Report Writing and Courtroom Presentation in Georgia Animal Cruelty and Fighting Investigations

Presented by:

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INTRODUCTION

Successful criminal prosecutions depend on thorough investigations, proper documentation, and effective presentation of the evidence in court; animal cruelty and fighting cases are no exception to this rule. The tasks of investigating, documenting, and testifying in court on animal abuse cases often fall to those who probably have not been adequately trained to do any of these things, i.e., non-mandated animal control officers, or to patrol officers who do not have training or experience as investigators. This unit of instruction is an effort at filling that gap in training. For trained law enforcement investigators and prosecutors, this unit will be an opportunity to focus on elements of documentation and presentation that all too often "get lost in the shuffle" as they deal with an overwhelming numbers of cases. For veterinarians interested in partnering with law enforcement and prosecutors in ensuring the successful outcome of animal abuse cases, this unit will provide an view of the case preparation process, and where the veterinary expert can most effectively fit into that process. For prosecutors, feel free to distribute this guide to the officers and witnesses you work with; it is intended to be a reasonably complete primer on the subjects of report-writing and courtroom presentation.

The days when fact-finders (jurors) afforded government agents and expert witnesses a certain respectful deference simply because they were government agents or expert witnesses are over. When jurors arrive at the courthouse, they have emerged from a media-saturated world in which TV shows and movies have given them the *impression* that they understand all about how crimes are investigated, how reports are supposed to be written, how evidence is supposed to be collected and preserved, and how witnesses are supposed to look and act in court. Because of this media influence, which trial attorneys

refer to as "the CSI Effect," jurors are increasingly skeptical about all evidence and testimony presented in court. They expect a degree of thoroughness and sophistication in the course of a criminal case investigation which would have been unheard-of even a decade ago. If we, as prosecutors and animal abuse investigators, are to expect a successful outcome to our cases, we must be willing to meet these juror expectations.

Animal abuse investigators and animal advocates often complain that animal abuse cases do not receive the same degree of prosecutorial attention and energy as other types of cases. The simple fact is that, when faced with overwhelming caseloads, prosecutors tend to "triage" cases, in the same way that battlefield or emergency medical personnel might "triage" patients. Where resources are limited, prosecutors will naturally devote their energies to those cases which stand a reasonable chance at resulting in a successful prosecution, and will relegate to the "bottom of the stack" those cases which are "fatally injured." A case which is inadequately investigated and documented, or a case in which the prosecutor knows that the witnesses are unlikely to be well-accepted and believed by the jury, is a case which is "fatally injured." Therefore, it falls to the case investigator to ensure that his/her case file can withstand the "triage" process.

THE IMPORTANCE OF EXCELLENT REPORT-WRITING

At its most basic, a report is a written record prepared so that information about certain subjects or events will be available in the future. In the context of animal abuse cases, a report serves the following functions:

- To aid the investigating officer's memory of events about which (s)he may need to testify in court;

- To aid in the investigation by providing information to other officers who might be involved in the case;
- To serve as a "check-list" of tasks which may still need to be performed in order to close a case;
- To accurately and completely present the facts of the case to the prosecutor so that (s)he may make charging decisions, prepare the case for presentation in court, and engage in reciprocal discovery with the defense;
- To justify the actions of the investigating officer and defend against potential liability;
- To document intelligence about criminal activity;
- To provide law enforcement agencies with information needed for internal management - crime statistics, deployment of resources, training;
- To ensure quality control;

Law enforcement agencies generally have their own internal "forms" which officers are required to complete when submitting a report of criminal activity. Such forms are useful as a "checklist" of information which should be included, but the completion of such a form does not necessarily ensure that all information that a prosecutor will need has been included.

Why is it important that investigators provide prosecutors with well-documented case files? There are a number of reasons: First of all, as mentioned above, a prosecutor will be more likely to devote time and energy to a case which has been worked well - one in

which the investigator has obviously invested the time and energy to do a good job. One of the clearest ways that an investigator can signal that his/her case is worth prosecuting is to prepare and present a well-documented case file. Secondly, a prosecutor can more easily evaluate the a case, make correct charging decisions, and work toward closing the gaps and dealing with the weak points in a case when he has all the facts and evidence in front of him to begin with. Third, most of the investigative case file will ultimately be made available to the defense attorney under the provisions of the Georgia Criminal Discovery Act, which is discussed more thoroughly below. A professional-looking case file sends a subtle, yet powerful signal to the defense that the case investigator is not an easy mark. It shows that the investigator has thoroughly investigated the case and is well-prepared to prosecute the case in court. Defense attorneys quickly learn which officers make unassailable cases. A good case file signals that you are one of those officers. Fourth, jurors have increasingly come to expect professional documentation. Defense attorneys understand this, and will certainly take advantage of mistakes and omissions in your case report by pointing out each and every one of them to the jury during cross-examination. Therefore, the best way to prepare for a good courtroom presentation is to make sure that the case file is well-documented.

The preparation of complete case documentation was made even more crucial by the passage of the Georgia Criminal Discovery Act (O.C.G.A. Title 17, Chapter 16) in 1994. Under the provisions of this Act, an attorney representing a defendant charged with a crime has the option of filing a motion to invoke the provisions of the Act ("opting in"). Once this motion is filed, the prosecutor is required to make available to the defense the following items if they are in the possession, custody, or control of the state or prosecution:

In felony cases:

- A copy of the charging instrument (indictment or accusation);
- A copy of the list of witnesses (including address, telephone number, and SSN and DOB of non-law enforcement witnesses);
- Any relevant written or recorded statement of the defendant made in response to interrogation;
- The portion of any written record containing the substance of an oral statement of the defendant made in response to interrogation;
- Any non-recorded relevant oral statements of the defendant made in response to interrogation;
- Any statement made by the defendant while in custody;
- A copy of the defendant's NCIC/GCIC report;
- The opportunity to inspect, copy, or photograph any books, papers, documents, photographs, tangible objects, audio and visual tapes, films, and recordings
- The opportunity to inspect and copy any buildings or places in the custody and control of the state;
- Reports of any physical or mental examinations and of scientific tests or experiments, "including a summary of the basis for the expert opinion rendered in the report";
- Statements of any witnesses;

In misdemeanor cases:

- Copy of charging instrument (indictment or accusation) and list of

witnesses;

- Copy of any in-custody statement by the defendant, whether written or oral;
- Copies of any written scientific reports;

The Criminal Discovery Act defines the phrase "in the possession, custody, or control of the state or prosecution to mean "an item which is within the possession, custody, or control of the prosecuting attorney or any law enforcement agency involved in the investigation of the case being prosecuted." [O.C.G.A. §17-16-1(1)] Failure to comply with discovery can result in a trial court ruling that the State is not allowed to use this evidence at trial. This means that if the investigating law enforcement agency is in possession of evidence, but fails to make the prosecutor aware of it so that the prosecutor can properly comply with discovery, the prosecutor may lose the ability to use this evidence at trial. The State must provide discovery materials to the defense not later than ten (10) days before trial. Thus, information and evidence that was in the possession of the investigator, but not revealed to the prosecutor until the day before trial is useless.

ELEMENTS OF A GOOD REPORT FROM A PROSECUTOR'S VIEWPOINT

I. General Considerations

A. Legibility

B. Spelling

C. Grammar

D. Style

1. Avoid police jargon.

2. Write in the first person.

3. Write in the active voice.

4. Write in chronological order.

5. Identify actors as quickly as possible and then refer to them by name.

6. When recounting statements or conversations made by anyone (officer, witness, or defendant), write down, to the best of your ability, *exactly* what was said. Do not generalize. Do not euphemize.

7. Don't use legal terms of art unless you are *sure* you know what you are talking about and that you are using the terms correctly in a way that will help your case. If you aren't sure, use plain English.

8. It is ok to include conclusions and opinions that you have drawn based on your expertise, training and experience - but don't exaggerate.

9. It is ok to include conclusions you have drawn based on certain facts uncovered during your investigation - but make sure to include the supporting facts in your report.

10. Don't try for a Pulitzer prize - remember Joe Friday!

II. Contents - Use the journalist's checklist - Who, what, when, where, why.

A. Where

1. Complete, accurate street address, including zip code

2. Venue - city v. county

3. Who owns the property? Who was in possession of it? Is it owned, rented, or were the occupants guests, or were they trespassing? Was the owner/lessee present at the time of the crime? Did (s)he have

knowledge of the criminal activity?

4. Map/diagram of crime scene

5. Orientation photos

B. When

1. Accurate date and time (be cautious around midnight)

2. Distinguish between time of incident and time of report

3. If you are approximating time, make it clear that you are approximating.

4. If your activity is recorded by your agency (radio room, dispatch, E-911 center), make sure that the times in your report match the times recorded by agency.

5. Especially for neglect cases - make note of the time of day, the temperature, and the weather.

C. Who

1. Identify all participants (defendants, witnesses, *and officers*) with **full, correct** names - ask for identification.

2. Include nick-names and street-names.

3. If an individual was present, (s)he is a potential witness for one side or the other, and the prosecutor needs to know about him/her.

4. Investigate relationship to case and to defendant and other witnesses.

5. Include complete contact information:

a. Mailing address, including zip code

b. Residence address

c. Location where the witness “stays,” if that is different from where (s)he “lives.”

d. Place of employment

e. Employment address

f. Home telephone

g. Work telephone

h. Cell telephone

i. Email address, if any

j. For lay witnesses and defendants - SSN and DOB (this is a requirement of reciprocal discovery)

k. For reluctant witnesses, or witnesses who may be difficult to locate later: contact information for relatives and associates, employers, or other data which may provide leads if all the above information becomes inaccurate by the time of trial

D. What

1. Description of all facts and circumstances surrounding the investigation

a. Chronological description of events.

b. Include as much detail as possible

(1) Lends credibility to the report - use of boilerplate makes a report “feel made-up.”

(2) Certain issues (existence of reasonable suspicion or probable cause, voluntariness of consent, voluntariness

of a defendant's statement, 4th Amendment search and seizure considerations, to name a few) turn on details, such as *exactly* what was said by the officer to the defendant. If you do not include details, you are sabotaging your case.

2. Physical Evidence - list of all evidence seized and proper documentation of chain of custody for fungible evidence

   a. Evidence description should be complete enough to distinguish that particular item from other items seized or other similar items.

   b. Don't create problems by guessing or drawing conclusions you aren't able to draw.

   c. Fungible evidence

      (1) Chain of custody necessary.

      (2) Everybody who touches the *unsealed* evidence should sign the chain of custody form.

      (3) If you are submitting to a lab, be sure you know the lab's evidence submission standards.

   d. Non-fungible evidence should still be handled in a professional manner and stored in a reasonably secured locations. It just doesn't need to be sealed.

   e. Label evidence clearly and legibly.

   f. Think ahead to the courtroom: evidence should be packaged

and labeled in such a way that seizing investigator can clearly identify and authenticate each item of evidence.

g. Do not "lump together" evidence. Bags are cheap.

h. Make sure that labeling on evidence clearly matches description on evidence forms and in narratives. A person who knows nothing about your case should be able to take your evidence and your report and tell *exactly* where each particular item of evidence was seized.

i. Prosecutor's case file should include two copies of any papers seized as physical evidence. Do not submit originals unless requested.

j. Extra credit: Photographs (non-crime scene) photographs of each item of physical evidence labeled to match case report and chain of custody forms.

3. Documentary Evidence

a. Photographs

(1) "CSI Effect" - jurors absolutely expect photographs

(2) Photograph all physical evidence at scene before it is moved.

(3) Photograph defendants and witnesses.

(4) Photograph any investigation post-crime scene, such as post-mortems, injuries to animals impounded after care has been rendered, etc.

(5) Prosecutor needs two sets of *copies* of *all* photographs with the case file.

(6) Do not submit originals unless asked.

(7) If using digital camera, be sure to use high enough resolution to allow for enlargements.

(8) Use TIF, RAW, or other non-lossy file format if possible.

(9) If using digital camera, be sure to save original digital files *in a place where you can find them* - preferably both on a hard drive and on a disc.

b. Video tapes

(1) Prosecutor needs two *copies* of any video with the case file.

(2) Do not submit original unless it is requested.

(3) Original should be preserved as fungible evidence.

(4) Be careful of what is captured on the audio of crime scene videos.

c. Diagrams, maps, charts

4. Statements of witnesses or defendants

a. Anything that comes out of a defendant's mouth or a witness' mouth is a statement.

b. Practice pointer: Make courteous, but authoritative use of the phrase, "It's going to be necessary. . . ." Explain that giving a statement at the witness' convenience is much easier than

being served with a grand jury subpoena.

c. Statements need to be taken as close in time as possible to the event they concern.

d. *Miranda* issues

(1) Advising of *Miranda* rights is only necessary where government agent intends to interrogate the individual.

(2) "Interrogation" includes any action designed to elicit an incriminating response.

(3) "CSI Effect" - jurors expect *Miranda* rights to be read at the earliest possible opportunity, so why not just do it?

(4) Use written *Miranda* form (signed waiver of counsel) if possible (and there is really no good reason why it should *not* be possible); include a copy with the statement.

(5) If advising of *Miranda* orally, be sure to have a witness, record who the witness was, and have that witness make a record as well, so that (s)he will be prepared to testify if needed.

e. Document *all* statements, even if the defendant/witness did not intend to be "making a statement."

f. Document *all* statements, even if *Miranda* hasn't been read - may still be useful for impeachment.

g. Document the age, level of schooling, any mental or physical

impairment, level of intoxication (if any), and ability to read/write/speak English of anyone from whom you are taking a statement.

h. The "interview followed by a statement" traps: Investigators often interview witnesses at length and then memorialize the "results" of the interview in a written statement. There are two inherent dangers in this practice:

(1) The investigator will have gained knowledge/information during the interview which doesn't then make it into the statement. The investigator already "understands what the witness is talking about" because (s)he conducted the interview. The investigator must, at the time of taking the statement, mentally assume the position of someone who knows nothing about the case and must ensure that the statement will be clear and meaningful to anyone else so situated.

(2) Investigators who have already interviewed a witness/defendant sometimes make the mistake of cutting corners on the statement by asking leading, summary questions (i.e., summarizing the contents of the previous interview) to which the witness/defendant then responds with short affirmations or denials. This

has the effect of making the statement appear less than totally voluntary and of making it appear that the investigator is "putting words in the person's mouth." The investigator's questions should never be longer than the witness/defendant's answers.

i. Don't be afraid to ask for clarification.

j. Once statement is given, if it is in writing, have defendant read it and initial the top and bottom of each page, so that (s)he cannot later claim that the statement was altered by substituting a page.

k. Be sure to include above within the statement an affirmation that the individual giving the statement has read it, that it is true and correct to the best of his/her knowledge, that the statement was freely and voluntarily made and that no threats or promises were made to induce the individual to make the statement.

l. Typed and signed by defendant/witness is best.

m. Handwritten by officer and signed by defendant/witness is second best.

n. If defendant/witness is allowed to write his/her own statement, check for legibility and clarity (use of nick-names, use of pronouns, completeness).

o. Audio or audio-video recording is ok, but the investigator *must*

preserve original recording in the same way as other fungible evidence. Always break out the "tabs" so that the tape cannot be accidentally recorded over. Provide two *copies* to the prosecutor with case file; retain original until requested by prosecutor for court. Transcribe if possible; agent who recorded the statement is in the best position to do this.

p. Oral statement is the least desirable, but it is still a statement.

q. Document as nearly as possible the witness or defendant's *exact* words.

r. Record the identity of any witness to the oral statement and have that witness make a record as well, so that (s)he will be prepared to testify if necessary.

s. Record the context of all statements:

(1) Where it was taken

(2) When it was taken

(3) Who was present

(4) Especially in the context of oral statements, the *context* (i.e., what was going on when the defendant or witness uttered the statement, what had been said to him/her by law enforcement or other parties just before the statement was made)

t. When witnesses claim to have no knowledge, don't necessarily take that at face value. Persist!

u. When witnesses refuse to cooperate, don't take "no" for an answer without doing all you can, legally and ethically, to get their statements. Persist!

v. It is important to take statements even from hostile witnesses (i.e., witnesses who want to provide the defendant with a defense).

(1) First, because these people may well show up as defense witnesses at trial and the prosecutor needs to know in advance what they are going to say.

(2) Second, it is important to get these people committed to a *detailed* version of whatever they want to say *early* in the process - before the hostile witnesses and the defendant have had a chance to coordinate their stories, and before a defense attorney has had the opportunity to assist in shaping the defense. Small inconsistencies between defense witnesses can be very helpful to the prosecutor in rebutting a claimed defense.

(3) Therefore, be judicious in confronting hostile witnesses with "what the other witness said." If the witness is obviously fabricating, it may be best to just let the inconsistency stand in the statement and let the witness be committed to it.

w. Special considerations regarding statements by defendants:

(1) Statements by defendants fall into two categories:

(a) Self-serving ("I didn't do it. I'm not guilty."); and

(b) Confessions/admissions (A confession involves the defendant admitting each and every essential element of the crime. An admission is an incriminating statement, but less than a confession.)

(2) Where statement by defendant is a *confession*, be sure to cover *all* elements of the crime in clear, unambiguous terms.

(3) Where statement by defendant is self-serving, it is still important to get him/her committed to a *detailed* recitation of whatever (s)he is claiming. This locks the defendant in to a particular version of the defense that may not be as well thought-out as the one he will present in court after working with his attorney. Even small inconsistencies between the defendant's statement and his testimony can be quite helpful to the prosecutor on cross-examination at trial.

5. Other supporting documents and information

a. Where case included a search warrant or inspection warrant, include copies of the application, supporting affidavit, warrant, and return.

b. Where case involved a consent search, include copies of signed written consent form.

c. Where case involved impound of animals, include copies of all impound documents, Title 4 notice to owners, etc.

d. Where case involved multiple complaints or previous visits to same location, include those reports.

e. Where case involved surveillance, include surveillance logs.

f. Where you are aware of historical or intelligence information about previous criminal activity of defendant, include this documentation.

g. Don't try to hide the bad stuff - evidence which might mitigate against the defendant's guilt, unfavorable witnesses, or mistakes in the investigation. A prosecutor can more successfully deal with these problems where (s)he knows about them well in advance of trial.

h. Investigations don't stop at the crime scene. Be sure to include supplemental reports which constitute a "log" or "journal" of any follow-up investigation you did. "CSI Effect" - jurors expect that you will be able to testify to a date and time of all your investigative activity.

i. Reports by other officers:

(1) Any officer who located any item of evidence should write a report.

(2) Any officer who witnessed a consent, a *Miranda* warning, or an oral statement of a witness or defendant should write a report.

(3) Any officer who assisted in follow-up investigation should write a report.

j. Reports from experts who may have assisted on the case (veterinarians)

k. Forensic reports

(1) "CSI Effect" - jurors expect forensic examinations to be conducted and often will find reasonable doubt in the absence of forensic evidence or will use it as an "excuse" to vote "not guilty" where there are really other reasons they don't want to convict.

(2) It is much more palatable to explain that a forensic examination was conducted and didn't reveal any evidence than to have to admit that no forensic examination was attempted. The effort is what counts.

E. Why

1. Why did investigators become involved in this case? (response to call, violation observed by officer, long-term investigation, intelligence from another agency)

2. Why, during the course of your investigation, did you take the steps that you took?

3. Why is this defendant being charged with this particular crime or crimes? Investigators often make the mistake of charging defendants with a crime without clearly thinking through the elements of the offense and how the State is going to prove each one.

   (1) Learn to "unpack" a statute and make a bulleted list of the elements.

   (2) Mentally, if not in writing, list the evidence and witnesses that would be used to prove each element.

   (3) Make sure that all of this information is included in the report.

TESTIFYING IN COURT

Testifying effectively is an art. A well-prepared witness who presents well on the witness stand enhances the State's case both with the content of his/her testimony and the manner in which it is delivered. When jurors are favorably impressed with the case agent, the State has an advantage. On the other hand, a witness who does not present well, no matter how truthful and relevant his/her testimony might be, will always be a detriment to the case.

Prosecutors, defense attorneys, and judges quickly learn which officers are credible, effective witnesses, and which ones are not. An officer's reputation in this regard can affect a prosecutor's willingness to go forward with a case, a defense attorney's willingness to counsel his client to enter a guilty plea, and a judge's decision to base future rulings favorable to the State on the officer's testimony.

Animal control and law enforcement officers may often be called upon to testify at various stages of the progress of the case through the criminal justice system. For instance, immediately after arrest, the officer may need to testify at a *commitment hearing*. The purpose of a commitment hearing is for the court to determine whether enough probable cause to believe the defendant committed the crime exists to warrant binding the case over to a state or superior court for trial. These hearings are generally held in a magistrate court, and are somewhat informal in nature compared to a jury or bench trial in state or superior court. The officer may or may not have the assistance of a prosecutor in presenting his case at the commitment hearing. At this level, the officer is responsible for presenting just enough of a summary of the facts revealed by the investigation to establish probable cause. Hearsay is admissible, and other witnesses are generally not called. There are two major concerns for the officer testifying at a commitment hearing:

(A) He must be absolutely sure that his testimony is accurate - that is, that he is not saying anything in this hearing which will be inconsistent with his later testimony at trial. This is particularly dangerous when the officer is testifying to aspects of the investigation which were actually handled by other officers. If you aren't sure, say so!

(B) He must try to guard against the defense attorney (if one is present) turning the commitment hearing in to a "fishing expedition" by attempting to gain more information about the investigation than he is entitled to at this point. Remember, the issue at a commitment hearing is *probable cause*, not guilt or innocence. Hopefully the magistrate will clearly define the limits of permissible questioning by the defense, but it is permissible for an officer

who feels the questioning has gone too far afield to respond, "I'm not really prepared to go into all of that at this point, and I don't believe it's relevant on the issue of probable cause."

Officers who prosecute violations of municipal ordinances may also be called to present their cases in municipal courts. In this situation, the issue is the same as in a state or superior court trial (whether the defendant is guilty beyond a reasonable doubt), as are the rules of evidence, but again, the process is somewhat more informal, and the officer may or may not have the assistance of a prosecuting attorney in presenting his case.

Our discussion today will focus mainly on the presentation of testimony at the superior or state court level, i.e., in a jury or bench trial. However, it should be noted that most of the ideas discussed are equally applicable to appearances in magistrate or municipal courts.

I. General Considerations

A. The purpose of testimony by State's witnesses is to present the facts of the State's case *in a way so that the jury can understand them*. The witness must always remember that the jury knows nothing whatsoever about the case, and this can be a difficult position for the case agent to take when (s)he has been intensely involved in the investigation for a long time. Further, even if the jury comprehends the facts, they cannot always be trusted to draw the correct conclusions from the facts, i.e., to "connect the dots." The prosecutor and State's witnesses must help them do this.

B. When a witness testifies, three factors will come through:

1. Personality (or lack thereof)

2. Preparation (or lack thereof)

3. Preparation (or lack thereof)

II. Pre-trial Preparation

A. Pull original case file and review everything in it thoroughly. You *must* know the major facts of your case cold before coming to court.

B. Organize the file so that you can refer to it easily on the stand if necessary, and so that it looks professional. In larger cases, consider a binder and index tabs.

C. Schedule a meeting with the prosecutor.

1. Make sure that the prosecutor understands your level of experience as a witness. If you've never testified in superior court before, say so.

2. Go over all the facts of the case and understand how the prosecutor wants you to structure your testimony.

3. Ensure that you understand the defense that will be presented, if the prosecutor knows. This will assist you on cross-examination, because you will have some idea of the purpose behind the defense attorney's questions.

4. Be sure you understand clearly how the prosecutor wants you to handle "danger zones" in the State's case.

D. Review transcripts/tapes of any previous testimony you have given in the case and be sure to inform the prosecutor if there are inconsistencies between the previous testimony and your anticipated testimony at trial.

E. Talking to the defense attorney/defense investigator

1. All witnesses, including law enforcement and animal control officers, have an absolute right to refuse to talk to attorneys outside of court.

2. The wisdom of an officer agreeing to be interviewed by the defense attorney or his investigator prior to trial is dependent upon the officer's degree of experience, not just on the job, but ***in court.*** You must be absolutely confident that you understand every aspect of the law which applies to the case - the elements of the crime, elements of any possible defenses, as well any search and seizure issues that might arise. While there are officers whose experience gives them this degree of understanding, they are few and far between. If you don't know what you are doing, you can do more harm than good to your case. Do not let your ego convince you that you are so invincible and that your case is so airtight that nothing you say to the defense attorney could possibly harm the case. If there is any doubt in your mind, see point 6, below.

3. Some departments have internal policies about officers granting interviews to defense attorneys on pending cases. Be sure that you are aware these.

4. If you choose to talk with the defense outside of court, be prepared to hear anything and everything you said again when you are on the witness stand.

5. Do not have "hallway conversations" about cases.

6. Don't talk over the phone.

7. Good middle ground: offer to be interviewed *with the prosecutor present*;

III. Coming to Court

A. The court system is not designed to make your life difficult (it only seems that way).

B. Your case is one of many. Generally neither the prosecutor nor the court can schedule individual cases with certainty. Accept that waiting is part of the job, and bring something to do.

C. Yes, you do have to come to court.

1. Defendant's right of confrontation[1]

2. A subpoena is a court order, not an invitation

3. Other witnesses are subpoenaed for the same case

4. The defendant may be betting on witnesses not showing up. Your appearance alone may be enough to convince him to plead guilty.

5. Prosecutor does not have time to deal with every individual's personal problems.

6. Being "on-call":

a. Don't abuse the privilege.

b. One snafu in "on-call" status will probably cause you to lose the privilege.

c. Attitude has a direct impact on "on-call" privileges.

[1]U.S. Constitution, Amendment VI; Georgia Constitution, Article I, Paragraph XIV

7. Be on time. Prosecutors have extremely tight schedules during trial weeks. (S)he may well be counting on spending exactly five minutes with you between 8:00 and 8:05 to clear up one last point about your testimony. If you aren't on time, there may not be another opportunity.

8. Go directly to the location where you are supposed to be and remain there. If you have to leave temporarily, let someone know where you are going and when you will return.

9. From the moment of your arrival at the courthouse, you are potentially being viewed by jurors. Maintain your professional demeanor ***at all times***, even outside the courtroom.

10. Don't be "buddy-buddy" with the defense attorney or his investigator in any place where you might be observed by a juror.

IV. Personal Appearance

A. A person in uniform will either look very sharp or very sloppy; the uniform only makes it more noticeable.

B. Discuss uniform v. civilian clothes with prosecutor.

C. If wearing civilian clothes, dress appropriately (suit or slacks/sport coat with a tie for men, suit or dress pants for women). Do not let the jurors or the defendant out-dress you.

D. Conservative is the key.

E. Obviously, practice good grooming.

F. No gum, candy, or tobacco in the courtroom.

V. The Rule of Sequestration

A. Generally assume that "the rule" has been invoked in every case.

B. After the start of the trial, you may discuss your testimony with the prosecutor and no one else.

VI. Deportment in the Courtroom

A. The jury is observing you from the moment you walk into the courtroom.

B. Sit up straight on the witness stand.

C. No crossed arms or legs on the witness stand - jurors understand instinctively that this is the kinesic indicator of fear or deception.

D. When taking the stand, take a few minutes to get comfortable, adjust the microphone so you can speak into it comfortably without leaning forward to answer each question. Open your file, take a deep breath, and then signal the prosecutor you are ready to begin by looking up.

E. Taking the oath is a serious event. Be sure your attitude reflects this.

F. Don't get in a hurry. Listen to each question and make sure you understand it before answering. This makes you look professional.

G. Most witnesses understand that it is important to testify *to the jury* and do a pretty good job on direct examination. However, on cross-examination, they forget and focus almost entirely on the defense attorney. Jurors notice the difference subconsciously, if not consciously. The correct demeanor for both direct and cross examination is to look at the questioner while the question is being asked, and then turn to the jury to present the answer.

H. There is a difference between looking *toward* the jury, and making eye

contact with jurors. Making individual eye contact is preferable, but tiring. It is ok to rest occasionally by looking at them as a group. When you are making eye contact, remember to change up. Too much eye contact with any one juror will make both that individual and the rest of the jury uncomfortable.

I. Speak clearly and loudly enough; enunciate. It is the prosecutor's responsibility to correct you if you aren't, but it will interrupt the flow of your testimony if the prosecutor is constantly having to remind you to "speak up" or constantly having to request that you repeat your answers.

J. On cross-examination: Avoid looking at the prosecutor. If you do, it gives the jury the impression that you are needing/looking for coaching and help. The prosecutor will come to your aid (interpose an objection) when appropriate.

K. Avoid kinesic indicators of deception, fear, stress

   a. Looking up before answering

   b. Fidgeting

   c. Making faces

L. Don't forget to breath.

M. Bad Attitudes

   1. Arrogant/Robo-Cop ("I am God's gift to law enforcement.")

   2. Over-Confident ("This defendant is guilty and I don't know why we are even having a trial.")

   3. Cynicism ("Jurors in this county never vote to convict; this is a waste of my time.")

4. Lazy ("I closed this case six months ago; I don't know why I had to burn an off-day to come to court.")

5. Antagonistic ("The defense attorney nothing but a hired mouthpiece for this guilty-as-sin defendant, and I'm going to stick it to him every chance I get.")

6. Defensive ("Hey, I did better on this investigation than anyone else in the world could have. That mistake wasn't really a mistake, it was a misunderstanding!")

7. Argumentative ("I am *much* smarter than the defense attorney and I am going to show it every chance I get by nit-picking his questions.")

8. Condescending ("If this rookie defense attorney had been lawyering as long as I've been working in animal control, he would understand these things.")

9. Dirty Harry ("If the attorney wants an answer from me, he's going to have ask exactly the right question. Otherwise, I'm going to be mono-syllabic.")

10. Too Cool/Too Cute ("I'm going to impress everybody with how cool I am by making light of the defense attorney's dumb questions; if I can get the jury laughing, we'll win.")

11. Thank God It's Over ("Woo-hoo, I'm finally off the stand! School's out!")

N. Good Attitudes

1. Serious

2. Modest

3. Unfailingly courteous

4. Respectful

5. Calm

6. Confident

7. Fair/unbiased (Role change from investigative portion of the case)

8. Reasonable

9. Honest

O. The Case Agent at Counsel Table

1. Prosecutors are allowed to have the lead investigator or case agent sit at counsel table to assist in the trial.

2. If you are offered this opportunity, take advantage of it; it is the best learning experience possible.

3. Appear organized.

4. Be alert, but calm. Don't make faces or react to occurrences in the courtroom.

5. Remain focused; the jury must see that you are interested in your own case.

6. You can assist the prosecutor by taking notes, keeping track of exhibits, and the like.

7. Don't engage the prosecutor in unnecessary conversation.

VII. Using Your Case File on the Stand

A. Most prosecutors expect that an animal control/law enforcement witness will

bring his/her report to the witness stand and refer to it during testimony.

B. As stated above, make sure that your report *looks* professional (no loose papers, neat and organized), and that you can readily find any document in the file with a minium of fumbling.

C. A report may be used to refresh your memory, but you may not read your report on the stand. Aside from the legal issues with reading the report (hearsay), reading makes it appear that you don't know the facts of your case.

D. If you need to refresh your memory, the proper procedure is:

1. In response to the question, state: "I don't remember that exactly, but it's in my report. May I have a moment to refer to it?"
2. *Calmly* look through your report.
3. Re-read the relevant portion, and then look up at the questioner to signal that you are now ready to answer the question.
4. Answer the question based on your refreshed memory - do not read the relevant portion of the report.
5. Remember that any document you use to refresh your memory in court is subject to examination by the defense attorney.

VIII. Practice Pointers for Testifying

A. Be yourself, unless you are an obnoxious jerk, then be somebody else.

B. Use simple, everyday language.

C. Remember the record

1. Answer verbally. The court reporter cannot transcribe a head nodding or shaking.

2. Do not ever use the words “uh-huh” (affirmative) or “uh-uh” (negative). These do not transcribe well at all, and may result in your answer on the record appearing to be exactly the opposite of the answer you intended to give.

3. Refer to exhibits by number.

4. If you are referencing an exhibit, be sure to describe verbally what you are referencing (“You can see right here in this picture . . .” v. “In the upper right hand corner, as you are looking at it, of this photograph, which is State’s Exhibit Number 6 . . .”

D. Avoid “cop-talk”

1. Don’t use the 24-hour clock when testifying about time (jurors don’t understand it, and view it as militaristic), or if you do, be sure to translate it to “civilian time.”

2. “Subject” (call him the defendant, or refer to him by name)

3. “Exited my vehicle” = “Got out of my car.”

4. Don’t use race as an identifying factor if it is unnecessary, and even if it is necessary, avoid using it first in your phrasing (“When I arrived, I saw two men standing over two dogs who were fighting. One of them was African-American, and one of them was white” as opposed to “When I arrived, I saw a black male subject and a white male subject....”)

5. If you use “street language” be sure to translate it.

E. Profanity

1. Obviously, don't choose profane or slang words in your own testimony

2. However, if you are asked to repeat something that was said on the scene (by the defendant, for example), don't try to euphemize, or use cute abbreviations for bad words, or clean up the language. The proper approach is when asked the question is to demonstrate your discretion by asking the questioner, "Do you want me to repeat exactly what he said?". If the answer from the questioner is affirmative, then repeat, word for word, what was said.

F. Do not begin your answers with the phrases "Well, honestly. . . ." or "To tell you the truth . . ." You have taken an oath that *all* your testimony will be true! Use of phrases like this may signal to the jury that the rest of your testimony was *not* truthful!

G. Do not begin your answers with the phrase "To the best of my knowledge. . . ." This sounds like a reluctant witness on the hot seat at a Senate Committee hearing.

H. Thought delays ("ok", "uh", "well", "alright, well")

1. Annoying to jurors

2. Look terrible in a transcript

3. Avoid by pausing and thinking before you begin to speak. You can overcome this habit!

I. Defendants on trial are not "gentlemen" or "ladies." If the defendant had been behaving in a gentlemanly or lady-like fashion, (s)he would not have committed a crime. Refer to the defendant as "the defendant" or by name.

J. The proper form of address when referring to anyone in the courtroom is by complimentary title and last name.

1. Refer to other officers as “Officer Jones” or “Investigator Smith” or “Sgt. Williams.”

2. Refer to non-officers as “Mr. Jones” or “Ms. Smith.”

3. The only exception to this rule is where there are two individuals of the same sex with the same last name in the case (for instance, the defendants are two brothers with the same last name). In this case, you refer to the individuals by title, first name, last name (“I first talked to Mr. John Smith, and then I talked to Mr. Willie Smith.”)

4. The correct form of address for the court is “Your honor” if you are speaking *to* the court, and “Judge Johnson” if you are speaking *about* the court.

K. It is ok to ask that a question be repeated or rephrased if you honestly don’t understand. The correct attitude is honest perplexity, not belligerence.

1. It is not ok to harass the defense attorney by constantly asking that questions be repeated or rephrased.

L. Testify from your own personal knowledge only - what you saw, what you did, what you heard. Do not fall into the trap of trying to answer questions that should be directed to other witnesses.

M. Don’t speculate

N. Don’t guess. If you don’t know, say you don’t know.

O. Don’t give opinions unless you are asked to do so.

P. If you realize that you have made a mistake in testimony, acknowledge it and correct it.

Q. Be careful about estimating time, distance, and other similar factors. If you did not measure, say you didn't measure. If you didn't look at your watch, say you didn't look at your watch. If you are estimating, make it crystal clear that you are estimating. For distance questions, it is ok to testify to a visual display in the courtroom ("I was about as far away as from here on the witness stand to the first row of benches."), but keep in mind that this will mean nothing whatsoever in the record.

R. Ensure that your answers are responsive to the question asked.

1. Some witnesses make the mistake of launching into an explanation before answering the questions. If possible, you should always respond "yes" or "no" at the very beginning of your answer, and then explain/expand more fully if you need to do so.

S. Do not volunteer information. On direct examination, the prosecutor can be trusted to ask for more information if (s)he needs it; on cross, volunteering information is probably exactly what the defense attorney is *hoping* you will do. It is possible to give brief responsive answers without being robotic/mono-syllabic ("Yes, that's correct", "Yes, I did", "That would be true, yes", or just simply "Yes, ma'am", as opposed to "Yes.")

T. Do not interrupt, and do not "talk over" any other person speaking in the courtroom. It is almost impossible for the court reporter to accurately record the proceedings where two people are talking at once.

U. Humor in the courtroom

1. Occasionally, genuinely funny things do happen in court.

2. Some defense attorneys will deliberately might light of the case in order to leave the jury with the impression that "none of this is very serious."

3. The best rule of thumb is the same one followed by prosecutors: Your may respond to a humorous situation (to totally fail to do so may make you look frankly stupid, or too rigid), but your response should be dialed down one or two degrees below that of everyone else in the courtroom, especially the jury. Therefore, if the jury is rolling on the floor with tears coming out their eyes and the judge is falling off the bench, you may smile broadly. If the jury and bailiffs are laughing out loud, you may smile. If the jury and court security officers are smiling, you may allow yourself a sparkle in your eyes and a twitch of the corners of your mouth.

V. Stay focused.

W. Always tell the truth, the whole truth, and nothing but the truth.

IX. Objections

A. The proper purpose for an attorney making an objection is to request that the court rule on the issue of admissibility of the evidence which is sought to be elicited by the other attorney's question.

B. Unfortunately, some attorneys use objections as a tool to try to hide unfavorable evidence or rattle the witness.

C. The true professional witness will take a deep breath before launching into the answer to any question, in order to give the opposing attorney the opportunity to interpose an objection.

D. When an objection is begun, *stop answering*. It is improper and unethical for a witness to try to slip in the rest of the answer. Give the court a chance to rule.

E. Try to listen to the objection and the court's ruling, and then conform your answer to it.

F. After the court has ruled on the objection, it is permissible to ask the examining attorney to restate the question. Especially where the argument on the objection has been protracted, it may be difficult for the court, the witness, the attorneys, and certainly the jury, to remember the original question.

X. Expert Witnesses

A. The first job of the expert witness is to make sure that the prosecutor clearly understands the scientific or other evidence about which the expert is to testify. If the prosecutor doesn't understand it, (s)he can't structure the testimony effectively, and cannot argue the evidence convincingly in closing.

B. If the expert cannot convey the information in terms the jury can understand, the testimony is useless. For safety's sake, assume the jury is operating at about a 7th grade level.

C. Remember to translate scientific, medical, or technical terminology into plain English.

D. Discuss with the prosecutor the preparation and use of visual aids to assist the expert in delivering his/her testimony.

E. The State's expert should also assist the prosecutor in preparing to disprove the defendant's theory of the case, and help the prosecutor prepare for cross-examination of the defense expert, if any. The State's expert should review any reports filed by the defense expert and be prepared to rebut them where necessary.

F. Expert witnesses are often asked on cross-examination if they are being paid for their services. If you are being paid, don't be reticent about acknowledging the fact. You should stress that this is a commonly-accepted practice in the community of experts to which you belong.

G. If the expert testifies frequently, (s)he should keep a file of transcripts of his/her previous testimony. Opposing counsel will often obtain transcripts of previous testimony and use them for cross-examination; the cross-examination questions may well concern portions of the previous testimony which are taken out of context. The witness should be prepared to explain the context of the previous testimony, and distinguish the factual differences between the prior cases and the instant case that might result in *perceived* inconsistencies.

XI. Direct Examination

A. Identifying yourself for the jury

1. The prosecutor must begin the testimony of a State's witness by asking for his/her name. This is *not* the time to give your title. The correct

response to the request to "State your name for the record" would be "Mary Elizabeth Johnson" - not "Sergeant Mary Johnson." The same holds true for expert witnesses. Your name is "John Robert Smith", not "Dr. Robert Smith." After you correctly state your name, the prosecutor will then ask you what you do for a living, or where you are employed. This is the time to state "I am an animal control officer for the City of Duluth", or "I am a patrol sergeant with the Byron Police Department", or "I am a doctor of veterinary medicine in private practice here in Savannah."

2. If your name is at all unusual, take the initiative to spell it for the court reporter.

3. After asking where you are employed, the prosecutor may ask you how long you've worked at this particular job, and then inquire about what training and experience you have had which enable you to do your job. Expert witnesses should have already provided the prosecutor with a curriculum vitae. Law enforcement and animal control witnesses sometimes stumble over this question. "Well, I went through mandate in . . . let's see, I think it was 1995, and then I've been to a lot of schools since then. . ." is not a good answer. You should keep a running record of the schools you have attended, your previous assignments within the department with dates, your previous law enforcement or military experience, the cases you have worked, etc., so that you can respond to this question in a professional manner, *especially* if your expertise

or experience is going to be an issue in the trial.

B. Strive to give "just enough" information. The prosecutor will ask for more if (s)he needs more. It is better to expand on a previous answer than to blurt out information that the prosecutor would rather not have admitted. Remember, you don't know what has gone on in the courtroom while you have been sitting in the hall. The posture of the case or theory of the defense may have changed.

C. Handling exhibits

1. Three steps to admissibility

a. Identification (verbal description of the item)

b. Authentication (why it is relevant to the case)

c. Tendering (performed by prosecutor after previous two steps have been completed; this process may require the testimony of more than one witness)

2. Witnesses must remember that identification and authentication are two separate and distinct steps.

3. Always refer to exhibits by number

4. Verbally describe aspects of the exhibit if you are referencing it in your testimony.

XII. Cross-Examination - General Considerations

A. Three purposes of cross-examination

1. Impeach witness (show that (s) is not worthy of belief)

2. Obtain favorable facts

3. Cast doubt on unfavorable facts

B. Scope of cross-examination - “thorough and sifting”

C. Soft cross v. hard cross

D. Being led is for sheep.

1. Try to anticipate where the defense attorney is going.

2. Don’t acquiesce just because it’s a leading question.

E. The witness can control the pace. Take your time.

F. Remain calm - it is better for the jury to view you as being the *victim* of an overly-aggressive or unfair cross-examination than for you to be viewed as adversarial.

G. Don’t display anger even if you feel it.

1. Exception: accusation or implication of lying, manufacturing evidence, racial motivation, other ethical violations.

H. Remember to engage the jury.

I. Understand that if the prosecutor lets you handle it, you are doing just fine.

J. The most brilliant trial attorney on earth cannot confuse a truthful witness.

XIII. Handling specific cross-examination techniques

A. Repeating the direct examination

1. Purpose: The attorney is hoping the witness will slip up and given an answer which is inconsistent with his testimony on direct examination.

2. Response: Stay focused and alert; keep your energy level high. View this as a golden opportunity to restate all the important facts of your

case one more time for the jury.

B. Repetitive questions

1. Purpose: Similar to "Repeating the direct", the attorney is hoping that (s)he can lull the witness into giving an inconsistent answer.

2. Response: Stay focused and alert. It is ok to judiciously point out to the jury what the attorney is doing ("As I previously testified. . ." or, in extreme cases, "Ma'am, my answer this time is the same as the last time you asked me that question. . ."

C. Going too fast

a. Purpose: Get the witness on a roll so that (s)he either doesn't think before answering, or is in a rut (long series of rapid-fire questions to which the answer is always "yes" followed by a surprise question where the answer should be "no")

b. Response: The witness controls the pace of the examination. If you take your time before answering and speak slowly, the attorney can only go so fast.

D. Cutting off the answer

a. Purpose: To stop an unfavorable answer to a question that the attorney suddenly realizes (s)he wishes she hadn't asked; to rattle the witness; to anger the witness

b. Response: Don't try to talk over the attorney. You'll both look rude, and the record will be a jumble. If the attorney interrupts you, stop talking, wait in silence until the attorney finishes, and

then pick up the thread of your answer again. If it persists, it is ok to turn to the judge and ask politely "Your honor, may I finish my answer now?"

E. Comparing testimony to that of another witness

1. Purpose: To create inconsistencies between witnesses.

2. Response: You have no idea what any other witness in the case has said, because you have been strictly following the rule of sequestration. You also don't know whether the other witness *actually* said what the attorney is claiming in his question, or whether it is a trick. The correct response is: "I can't comment on what Officer Smith may or may not have said. I can only tell you what I know about this case."

F. Asking for information outside the witness' personal knowledge

1. Purpose: The attorney is hoping you will speculate, guess, or misstate the facts, or is trying to admit into evidence information helpful to his side of the case without the necessity of calling the proper witness.

2. Response: Remember that you can only fairly be asked to testify to facts and evidence within your personal knowledge: "I can't tell you the results of the fingerprint analysis, because I didn't perform it. You would have to ask the officer who did that test."

G. Misstating facts in the question

1. Purpose: The attorney is hoping that you will fail to notice the misstatement and, by answering the question, tacitly agree with the

misstated facts.

2. Response: You must listen *carefully* to each question. If facts are misstated in the question, don't answer it, correct the misstatement.

H. Compound questions ("Isn't it true that you arrested my client and then interrogated him without advising him of his rights?")

1. Purpose: By asking a multi-part question, portions of which would properly be answered differently, the attorney is hoping to get a favorable answer from you.

2. Response: Point out the ruse - "Mr. Jones, that's really a two-part question. My answer to the first part of the question is yes, I did place your client under arrest. My answer to the second part of your question is no, I didn't question him until after I had advised him of his rights."

I. Use of inflammatory language in a question

1. Purpose: To get the witness to admit to a mis-characterization of the facts; to inflame the jury; to rattle or anger the witness.

2. Response: If the language in the question is unreasonably inflammatory, answer in whatever way would constitute a disagreement with the inflammatory language ("No, I didn't beat your client while he was in handcuffs.") and then explain the truth of the matter ("After your client was in handcuffs, he continued to be extremely combative and was kicking the windows of my patrol car, obviously trying to break them. Therefore my partner and I held him

down while a third officer restrained his feet with flex-cuffs.")

J. Deliberate use of wrong names and other descriptors

1. Purpose: An infantile tactic, but the attorney is hoping to distract the jury and get them wondering why he is making consistently making this mistake.

2. Response: Listen carefully to the question. Correct misstatements politely, but with increasing firmness if the tactic is repeated.

K. Trying to introduce bias

1. Purpose: To inflame the jury; to rattle or anger the witness.

2. Response: Response: Answer in whatever way would constitute a disagreement with suggestion of bias ("No, I didn't single your client out just because he is Hispanic.") and then explain the truth of the matter ("I focused on him because the complaint I was investigating was specifically about a Hispanic male, and he was the only one fitting that description on that street corner at that time.")

L. Shifting values

1. Purpose: By clever use of language in his questions, the attorney gets the officer to tacitly agree to something that is exaggerated or downplayed as compared to the true facts of the case. Example: The animal control officer testified on direct that it was a freezing cold day when he discovered the dog chained outside with no shelter. On a series of questions on cross, the defense attorney characterizes the day as "cold", then "chilly", then "cool."

2. Response: Listen carefully to the question. Correct misstatements of fact contained within the question before answering.

M. Pre-trial discussions with the prosecutor

1. Purpose: To leave the jury with the impression that the prosecutor and officer/witness have somehow improperly conspired to frame the defendant.

2. Response: A matter-of-fact acknowledgment that yes, of course, you met with the prosecutor to prepare this case for trial, as you do in every case that is going to trial. This answer can be delivered with just a hint of incredulity at the idea that the defense attorney would even ask such an obvious question.

N. Trying to pin the witness down to specifics

1. Purpose: To make the witness appear incompetent or confused, or to create contradictions with the testimony of other witnesses.

2. Response: Give the most specific answer you are able to give and then refuse to give in to repeated demands by the cross-examiner to be more specific. If you have estimated or approximated, restate this, and say that this is the very best you can do. If the tactic continues, it is ok to point it out to the jury: "As I have previously testified, I can't tell you to the minute what time I left the crime scene."

O. "Have you ever told a lie?"

1. Purpose: To discredit the witness in the eyes of the jury, and more importantly, to make the witness appear sheepish, angry,

uncomfortable, or unreasonable in front of the jury, depending on the response of the witness.

2. Response: Do not let this question make you angry or uncomfortable. It is an infantile tactic by an unsophisticated trial attorney; recognize it as such. The proper answer is a calm acknowledgment: "Yes, Mr. Jones, I'm sure that at some times in my life I have exaggerated the truth or told a white lie. However, I have never lied under oath."

P. "Isn't it possible that. . . ?"

1. Purpose: To introduce some wild alternative theory of the crime to the jury and get you to agree that it could possibly be valid. If you agree with the question, the closing argument will go like this: "Even Officer Smith agreed that it was possible that someone else planted this syringe full of steroids in the defendant's garage. . . ."

2. Response: The typical response to this question is either a belligerent "No, that's not possible, no way." or a sheepish "Well, uh . . . anything's possible." Neither of these is very effective. Remember that there are certain things about which no witness could ever be 100% certain. However, the State doesn't have to prove guilt to an absolute mathematical certainty, but only to a reasonable certainty and beyond a reasonable doubt. Use your response to this question to affirm your *reasonable* certainty of the defendant's guilt, and reiterate all the reasons why: "Mr. Jones, I'm reasonably sure that would not have been possible. The garage was locked, only the defendant had a

key, we found a partial fingerprint on the bag that contained the syringe that matched the defendant's, and it was exactly the same type of syringe that we found in the defendant's truck."

Q. "Have you ever made a mistake?"

1. Purpose: Similar to the "Have you ever told a lie before?" question, the idea here is to discredit the witness in the eyes of the jury, but more importantly to make the witness appear sheepish, uncomfortable, or unreasonable, depending on his answer.

2. Response: All humans make mistakes and will continue to do so. This fact is in no way relevant to the issue of the guilt or innocence of the defendant. The relevant question would be whether there has been some mistake in the investigation, or some mistake in the witness' trial testimony. If mistakes were made during the course of the investigation, hopefully they have already been revealed/explained to the jury during direct examination. Therefore, the best response to this question would be something like this (delivered with the greatest degree of humility and sincerity): "Yes, Mr. Jones, I have made mistakes at times in my life; I am only human and none of us are perfect. However, I am not aware of any mistakes in my testimony today (or in the course of the investigation, other than the ones you've already acknowledged on direct, if any). If there something specific about my testimony that you believe to have been an error, I would be glad to try to clarify that for you if you will ask me." This answer very

subtly points out the jury the unfairness of the attorney's tactic in asking this question.

R. The list of "didn'ts"

1. Purpose: To emphasize as much as possible any failures or alleged failures in the investigation. Example: Investigators failed to submit any of the physical evidence in the case for fingerprint analysis. This fact has already been brought out on direct examination. However, the defense attorney on cross-examination emphasizes the point by asking a separate question about each individual item of physical evidence: "You didn't submit the syringe for fingerprint analysis, did you? And you didn't submit the bottle containing the steroids for fingerprint analysis, either, did you? And you didn't submit the gambling records for fingerprint analysis, did you?

2. Response: Recognize what is happening and after the second question, restate the broad point: "Mr. Jones, as I testified on direct, we didn't submit *any* of the physical evidence for fingerprint analysis." and then if there is a reasonable explanation for the failure, reiterate it: "The garage where these items were found was locked, and your client told us that he was the only one who had access to it."

S. Staring

1. Purpose: To rattle the witness; to make the witness angry; to imply to the jury that the last answer the witness gave is so incredible as to be unworthy of belief; to allow a period of silence in which the attorney

hopes that the witness will be uncomfortable enough to blurt out more information that was necessary to answer to previous question; to cover up the fact that the attorney needs time to formulate his next question.

2. Response: Maintain a professional demeanor, remain silent, take several deep breaths, take a drink of water, and wait for the next question. Remember, a period of silence tends to "stretch out" in a courtroom. Don't be drawn into trying to fill the void.

T. Speculation, hypotheticals, "if" questions

1. Purpose: To distract the jury from focusing on the true facts of the case. Example: "If my client's ex-wife hadn't called and told you about the dog in my client's backyard, you would never have know it was there, and you wouldn't have even been investigating my client, would you?"

2. Response: It is irrelevant what might have happened if the case had progressed differently. Use your answer as an opportunity to restate what *did* happen. The proper answer is, "Mr. Smith, I can't speculate on that, because it didn't happen that way. The facts of this case are that Ms. Anthony *did* call us and alert us to the fact that this animal was chained in the backyard with no food, no water, and no shelter, in the 101-degree heat. We went to investigate and found that the dog was in an advanced state of dehydration."

U. The incomplete report

1. Purpose: To cast doubt on the credibility of the witness by pointing out things that were left out of the report and implying that there might be other important facts that were also left out. This line of cross almost always begins with the attorney submitting to the witness a series of friendly and seemingly reasonable questions about the importance of complete report writing; you can see it coming a mile off.

2. Response: First of all, don't be led into responding blindly to the lead-in questions. You are *not* expected to prepare a report which contains every last minute, irrelevant detail. You are expected to prepare a report which is *reasonably* complete and reflects the important facts of the case, and you should agree with this proposition and only this proposition. The rest of your response will depend on *what* it was that has been left out of your report. If is was a major fact that really should have been included, the prosecutor has probably already asked you about this on direct, and so you can just humbly re-acknowledge the omission while pointing out that you've already answered this question, and reiterate your previous explanation if there is one: "Mr. Smith, as I testified on direct, I did leave the fact that there was a Pomeranian inside the house out of my report. As I explained, that dog appeared to be well-cared for and showed no signs of abuse; my focus at the scene was on the bleeding pit-bulls in the backyard." Of, if the attorney is asking about some minor detail that no reasonable

officer *would* have included in his report, you can admit the omission and explain why you left it out: "No, Mr. Jones, I didn't make a note of what kind of shoes your client was wearing at the time of his arrest. I didn't view that as being a relevant factor in the investigation." The proper attitude to display here is that you are a professional investigator who knows how to "separate the wheat from the chaff." Do not answer with a casual "I didn't think it was important."

V. Mistakes in the report

1. Purpose: To cast doubt on the credibility of the witness by pointing out things errors in the report and implying that there might be other items in the report that were also erroneous. This line of cross almost always begins with the attorney putting to the witness a series of friendly and seemingly reasonable questions about the importance of accurate report writing; again, you can see it coming a mile off.

2. Response: Again, if there is a major error in the report, you should have already caught it and pointed it out to the prosecutor; generally the prosecutor will bring such a problem to the jury's attention on direct examination in order to diffuse the impact of the error. If the error has already been discussed on direct, you can simply re-acknowledge it, while pointing out to the jury that the defense attorney is just re-hashing: "Yes, Mr. Jones, as I testified on direct, I did transpose the first and second digits of the defendant's house number on the second page of my report. It was a typographical error." If the

error has not already been discussed on direct, you will simply have to acknowledge it and explain it as best you can. Do not be defensive. This is not a good time for you to argue that the mistake was irrelevant. Your report should be accurate, for exactly the reason that you don't want to have to admit these kinds of mistakes on cross-examination. Be humble. The jury will respect you for being willing to admit your mistake.

W. "You refused to discuss this case with me before trial. . ."

1. Purpose: To leave the jury with the impression that the witness is biased and unwilling to be fair to the defendant.

2. Response: If you have followed the suggested course of action in the "Preparing for Court" section above, you can respond as follows: "Mr. Jones, I didn't refuse to talk with you. I simply told you that to be fair to both sides, I would prefer that you, and I and Ms. Baker, the prosecutor, sit down together to discuss my testimony. That way everybody could be equally clear on exactly what my testimony was going to be." You can also point out that you prepared a complete report of your actions in the case, and that it is your understanding that the defense attorney has been provided a copy of that report if he was willing to engage in reciprocal discovery with the State.

X. Badgering/belligerent/argumentative

1. Purpose: To cause the witness to lose his composure and appear unreasonable and overbearing - like a stereotypical "bad cop."

2. Response: Breath deeply and maintain your composure. It takes two to fight. Again, it is better for the jury to perceive you as being the victim of an unfair cross-examination by an abusive jerk than to view you as being an abusive jerk!

Y. "You're not sure about that, are you?"

1. Purpose: To raise reasonable doubt as to the guilt of the defendant by getting the witness to admit that he is unsure of himself.

2. Response: Remember that any person on earth could be wrong on some occasion about something. The real question is whether you are sure enough to be testifying to the particular fact; presumably if you have already stated the fact under oath, you are so convinced. Therefore, don't give in by admitting that you "really aren't sure" when the real truth is that you are as sure of the answer as any reasonable person could be.

Z. Condescending/ridiculing/laughing at the case

1. Purpose: To imply to the jury that no really intelligent or capable person would be a law enforcement or animal control officer in the first place; to make the officer witness feel inferior; to imply to the jury that the trial is about a silly, unimportant charge made by a silly, unimportant officer, and that the jury should, therefore pardon the defendant even if he is guilty.

2. Response: You are a professional. Assuming that you have done your job well in this case, you have every reason to be proud of your efforts

and your service to the community. Not everyone is capable of doing the job you do. Your job was to investigate a crime and bring the guilty party to trial and you have done so. Stand tall, and clearly convey by your answers that you are completely satisfied with your job and confident in your investigation. This is one of the rare situations in which the witness may consider making a polite request for the attorney to repeat his question, as if you are honestly puzzled as to why anyone would ask such a thing. This has the subtle effect of letting the jury see the tactic for what it is.

AA. Use of legal "terms of art" in the phrasing of the question; asking the witness to make legal rulings; asking the witness the "ultimate question"

1. Purpose: When an attorney uses legal terms of art like "probable cause", "reasonable suspicion", "plain view", "exigent circumstances", and the like, the attorney is trying to entice the officer into stating an incorrect conclusion about some point of law. When the attorney asks the witness the "ultimate question" (guilt or innocence of the defendant), the attorney is imply to the jury that the witness has made up his own mind and therefore must be shading, or worse, fabricating his testimony to support his conclusion.

2. Response: Don't use legal terms of art in your answers unless you are absolutely sure you know what you are talking about. Don't answer a question phrased in legal terms. Instead, restate the *facts* as you know them to be. The proper response to the "ultimate question" would be:

"Mr. Jones, it is up to the jury to decide whether your client is guilty or not. It is my job to completely, fairly, and accurately report the facts to them, and that is what I have done."

CONCLUSION

A true professional constantly tries to improve his/her performance. In the area of report writing, performance can be improved by any or all of the following activities: by reading extensively, by intentionally expanding ones vocabulary, by asking for critiques of reports one has written, by studying reports prepared by more experienced officers, and by spending as much time as possible observing courtroom procedures, so that one begins to understand what investigative procedures are essential to a case and how to properly record them. In the area of courtroom presentation, officers might consider taking a course in public speaking, gaining experience in public speaking by doing public relations work for one's department, or becoming a training instructor for other officers. Another idea would be to study carefully members of the media who are judged to be effective communicators, and learn from their manner of presentation when they appear on television. Here again, however, nothing can substitute for spending as much time as possible in the courtroom. Ask prosecutors for advice on which local officers are considered "star witnesses" and make a point to watch and learn from them. An officer might also consider asking the prosecutor for a "debriefing" after a trial in which (s)he has testified, in order to discuss any areas that need improvement.

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