

United States Department of Justice
United States Attorney's Office
District of Alaska



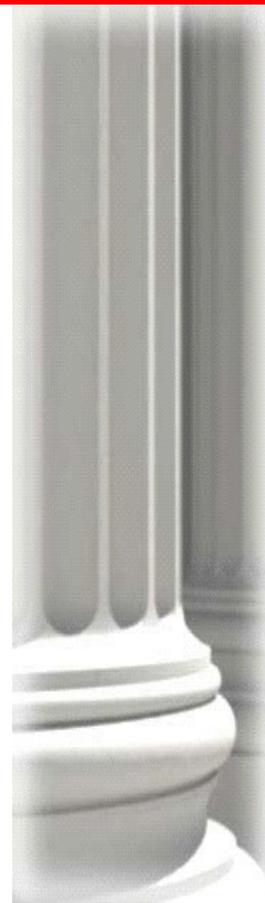
PREPARING TO TESTIFY

General Resource Guide

Provided by:

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PREFACE

The federal criminal justice system cannot function without the participation of witnesses. Witnesses have important responsibilities in the criminal justice system. The complete cooperation and truthful testimony of all witnesses are essential to the proper determination of guilt or innocence in a criminal case.

We hope this booklet will provide answers to some of your questions, however, this is only an introduction. Please feel free to ask any additional questions you might have. You may contact the Victim/Witness Coordinator or the Assistant U.S. Attorney assigned to the case. Addresses and telephone numbers are listed at the end of this booklet.

Thank you for your cooperation with our office and for your service as a witness. We appreciate the sacrifice of time being a witness requires.



Tips for Testifying

1. REFRESH YOUR MEMORY

Before you testify, try to picture the scene, the objects, the area, the distances and exactly what happened. This will assist you in recalling the facts more accurately when asked a question. If the question is about distances or time, and if your answer is only an estimate, be sure you say it is only an estimate. Beware of suggestions by attorneys as to distance or times when you do not recall the actual time or distance. Do not agree with their estimate unless you independently arrive at the same estimate.

2. SPEAK IN YOUR OWN WORDS

Don't try to memorize what you are going to say. Doing so will make your testimony sound "pat" and unconvincing, instead, be yourself. Prior to trial go over in your own mind those matters about which you will be questioned.

3. SPEAK CLEARLY

Present your testimony clearly, slowly, and loud enough so the juror farthest away can easily hear and understand everything you say. Avoid distracting mannerisms such as chewing gum while testifying. Although you are responding to the questions of a lawyer, remember that the questions are really for the jury's benefit. Additionally, smoking is not allowed.

4. APPEARANCE IS IMPORTANT

A neat appearance and proper dress in court are important. The trouble with an appearance that seems very casual or very dressy is it will distract the jury during the brief time you're on the stand and they won't concentrate on your testimony.

5. DO NOT DISCUSS THE CASE

Jurors who are or will be sitting on the case in which you are a witness may be present in the same public areas you will be. For that reason, you **MUST NOT** discuss the case with anyone. Remember too, jurors may have an opportunity to observe how you act outside of the courtroom.

6. BE A RESPONSIBLE WITNESS

When you are called into court for any reason, be serious. Avoid saying anything about the case until you are actually on the witness stand.

7. BEING SWORN IN AS A WITNESS

When you are called to testify, you will first be sworn in. When you take the oath, stand up straight, pay attention to the clerk, and say "**I do**" clearly.

8. TELL THE TRUTH

Most important of all, you are sworn to **TELL THE TRUTH**. Tell it. Every true fact should be readily admitted. Do not stop to figure out whether your answer will help or hurt either side. Just answer the questions to the best of your memory.

9. DO NOT EXAGGERATE

Don't make overly broad statements you may have to correct. Be particularly careful in responding to a question that begins, "Wouldn't you agree that...?" The explanation should be in your own words. Do not allow an attorney to put words in your mouth.

10. LISTEN CAREFULLY TO AVOID CONFUSION

When a witness gives testimony, he/she is first asked some questions by the lawyer who called him/her to the stand. For you, this is an Assistant U.S. Attorney. The questions asked are for the purpose of "direct examination." When you are questioned by the opposing attorney, it is called "cross examination." This process is sometimes repeated several times in order to clearly address all aspects of the questions and answers. The basic purpose of direct examination is for you to tell the judge and jury what you know about the case. The basic purpose of cross examination is to raise doubts about the accuracy of your testimony. Don't get mad if you feel you are being doubted during the cross examination. The defense counsel is just doing their job.

11. DO NOT LOSE YOUR TEMPER

A witness who is angry may exaggerate or appear to be less than objective or emotionally unstable. Keep your temper. Always be courteous, even if the lawyer questioning you appears discourteous. Don't appear to be a "wise guy" or you will lose the respect of the judge and jury.

12. RESPOND ORALLY TO THE QUESTIONS

Do not nod your head for a "yes" or "no" answer. Speak aloud so the court reporter or recording device can hear and record your answer.

13. THINK BEFORE YOU SPEAK

Listen carefully to the questions you are asked. If you don't understand the question, have it repeated, then give a thoughtful, considered answer. **DO NOT GIVE AN ANSWER WITHOUT THINKING.** While answers should not be rushed, neither should there be any unnaturally long delay to a simple question if you know the answer.

14. EXPLAIN YOUR ANSWER

Explain your answer if necessary. Give the answer in your own words, and if a question can't be truthfully answered with a "yes" or "no," it's O.K. to explain your answer.

15. CORRECT YOUR MISTAKES

If your answer was not correctly stated, correct it immediately. If your answer was not clear, clarify it immediately. It is better to correct a mistake yourself than to have the attorney discover an error in your testimony. If you realize you have answered incorrectly, say, "May I correct something I said earlier?" Sometimes witnesses give inconsistent testimony - something they said before doesn't agree with something they said later. If this happens to you, don't get flustered. Just explain honestly why you were mistaken. The jury, like the rest of us, understands people make honest mistakes.

16. DO NOT VOLUNTEER INFORMATION

Answer ONLY the questions asked of you. Do not volunteer information not actually asked for. Additionally, the judge and the jury are interested in the facts you have observed or personally know about. Therefore, don't give your conclusions and opinions, and don't state what someone else told you, unless you are specifically asked.

17. DON'T SET YOURSELF UP FOR ERROR

Unless certain, don't say "That's all of the conversation" or "Nothing else happened." Instead say, "That's all I recall," or "That's all I remember happening." It may be after more thought or another question, you will remember something important.

18. DON'T SET YOURSELF UP FOR ERROR

Stop speaking instantly when the judge interrupts you or when an attorney objects to a question. Wait for the judge to tell you to continue before answering any further.

19. BE POSITIVE AND CONFIDENT

Give positive, definite answers when at all possible. Avoid saying, "I think," "I believe," or "In my opinion" if you can answer positively. If you do know, then say so. You can be positive about important things which you would naturally remember. If you are asked about little details which a person naturally would not remember, it is best just to say so if you don't remember. Don't make up an answer.

20. FOLLOW COURTROOM RULES

When being questioned by defense counsel, don't look at the Assistant U.S. Attorney or at the Judge for help in answering the question. If the question is improper, the Assistant U.S. Attorney will object. If a question is asked and there is no objection, answer it. Never substitute your ideas of what you believe the rules of evidence are.

21. TALKING TO OTHERS ABOUT CASE

Sometimes an attorney may ask this question: "Have you talked to anybody about this case?" If you say "no," the judge knows that doesn't seem right, because a prosecutor usually tries to talk to a witness before he/she takes the stand and many witnesses have previously talked to one or more police officers, or federal law enforcement agents. It is perfectly proper for you to have talked with the prosecutor, police or family members before you testify, and you should, of course, respond truthfully to this question. Say very frankly you have talked with whomever you have talked with—the Assistant U.S. Attorney, the victim, other witnesses, relatives and anyone else whom you have spoken with. The important thing is you tell the truth as clearly as possible.

22. DO NOT DISCUSS YOUR TESTIMONY

After a witness has testified in court, he/she should not tell other witnesses what was said during the testimony until after the case is completely over. Thus, do not ask other witnesses about their testimony and do not volunteer information about your own testimony.

Recap

- ✓ **REFRESH YOUR MEMORY**
- ✓ **SPEAK IN YOUR OWN WORDS & SPEAK CLEARLY**
- ✓ **APPEARANCE IS IMPORTANT**
- ✓ **DO NOT DISCUSS THE CASE**
- ✓ **BE A RESPONSIBLE WITNESS**
- ✓ **BEING SWORN IN AS A WITNESS-STAND TALL & RAISE YOUR HAND**
- ✓ **TELL THE TRUTH & DO NOT EXAGGERATE**
- ✓ **LISTEN CAREFULLY TO AVOID CONFUSION**
- ✓ **DO NOT LOSE YOUR TEMPER**
- ✓ **RESPOND ORALLY TO THE QUESTIONS**
- ✓ **THINK BEFORE YOU SPEAK**
- ✓ **EXPLAIN YOUR ANSWER**
- ✓ **CORRECT YOUR MISTAKES**
- ✓ **DO NOT VOLUNTEER**
- ✓ **DON'T SET YOURSELF UP FOR ERROR**
- ✓ **QUIT SPEAKING WHEN COUNSEL OBJECTS**
- ✓ **BE POSITIVE AND CONFIDENT**
- ✓ **FOLLOW COURTROOM RULES**
- ✓ **IF ASKED, BE HONEST ABOUT TALKING TO OTHERS ABOUT THE CASE**
- ✓ **DO NOT DISCUSS YOUR TESTIMONY**

DEFINITIONS

ACQUITTAL: Legal judgment that a criminal defendant has not been proved guilty beyond a reasonable doubt.

ARRAIGNMENT: A proceeding in which the criminal defendant is called into court to have the indictment read to him/her and to enter a plea.

CONCURRENT SENTENCE: Sentences for more than one crime in which the time of each is to be served at the same time, meaning that all time served is credited to all sentences.

CONSECUTIVE SENTENCE: Sentences for more than one crime in which the time of each is to be served successively, meaning that time served for each sentence is served one after another.

CONTINUANCE: When court hearings cannot take place as scheduled, the hearing date is changed to a future date. This is a very common occurrence in the criminal justice system.

CONVICTION: Legal judgment that a criminal defendant has been proved guilty beyond a reasonable doubt.

DEFENDANT: The person against whom the indictment has been filed.

DEPOSITION: An oral statement, made under oath by a witness. Counsel for the case have an opportunity to question witnesses to discover what each witness knows and will testify to at trial. The deposition may be used later in the trial.

EVIDENCE: Any kind of matter, presented at trial through witnesses, records, or documents for the purpose of persuading the court or jury of the correctness of the contentions of the parties involved.

GRAND JURY: Made up of persons who hear the government's evidence against a person who is suspected of committing a crime to determine whether there is sufficient evidence to bring that person to trial.

INDICTMENT: The formal charging of the defendant with a particular crime by a grand jury.

INFORMATION: The formal accusation charging the defendant with a particular crime but brought by the U.S. Attorney, rather than by the grand jury.

JUDGMENT: The official and authentic decision of a Court adjudicating with finality the respective rights and claims of the parties in a law suit.

PERJURY: Deliberate false testimony under oath. Under current Federal Law, perjury carries a penalty of up to 5 years.

PLAINTIFF: The one who brings the suit, asking for the enforcement of a right or the recovery of relief from wrong.

PLEA: A defendant's official statement of "guilty" or "not guilty" to the charges made against him/her.

REASONABLE DOUBT: The idea that the evidence in a criminal trial must show that the defendant is guilty to the point that the jury is convinced and morally certain that the defendant did commit the crime.

RESTITUTION: Payments by offenders to victims as redress for the damage done in committing a crime.

SENTENCE: Sanction formally pronounced by a judge upon a defendant after his/her conviction.

SUBPOENA: A court order directing a witness to appear in court and give testimony. Failure to honor a subpoena constitutes contempt of court.

SUPPRESS: To put a stop to a thing actually existing; a motion to suppress evidence or a confession asks the Court not to allow the use of such evidence or confession in the case.

VENUE: The geographical location in which a case is tried.

VERDICT: The formal decision or finding made by the jury upon the matter submitted to them at the trial.

VICTIM IMPACT STATEMENT: A statement from the victim to be given to the sentencing judge. Items in the statement should include the impact of the crime on the victim emotionally, physically and financially.