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Instructions to Clients and Witnesses

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INSTRUCTIONS TO CLIENTS AND WITNESSES

Many interesting and valuable volumes have been written for the profession on instructions to juries, but it seems that nowhere is there a particular discussion of the subject "Instructions to Clients and Witnesses." Perhaps it is fair to say that not infrequently instructions given to clients and witnesses in the office of the lawyer have more bearing upon the findings of a court or jury than do the instructions given by the court to the jury. In keeping with the practical importance of this subject, the writer suggests twelve "instructions" that have been found valuable in his experience for the guidance of clients and witnesses.

1. Neither client nor witness should dress specially for appearance on a trial. They should be told that a trial is not a dress affair. Many of us have been vexed at the appearance of some lady client or witness with all her latest "flub-dubbery" on, appearing in the witness chair and endeavoring to look her prettiest. The fact that she might be considered very pretty by the jurymen does not indicate that they will believe what she has to say and will be impressed by it. Jurymen often make up their minds as to a case on very trivial matters and are prejudiced one way or another by an impression which they receive from a client or witness early in the trial. They usually carry this prejudice throughout the trial. Of course, in some cases the dress would make very little difference. In others it might have quite an influence, for instance diamonds on the hands of a client or witness in a case where it is to be established that someone has had property rights taken away from him or has been imposed upon financially and is in need, do not have any special weight in inducing a jury to bring in a verdict for the client. When one is "dressed up" he is more apt to feel and act smart or be over independent or be less serious than he should be. Men or women are more apt to be themselves when they are in their usual dress than when they attempt to place upon themselves all of the fine clothing which they have in their own wardrobe, and often what they can borrow from a friend. It may be advisable to tell a woman client or witness that she must not speak in a contentious tone of voice; that she should take some of the paint from her cheeks or lips; that she should remove a necklace and some rings and should lengthen a skirt. We lawyers do these things for we realize that we are placing a sort of picture before the jury and that the witnesses are the actors; the jury gains its general impression from the average of the individuals who par-

ticipate. If the average is poor on account of such a thing as dress, the jury will not be impressed by the strength of your side of the case. The idea of a jury was well expressed by the judge's little daughter, who had attended her father's court for the first time. After her return home she told her mother, "Papa made a speech, and several other men made speeches to twelve men who sat all together, and then these twelve men were put in a dark room to be developed." Lawyers are concerned most about the time when the twelve men are in the dark room to be developed.

Sometimes we must tell a young man client or witness to wear his hat straight and not cocked to one side, because it would give to a jurymen who might see him about the court room or on the outside, the impression that he was egotistical or cared too much for his personal appearance, or maybe cared too little. We tell some men not to wear fads of any kind, because these are often distasteful to the sensible individuals who are supposed to make up a jury. The matter of dress is one which must be handled carefully or feelings may be hurt, and a client may be lost. A witness or client should be talked to privately about such matters and it should be explained to him that it is not you who object to these things, but it is the peculiar make-up of the jury which must be looked after.

2. As to whom the witnesses have talked. Witnesses begin to fall when they are suddenly and sternly asked the question: "With whom have you talked about this case?" But they are safe if they have been told in advance that they have a perfect right to talk to their friends and members of their family, their lawyers and in fact, to any one to whom they desire to speak concerning their case before the trial, and at and during the trial, unless there has been a separation of witnesses and they have been instructed by the court that they should not talk over the case with any one concerning their testimony except their attorneys. Nine times out of ten the abrupt asking of the above questions brings the answer that the witness has talked to no one. Of course this is confusing to the witness afterward because he feels that he may have done something which he should not have done and furthermore, he feels that he has lied to the court and jury. This discommodates him and he is not able to make the good and truthful witness which he otherwise would make. The asking of this question is a good way to confuse an untruthful witness, but is not fair to the real truthful witness. I know of one court who, when such a question is asked, informs the witness of his right in the matter, when he

feels a witness is honest and is endeavoring to tell the true state of facts, informs the witness of his right in the matter, when such a question is asked.

3. Many clients and witnesses must be instructed that they should not become angry on the witness stand or lose their temper in any manner. No one knows better than the lawyer that if clients or witnesses become angry they are liable to say things which they should not say and they will make a poor impression upon the jury so that their testimony does not have the weight and bearing which it should have. The witness by becoming angry shows often a prejudice and jurors do not disregard prejudices of witnesses in reaching a decision. Many a case has been lost by a client losing his temper on the witness stand.

4. Witnesses should be told that if they make mistakes in their testimony they should acknowledge it and ask to change their testimony so that it shall speak the truth. They should be told that they should correct their mistakes as early as possible because of the bearing which the wrong statement might have on the rest of their testimony. The fact that they have made mistakes may lead to all sorts of inconsistencies in other statements which they may give later to the jury.

5. An instruction to clients and witnesses that they have a right to be deliberate in their testimony is often of great benefit. It helps if they know that should the attorney on the other side pass them rapid fire questions, they have a right to pause and make their statements slowly. This helps them to get control of themselves and gives them an opportunity to think before they blurt out something which they would not have done after some deliberation. Clients and witnesses, however, can pause too long. But witnesses and clients sometimes, however, surprise us by their sudden adroitness. They change a seemingly unfavorable situation to a most favorable one. They are like the young gowdy who accidentally broke a window pane and attempted as fast as he could to get out of the way, but he was followed and seized by the proprietor, who exclaimed: "You young rascal, you broke my window!" "I know I did," said the lad, "and don't you see me running home for the money to pay for it?"

6. Sometimes clients must be informed at the time of the trial of their case, that their case is the most important thing they have at that time. Witnesses may have to be impressed with the fact that a lawyer can not make a case, and that it is primarily for the client to establish the case in every particular

by his testimony. Of course, this must be done under the guidance of the attorney and substantiated, if possible, by that of witnesses. All this testimony must be presented to the jury in such a manner as to have the proper effect and to be the most impressive. It is an advantage to the case when the client is informed that he should immediately upon the adjournment of court get in touch with his attorney and should go to the office of his attorney at any adjournment of court and be there prior, if possible, to the taking up of court after adjournment. The client is the center of the entire case and he must be ready for any emergency which may arise. Should an important witness be absent, it is the client's duty to immediately find out the reason, and if possible, produce the witness. Should some papers such as letters or exhibits of any nature belonging to the case, be needed, the client should be ready to exert his supreme efforts to bring these into court. It helps wonderfully for the client to realize that the case at hand is the most important thing he has and that he must give up everything else for the time being; that he must close his place of business if necessary and must save his energies so as to place his case in the best light before the jury. It is of great assistance to the lawyer for the client to know that it is important that he should be in court during the entire trial, lest the jurymen may take the same attitude toward the case as the client apparently does and lest the jurymen feel that the client thinks his case is more or less unimportant. Many cases have been lost because of the apparent inattention of a client to the case when on trial before the jury. Jurymen know more and see more than clients and witnesses are inclined to give them credit. They have knowledge of some inside workings of things in general.

Of course, there are exceptions to the rule, that clients should be impressed with the importance of their case, for some clients are apt to worry the lawyer by being around the office and in the court room endeavoring at all times to keep before the attorney their ideas of the case and desiring to direct the case themselves, rather than to leave that to their attorney. Some clients are so annoying in court by making suggestions to the attorney that it helps to have them to write down on a note book the things which occur to them. They will be kept busy in this manner and the attorney will not be annoyed as he might be by their constant whispering in his ear of something that they think should be placed before the jury. Such clients often so annoy the lawyer that he finds it necessary to arise from his

chair and approach closer to the witness on the stand and examine him while so standing.

7. It may be necessary to inform a witness not to talk to anyone about a law suit. We find that talking promiscuously about the matter is dangerous, in that the talk is very likely to reach the parties interested on the other side of the case and it may be repeated in the presence of some one who later might be called as a jurymen. This would likely prevent him from serving as such when it might be desired very much that he should be on the jury. Sometimes, if a client talks freely of his case, it permits those interested on the other side of the case to have their testimony conveniently presented so as to nullify what the witness is to say.

8. The client should be careful of his conduct, both in and out of the court room from the first day of the trial until its close, as nothing can be so easily misunderstood and misinterpreted as the conduct of a client. If any one in a small town where a trial is held should see a woman client or witness smoke cigarettes, it would not be long before the fact would be known in every home of the town. Laughing and talking in court by a client and witnesses has often impressed the jurymen that the client has not taken the matter on trial very seriously, and the jurymen feel that if the matter is so trivial to the client, they should not be overly concerned about the outcome of the case. Clients and witnesses should be careful in their talk going to and from the court-house or at the court-house.

9. Many times it occurs that a client or witness should be told not to talk too much on the witness stand, to answer the questions with yes or no and not to go into any explanation; that if any explanation is desired, the attorney can indicate it or it may be brought out on cross-examination. Witnesses may keep on talking regardless of the fact that they are warned while testifying; it does not occur to them that you desire that they should say no more. Such clients and witnesses tell things which have no bearing on the case but are very prejudicial to it.

10. All of us are familiar with the witness or client who is over confident; who says he is anxious to take the witness stand and tell what he knows; that he will not become nervous or excited and has no doubt that he can put over what he has to say. Such a client or witness is headed for a fall. The best witness is the one who feels more or less nervous when he thinks of testifying and who feels rather serious concerning how he should say what he has to say. The over confident witness is the one who needs very careful attention.

11. One of the most disturbing witnesses is the one who makes a statement and qualified it with "I think," or some similar words. He has made positive statements to you in your office and you are convinced there that he is telling the absolute truth and that he has full and accurate knowledge on the subject. Then under the fire of cross-examination, he qualifies the most vital parts of his testimony by "I think."

12. Clients should always be instructed to tell all the facts to their attorney before trial; they should tell the worst side of their case as well as the best side. The attorney should be in possession of all facts as an unexpected surprise by certain facts coming into the case may be very disastrous. Witnesses should be told that they must be certain of any unusual testimony. All of us know how easy it is to mistranslate an overheard remark. Clients often are over zealous and mislead their attorneys. They claim they have certain articles to be introduced at the trial and to know certain things whereas, when they are pinned down to the actual facts, it is found to be otherwise.

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