

## Make Your Case: How to Testify in Court

BY JULIE MILLER DOWLING



If you scope out the courthouse—and the courtroom itself—before the day of the trial, you'll feel less nervous going in. FRANCES TWITTY/ISTOCKPHOTO.COM

**W**hether you've been a cruelty investigator for 10 months or 10 years, you can't help feeling sad and angry when you find a skin-and-bones retriever tied to 15 feet of rusted chain or when you take in the scarred and bleeding pit bulls victimized by a dog-fighting operation.

But it's best to keep that emotion out of the courtroom when you're called to testify.

"You would be amazed at how many animal control officers get emotionally involved in the case," says Patrick Bucher, a retired Maryland State Police captain and instructor in criminal investigation and courtroom procedures at the East Coast Animal Control Academy in Westminster, Md. "You absolutely cannot tolerate that

because the case is not made on emotion; it's made on factual analysis."

Often it takes months to build a case. It's natural to want to get justice for the animals you seized—and ensure the perpetrator isn't allowed to victimize more animals. But if you channel your emotions into professional, measured testimony, you're more likely to get the results you want.

The following primer can help you prepare for your day in court.

### Honesty Above All

"First and foremost, you always have to tell the truth," says Scott A. Heiser, senior attorney and director of the Criminal Justice Program for the Animal Legal Defense Fund (ADLF) in Cotati, Calif. "That's an absolute and should go without saying."

But there's much more to providing effective testimony, so it's best to prepare before you're swamped in case-work logistics. You won't learn how to testify by watching a few episodes of *Law & Order*. If you want to learn about unbearable sexual tension, watch the litigious and sultry stars on TV—but if you want to learn about legal proceedings, go to a real courtroom. "We recommend our ACOs attend court and watch other experienced officers give testimony," says Belinda Lewis, director of Fort Wayne Animal Care and Control in Indiana. Observing trials—even those unrelated to animal issues—can help you get a feel for what testifying will be like.

Hitting the books can help, too: Read up on courtroom procedures. You



**Can animal cruelty investigators qualify as expert witnesses?** Visit [animalsheltering.org/expertwitness](http://animalsheltering.org/expertwitness) to learn more.

Organize your notes before you enter the courtroom; that way, you won't have to shuffle through scattered papers while you're on the stand. MICHELLE RILEY/THE HSUS

can also attend courses offered by national organizations like The Humane Society of the United States (HSUS) and the National Animal Control Academy (NACA), and you can be trained locally as well. Heiser, who teaches courtroom procedures to animal control officers, recommends that agencies get help from ALDF or from their state prosecutors association; the latter can likely provide jurisdiction- and state-specific training on courtroom proceedings. He also recommends courses by Ron Smith and Associates, a forensic consulting and training company in Collinsville, Miss.

### Before the Big Day

You've studied up on courtroom procedures. You've seen a few local trials. You've become so immersed in your case that it dominates your dreams. But are you ready for the big day? Here are some steps that can help you present the best possible testimony.

- **Meet with the prosecutor.** Most prosecutors are swamped with cases; they may not call you before the trial. Don't wait until 10 minutes before you're called to the stand to review the case with the prosecutor—take the initiative. "A good witness calls the prosecutor two weeks before trial to set up a little time to go over the case and prepare for it," says Heiser. "That way you have time to think and reflect."
- **Review the case.** You may have memorized the facts of the case, but it's important to go over everything again prior to testifying. "As a case unfolds during an investigation, facts will come to light in a very haphazard fashion," says Bucher. "It's imperative that prior to testimony [you] review the facts of the case from a chronological standpoint."
- **Gather your notes.** Make sure you're working with the original notes taken at the scene during the investigation. "If [you] take in a bunch of personal notes that weren't part of discovery,

then that could create an issue," says Lewis. Bring other essential documents, such as the citation or summons containing the charge. Organize your notes in advance so that you don't have to shuffle through scattered papers on the witness stand.

- **Tour the courtroom.** Scope out parking availability, the courthouse, and the courtroom itself a few days before you testify. "It makes a huge difference to walk into an environment that you're at least mildly familiar with," says Heiser. The night before court, lay out your clothes, sleep your eight hours, eat a good meal, double-check what you've packed, and set your alarm clock to allow plenty of time to get to court. You'll be more confident if you come prepared.

### Take a Shower, Shine Your Shoes

You've probably heard that most interpersonal communication is nonverbal. Don't forget that when you're in court—whether you're testifying, sitting in the

courtroom, or strolling the halls. “The jury is looking at you because you are the arresting officer and the case is being carried on your shoulders,” says Lewis.

Follow your agency’s dress policy; if it calls for your uniform, make sure it’s freshly laundered and ironed. When Lewis’s frontline officers go into a courtroom, they’re instructed to wear a dress uniform, preferably with a tie and shined shoes. “It forecasts a professional presence,” says Lewis. “They’re also representing the agency.”

If a uniform is not an option, wear dark, formal business attire; you may not be a lawyer, but you’ll look like you could play one on TV. “Wear conservative dress that carries with it the message that ‘I respect the process, I respect the courtroom, and I am a professional,’” says Heiser.

Your posture should convey your professionalism as well—mind what your mother taught you, and don’t slouch. Try to avoid crossing your legs and touching your face, and be aware of your facial expressions; a witness who looks stonefaced, bored, surprised, angry, or defensive can send a bad message to the jury.

Be yourself—the self that’s competent, honest, and serious about the work you do, but also a human being. “If you try to be somebody you think the judge or jury wants you to be because that’s what you’ve seen on television, you’ll appear shallow, phony, and disingenuous,” says Heiser.

When a Fort Wayne officer goes to court, the enforcement division supervisor tells him to try to come across as a person, not as an authority figure. “He doesn’t want his officers being too authoritative with their body language in court because that would not necessarily go over well with a jury who thinks that law enforcement [is] overbearing,” says Lewis.

### Talk Isn’t Cheap

In his classes at the East Coast Animal Control Academy, Bucher not only walks students through courtroom procedures, he also organizes mock trials. For many of the officers who attend the training, it’s an introduction to public speaking.

## Keep Cool When You’re Crossed

Trials are naturally adversarial, and conflicts reach their peak when witnesses are cross-examined by opposing attorneys. Prepare for the cross by knowing what to expect.

- **Think like them.** As you prepare, consider what the defense wants. District attorneys know the defense lawyers, so ask the prosecutor how the defense will likely approach the case. Examine your report for any inaccuracies that might be pointed out in court. “If you get blindsided on the stand, you’re going to get defensive. You’re going to cross your arms; it’s going to go south on you,” says Scott A. Heiser, senior attorney and director of the Criminal Justice Program for the Animal Legal Defense Fund (ADLF) in Cotati, Calif.
- **Keep your lips zipped.** Defense attorneys are experts at drawing information from witnesses, so don’t be lured into chitchat with them outside the courtroom. “If the defense attorney wants to talk with you, politely explain that you prefer to have the prosecutor with you,” says Belinda Lewis, director of Fort Wayne Animal Care and Control in Indiana. She learned this the hard way years ago: When a defense attorney drew her into a friendly conversation in the hall, Lewis mentioned that the defendant had a twin and that the only way someone could tell them apart was by an abdominal scar. “The defense attorney tried to use that as the whole basis to throw out the case, [saying] that we wouldn’t be able to prove at any given time that we had been speaking with the right individual,” says Lewis. “Fortunately, the judge didn’t accept it. I didn’t think [that fact] was relevant at that point in my career. Now I know that everything is relevant.”
- **Slow things down.** If the defense attorney fires questions quickly, don’t feel like you have to keep up. Just slow down your responses, says Pat Bucher, an instructor in criminal investigation and courtroom procedures at the East Coast Animal Control Academy. “No matter how quickly the attorney asks the question, he still has to wait for your response,” he says. Pause before answering the question to give your attorney time to object—and if you don’t understand the question, say so.
- **Keep your cool.** When you’re being cross-examined, it’s common to feel nervous and angry. Just don’t let it show. “When you appear nervous or emotional or even angry on the stand, it impacts your credibility,” says Bucher, who teaches officers how to maintain a calm voice to diffuse tense situations. “If your attitude, demeanor, words, or volume change from direct testimony to cross examination, the judge and jury will pick up on that too.”
- **Don’t take it personally.** Righteous bluster, chest-thumping, and accusations of incompetence are courtroom role play on the part of the defense attorney. Don’t let it bug you. Many officers are surprised at the end of the trial when the defense attorney approaches them in the hall to shake hands. “They see a whole different person,” says Lewis. “The defense attorney’s job was to break you up on the stand.”



Prepare for your day in court by meeting with the prosecutor to go over the case.  
ROB FRIEDMAN/ISTOCKPHOTO.COM

Even if you've testified before, it's common to feel some stage fright. These tips will help you deliver your testimony more effectively.

- **Don't let your fear control you.** It's normal to feel nervous, says Heiser, but many people who are new to testifying deny their fear instead of addressing it. "So when confronted with what may be an inaccuracy or error, they'll have a propensity to minimize that and explain it away or deny it, which can only erode their credibility," he says. "Being willing or able to acknowledge any error and correcting that error is key."
- **Slow down—and don't get smart.** Stress may also cause you to talk too fast or rush through an answer. Breathe! Speak slowly and clearly, and don't be sarcastic or defensive on the stand. Don't give the judge or jury a reason to question your character or testimony.
- **Stick to the point.** Answer only the questions you're asked; don't succumb to the temptation to keep talking. "That way you're not throwing [in] parts of the case that your attorney may not

have wanted out there," says Lewis. "You can accidentally bring in evidence that can hurt your case if you don't stick to relevant facts."

- **Talk, don't read.** Your notes are not a script, says Lewis. "Your goal is simply to be answering questions and using any of the paperwork you take into the courtroom with you as a reference." If you know your case well, you can be articulate and informed without sounding rehearsed—and if you don't have to read from your notes, you'll be able to look the jury in the eye.
- **Avoid jargon.** You may know what "running at large" means, but does the jury? ACOs, TNR, RTO—the animal welfare field has cooked up a bowl of alphabet soup that laypeople won't know how to swallow. Make your testimony more palatable by using descriptions and terms the public will understand.
- **State the facts.** Don't give your opinion unless it's requested. "'Well, I thought he was beating the dog' or 'The dog seemed unhappy and starving for affection' doesn't cut it in court," says Bucher.

Don't make something up just because you think you ought to know the answer. If you don't know the answer to a question, say so, and if you have to estimate part of your response, acknowledge that you're making an educated guess. Remember, you're under oath.

- **Admit your inexperience in the courtroom.** You read that right: it's okay and even desirable to let the court know that you're new to testifying. While jurors often have the perception that law enforcement officers and humane investigators are in court daily, that's not always the case, and it's okay to let them know that this is new to you, too. Most jurors go through questioning and scrutiny during the selection process and will likely empathize with your nervousness. "You can ask the DA to set you up with a question about your experience in testifying in court ..." says Heiser. "It's admissible if it goes to your experience, training, and education."
- **Know where to look.** As you take the oath, look at the person who's swearing you in, and then look to the jury as you say, "I do." When you answer questions posed by the defense attorney, don't look at the prosecutor—jurors may think you're seeking guidance. Instead, look at the person asking the question, then look at the jury while providing your answer. You are, after all, telling them your story. "There's a big exception, and that's when the defense attorney is going for the throat and challenging your veracity and calling you a liar," says Heiser. If this happens, don't lose your composure. Look directly at the attorney and respond firmly but politely. (For more tips on handling cross-examination, see the sidebar on page 45.)

### Case Closed

While more jurisdictions are taking animal cruelty cases seriously, some old-school judges still consider animal cruelty violations less important than other crimes, and they may allow their dismissive attitudes to infuse the court proceedings. But if you stay calm and

professional before an unsympathetic judge, you may win the jury over.

Even a well-documented criminal investigation and well-delivered testimony can't always guarantee a courtroom victory. But if you lose, you've still gained something: your solid investigation and exemplary testimony will help solidify your agency's reputation as an organization that carries out a thorough and responsible investigation from start to finish.

Lewis has witnessed that sort of evolution in Fort Wayne. Twenty years ago, judges were skeptical about animal-related cases. But Lewis's agency has built a reputation of sound cases, sound filings, and sound work, she says, which has earned respect for the agency, its officers, and the cases they bring to court. AS

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## Resources

Check out our Resource Library ([animalsheltering.org](http://animalsheltering.org)) for more information about legal issues, including the article "Animal CSI: Gathering the Evidence," in the Jul-Aug 2007 issue of *Animal Sheltering*.

Get training from Humane Society University ([humane-societyu.org](http://humane-societyu.org)) or the National Animal Control Association's Training Academy ([nacanet.org/naca100.htm](http://nacanet.org/naca100.htm))

Talk to the experts at Ron Smith and Associates forensic consulting and training ([ronsmithandassociates.com](http://ronsmithandassociates.com)).

Consult the Nutshell Series from ThomsonWest Publishing ([west.thomson.com](http://west.thomson.com)), a series of study guides that explain the most important issues of various parts of law.



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