

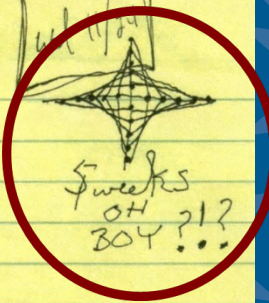


Witnesses Win Lawsuits

WILLIAMS MULLEN

Sun 11/21

Mon 11/22 Tues 11/23



#1 - PW - Continued

→ Cross Exam → Mr. Wollensky -
 → Who cares whether he
 continued to throw up on
 Monday.

→ ARE ALL FAMILY MEMBERS GOING TO RECREATE THE SEQUENCE OF EVENTS??

was the
 nurse in
 not calling
 Dr. Kelly

→ Witness is a bit flustered

→ I don't understand the point of some of the questions.

→ Did the heart attack cause the BRAIN INJURY??

→ Seems as if effy is trying to destroy credibility!! ⇒ Not working for me!!

→ Records indicate discussion w/ family
 on 11/24 AND 11/25
 → Maybe w/ OTHER sister??

→ SO WAS IT???

Cross of
Hilly
Kaye

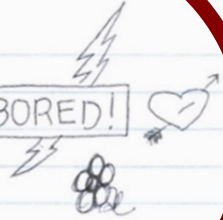
Exhibit 10 - the grey scale

Comparison and Elimination

- only one subject for elimination
- Christy Cashman?? - who's the?

on battery cover / can't tell when placed or how long it has been there.

BORED!



Redirect

Latent prints - low humidity - not many latent prints
- a few smudges on both scales

Recross

N/A

Barry L.
Overton -
Detective
w/ DPD

Detective - District 6 Narcotics Units

12 years

- 2 1/2 years patrol officer in Anniston, LA / undercover narcotics

- Military Police

- 15 years narcotics related

500 search warrants executed

75 arrest warrants

DEA narcotics schools

*M, Cocaine, Crack, heroine, Meth, ecstasy

- 3 other times as expert → state level







MY COUSIN VINNY...



WHY DO WITNESSES **CRASH & BURN**???





MAY 3 2006

8:41:07 PM

WHY?



- > Teacher/Student paradigm fails
- > Witness/Lawyer role misunderstandings
- > Witness Anxiety
- > No "Coping Strategy" – Themes, Home Bases, Resources
- > Witness doesn't "own" the story
- > Inadequate cross practice
- > Under stress, the witness wilts, forgets, becomes evasive or nonresponsive
- > "Fixing" strategy not well understood by witness

THE 3 P'S
PREPARATION
PRACTICE
PACE

WITNESS TYPOLOGY MATRIX

<p>"Evasive , Angry" (Aggressive, Non-disclosing) Hostile, wise guy, argues with Q, won't answer directly</p>	<p>"Heavy –handed" (Aggressive, Informative) Has good things to say, but is too eager, too much of an advocate, can't be wrong, over confident</p>	<p>"Careless/Bully" (Aggressive, Over-disclosing) Know it all, something to prove, needs to win every point, self absorbed</p>
<p>"Unprepared" (Assertive, Non-disclosing) No doubts, but no facts either – How should I know?</p>	<p>"Good Communicator" (Assertive, Informative) "Newscaster" - objective, confident, competent, Non defensive</p>	<p>"B.S. Artist" (Assertive, Over-disclosing) Talks too much, too fast, salesman, strays from subjects</p>
<p>"Empty Chair" (Passive, Non-disclosing) Wallflower, introvert, spineless, scared</p>	<p>"Boring" (Passive, Informative) Not my job, dull, don't care</p>	<p>"Victim" (Passive, Over-disclosing) – volunteers harmful information, hoping to just get it over with</p>

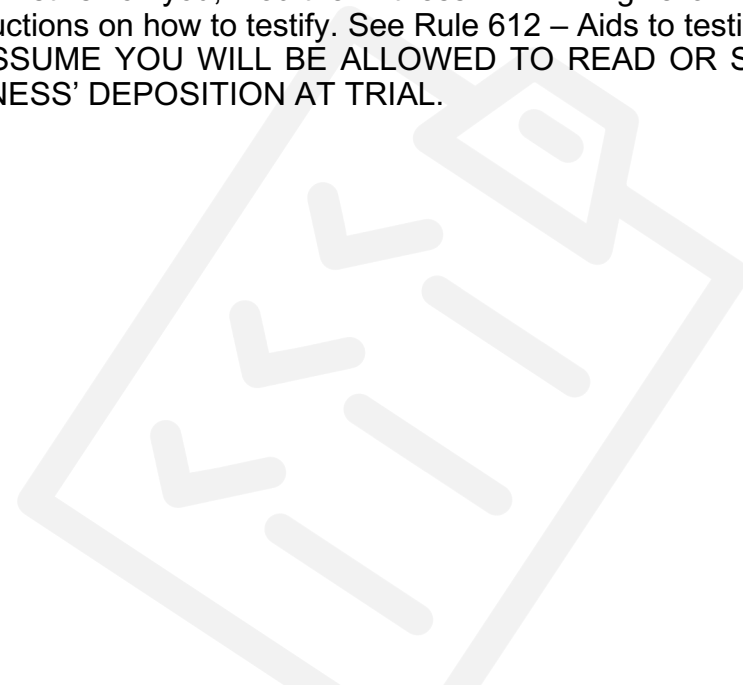
WITNESS PREPARATION CHECKLIST*

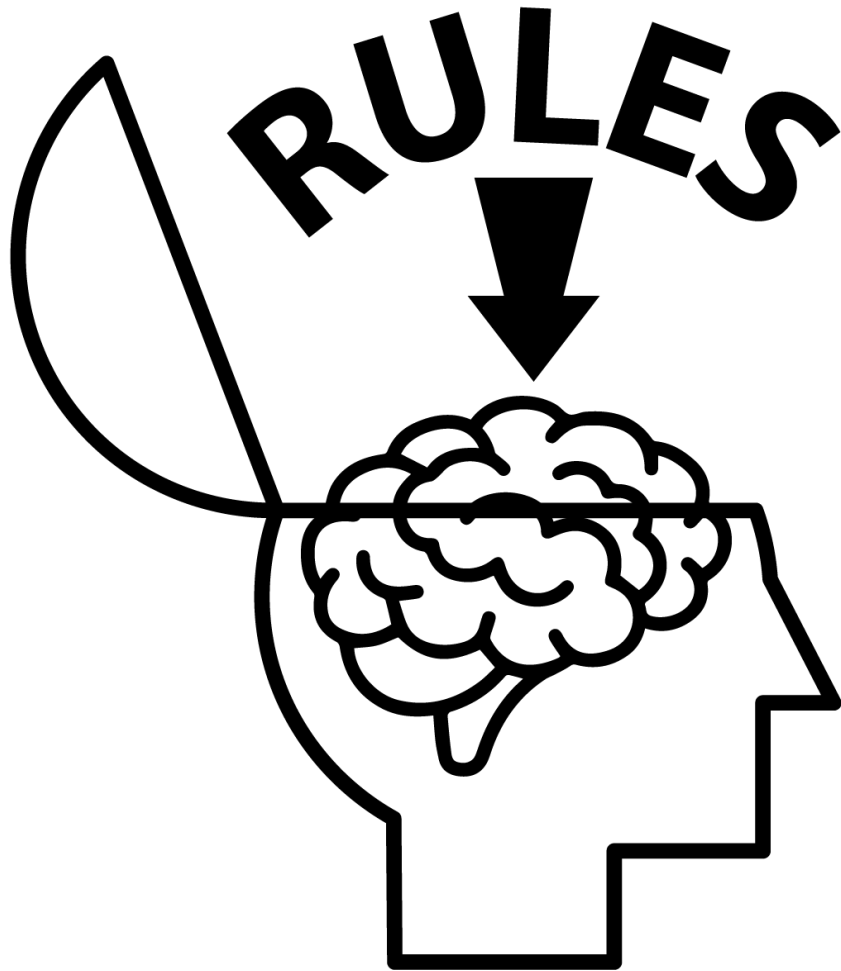


1. Tell the truth.
2. Listen to the question, answer only the question asked, then stop. Don't volunteer.
3. Pause (1,2,3) – Pace (slow)
4. Never evade. Answer the question asked, then explain.
5. Watch out for leading questions. Use YOUR words, not the questioner's.
6. How to handle objections.
7. How to handle mistakes.
8. How to handle repetitive, compound, or unfair questions.
9. Off the record discussions with counsel, when permitted, when not.
10. When is "I don't know" or "I can't recall" not ok, and what to do if you draw a blank.
11. Don't guess or speculate.
12. Dealing with documents/exhibits.
13. How to handle redirect.
14. Attitude: be polite but firm. Do not show emotion or reflect the questioner's energy. Do not try to be overly helpful or win the case.
15. Avoid humor, hyperbole, colloquialisms, analogies, sarcasm, argument or anger.

16. Breaks every hour whether needed or not.
17. What are you worried about? Bad facts, private information.
18. Refusal to answer – privilege, your counsel's instructions.
19. How to handle depo preparation questions – NO NOTES!
20. Reading and signing, errata sheets, follow up.

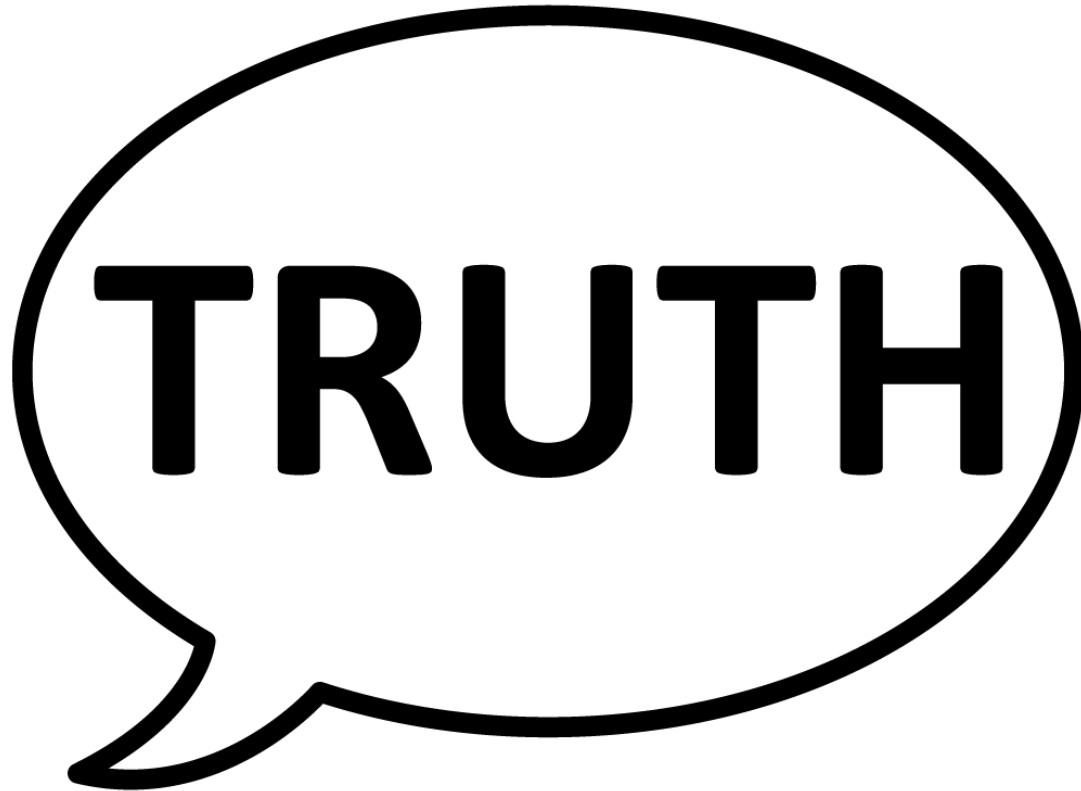
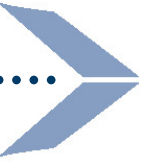
*Note – this list is for you, **not** the witness. **NEVER** give a witness written instructions on how to testify. See Rule 612 – Aids to testimony. **DO NOT ASSUME YOU WILL BE ALLOWED TO READ OR SHOW YOUR WITNESS' DEPOSITION AT TRIAL.**





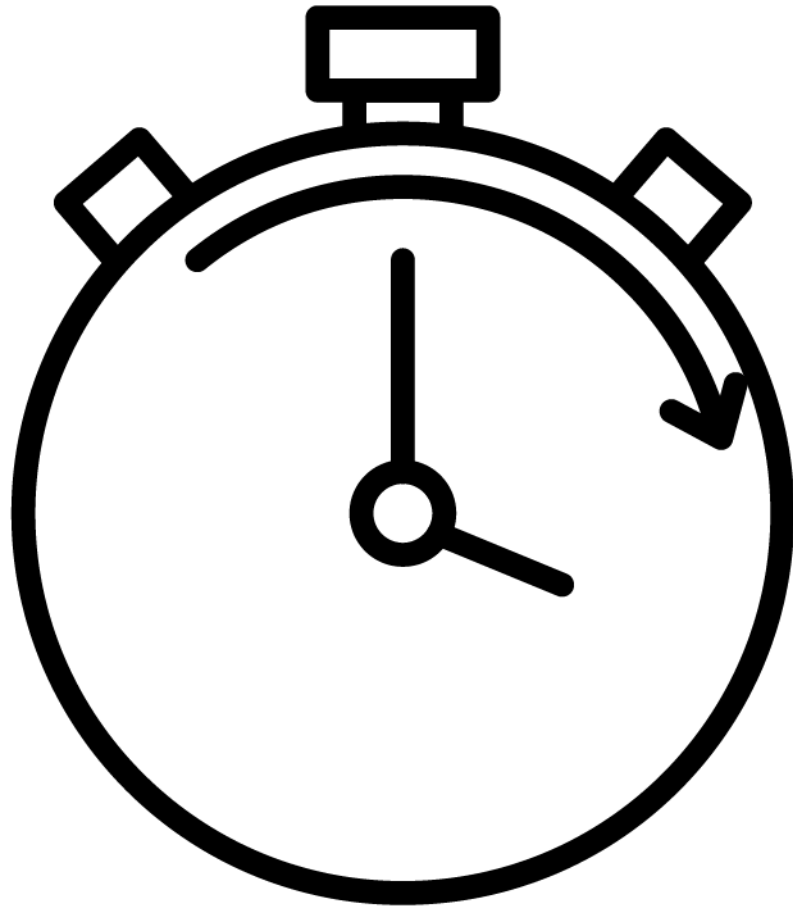
KNOW THE RULES

- A. Oath
- B. Verbal responses
- C. Understand the questions
- D. Objections – Ours, theirs
- E. Breaks
- F. Preparation



TELL THE TRUTH

- A. Don't guess
- B. I don't know, but...
- C. Yes/no, then explain



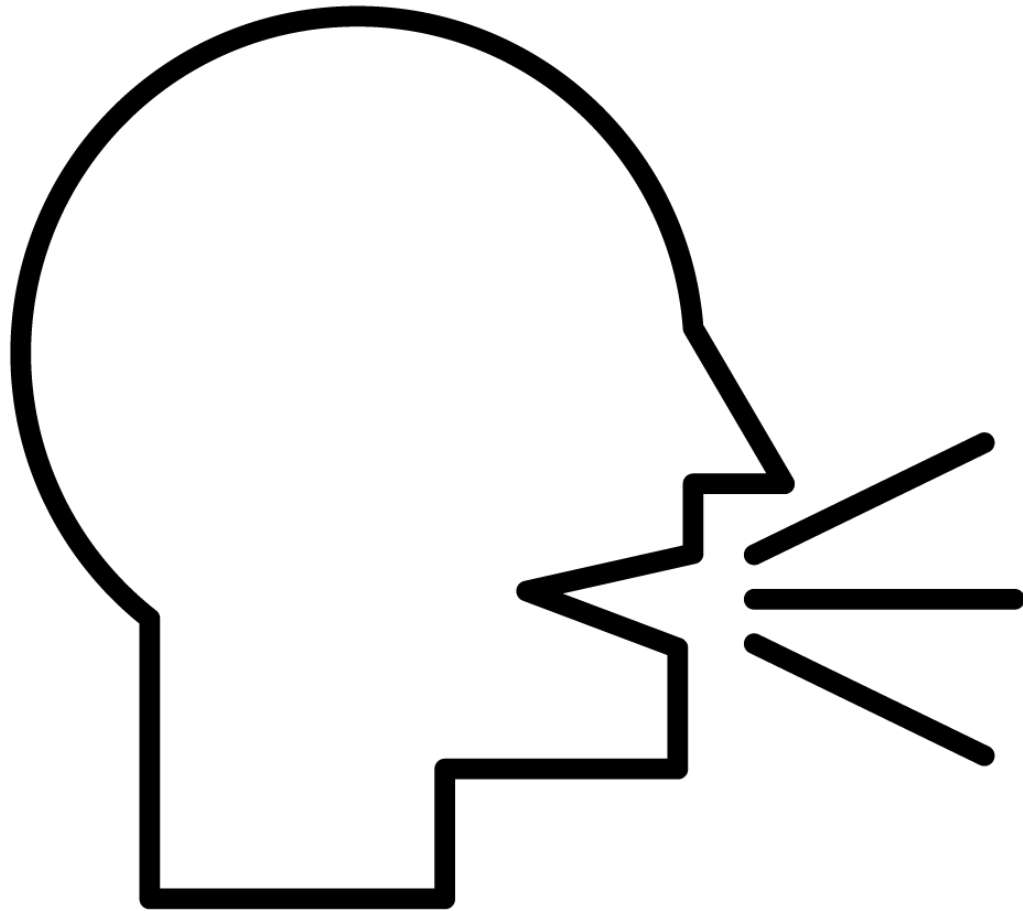
CONTROL THE PACE

- A. The Pause
- B. Breaks
- C. Leading Questions



LISTEN TO THE QUESTION

- A. Complete responses
- B. Don't volunteer
- C. Keep your eyes on the prize



OWN YOUR TESTIMONY

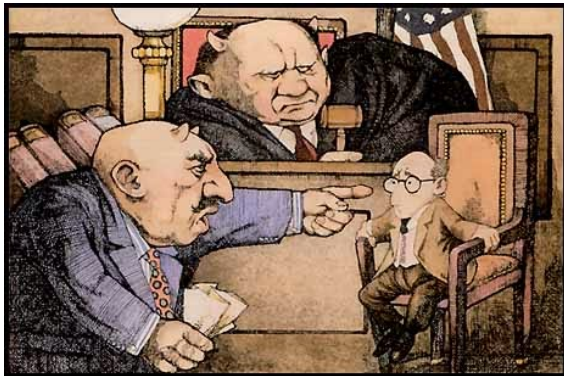
- A. Personal knowledge
- B. Know your role
- C. Sources of information
- D. Themes
- E. Home Bases

NON-VERBAL BEHAVIOR



- > Jurors typically over-value non-verbal signals in evaluating witness credibility
- > Jurors also take clues from **YOU** re: believability of witness – listen, poker face, objections, re-direct
- > "Stage Presence"
- > Microphone/video technique
- > Slight Pauses (1,2,3...)
- > Appearance
- > Energy level
- > Anxiety
- > **Evade evasion!**

NON-VERBAL BEHAVIOR TO AVOID (IN A VIDEO DEPOSITION)



- > Hands to mouth
- > Looking at your lawyer before/after answering
- > Long pauses before responding
- > Smirking, laughing, sarcasm, humor
- > Facial expressions/gestures of frustration/stress
- > Fatigue
- > Inconsistent demeanor depending on who is the question/questioner
- > Reflecting/reacting to the tone of the questioner
- > Nerves, quivering voice
- > Too loud, too soft, monotone
- > Repeated use of the same phrases or non-responses
- > Asking for frequent breaks
- > Avoiding eye contact with questioner
- > Adopting the substance of an objection in the response
- > Changing pace or losing focus as deposition concludes ("Close to the Barn" syndrome)

SEINFELD

