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The Surveyor in Court as Witness*

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I. GENERAL OBSERVATIONS APPLICABLE TO ALL WITNESSES

Be sure you understand the question; if you do not, say so. When you are asked a question on the witness stand, be sure that you understand the question before you answer it. Too many witnesses think they must answer a question as it is asked. If you do not understand the question, the thing for you to do is say, "I don't understand it." Or, "Would you repeat it?" Something that gets you in a position where you know what the attorney is talking about. That applies on both direct examination and cross examination, direct examination being of course the examination by the counsel for your own client.

Never guess at an answer. Never guess; you should never make a guess at an answer. Incidentally, these principles apply to you both as an expert witness and as a general witness to a factual situation, a layman witness if you want to call it that. The fellow who guesses answers is going to wind up getting trapped before he is through.

If a "yes" or "no" answer is demanded, you have a right to explain. You will often be asked a question and be told that it can be answered "yes" or "no." Here you have a nice answer all set up, and the attorney, the cross examiner, says, "That can be answered yes or no, will the last statement of the witness be stricken." And the judge says, "Yes, you may answer that yes or no." Your attorney, however, will see that you are given the right to explain your answer. You always have a right to explain. As a matter of fact, if the question can not be answered "yes" or "no" go ahead and say so. You can say, for example, "That question cannot be answered yes or no; I will have to answer it this way." Then go ahead with your answer. There may be a little friction developed, but the judge will finally make his ruling on that. And the Attorney who has put you on direct examination will always see that you have a chance to explain any answers.

Never allow yourself to become angry. Never indulge in sarcasm. These are two things that I think are true above all when you are on the witness stand in any capacity, expert or layman witness. Never get angry; never get sarcastic. The cross examiner will be tickled to death if he can make you angry because you then have a tendency to blurt out answers. He will be tickled to death if he can get you to be sarcastic because then he can go back and twiddle around a little bit and then ask the judge "Your Honor could you ask this witness to please answer the questions. I am only trying to draw out the true story." So the judge will turn to the witness and say, "Answer the questions." You haven't accomplished anything; you haven't achieved anything by being sarcastic with the cross examiner except a little bit of salve for your own ego, and that's blown up when the judge says, "Don't do it any more." You are there just to tell the truth; tell a straightforward story without embellishment and without getting into arguments with the cross examiner.

Do not volunteer more than the question calls for unless you have previously discussed it with counsel. Answer the questions that are asked of you directly and do not volunteer any extra information, unless you have discussed it with the attorney ahead of time and he wants you to elaborate a little bit in answer to a given question. But by and large the questions are worked out on direct so that you are being asked only for certain information. On cross examination do not volunteer a lot of extraneous material because that may open up a whole new line of cross examination. The cross examiner is only entitled to ask you questions on things

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that were brought out in the direct examination; but if you volunteer something extra, that opens it all up. Your own attorney will get up and object, "That is beyond the scope of the direct examination." The cross examiner says, "Well, your Honor, he just brought it out himself." The judge says, "You may answer the question." And when the judge says you may answer the question, make sure you answer it.

Do not be too positive when there is a possibility of faulty or incomplete recollection. Generally it's a good idea, if there is any possibility of a question arising about your recollection, whether it might be faulty or might be incomplete, not to be too positive. A simple example of that is, for instance, in testimony about a conversation. You are being asked, "Did you have a conversation with Joe Doakes at such and such a time at such and such a place?" You answer, "Yes." You are asked who was present, what was said, and so on. You go through the conversation the best you can —a resumé of it—and then the attorney will ask you, "Is that all that was said at that time?" Well, if you say "yes," later on you might remember that there was something else, or your attorney may be sitting there saying, "My gosh, won't that clown remember this?" And later on you attempt to bring in that remaining part, or your attorney does through redirect examination, and there is comment made on it and arguments to the jury that they tried to rehabilitate the witness: "He said that was all and suddenly he remembers this." So say, for example, "That's all I can recall at the present time." Or, "Yes, I think that was the extent of the conversation." In other words, leave yourself a little bit of leeway—do not be too positive.

I remember, in one particular case, there was a surveyor on the stand who found what later turned out to be an outcrop of mineral rock, and he testified, "This is the southwest corner monument of such and such a section." Later on, when it did turn out to be an outcrop, he was trapped with having said, "This is definitely it; there is no question in my mind." Later on he had established another one himself some place else, and said he couldn't find the real monument. "I put this one over here," he said. The argument before the court was beautiful. The opportunities presented were beautiful in that particular case, for that was an example of being too definite and too positive.

Be frank about having discussed the case with counsel, including any conversations at recesses, if you are asked. It is perfectly proper. Be perfectly frank about having discussed the case and having discussed your testimony with other people, particularly with the attorney who put you on the stand, because any attorney who puts a witness on the stand at any time and does not discuss the case with him before he puts him on the stand is crazy. He has to discuss it with you at least so he knows what you are going to say. He has to discuss it with you to find out what the facts are, and there is a little series of trick questions that go along with that. At one time I thought it was such an old saw I forgot to or I gave up advising my witness about these trick questions and darned if some attorney didn't try it on the witness and it worked—for him.

The question is, "Have you discussed your testimony with anybody?" Well, the normal witness isn't thinking too much about it, and he thinks the fellow means have you "cooked up" a story with somebody. Well, that's exactly what the attorney wants him to think and so he says, "No." Well, that takes care of that. He says he hasn't discussed it with anybody. His own attorney then has to rehabilitate him and get up and say, "Now Mr. Jones, don't you remember discussing it with me in my office day before yesterday or this morning?" "Who, me?" It finally winds up with the witness looking pretty silly because obviously he has talked his testimony over with somebody. It is perfectly proper for him to talk it over, and this should be known to the court and to the jury. Sometimes if he gets by that first question and says, "Yes, I talked it over with Mr. Thomas," then the next question is, "And Mr. Thomas told you what to say?" Sometimes they flub that one. The answer, of course, is, "Well, Mr .Thomas told me to tell whatever the facts are." And that's all we are trying to do; that's all any of us are

ever trying to do in any of these lawsuits is to get the witness to tell the true facts. So be sure that you always admit that you have talked your testimony over with somebody.

Do not blurt out answers. Give them some thought, which also allows counsel time for an objection if he deems one proper. Do not hesitate too long over answers. Act as naturally as possible. In general testimony when you are asked a question, do not blurt out your answers in a big hurry. Give them a little bit of thought so you can answer them properly. This also gives your attorney an opportunity to object to the question if he is going to. I remember up in Madera one day—this had to be with an interpreter—there was a fellow on the stand who was Portuguese, and he said that he needed an interpreter. He was the party on the other side and they called in an interpreter. His attorney went through direct examination with questions being asked and they would be interpreted back. It took about an hour to get through five or six questions. I tried him on cross examination and he somehow couldn't even understand the interpreter by then. Then his own attorney took him on redirect examination, and he asked him a question that took maybe about 45 seconds to get out—a long involved question. Before the interpreter could interpret it to him, he answered, "Si." Well, he blurted it out and the jury enjoyed a good laugh. Think a little bit when you answer your questions; do not answer them too fast. At the same time, do not hesitate too long over them; you are trying to act just as natural as possible—it's conversational to the best of your ability. The witness who sits there and thinks for a minute or so, appears to be trying to think up a "cagey" answer, even if he's not. So go along and do it in as conversational a manner as possible; act natural.

On Cross Examination, watch for the "why" question. It presents an opportunity to explain many things. When you are being cross examined, watch for the "why" questions. This is not so true of you as an expert, because you are always entitled to give your reasons or opinions when you are an expert, an expert witness; but if you are a lay witness, wait for the "why" questions and if the cross examiner is stupid enough to ask you *why* you did something, that gives you an opportunity to unload everything you have been trying to unload and your attorney could not get in on direct examination because it was not admissible. Of course the fellow will try to stop you and object to the judge that this is not responsive, and your own attorney gets up and says, "Your Honor, he asked why. He just told you why." So watch for the questions in a cross examination that give you an opportunity to make whatever explanations seem to be necessary, but always, of course, within the framework of the true facts of the situation—that is always and uniformly true.

Be sure you tell the whole story—the bad as well as the good—and tell the attorney who puts you on the stand everything. Be sure, as a witness in any capacity, that you tell the whole story—the bad with the good. And in that connection, make sure that you tell the attorney for your side everything—the bad and the good—because if the other side brings it out, your side does not appear in such a good position. But if your attorney knows both the bad and the good, he will bring it out himself. He will get you to bring it out. It might have something to do with the possible existence of monuments the other side has not found. You will have to tell it anyway, and they might not be in complete accord with your position. It might raise some doubt; it might be that it could be this monument or that monument, and you have not quite made up your mind. Tell them about both of them; do not select the one that is going to fit your theory and say this is it. Get in both of them; tell the bad with the good and bring out the bad yourself. You will discuss that with the attorney for your side before you go into the courtroom.

If you make a mistake in your testimony, be sure you correct it. Advise counsel of the need for correction first, if possible. About mistakes in testimony, it is best that any time you have made a mistake in your testimony while you are on the stand, make good and sure you correct it. It may not be found out, but you have to live with yourself. If

it is found out, then it will be called impeachment, and you are lying. Make sure that you correct any mistakes, if it is a mistake in calculation or a mistake of fact, or a faulty recollection—anything like that. Discuss it with your attorney first, the attorney for your side, if you have an opportunity to do so—such as at a recess—but be sure that you get the mistake corrected in any event.

II. SOME OBSERVATIONS ON EXPERT TESTIMONY

Have a definite fee arrangement, but never a contingent fee. Part I just set forth some observations on being a lay witness. When you come to the expert witness, you have not only those things—principles to work with and apply—but you have an additional set of principles applicable to the expert witness. There are a number of things that must occur before you ever climb on the witness stand. First of all, and it may be the most important, better have a good fee schedule lined up and know who is going to pay you. Sometimes you will be hired by the attorney; sometimes you will be hired by the client. The client is the one who is responsible for your fees. You should have it understood, but in that connection never under any circumstances ever have a contingent fee. In other words, a fee that is based upon the outcome of the case. That is a criminal offense. The theory behind it is that an expert witness is supposed to be there to testify to his opinion, to have formed an opinion, and to exercise judgment and discretion; and if the outcome of the case is going to affect his testimony, or rather his remuneration, then he has a situation which prevents him from being a true expert witness, and his testimony is subject to violent impeachment. So, no contingent fees on expert-witness work in any regard.

Answer questions concerning your expert fees straight-forwardly. The fact that you are being paid as an expert, whatever your fees are, is recognized by the courts and by the juries, and do not hesitate if you are asked on cross examination if you are being paid for your testimony. Just say, "Certainly, I am being paid my professional fees for professional work and expert testimony." And if they ask you what it is, say so; it is perfectly proper. And if you try to hedge (I have seen expert witnesses attempt to do that) the jury wonders what sort of a deal has this fellow got; is he going to make something to win the case or what. So, it is the normal thing—we are all in business to make money, and that is part of your business as a professional man, to assist people in litigation as well as in just trying to find out where their property is.

Always have good field notes—no erasures. If you must correct, do so by crossing out. Be sure there is a good explanation for corrections. You may make up a smooth copy of field notes for use in court but always have the original notes available. In preliminary work be sure that your field notes are accurate, legible, and without erasures. You never know when some of these things may wind up in litigation; so, of course, that is a good idea in any work you do. No erasures because it casts doubt upon the notes and their authenticity. If you make a mistake in your notes, cross it out and put in what the true fact is. Be sure you have a good explanation as to why you did that. But no erasures on those notes, or crossing out an entry in such a way that nobody can see what was underneath; it gives the implication that the notes might have been tampered with. You can make up a smooth copy of the notes, a typewritten copy if you want, for use on the witness stand. But be sure that you have with you your original field notes because those are the best evidence; and if you attempt to testify from typewritten notes, that will be the subject of criticism. The fact that you made them yourself or that they were made under your supervision make them admissible, but still the court and opposing counsel will want to see the originals. If you have lost the originals, you can always explain it, but it's better if you do not have to explain something.

Incidentally, you are always entitled to have notes when you are on the witness stand, particularly the expert witness. When you climb on the stand with those

notes, the opposing counsel is at liberty to examine the notes that you are using, so be sure that you do not have some vague name and telephone number or address on the other side of them, because he will probably question you about that. You can take any notes that are pertinent to the case. If you want to refresh your recollection without use of notes, you can do it before you get on the stand or even with your attorney. The fact that they are with your attorney does not make them available to opposing counsel. Your own attorney will scream like a "wounded sow" if the other attorney tries to look at things that are in his possession. But if you get them on the witness stand, you are subject to having them looked at by opposing counsel.

Make your own maps and diagrams. Make your own maps and diagrams or have them done under your immediate supervision. Do not attempt to testify from someone else's work. Even if it is admitted into evidence, it detracts from your effectiveness.

Before trial, work closely with your client's counsel. He may not know it all. Before the trial you, as a professional surveyor and expert witness, have a lot of work to do with the attorney for your own client. Surprisingly enough he may not know everything about surveying, and he may need a little bit of assistance even in the law. You have a pretty good *bible*—the "Manual of Surveying Instructions" put out by the Department of the Interior. Shove that under his nose if he has never tried a surveying case before. The first time I ever tried one, I was amazed at all the things I found in there, and it has citations too. And for your own benefit, I would recommend Clark's "Law of Surveying." It is spoken of very highly in the Manual, and it has a lot of darn good law in it. But if you are somewhat familiar with some of these legal priniciples yourself, you can assist your own attorney considerably; at least make the offer. If he does not accept it, that is his fault. Normally the attorney would be very happy to get a little bit of assistance.

Advise with counsel concerning cross examination of opposing party's expert. The surveyor should advise his client's counsel concerning cross examination of opposing experts, getting an idea of what this other fellow is likely to say, and give him a few ideas, if you can, as to how to counteract some of the testimony the other expert may present.

Discuss with counsel probable cross examination to which you will be subjected. Handling expert witnesses is one of the most difficult things that an attorney has to do, and that includes cross examining of expert witnesses as well as working up the direct questions in order to bring out what he wants from you.

Go over any hypothetical questions carefully in advance. Go over with counsel, before the trial, any hypothetical questions. If there be hypothetical questions that he is to ask you, they should all be written out and you should have a copy and he should have a copy. And you should know what the answer is. The hypothetical question assumes a set of hypothetical facts, and it says that if this is true, and this is true, and this is true, and this is true, in your opinion, where is the corner. Lots of times a hypothetical question never actually gets asked because the attorney does not write it out in advance; he fails to assume some of the things that are in evidence or maybe he assumes something that is not actually in evidence, and he is not entitled to do that. The hypothetical question is circumscribed by strict rules and it can only be answered if it complies with those rules. So work it out with him in advance. You might even help him work up some hypothetical questions for the opposing expert to cope with, because there may be only one answer to a particular hypothetical question—only one opinion available. If you get the right question and the fellow has to answer it in only one way, you may have him.

By this time you have worked things over with the attorney for your side—you have consulted with him. You may have spent a good many hours in his office or he in your office. You have some diagrams; they are all to scale, and you are able to testify from them completely and show exactly where everything is. If there is a tree there

or its remains—you didn't leave it out—you have your facts in detail—so you are ready to get on the witness stand.

On the stand, be well dressed and not in field clothes, unless it is unavoidable. In the first place, do not climb on the witness stand in field clothes, unless it is unavoidable such as, for example, you had to go out in the field during the middle of a trial, as we once did. Be well dressed; have at least a coat and tie. You are not some "wino" who happened to be standing on a street corner when a couple of cars collided. You are an expert witness testifying to work that you have done as a professional man; you are expressing an opinion; you have formed opinions; you have determined what items are acceptable to you in the location of a line, for example, and the jury or the judge looks up to you as such. So, act the part. There are several theories about how attorneys sometimes appear in different cases. I know one attorney who, every time he would go into one of the small towns to try a case before a jury, would have a few blades of grass in his brief case and would chew on those once in awhile. Well, that is a theory, but I do not think it does any good. You are not trying to talk at the level of the person you are talking to; you are talking on your own level of intelligence, experience and knowledge.

Give complete qualifications but do not overstate. Let counsel draw them out by repeated questions. The expert witness, of course, always has to be qualified on the stand. At a jury trial, often an attorney will offer to stipulate to the qualifications of the expert. The attorney, putting the expert on, if he has any sense, will not accept the stipulation. He will say, "I thank counsel for his confidence in my witness, but the jury is the judge of the facts here, and I think they are entitled to know the true qualifications of my witness." Then he goes ahead and questions you about qualifications. Do not leave out anything unless it is of no importance whatsoever, but do not string it out in a long spiel and sound as though you are bragging about something. Let your own attorney pull it out by repeated questioning. You are being modest a little bit. The better your qualifications, the more questions the attorney has to ask. And do not neglect your practical experience. A great many expert witnesses are there not because they had formal education, but because they had a whale of a lot of practical experience in the field. In many cases, that is a great deal better than a lot of formal education on the particular problems involved.

Explain technical terms in layman's language. When you are testifying, if you have to use technical terms, and you often will, explain them in the layman's language to the jury and also to the judge. There are some judges who do not know a lot of technical terms, and that is perfectly normal; they are not in their field. Most of the jury, you will find, do not know technical terms. They are a little happy to get the explanations. They will go out and use them to their friends a little later on; and so, if you explain them, you establish a little bit of rapport with the jury or some of the members of it anyway, and what you are trying to do is project yourself to the jury.

Talk to the court or jury as much as possible, rather than to counsel. In that connection, talk to the jury as much as you can without being too obvious about it. This business of question and answer is not a cozy little chat between you and the fellow who is asking the question. He is asking the questions so that the jury will hear them, and he is expecting to get answers that the jury will hear. He may have wished sometimes that the jury had not heard some of the things you said, but the general purpose is for the jury to hear. So, talk to the jury once in awhile or, in answering a question, turn around and say something toward the judge. You are not just conversing with your own attorney or the attorney for your own side. The same thing is true under cross examination.

When marking a diagram, identify the marks by letter or number only after the court has told you to do so. As an expert witness you will be using diagrams. Always be sure that you have a scale with you, and always be sure you know what the scale of the diagram is. And you will be marking

diagrams. Now normally in court, as I am sure you know, if you mark something on a diagram and if your name is Jones, they will give it J–1, J–2, J–3 etc. Do not give a mark, that you put on a diagram, a number or identifying symbol until the court tells you to. Sometimes the courts get a little fussy about that. They would rather tell you to make it J–1 or J–10, or draw a line here. I know one judge who would be delighted to get down there and help draw the lines. It is their prerogative to control what happens to the evidence, what happens to the diagrams, pictures, and so on. So wait until the judge tells you to mark it before you do. Otherwise, he will think you officious and the jury might think you are being a little overly eager too. A jury member might think to himself, "I wonder about this fellow as a real expert; he's been in court so many times that he knows more than the judge does. I don't know whether I'll believe him or not." So wait for your instructions from the court in connection with the marking of diagrams.

Use demonstrative evidence where possible. On the question of demonstrative evidence, which is physical evidence really, you should make as much use of it as possible because people are more prone to understand and believe what they can see than what they hear. One instance that comes to mind is how far a tree rolled after it fell; it was a marked tree that was an accessory. We used a pencil, for example, to show how it fell and how it rolled. If you can demonstrate something along that line, the jury or the court will of course understand it a little better.

When referring to exhibits, do so by number. When you are being asked about an exhibit that is in evidence, refer to it by its number. Do not just answer yes or no when the attorney hands you a picture and says, "Do you recognize what this is?" It is already in evidence; it has a number and may be plaintiff's exhibit number 13. He should say, "I hand you plaintiff's exhibit 13. Do you recognize it?" You should then answer yes or no. But if he doesn't give you the exhibit number, identify it as plaintiff's exhibit 13; it shows so and so. And when you are talking about it, if you have to put marks on it (in the record it is all taken down by the court reporter), refer to the exhibit by number, so that if anything goes wrong and the attorney for your side has not been congratulated for having won the case and it's on appeal, and the record will show that he was referring to exhibit so and so and number so and so, and the attorney or the court does not have to dig it out and find out what it was.

Listen to statements of your client's counsel. Even in an objection he may be attempting to remind you of something you have forgotten. While you are on the stand, be sure you listen to the statements of your own counsel. You may not think much of them, and a lot of them may not be of any particular importance to you or anybody else; but while you are under cross examination, for example, even while he is objecting to some question, he may be trying to remind you of something that you have forgotten. Or he may state his objection in such a way that you will say to yourself, "Oh, I forgot that on direct examination." Throw it in if you get the opportunity, perhaps on the "why" questions. On direct examination your attorney cannot ask you leading questions. I have seen this done. The attorney spends a lot of time trying to draw out the fact that the witness knew and told him he knew five minutes before putting him on the stand. He asks him about it on the stand and the witness says, "I don't remember." So then I have seen the attorney ask him, "Well, all right, Mr. So and So, isn't it true that so and so, etc.?" Well, of course, there was an objection, and the objection sustained, but by that time the witness wakes up so he is asked the general question again and he answers, "Yes, so and so and so, etc." That's a pretty extreme example, and I do not recommend it for attorneys. But, as I say, I have seen it done.

The same sort of thing can happen in a subtle way so that if you have forgotten something, you can be reminded of it, so listen to what your counsel has to say during the course of the trial—when you are on the stand anyway. You do not have to listen to him when you are not there on the stand.

On cross examination do not assert vast knowledge. It may trap you. On cross examination one of the methods of attempting to impeach the expert witness is to examine him on his knowledge, and particularly with doctors is this true. They drag out a big, thick medical tome and say, "Doctor, are you familiar with so and so?" And then they read an obscure paragraph from it about somebody's treatment of a liver disease when this fellow is an orthopedist, and he knows nothing about it. He answers, "No." "Ha, I thought so!", says the cross examiner. They will do the same thing with you on principles of surveying. They might drag out the Manual of the Department of the Interior and ask you questions. They have a right to read passages from it to test your knowledge. So do not assert a vast knowledge of surveying and the principles of civil engineering. Be a little bit cagey about it and say, "Yes, I am a little bit familiar with that work."

A doctor scared the daylights out of me in trial one day when the attorney on the other side said, "Doctor, are you familiar with such and such work?" and instead of saying yes, he knew it a little, he said, "Yes, I certainly am." And I thought, there goes my witness; he's dead. The attorney then read a passage from this book, and it said just exactly the opposite of what my docter had been testifying to. I do not know, but I guess maybe he had planned this and was just having fun with me or something, but he thought a second and he said, "What edition is that book; let me see it a minute." The attorney handed it to him; he looked at the flyleaf, closed it and said, "I thought so." He handed it back to him. The attorney did not know whether it was an old edition or not, so that was the end of the conversation. But you know, you are not always able to do that. There are not so many editions of the Manual—the last one we know of is 1947.

Be an expert witness, not an expert advocate. Be sure that you are an expert witness and not an expert advocate. When you become an expert advocate, you destroy your effectiveness completely. You are not there to shove a proposition down the throats of the jury; you are there to tell whatever the truth is, to tell them that you are an expert, that in your opinion this is true, that you believe it could not be otherwise. In your judgment, this is it. But do not say this other fellow does not know what he is talking about; this has to be it; it cannot be anything else. Unless it is absolutely true that the other guy does not know what he is talking about, go ahead, but do not try to make things look like what they are not, even by innuendo. You are just giving your true opinion, your studied judgment, and not trying to wave the flag for your side of the case. You will even be testifying to some things that are a little detrimental. If the over-all picture in your judgment does not sound right, okay. If your side is not in too good shape, you are going to have to say so. Chances are you probably will not be on the witness stand if your own opinion is that your own client is wrong. So do not worry about it, but do not become an advocate. The attorney will take care of the advocacy; that is what he is paid for and you are paid to give information and opinions.

Do not attempt to consult with counsel when a witness is testifying. Pass him notes or see him at recess. While you are engaged in the trial, your side will undoubtedly want you at least part of the time in the courtroom—sometimes all the time. Do not try to become co-counsel. Do not attempt to talk to the attorney for your side while he is cross examining a witness. It is an awkward situation when a fellow pulls on counsel's coattail to attract attention while he is trying to cross examine a witness. Make notes and talk to counsel in a recess, but do not distract him while he is conducting an examination of a witness, either direct or cross. Passing notes is perfectly fine. You hope he reads them. If he does not read them, pick them up and hand them to him again at the recess, but do not talk to him during his conduct of the trial.

Do not discuss any feature of the case with jurors during recesses. In connection with being in court, if it is a jury case, never discuss any feature of the case with any of the jurors at recess. The jurors are a sociable

and gregarious bunch and they will come up and want to talk to you most of the time. This sometimes presents a problem. You have to be courteous, but do not discuss any feature of the case with any of the jurors. No witness should ever do that. The judge should (and if he doesn't, the attorney should ask him to) instruct the jury that they are not to discuss anything with any of the witnesses, and he will add to that instruction, or at least he should say, "Do not ever be offended if a witness walks away from you or one of the attorneys walks away from you. He is not being discourteous; he is only complying with the rules as I have just given them to you." So if the judge has not given the instruction at a jury trial and your attorney has not asked him to, pass him a note.

Do not discuss your testimony or your work with opposing counsel or the opposing party at recesses. Do not discuss your testimony or any of your work in connection with the case with the opposing party or the opposing counsel at recesses. There is nothing wrong with it; you probably know the fellow as well as you know your own attorney and maybe better, but do not discuss the work you have been doing, your testimony, what you think about the case, or anything like that, or *anything* connected with the case, because you are likely to be cross examined on it when you come back on the witness stand after the recess. I have seen that happen a number of times where the attorney for the opposing side talked to a witness. It is perfectly all right to talk to a witness for the other side. I can talk to all the witnesses on the other side; I can not talk to any of the opposing parties, but if a witness looks like a friendly guy who wants to talk, I am going to listen, and so is any other attorney. And sometimes you wind up with a pretty good cross examination from something he told you during the recess. So do not do that with the opposing counsel or the opposing party. Besides, you will probably be misquoted. Those are, as far as testimony is concerned, the basic or general principles. They could be elaborated a little, and there are, of course, lots of others.