INFORMATION PREPARED AND PRESENTED
FOR OTTAWA COUNTY JUVENILE COURT TRAINING

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WHAT TO DO WHEN YOU ARE CALLED AS A WITNESS TO TESTIFY IN COURT

You are called ("subpoenaed") as a witness because someone believes you have knowledge of some facts which may assist the court (judge or jury) in deciding a disputed issue in a case.

A witness is a person who has personal knowledge of an event. It is direct knowledge obtained through the senses, that is, heard, seen, touched, smelled or tasted.

To "testify" means to answer questions in court after being sworn to tell the truth. The purpose of "testimony" is to furnish facts to the judge (or jury) who must make a verdict, a judgment, a decision, a conclusion.

"IT'S NOT TELEVISION!"

Contrary to popular belief, trials are not conducted the way they are portrayed on television. That is fiction, written and acted to telescope a day or two of trial into 30 minutes (minus commercials).

" GET READY FOR THE TRIAL!"

Psychologists tell us that every word we have said or heard or scene we have seen is impressed on our mind, and our memory, is the ability to recall these things. The memory, as we know, can be trained and sharpened. It can be aided by reports, notes and the memory of another who was there.

As soon as you are notified of a trial, which is usually several days before, look up your reports and read any additional notes which you might have made. This will set your unconscious mind to work

recalling the events. You will not have to consciously think of the events, though at times you will find it comes to your conscious mind. A couple of days before the trial talk over the reports and notes with other witnesses on the case. You will aid each other's memories because you will have remembered certain things, not appearing in the reports or notes, which he will have forgotten, and he will likewise remember things you have forgotten. In addition, talking it over, you will recall items which both of you had forgotten.

Make a habit of writing notes each day on your cases. These need not be elaborate, just sufficient to aid your memory later. Always write down the amusing or unusual aspects of the situation, they will be an aid to memory of the case.

When you are asked by the attorney to be in a certain office ahead of trial time, it is not just another inconvenience. Its purpose is to allow the attorney to find where your testimony fits into the case, to allow you an opportunity to read over your reports or notes to refresh your memory, and to discuss with other witnesses about your, and their testimony.

REPORTS AND NOTES IN COURT

You may take your reports and notes into court and with you onto the witness stand, if you choose. However, if you glance at them to aid your memory, to get your mind at work to recollect, even though you do not read from them in answer to the question, you must submit them to the opposing attorney for his use in cross examining you to test your actual memory. They are not marked and received as evidence but are used by the opposing lawyer to test your memory. This is "present recollection refreshed."

On the other hand,"past recollection recorded" is the situation in which the reports, records and notes may be marked as exhibits and received into evidence as proof of the statements they contain, if certain conditions are met. (1) Where the witness has no present recollection of what was said or done then and the memoranda do not refresh the witness's memory, (2) but the witness does remember he did have a conversation or did something, (3) he did write it down fairly contemporaneously with the facts or events recorded while the details were fresh in his memory, (4) what he wrote down was the truth (or if dictated to and written by another and read by the witness at the time and it was true) then the report, record, notes, can be admitted as evidence of the fact sought to be proved as "past recollection recorded". This could be important where the witness has a large case load and/or the cases are of long duration before trial.

"SPEAK UP!"

Of course you are nervous! Nervousness causes your vocal cords to tighten up, unknown to you, and your voice comes out in a loud whisper. So speak up as loudly as you can and do not let your voice drop at the end of the sentence. As they will tell you, "Speak up!" If you try to shout your voice will come out in a loud clear volume.

Visit a court hearing with witnesses testifying. It will make you familiar with a court.

COURTESY, DIGNITY, FAIRNESS!

Conduct yourself in the courtroom as a public official, that is, with courtesy and dignity. The public expects more of a court officer and public social worker because they have great authority -the power to separate a child from his home, his parents, his friends, his family , his neighborhood. Dress appropriately for the

occasion. Refrain from whispering to or laughing with others, or from displaying any emotion beyond that which the judge or the jury is sharing at the events in the courtroom. Appear relaxed and interested but not emotionally involved in the outcome (it is not football or baseball game).

Make a good initial impression. Stand upright when taking the oath. Say "I do" clearly.When you are testifying appear confident in what you know and ready (but not eager) to tell the facts you know. Remember, no single witness, including yourself, knows all of the facts. Use every opportunity to show that you are fair and impartial and interested in protecting the rights of people as well as in correcting situations which appear wrong to you.

"ANSWER THE QUESTION!"

In our legal trial system the method of presenting facts to a judge or jury is by question-and-answer; the lawyer asks a question of the witness who then gives an answer. Factual information is not given in speeches. What appears to be an opening speech of a lawyer is, correctly, a statement of what he expects the testimony to reveal. The closing "speech", after the witnesses have testified, is a summary or, more properly, an argument by the lawyer of what the witnesses have said, their believe-ability, and an attempt to persuade the judge or jury that the witnesses have supported the lawyer's side of the case.

The role of the witness then is to answer the question- it is not to present a viewpoint, opinion, conclusion, judgment, decision or verdict.

You can be a more effective witness when you look at and speak to the judge (or the jury) when answering the question, particularly if it is a long answer such as telling what happened in the form of a story.

"IT'S EASY!"

Pay close attention to the question, then answer the question. Do not extend or elaborate on the answer. Do not volunteer to say more than the answer calls for. "Were you present when the photographs were taken?" "No, I was sitting in the driver's seat of my Pinto, you know the one I bought two months ago, adjusting the calibration of the seat which hasn't worked since I drove through that rainstorm shortly after ..."

- if the answer to the question is "No"	say "No"
- if the answer is "Yes"	say "Yes"
- if you do not know the answer	say "I don't know"
- if you cannot answer the question with a "yes" or "no"	say "I cannot answer that question 'yes' or 'no'
- if you do not understand the question	say,"I do not understand the question."
	Don't guess at the questi don't guess at the answer
- if you do not know the exact answer	say" I do not know exactly, my best estimate is..."
- if you do not remember	say "I don't remember."
- if the lawyer asks you "could it be..." "Is it possible that..."	say "It could be anything but that is not what happened".
- if you are sure of a fact, stand with it.	

Explain your answer, if necessary

If your answer was wrong, correct it immediately.

If your answer was not clear, clarify it immediately.

Do not say "That's all of the conversation," or "Nothing else happened." Instead say,"That's all I remember at this time."

Do not memorize what you are going to say.

"STOP ACTION" AND "REPLAY"

When relating a continuing series of events you may be stopped by the attorney ("stop action" on TV) to describe the position of persons and objects in the stop-action picture frame. He might even ask for a "replay" of a previous event. This is the way he uses words to create a picture in the mind of the judge (or jury).

" I OBJECT!"

When an objection is made by an attorney,stop talking immediately. To keep on talking is impolite and implies that you are trying to get improper testimony into the case. It annoys everyone because it causes the lawyers and judge to shout at you to get you to stop.

If the judge says,"Objection overruled," it means that you may continue testifying in the same way. Wait for the attorney to repeat the question or to tell you to continue testifying.

If the judge says,"Objection sustained," it means that you are not testifying to a correct subject or that the subject is correct but your way of testifying is incorrect. Listen to the objection being made and the answer of the other attorney and the ruling of the judge. Try to understand what the objection is about so that you can correct it yourself. Wait for the next question.

Oftentimes you consider something important which should be made known to the jury and you are stopped from telling it by the lawyer when he is questioning you. It is the responsibility of the othe

lawyer to get the information from you when it is his turn. If the case is well prepared the attorney knows what you know. He also knows the rules of evidence and whether the information is important to the issues of the case. You have to trust his judgment in this instance.

"THE FACTS, MA'AM, JUST THE FACTS!"

Witnesses often say things in court which call forth an objection from the other attorney that the witness is giving his "conclusion", or his "opinion", or is"interpreting" the facts rather than "stating the facts".

What is a fact and what is a conclusion? The dictionary says a"fact" is "something that has actual existence; a piece of information presented as having objective reality." A "conclusion" is "a reasoned judgment; the final decision in a law case." The witness is to furnish the facts in court; the judge or the jury is to interpret the facts presented and to arrive at a conclusion, the verdict.

When a witness presists in stating conclusions and opinions rather than facts, it may be due to a number of reasons: the witness may be careless in his manner of speaking; he may be trying to make his testimony more impressive; he may be attempting to state a viewpoint of the case or persons; he may be prejudiced and biased.

A simple illustration of a conclusion and of the facts: Conclusion: "Jones was nervous". Facts:"Jones wet lips with his tongue, he was sweating, he looked quickly at different parts of the room and he gulped frequently."

It is so much simpler to say," I said," "he said,","she said," one wonders why witnesses insist on saying "he admitted", "he confessed" "he claimed," "he stated." Avoid prefacing each answer with "I think,"

"I thought", "It seemed,""I believe".

When describing a scene or conversation where there are several persons present, particularly if they are of the same sex, it is quite simple to identify the persons by name rather than by pronoun. "Jones said he, Jones, shot Susan with the shotgun after Smith told Jones to watch out." versus "He said he shot her with the shotgun after he told him to watch out."

When definiteness of facts or of memory are not practicable the witness should qualify the answer,"Approximately..." "In my best judgment..." "As I recall..." "As I remember..." "My best recollection is ..."

"YOU ARE AN EXPERT"

The rule of law is thoroughly established that what the court wants from a witness is a statement of the facts known or observed by him, not an opinion based on those facts.

But in certain situations, in order to render any sound verdict at all, the jury must have help from the opinion of a witness, where they are not equipped by education, training, or experience to arrive at a sound conclusion from the facts before them, where a knowledge of the subject matter under consideration is not likely to be possessed by the jurors.

Opinions of expert witnesses are always admissible when needed. A witness may state a conclusion of fact if it will help the jury and will not intrude on their province (the verdict).

The average expert witness is an ordinary man, fitted by education, training, and experience in a particular trade or calling or profession to be of assistance to the jury in explaining the relationship to one another of the facts submitted in the case or the results to be expected from such facts.

A witness will not be allowed to give expert testimony until he has been "qualified" as an expert and the basis for the opinion has been shown.

Ordinarily the opinion of the expert witness is only an element of evidence in the case, to be weighed by the jury with the other evidence and to be regarded or disregarded as they may decide.

STANDARDS

The standards of human behavior in a court, which is an official instrumentality of the community, are the standards of the community at large, not the personal standards of a particular witness, or of an individual juror, or of an individual judge, but the standards to be applied are those of the community at large.

THE HEARSAY RULE IN GENERAL

A definition of "hearsay" is "an out of court statement, oral or written, offered by a witness to prove the truth of the matter stated therein." By "out of court" is meant any statement made other than a witness while testifying at the present hearing.

There is no more thoroughly established rule of evidence than the one prohibiting the use of hearsay. A witness must tell what he knows himself, not what he has heard from others.

The real reason for the rule is the lack of opportunity of the parties in court for cross-examination.

There are, obviously, numerous exceptions to the hearsay rule which have been developed over the centuries. The attorneys and the judge are expected to know those exceptions and to guide the witness and to rule accordingly.

THE"THINKING" WITNESS

The fear and dread of inexperienced witnesses is the cross

examination by the opposing attorney. Actually, the direct examination is more difficult to respond to correctly. A witness who has prepared himself to tell what he knows, pays attention to the question, and answers the question, all the while continuing to think as a reasonable, intelligent person need have no fear of cross-examination.