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WITNESS PREPARATION

Taking the Witness Stand



Witness Preparation

- What makes a good witness?
- What makes a bad witness?
- Can you, as a prosecutor *make* a witness?

Session Goals

- What will you get out of this?
 - Identify primary problem areas for witness testimony;
 - Understand methods and techniques to prepare witnesses and avoid testimony pitfalls;
 - Ability to explain the need for continuing education of witnesses, especially peace officers, in developing testimony skills using the "PAIR" techniques; and,
 - Understand the emerging emphasis in witness candor in courtroom proceedings.

Think about what your doing!



Boy Scout Motto

- “Be Prepared”!!!!
- The “P” in PAIR is Prepared!
- What affects preparation?
 - Complexity
 - Seriousness
 - Witness’ Role
- Exposure – witnesses must be aware and practice is professional.

Study for the Big Day!

- Officers must read their reports
 - Not skim, review, but READ!!!!
 - NOT Memorize
 - Don't "rehearse" testimony
 - Pay the most attention to dates, times, day of week (and if they make sense?)
- Make sure they know prior testimony
- Talk to your witnesses! (Duty of candor)
- Make sure they know locations involved

Avoid Partiality

- The “A” in PAIR is to Avoid Partiality
- Professionalism – Defined
 - Impartial
 - Dispassionate
 - Independent Observer
 - Don't take sides
 - Speak the truth
 - Treat others as you would want to be treated
 - Kill with kindness

Avoid Partiality - Continued

- Discourage evasiveness
- Don't try to out-think
- No such thing as a "trick question" to a witness
- Do not be defensive or angry
- Ensure trust in you, by your witnesses to allow clean up re-direct examination
- Discourage volunteer statements

I slept since then.....

- It's okay to say:
 - I don't know
 - I can't remember
 - I didn't see it
 - I don't understand (no lack of capability)
- Coach the difference between:
 - I can't remember & I don't know
 - Did you ever know?
 - Absolutes will hurt, absolutely!

Transition to: Avoiding Traps....



Inquire to Avoid Traps

- The “I” in PAIR is for Inquire to Avoid Traps
- Difference between report and recall
 - Used to attack credibility
 - Everyone is human – admit mistakes, even use humor
 - If I knew you were going to ask me that question, I would have been sure to include it in my report...- be very careful.
 - Don't allow testimony to be limited to what is in the report
 - Ask what the purpose of the report is?
 - Verbatim recount, or list of important facts known at the time?

More Inquiry...

- Repeated Questions (yes or no leading)
 - Pay attention, make sure you agree with everything, respond by agreeing to as much as you can, then reject the rest.
 - Typically compound in nature
- Teach Witnesses to use objections as a signal
- Use caution when summarizing – did the summary leave out an essential fact?
- Prepare the witness for questions about interaction with the Prosecutor

Inquiry – yet again...

- Prosecutor Interaction
 - Avoid answers which suggest “rehearsal”
 - I told him what happened....stick to the facts
 - Avoid answers about whether he questioned the officer’s story
- Times & Distances
 - Don’t allow witnesses to guess!!!!
 - Use a process, but be careful to “estimate”
 - Use examples, instead of feet/yards

Inquiry...



Regular Plain English!!!

- The "R" in P A IR is for Regular Plain English
- Using Regular Plain English
 - I exited my patrol vehicle
 - I was enroute
 - I activated by emergency lights
 - I entered the residence
 - I spoke to Jones, Timothy or S₁, O₃, etc.
- Read page 14.....
- Make sure your witnesses know their audience....

Regular Plain English...



Session Goals Achieved!

- So, what *did* you get out of this?
 - We discussed
 - Reports
 - Prior Testimony
 - Treatment of Counsel/Court
 - Evasiveness
 - Volunteering
 - Anger
 - Don't know/recall/understand
 - Repeated questions
 - Summarized leading questions
 - Contact with the prosecutor (duty of candor)
 - Times & Distances

Session Goals Achieved!

- We examined how to “PAIR”-UP with your witnesses:
 - Prepared
 - Avoid Partiality
 - Inquire to Avoid Traps
 - Regular Plain English
- We identified a continuing need for education, training, and exposure, especially peace officers, to develop testimony skills with the Prosecutor in using the “PAIR” techniques; and,
- Highlighted the emphasis in witness candor in courtroom proceedings through professionalism.

Progress, not perfection...



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