

The Truth, The Whole Truth, And Nothing but The Truth

BY BRUCE STANGER

Giving testimony is about disclosing information. It is by definition under oath and almost always recorded in some fashion “word for word” as they say. Most of us never have the reason or the opportunity to give testimony under oath. However if you are called upon to testify there are a few things to keep in mind.

AVOID NERVES

If you are giving testimony your demeanor matters. Telling the truth, but appearing to be very nervous and shifty is not the way to impress, whoever is listening, with your honesty. Responding with “to tell the truth” is a mistake when you answer a question. This line makes it appear as if you only sometimes tell the truth.

BE HONEST

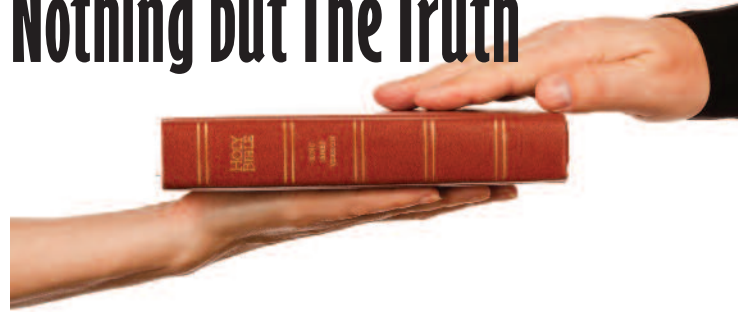
The most important tip is this: tell the truth! As you know, if you tell the truth it’s hard to be tripped up, confused, or to make an error. Telling the truth is what our parents always told us was the right thing, even though it’s not always easy. Truth in part is based upon perception, experience, and can be clouded by the many different things that spin around in our mind as we are asked questions. It can especially be clouded by the tensions of the moment where the testimony is perceived as important either simply because of the desire to tell the truth or because of some interest in the outcome of the proceedings.

LISTEN TO YOUR ATTORNEY

If you are ever called to testify (and if you’re represented by a lawyer), expect the lawyer to meet with you to discuss possible questions that might be asked and to review your answers. The lawyer will not ask you to lie. The lawyer will help you to understand the full import of certain questions so that when you answer them you can be better prepared. The lawyer will also in all likelihood help you practice by asking you questions as if you were on the stand.

THE RULES, NOTHING BUT THE RULES:

1. This can’t be emphasized enough: tell the truth.
2. Do not answer a question that is not perfectly clear to you. What this in essence means is if you’re not sure what precisely the person who is asking the question is asking don’t answer it. Simply state that you are unclear about the question or that you do not understand the question.
3. If you feel that you’re being trapped into a yes or no that does not make sense and needs an explanation, you may simply answer by stating that the question can not be answered as a yes or no and requires an explanation, and then give the explanation as part of your answer.
4. If the question presumes a fact is true such as “when is the last time you beat your wife” one of the lawyers may object to it but if not you can simply answer by saying: “I never beat my wife” rather than feeling trapped by the nature of the question.
5. If one of the lawyers objects to the question wait to be told whether you should answer it or not and listen to the objection. It may actually help you understand the nature of the question.
6. If the question sounds like a series of questions rolled into one such as “wasn’t it a sunny day and wasn’t it on a Tuesday in the month of July” then your response should simply be a question: “There appears to be more than one question in there; which one would you like me to answer?” If you try to remember and answer all the parts it will put you under further stress and only confuse the record being taken down by the court reporter.
7. Don’t worry about the court reporter getting everything. You will



be told if your testimony is not clear or loud enough. Keep your focus on the person who is asking the questions so you are sure to hear the full question clearly.

8. Don’t try and slip in additional information or facts or opinions which are not clearly part of the question. You will not only appear to be advocating rather than answering questions but you may very well be advocating in a way that will not be helpful. Again simply answering the question is the most likely way for success.

9. If you are represented by a lawyer you do not have to be concerned about the proper information getting in if your answers are only part of the full story because of the way that the questions were asked. The person asking the questions may be trying to limit the question so as to limit the facts that you testify to. You can rely upon your lawyer who will have an opportunity to ask you questions as well to ask you more open question or specific questions about those facts that are most helpful to you or to his or her client. If you are perceived as trying to get in information that wasn’t clearly asked for you may not be perceived as being cooperative and truthful.

MY TURN TO BE ON TRIAL

There was only one time that I testified under oath. It was in connection with the terms of a deal that I had negotiated. The judge was trying to figure out what the parties really meant by an oral agreement that had been placed on the record in settling a case. The so called settlement ended up not settling every issue because the parties were once again fighting about the same points. It was an interesting situation for me as I was typically an advocate and would argue a position. I was tempted to throw additional information in rather than follow my own advice. In the end, I did follow my advice and the other lawyer did his job by asking me all the clarifying questions. So at the end of the day it worked just the way it was supposed to work.

During my first few years as a lawyer, in the late 70s, I put the in house corporate counsel of my client on the stand in a matter of great significance. We had prepared, he knew what I was to ask him and I thought it would be easy. This lawyer was very senior to me and very experienced; but he was making a big mistake. He would respond to each one of my questions with: “Attorney Stanger I think the question that you meant to ask was _____ and the answer is _____.” The lawyer on the other side objected each time. The judge looked down at my client after the second or third time and said to him you have a capable lawyer, you hired him, let him do the job and answer his questions not your own. The lawyer on the stand scowled, apologized, and then he did simply answer my questions. The client got what he wanted – we won. The judge believed him.

The moral of the story is to be forthright, clear, and stick to the system established by the court for providing evidence. Of course tell the truth. ■

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