

## Tips for Testifying

**Be honest.** No matter what you say, I can deal with your answer if you're honest. Even if it's only a minor detail, when you lie or exaggerate, the jury stops listening to you. You can be honest about 99.9% of your testimony, but if the jury finds out that .1% isn't true, they will think you're a liar and won't listen to you. I don't care if you ignore every other piece of advice in this letter, so long as you're honest. Don't stop to think about whether your answer "helps" or "hurts" the case – all that matters is that you're honest.

**Be prepared.** Look over any statements or reports you wrote. Close your eyes and think back to the night of the crime. Think about the lighting, the time of day, what you saw, what you said, what you did, what the defendant was wearing, what he was doing, etc. Run through the entire scene in your mind. Go in fast-forward, and then go in slow motion. Put yourself back in the scene.

**Dress appropriately.** If you don't own a suit, that's fine. Wear what you would wear if you had to go to church or to a funeral. This is a courtroom, not a nightclub. People's lives are decided in this room. Dress with the respect the situation demands.

**Don't chew gum.**

**Turn off your cell phone, radio, and pager.** Not to "silent" or "vibrate." Turn them off. When you're testifying, nothing else is more important. Tell people in advance that you're going to be tied up today, and that you'll call them back when you're finished testifying.

**Don't talk with other witnesses about the case.** You might see other witnesses in the hall, also waiting to testify. Don't talk with them about the case or about what happened in the courtroom. We don't want your testimony to be tainted by what you hear other people say.

**Don't guess.** If you don't know, say you don't know the answer. If you forgot, say so. If you remembered once, but have forgotten it, say so. If there's something that would help you remember, tell me.

**Listen carefully to the question.** The other lawyer isn't being nice to you because he likes you. He's being nice to you in hopes of gaining additional information that you wouldn't normally disclose. He's being nice to you so that you start agreeing with his questions. If you don't understand the question, tell him. If you don't hear a question, ask him to repeat it.

**Pause before responding.** After you hear the question, pause for a second before you answer. That will give the court reporter an opportunity to keep up with the proceedings, and it will give you a moment to think through your answer. Also, if the question is improper, it will give me the opportunity to object before you answer. Always think before you answer a question, but if the question is a simple one, don't be afraid to answer it quickly.

**Answer the question he asked you, not the question you *wish* he'd asked you.** If possible, keep answers to "yes" or "no." If it's impossible to answer a question with "yes" or "no," you

will be allowed to explain your answer. Otherwise, I will have the opportunity to clarify your answer on re-direct examination.

**Don't volunteer information.** Answer the question, and then wait for the next question. Many lawyers will pause after you answer a question to see if you volunteer any additional information. Sit quietly, and wait for him to ask the next question.

**Speak clearly.** Say "yes, sir" or "no, sir." "Uh-huh," "uh-uh," or nodding your head won't make any sense when your testimony is transcribed for the permanent record.

**Don't argue.** That's my job. Your job is to answer the questions. If a question is improper, I will object. Otherwise, you need to answer the question. Many cases are lost not because the facts aren't proven, but because a witness develops an attitude problem. If you start to quibble or argue with the attorney, the jury will think you're hiding something.

**Don't get angry.** When I'm cross-examining, a witness, I *love* it when they get angry. I know I've hit a nerve, and I stick with that point until the jury loses respect for the witness. If you're angry, the cross-examiner will have a field day with you. You'll exaggerate, argue, and appear unstable. Calm down. Count to 10 if you have to. Just don't show your anger. As soon as you blow your top, the jury discounts your testimony.

**Don't guess.** Unless you're absolutely certain, don't make statements like "that's all that happened" or "that's all I had to do with the case." It's better to answer, "to the best of my memory, that's all I remember" or "that's all I recall." Don't lock yourself in, because later something may trigger a memory about something important to the case.

**Watch your mouth.** If you swear a lot, please watch your language while you're testifying. However, if you are repeating something that someone said on the night of the crime (whether it's the defendant, a witness, or even something you said), don't edit the language. Just tell us exactly what was said.

**Lawyers are people, too.** Many times, the cross-examiner will ask if you have talked about the case with anyone. Many witnesses forget that they've talked with a lawyer about the case. Believe it or not, lawyers are people, too. In addition to anyone else you may have talked with (police officers, victim advocates, friends, enemies, family), you should also tell him which attorneys you've talked to.

**Look at the trier of facts.** You should look at whoever we're trying to persuade. If this is a hearing or a non-jury case, you should direct your answers to the judge. If this is a jury case, direct your answers to the jury.

**Be yourself.** If you don't normally use fancy words, don't try to use them in the witness stand. I don't want you to try to put on an act while you're in the witness stand. Just be you.

A handwritten signature in black ink, appearing to read "Elliott Wilcox", with a small dot above the 'i' and a long horizontal stroke extending to the right.