedestrian on the sidewalk and they both fell to the ground. It was this fall that caused the defendant's head to hit the ground."*

You have now repeated important testimony that you likely already stated at least once during direct examination. Repetition of the same facts makes them more concrete, memorable and credible to the juror's minds.

In nearly all cross examinations, defense counsel will concentrate on one particular point at a time, and ask a series of questions to build to that point. Most of the time, you can figure out what the point is. Resist the temptation to jump to that point and try to hit it head-on:

> Q: *"Officer, you were trained at the Academy on use of minimal force during a suspect's arrest, weren't you?*
>
> A: *"I didn't have to use minimal force – I used the proper amount of force against the defendant because he ran from me and I had no choice!"*

Instead, take it one question at a time. *"No, sir, that is not correct"* is a great answer, particularly for confrontational questions, as it begs a follow-up open-ended question. But you may also choose occasionally to give a longer answer or make a subtle, polite correction, which is a good choice if the questioner has made a simple mistake or you want to appear cooperative:

> A: *"No, sir, I received use of force training at the Police Academy."* (controls tempo, and may also require open-ended follow-up question)
>
> A: *"No, sir, I was not trained at the Academy. I received training at the Federal Law Enforcement Training Center, where I received legal and practical instruction on use of force, not minimal force, and on arrest techniques."* (defense counsel appears unprepared or uninformed)

If the questioner is careful, the correct and expected answers to a series of questions leading to a point will be simply, "yes" or "no." But that does not mean you must utter only "yes" or "no" every time. You can control tempo and content by occasionally giving a slightly different answer than the root of the question.

For example, assume you have testified on direct examination about having arrested a liquor store robbery suspect at a park about 50 minutes after the robbery. Defense counsel claims you arrested the wrong man, and wants to emphasize the time difference between the robbery and the arrest. It might go like this:

> Q: *"Officer, you are acquainted with the location of Oscar's Liquor Store, aren't you?"*
>
> A: *"Yes."*
>
> Q: *"Would you agree that Oscar's is located about ½ mile from Copland Park?"*
>
> A: *"Yes."*

Q: *"And the robbery occurred at Oscar's at about 1:30 a.m., correct?"*

A: *"Yes."*

Q: *"But you didn't see my client, Mr. Johnson, at Copland Park until 2:15 a.m., correct?"*

A: *"Yes."*

Q: *"If a person walks average speed, wouldn't he arrive at the park at about 1:40 a.m.?"*

A: *"Yes."*

Q: *"And 1:40 a.m. is 50 minutes earlier than when you saw Mr. Johnson at the park, would you agree?"*

A: *"Yes."*

Q: *"Would you also agree with me that you don't know where Mr. Johnson was for at least 50 minutes before you went to the park?"*

A: *"Yes."*

In this example, defense counsel has established a tempo, and you have agreed with all he said. By doing this, you have lent some credence to counsel and to his defense. Instead, you may want to change up some of the answer, so as to disrupt tempo or to discredit counsel. Here are the same questions, but with a sample tempo-disruptive answer to each:

Q: *"Officer, you are acquainted with the location of Oscar's Liquor Store, aren't you?"*

A: *"I am, because that store has been located in my regular patrol area for the past 10 years."*

Q: *"Would you agree that Oscar's is located about ½ mile from Copland Park?"*

A: *"No, I actually measured the distance as part of my robbery investigation. The exact distance is .68 miles."*

Q: *"And the robbery occurred at Oscar's at about 1:30 a.m., correct?"*

A: *"According to the security camera logs, the robbery began at 1:26 a.m. and ended at 1:34 a.m. when the defendant fled from the store."*

Q: *"But you didn't see my client, Mr. Johnson, at Copland Park until 2:15, correct?"*

A: *"I can't say the exact time I saw him first, because I saw several people at the park and it took me at least 5 minutes to positively identify him from the description I was given by the liquor store manager."*

Q: *"If a person walks average speed, wouldn't he arrive at the park at about 1:40 a.m.?"*

A: *"I can't really say, because that would depend on several factors. People walk at different rates of speed, and there are a few different routes he could have taken."*

Q: *"And 1:40 a.m. is 50 minutes earlier than when you saw Mr. Johnson at the park, would you agree?"*

A: *"I would say it is approximately that, yes."*

Q: *"Would you also agree with me that you don't know where Mr. Johnson was for at least 50 minutes before you went to the park?"*

A: *"I agree that I do not know where the defendant was between the time he robbed the store and when I saw him at the park, but I can't agree that the time was 'at least 50 minutes.'"*

A few of these answers, interspersed with the simple "yes" answers, will stop defense counsel's dictation of tempo and prevent an inadvertent vouching for the credibility of the defense's story. They also keep you active, and perhaps dominant, in the narrative and emphasize the thoroughness of your investigation.

Personal Knowledge

Errors most often made in answering cross examination questions stem from one problem – not listening carefully to the question. Agreeing to "facts" of which you have no personal knowledge is commonplace. Attorneys at trial are not under oath, and a combination of the stress of trial and personal interpretation of evidence (maybe a little bit of clever wording, too) can create false assumptions of facts in the premise of questions. The solution to all of these issues is simple. Listen, and do not agree to anything you do not know from your own *personal* knowledge.

Having personal knowledge of a fact means you experienced the event – you personally participated, actively or passively. You heard it, saw it, touched it,

tasted it, or smelled it with your own senses. The issue of personal knowledge can arise whenever defense counsel wants to use your testimony to make a point favorable to the defendant. It can happen during general questioning about investigative events or about defendant's prior statements.

Your testimony about the investigation will typically entail a mix of information favorable to the prosecution and, to a lesser degree, information favorable to the defense. Of course, you should expect the defense to isolate facts favorable to them, and ask specifically about those facts. For example, if the liquor store owner's description of the robber was generally correct, but he mistakenly described the defendant to you as wearing a red jacket, defense counsel would likely hit that issue and move on:

> Q: *"You obtained a description of the robber from the store manager, didn't you?"*
>
> A: *"Yes, I did."*
>
> Q: *"And the manager told you the robber was wearing a red jacket, correct?"*
>
> A: *"Yes."*
>
> Q: *"When you encountered Mr. Johnson, wasn't he wearing a yellow jacket?"*
>
> A: *"Yes, it was yellow."*

That ends the jacket discussion, as defense counsel got what she wanted from you – to cast doubt on the identification of her client. She can now use this fact in her closing arguments to support acquittal.

This question sequence is also the best (or perhaps the "least bad") outcome for your side of the courtroom as well. Because a mistake was made and you have personal knowledge of the error, your job is to minimize the time spent on the issue by giving short, pinpoint-accurate answers without argument or attempted rationalization. Any necessary clarification can come during redirect examination.

However, if you do not have personal knowledge of the manager's description because his statement was taken by another officer, or you simply received a suspect description over the radio, you should not be the witness to affirm the error. Defense counsel knows this, and is not likely to hit the issue bluntly. The questioning could be subtle:

Q: *"Isn't it true that, when you encountered Mr. Johnson, he was wearing a yellow jacket?"*

A: *"Yes, he was."*

Q: *"But the robber's jacket was red, so you should have been looking for someone in a red jacket, correct?"*

Or

Q: *"Would you agree that you should not have been looking for anyone in a yellow jacket?"*

Or

Q: *"It was a mistake to arrest someone wearing a yellow jacket, wasn't it?"*

Defense counsel is attempting to affirm her version of the manager's description through you, and therefore poses a question that presumes the manager's statement as fact. But regardless of whether the manager was correct, you do not have personal knowledge of the manager's statement. The tempting path is just to agree, perhaps because dispatch told you to look for a man wearing a red jacket, or perhaps you read the report that said the jacket was red.

But you need to correct the premise of the question before attempting to answer it. If you do not, your testimony and the court record will suggest knowledge that you do not possess. It may also imply that you were present when the manager's statement was taken. The premise may even be incorrect. Consider the possibility that the officer who talked to the manager wrote "red" in his report, but would testify that the manager more thoroughly described it as a red and yellow jacket, or "reddish," or some other nuanced description.

Either way, you may not testify to hearsay, and you may not testify to something of which you have no personal experience or knowledge, regardless of how sure you are that it is true. You are only allowed to testify as to your personal understanding of the situation, and how you proceeded based upon that understanding. For example, you can testify that you looked for a man in a red jacket because that was the description dispatch gave you, or because another officer told you the robber was a man in a red jacket. But you must make clear first that you are merely explaining your conduct subsequent to receipt of information, without affirming the information as true.

Thus, any of these answers will suffice, depending on the phrasing of the question:

- *"No, I can't agree that's correct."*
- *"No, I believe I arrested the right man."*
- *"I didn't speak to the manager, and I don't know whether he spoke to law enforcement."*
- *"I have no personal knowledge of what the manager may have told other law enforcement officers."*
- *"I have no personal knowledge of what the manager said, if anything, prior to my arrest of the defendant."*
- *"I didn't personally speak to the manager, so I can't testify to what he may have said to anyone. However, I was looking for someone matching the general description I had been provided by dispatch."*

These answers accomplish your goal of signaling to the jury that whatever was your understanding of the color of the jacket was just that – *your understanding*, and not a statement of fact. This level of care should be taken whenever a question is posed that requires acceptance of a "fact" that you cannot verify from your own personal knowledge.

The prosecutor may try to assist you with these questions as well. If, after the question is posed, the prosecutor objects to the question based upon either "improper predicate" or "assumes facts not in evidence" (or some derivation of those objections), this may be a signal to you that the prosecutor believes you do not possess the requisite personal knowledge to answer the question. You should then consider carefully whether to attempt a direct answer, or whether one of the alternatives would be legally appropriate.

Defendant's Statements

Statements made prior to trial by defendants can pose similar challenges for you, but they also pose special problems for defense counsel. The rules of evidence generally allow these statements to be offered for admission at trial only by the prosecution, because they are considered statements of a party-opponent.

Naturally, if the statements are self-serving and not at all helpful to the prosecution, the prosecutor will likely not offer them into evidence. But often, prosecutors will offer a statement into evidence even if part of the statement is consistent with the defense. Prosecutors do not want juries to think they are hiding valuable information, and juries want to hear whatever the defendant had to say about the charged criminal activity. Also, if the prosecution offers only part of a statement into evidence, the rules of evidence generally will allow for the introduction of the remainder of the statement by the defense, unless another rule would mandate against some of the statement's contents.

Defense counsel may want the jury to hear the defendant's prior statements too, if they bolster the defense's theory of the case. If the statements are offered by the prosecution and you have testified about them on direct examination, cross examination may consist of merely repeating the parts favorable to the defendant. If so, answering the questions will not be tricky, you just need to ensure the questions contain an accurate account:

> Q: *"When you arrested Mr. Johnson, he told you he had just come from his home, where he had been binge-watching Netflix, then showered and dressed to meet his girlfriend at the park, correct?"*
>
> A: *"That's essentially correct, though those were not his exact words."*
>
> Q: "*Would you agree that Mr. Johnson's home is about a mile in the opposite direction of Oscar's Liquor Store?"*
>
> A: *"I would say that the liquor store is west of Copland Park, and the defendant lives about a mile southeast of the park."*

So far, so good.

Defense counsel will want the jury to believe the defendant's version of the facts. Chances are, however, when the defendant told you his story, you believed none, or maybe just part, of what he told you. But your mere belief or impression of the defendant's truthfulness may not be admissible on direct examination. To show the statement was untruthful or unreliable, the prosecutor may try to link the statement with some contrary fact, either on direct or redirect examination:

> Q: *"Did the defendant tell you where he had been immediately before the arrest?"*
>
> A: *"Yes."*
>
> Q: *"What did he say?"*
>
> A: *"He said he had just come from his house."*
>
> Q: *"When you spoke to him, did you have information contrary to his assertion that he had just come from his house?"*
>
> A: *"Yes."*
>
> Q: *"What information did you have?"*

A: *"I had watched him for at least 5 minutes before positively identifying him as the robbery suspect. While I watched him during that time, I saw him approaching, then entering, the park from the west. He lives southeast of the park, so his direction of travel was inconsistent with his claim that he had just come from his house."*

The jury can now conclude on its own that the defendant was lying based upon the same reasons you concluded he was lying, and the prosecutor has her alibi rebuttal for closing arguments.

But just as with cross examination regarding investigative steps, questions on the truthfulness of a defendant statements can be much less direct. Defense attorneys can word their questions in a way designed to get you to inadvertently agree the statements are true. For example, assume you arrested Johnson and are unaware of any health issues. You are asked:

"Did you ask Mr. Johnson if he needed insulin for his diabetes before you took him to jail?"

If you did not have health information about Johnson and did not offer insulin, some tempting answer choices are:

"No, I didn't treat his medical condition."

"No, I didn't know he had diabetes."

"The jail should have taken care of his diabetes issues."

However, with each of these answers you are, in effect, testifying that Mr. Johnson has diabetes – a fact you do not know from personal knowledge. The better answer is:

"I am personally unaware of whether or not Mr. Johnson had diabetes, and I did not ask about insulin."

This is the best answer even if you heard from a reliable source that Mr. Johnson does have diabetes. While you may feel comfortable confirming such a fact during everyday conversation, you are only permitted to *testify* about information about which you have personal knowledge.

Mistakes of Fact

Mistakes happen. Officers can err both before and during testimony. If you find an error before testimony, such as in a report or prior statement, tell the prosecutor. Most mistakes can be overcome fairly painlessly, as long as the

prosecutor knows about them beforehand. If your report states the suspect ran north, but he actually ran south, prosecutors may choose to dismiss the case (depending on the factual significance of the mistaken fact), but they probably have better, less drastic options to correct the problem before trial. However, prosecutors cannot easily fix such a problem if they learn about it during your testimony.

Correction may not stop defense counsel from impeaching you with your mistake, but catching the issue before trial usually eases its impact of cross examination. Remember, if asked about the mistake on cross examination, simply admit you erred and stop there. Do not try to explain why you erred or what you may have done to mitigate the error. Not yet.

A mistake during testimony may also subject you to impeachment during cross examination. If you testify the suspect ran north, but he actually ran south, and defense counsel catches it, she may point out your mistake for the jury to hear. Counsel impeaches witnesses for the primary reason of chipping away at their credibility, not necessarily because they care about the correct answer. The correct answer may not even be helpful to the defense. But they understand the basic premise that the more a witness is caught in mistakes, the less valuable their information will be to the jury. Mistakes during testimony also tend to make you look less prepared, which a jury could interpret to mean you simply don't care – about the trial, the truth, or them.

But the reality is, no matter how much you care, mistakes do happen. The good news is, juries really do understand that sometimes people misspeak, and as long as it is not a recurring issue, they will make little of it. The important thing to remember is, if you realize you made a mistake, interrupt questioning to correct the answer. *"Excuse me, Counsel, but a few minutes ago you asked me ___, and I need to correct the answer I gave you."* You will be allowed to correct your answer.

If you don't realize your answer was incorrect, but are prompted by one of the attorneys (usually by reminding you of some previous statement you made to the contrary), be humble, apologize for the error, and move on. Do not let it rattle the remainder of your testimony. It will likely be a non-issue for everyone.

So, once again, preparation is key. The more prepared you are, the less prone you will be to making mistakes, and if the mistake already exists before trial, the prosecutor can strategize and prepare you for any consequences.

Playing Games

To have any real discussion about cross examination, we must acknowledge that some defense attorneys will deliberately attempt to trick you or make you testify to something that simply is not true. Certainly, that tactic is not prevalent, and judges generally do not well tolerate such behavior in their courtrooms. But any law enforcement officer who testifies may encounter it.

Picture yourself on a witness stand being cross examined when counsel asks you, *"Didn't Officer Brown say something exactly opposite of what you just stated?"* While asking you this question, counsel is holding a piece of paper and appears to be reading from it. You do not remember what the other officer's report says. You assume, naturally, that the paper counsel holds is your partner's report, and it does say something different from your testimony. So you agree.

After trial, the prosecutor asks you why you agreed with the defense, and tells you that the other officer's report is not contrary to your testimony. He further tells you he saw the piece of paper defense counsel was holding, and it was blank.

This example is one of many potential tricks counsel can play. As a witness, you must be alert to the possibility of ploys to undermine your testimony and your credibility. Once again, preparation is key. Ask the prosecutor whether defense counsel in your case is prone to such trickery. The prosecutor may even have past experiences with counsel to share. You may also want to contact other law enforcement officers who have been cross examined by this attorney to determine what to expect.

Once you are on the witness stand, an important tenet to remember is this: you are not required to take anyone's word for anything as a basis for your testimony. Your job is simply to relay facts known by you in the form of responsive answers to relevant questions. If counsel tells you to assume some other fact which you do not know, or you know is not true, then the answer to the question is simply not relevant. And if counsel has given himself the advantage of reading a document that he is not sharing with you, you are not obligated in any way to take his word for what is on that paper. In other words, you are not required to play the game.

The prosecutor has some ability to assist you if defense counsel attempts to lead you astray. One common technique is to object to the question. The prosecutor may believe that the objection will be overruled, but may be trying to signal to you that something is wrong. For example, the prosecutor may use one of the following objections:

"Objection to the form of the question."

"Objection, the question assumes facts not in evidence."

"Objection, improper predicate."

"Objection, beyond the scope of direct examination."

"Objection, basis of knowledge."

"Objection, relevance."

The exact words used do not matter so much as does the signal to you that something is wrong, and the prosecutor does not want you to attempt an answer the question as it was posed. Consider options to a direct answer. You may want the question rephrased, which would also give you time to contemplate your response.

All that being said, at some point you may be required to say something in response to a question specifically designed to trip you. If so, then first ensure the jury knows you are very uncomfortable with the position in which you have been placed. You can even politely call defense counsel out on his tactics. For example:

"I don't believe I can answer that question, sir, because I know that information is not true."

"I'm sorry, but I am not familiar with the piece of paper you have and I don't know what it says, so I don't know how to answer your question."

That way, even if you are required to continue, the jury knows what counsel is doing, and counsel cannot later argue to the jury that you verified this information as true. So, in the case of Officer Brown's report, consider this answers instead of a simple agreement:

Q: *"Didn't Officer Brown say something exactly opposite of what you just stated?"*

A: *"I am unaware of any statement made by Officer Brown that is contrary to my testimony, but I would be happy to look at whatever you have and reconsider my answer if I need to."*

You have been eminently reasonable, and have spotlighted defense counsel's tactic for all to see. Counsel can either:

(1) show you what he is looking at, which will not happen if the document is fake;

(2) order you to answer without benefit of the document, which will make counsel look unreasonable or dishonest; or

(3) drop the line of questioning altogether.

Regardless of the tactic and whether you fall for it, remain calm. The prosecutor will likely be able to assist you during redirect examination.

Redirect Examination: The Cleanup

If any part of your testimony could be considered almost enjoyable, it would be redirect examination. This is the prosecution's opportunity to "right the ship" and refocus your testimony. It may also provide an opportunity to offer explanation for cross examination answers in a friendly environment.

Sometimes the prosecution will decline redirect examination, if it appears nothing needs clarification or response. If they choose to conduct a redirect, the prosecutor still may not ask you about something you want very much to explain. While this may be a source of frustration for you, the prosecutor probably has a very good reason for not asking. But if you believe your answer would have been important but it was missed, or something the prosecutor may not have been aware of, mention it to the prosecution team after your testimony so they may decide how to proceed.

Redirect examination adheres to the same format as direct examination, in that the prosecutor will ask non-leading questions. It is limited to topics raised during cross examination and should not be a repeat of direct examination, but repetition opportunities will probably be present again. Your preparation with the prosecutor will have identified key facts, an abbreviated version of which should be worked into your redirect examination answers if possible.

During cross examination, you were asked leading questions and gave mostly minimal answers – yes or no – without much explanation. Perhaps you were impeached, or your credibility was attacked in some other way. Often, these types of exchanges create confusion and complication of important facts. But while you testified on cross examination, the prosecutor was busy watching your signals and taking notes. Every time you gave a short answer, the prosecutor knew the long version of that answer (because you met and prepared properly!), and made a decision whether to bring up the subject again on redirect. If you were impeached, the prosecutor assessed the damage and decided whether raising the issue again would make it better or worse. It manifests like this in redirect:

"Officer, you testified on cross examination that you made a mistake in your report. Do you recall that testimony?"

"Yes, I mistakenly wrote north instead of south in my report."

"Did you catch that mistake prior to trial?"

"Yes, I did, during a meeting with my supervisor three weeks prior to trial."

"Did you take any steps to correct the mistake?"

"Yes."

"What did you do?"

"I immediately notified the prosecutor's office of the error and requested guidance. I was told to file a new report regarding the error, which I did. The next day, I supplied a copy of the new report to the prosecutor's office and personally delivered a copy to defense counsel as well."

The full story has now been told, and (depending on the judge's particular practice) you probably will not be subjected to cross examination regarding your explanation because no new issues were raised during redirect examination. Your patience during cross examination has paid dividends. The jury will appreciate your candor and your efforts to correct the mistake, as long as you remain humble and contrite. Their memory of this topic during deliberations may be, not that you made a mistake, but that defense counsel was distorting the facts.

Conclusion

Testimony is indeed an art. Truth is paramount and preparation is key. The more information you have, the better you will feel. To testify well, officers must be willing to put their ego aside and evaluate their strengths and weaknesses. They must ask questions, accept guidance from prosecutors, and use past mistakes to be better officers and witnesses. They must be solid and steady in their testimony and appearance, and know the rules of court and conduct. So be alert, respectful, honest and patient. But most of all, be yourself.

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