



When Everyone Has a Story

The Role of the Expert Witness

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What Do We Want Testimony to Feel Like?

◆ *What testimony can actually feel like.*



◆ *What we want testimony to feel like.*





The truth has been an issue since the beginning of time.

Many famous people have commented on it.



*“If you tell the truth, you don’t have
to remember anything.”*

— Mark Twain



*“I’m for truth, no matter who
tells it. I’m for justice, no
matter who it’s for or against.”*

— **Malcolm X**



*“Tell me the truth or I’ll whip
you’re A\$\$.”*

— My Mom

The Oath



“Do you solemnly swear (or affirm) that the evidence you shall give is the truth, the whole truth, and nothing but the truth, so help you God.”

Definitions of Truth



The body of real things, events and facts: Actuality



The real facts about something



The state of being the case: Fact



The quality or state of being true



That which is true or in accordance with fact or reality



“The Whole Truth”

“**The whole truth**” means telling all the facts about something without leaving anything out, exaggerating, or altering the information.

Legal and common usage

In legal contexts, the phrase is part of the oath sworn by witnesses: *“the truth, the whole truth, and nothing but the truth.”* Here, “the whole truth” means the witness must **not omit any relevant facts**, because leaving out information could distort the overall truth, even if no direct lie is told. It ensures that testimony is complete and accurate, preventing deception by omission, while **“nothing but the truth”** prevents adding falsehoods to the facts presented. In everyday language, the phrase is used to emphasize honesty and full disclosure in any situation.

Everyone Has a Story

- ◆ **Different stories** — Even when there is a singular set of facts – the stories may be different.
- ◆ **Interpretation** — People may “interpret” facts differently.
- ◆ **Frame of reference** — People’s frame of reference may introduce unintended bias into their story.
- ◆ **Motivation** — People’s motivation might affect someone’s story telling.
- ◆ **Dishonesty** — People can lie.

One set of facts.

Many stories.

The Truth Can Be Subject to Interpretation



The facts: This husband has been out watching the Super Bowl with his buddies and has had 8 beers since halftime before returning home. His wife has a few questions...

“Are you drunk?”

“No.”

Rationale: I’m wasted.

“Are you drunk again?”

“No.”

Rationale: I stayed drunk.

“Have you been drinking all day?”

“No.”

Rationale: We stopped drinking to drive to the liquor store.



Same facts. Different story.

Unintended Bias (Whoop!)

One property – three appraisers





**People's motivations can
affect their story telling.**



People Can Lie



Question from attorney: Did the house suffer from any deferred maintenance?

Answer from appraiser: No, the home appeared to be adequately maintained.

When does an opinion go so far that it becomes a lie?



Ethical Rules That Limit Advocacy

USPAP's **Ethics Rule** requires appraisers to act with **integrity, impartiality, objectivity, independent judgment, and ethical conduct**. This means:



No bias or partiality toward any party involved in the transaction.

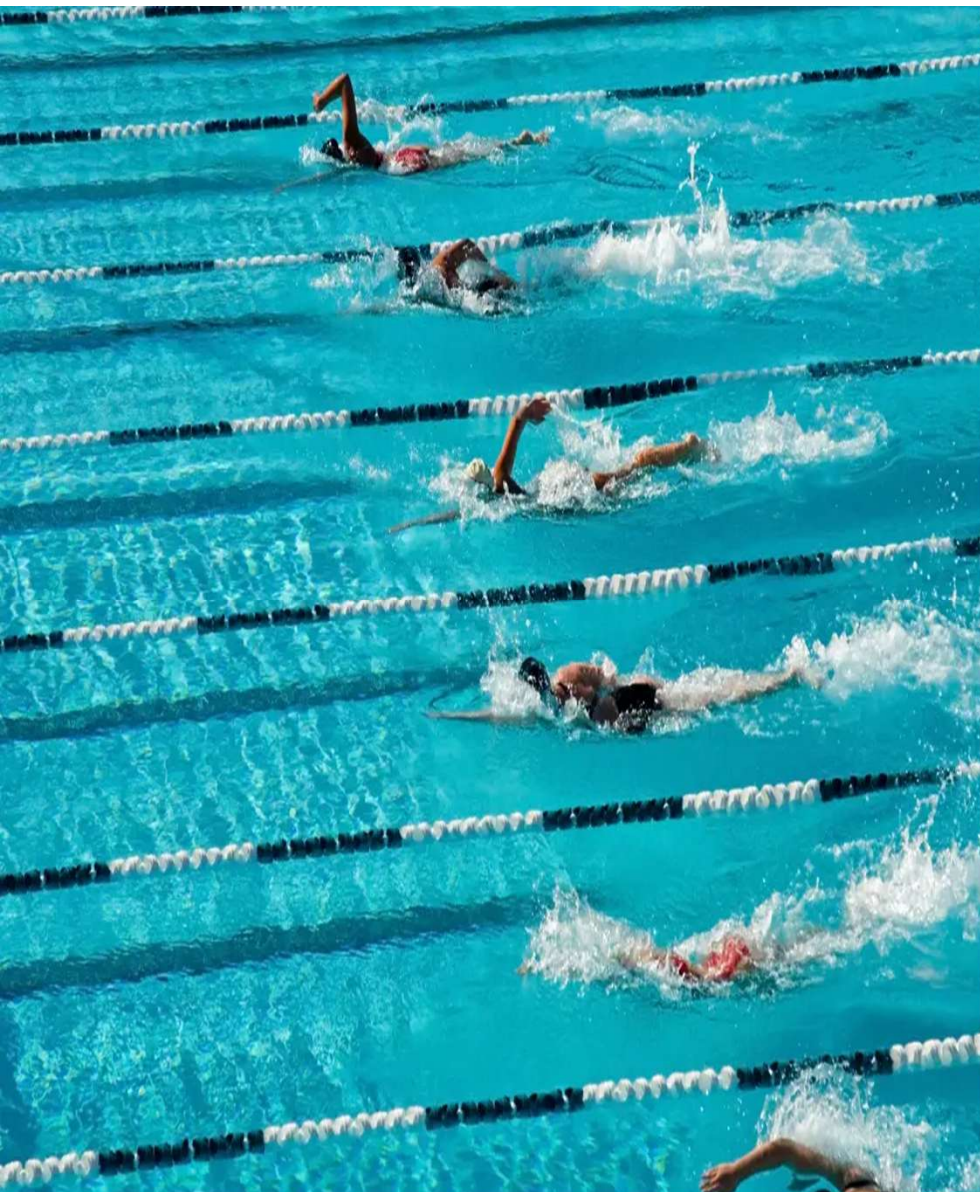


No undue influence or attempts to sway decisions in favor of a particular client or interest.



No conflict of interest that could compromise objectivity.

If an appraiser promotes or supports a specific party's position in a way that could influence the valuation or decision-making process, that would violate the Ethics Rule and could be seen as advocacy.



Stay in Your Lane!

- ◆ Attorneys get paid to be advocates.
- ◆ The rest of us get paid to tell the truth.

As a witness, don't allow an attorney to pull you into advocacy.

What Does Your Attorney Hope to Accomplish?



Hide



Hit

What Does Your Attorney Hope to Accomplish?



Hide the Candy

Attorney note — *The ability of your witness matters.*

What Does Your Attorney Hope to Accomplish?



Swing for the Fence

Attorney note — *The ability of your witness really, really matters in this approach.*



Rules for Every Witness

The Rules



1 Tell the truth.

2 Listen to the question. Pause. Think as long as necessary before answering.

3 Don't pause too long before answering.

Attorney note — *If you have them on the ropes, rapid fire. Eliminate the pauses.*



The Rules, Continued

- ◆ If you don't know the answer, say "I don't know."
- ◆ If you don't remember the answer, say "I don't remember."
- ◆ Don't confuse "I don't know" with "I don't remember."



The Rules, Continued

- ◆ Answer “yes” or “no” if appropriate.
- ◆ Don’t answer “yes” or “no” to a yes-or-no question if the question cannot be answered accurately with yes or no.
- ◆ Don’t speculate or guess.
- ◆ Speculate or guess if you are asked to speculate or guess, but qualify your answer by identifying it as a speculation or a guess.

Attorney note — *Keep re-asking your question, eliminating the qualifiers in the answers given.*



The Rules, Continued

- ◆ Don't give wishy-washy, equivocal answers like "possibly," "probably," and "maybe" when you should be positive, assertive, confident, certain, strong, and precise.
- ◆ Answer narrowly. Answer only the question asked.
- ◆ Don't volunteer.
- ◆ Where appropriate, volunteer.



The Rules, Continued

- ◆ Don't help the questioner by answering the question that should have been asked.
- ◆ Don't help the questioner by supplying information to fix the question.

Attorney note — *If you feel as though you were just given an affirmative answer to your case-winning question, make sure your question was perfectly on point.*

The Rules, Continued

- ◆ Don't agree with the cross-examiner unless you are satisfied that the leading question is 100 percent accurate. Your simple "yes" or "no" answer to a leading question makes the premise and phrasing of that question sworn testimony.

Attorney note — *Lead, lead, and then lead some more.*

- ◆ Don't use formulations that dilute your credibility. If you preface your answer with a term like "frankly," you are suggesting that you may be other than frank when giving answers not labeled as being frank. The same is true of formulations like "the truth is..." or "to be totally honest..."

Attorney note — *If you hear any of the "to be honest" answers above — pounce.*

The Rules, Continued

- ◆ Don't let the questioner interrupt your answer. Say something like, "I haven't completed my answer. May I complete my answer?"

- ◆ Correct mistakes. If you realize you have been inaccurate or incomplete, say so. ("Excuse me. A few minutes ago, you asked me how many times I requested my personal file, and I said three. I just remembered that I asked a fourth time, too.")

Attorney note — *"This is my time to question. Your attorney can ask you questions on his time."*



The Rules, Continued

- ◆ Beware of questions that assume facts, as in, “Have you stopped beating your spouse?”
- ◆ Beware of questions that require a choice between alternatives selected by the questioner, such as, “Was the light red or green?” If appropriate, answer “neither” and wait for the next question.
- ◆ Beware of questions that purport to summarize your earlier testimony.
- ◆ Beware of questions that rephrase your earlier testimony.
- ◆ Beware of compound and multiple questions.

Attorney note — *Do all of those things!*



The Rules, Continued

- ◆ Tell your attorney about all the skeletons in your closet now, so you can prepare for cross-examination. No surprises — your discussion with your attorney is privileged.
- ◆ Admit what you have to admit.
- ◆ Don't admit what is not true.

Attorney note — *Make sure your witness fully informs you of any potential weaknesses.*

Key Takeaways

- ◆ **Everyone has a story** — Even with a single set of facts, interpretation, bias, and motivation can lead to different accounts.
- ◆ **Tell the whole truth** — Leaving out relevant facts distorts the truth just as much as adding false ones.
- ◆ **Stay in your lane** — Attorneys get paid to advocate. As a witness, your job is to tell the truth — not to win the case.
- ◆ **Know the rules** — Pause before answering, don't guess, answer narrowly, and don't let a leading question become your sworn testimony.

Same facts.

One truth.

Tell it.

What Do We Want Testimony to Feel Like?

◆ *What testimony can actually feel like.*



◆ *What we want testimony to feel like.*





FINAL THOUGHT

If you remember nothing else from today, after you swear in, remember this...



*“Tell me the truth or I’ll whip
you’re A\$\$.”*

— My Mom



Thank you.

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