Day 2

• Finish Reports

• Hand in your evidence locker with all documents and the thumb drive (report should be on the thumb drive)
Review Reports
Note Taking
Why This Session

• Proper note taking is the cornerstone for preparing a good report

• Good, readable reports enable the inspector to get information to senior management and attorneys – and make the case for enforcement

• Problems can result from poor note taking
Question

How do I know what I know?
Note Taking Equipment

Portable
Sturdy – water resistant paper
Dedicated
Bound or loose pages?
Prepaginated?
What do you use?
The old standbys

Bound, Paginated, Water Proof
Portable, Cheap
In an emergency
Options
Notes +

• Notes encompass much more than written word

• Audio and Video Recordings = notes

• Remember to check the date/time setting on any digital device
Photos/Video
Format

Does not matter – common elements include

- Date and time of entry
- Location
- Consent
- Persons present
- Body of facts

- Who
- What
- When
- Where
- Why
- How
Note Taking - Techniques

• Follow pattern you are most comfortable with
  • Outline
  • Bullets
  • Sub headings
  • Short hand
• Focus on key points
• Complete sentences not necessary
• Use key/buzz words to jog memory
• WRITE LEGIBLY..
Suggestions

• One book for all notes
• One notebook, one inspection,
• One notebook, one facility, or
• If you use one notebook for multiple inspections separate each inspection by a blank page

• Dual Notes (2 or more inspectors)??
Note Taking-Corrections

• Write entries on only one side of notebook
• Add details/new information on opposite side
• Make corrections on opposite side, line through initial & date, and make correction with logic/reason, initial & date
• Major or complex corrections or conflicting field notes should be followed up by memo to the file explaining any changes.
What goes in your notes

• Any info relative to site or event

• Site entry procedures, events, contacts particularly if there are problems

• Owners generally provide entry consent
  • If they limit consent, record in your notes
What goes into notes

• Clearly document the authority of any escort in your notes. The scope of this authority can be a key issue.

• Inspections sometime extend thru the lunch hour. Company representatives often leave during lunch hour while inspectors may continue to work.

• Get permission to inspect and DOCUMENT
What goes into notes

• Names, titles, emails, phone numbers
  • Hint: Clip or tape business cards in logbook
• Times of specific events
• Deviations from established SOP
• Discussion of unusual conditions
What goes into notes

• Interview Notes

• “Quotes”: If important ask to
  • Repeat
  • Confirm
  • Wait until finished recording the quote to continue with the interview

• Important to use exact words so original intent can be preserved.
What goes into notes

- All sampling information
- Photograph/video log
- Items or materials taken or given
  - Who gave
  - Who received
- Reminder notes, follow up needed
- How do you note if no violations are observed?
Just the Facts

Entries should be

• Objective/not subjective
• Factual (avoid writing potentially embarrassing notes)
• Professional opinions (e.g., engineering) and personal reminders (related to inspection/investigation such as needed follow up)
• NOT personal opinions
Clear and accurate notes are your best line of defense.

• Conversations between company officials and inspectors should be documented in writing to the maximum extent possible.

• Clarifying questions should be asked, re-asked and documented, if deemed critical.
Establish routine for note taking and follow it!
Note Taking

• Report prepared from Notes
  • Report may not contain all notes material
  • Report may reorder info into logical sequence

• BE AWARE the Inspection Report may be compared to your notes.
Notes Retention

• Your agency’s policy?

• SOPs are important

• EPA Office of Compliance Policy 2009 is to keep notes for five years unless there is an ongoing enforcement action
Note Taking

• Comments??
Report Writing

It all comes together in the report.
Writing Style

Write in **first person** and **active voice**. “I saw, I did”

This will help ensure your actions, findings, and observations are not misinterpreted by the reader.
Writing Style

Use a Compare and Contrast writing style:

- Compare the legal/regulatory/permit condition AGAINST:

- The Observations  – What was observed, witnessed, and documented as evidence to demonstrate how the facility failed to meet the requirement.
A Good Inspection Report Is:

• Timely, written “near in time” to the inspection.
  • This critical to the value of the report. Example: 30/60/90 days after the inspection?

• Organized → intro, procedures, findings, etc.

• Clear → Use simple words and short sentences.

• Concise and Thorough → Write what’s needed, write all that’s needed, and don’t ramble on.
A Good Inspection Report Is:

• Factual, no personal opinions or comments.

• Technically correct → A “technical review” should be done by a qualified peer.

• Referenced → All photos, maps, and attachments must be referenced in the report.

• Paints a picture, allows a person not familiar with the facility to understand its compliance status
A Good Inspection Report

• Identifies all areas of non-compliance.
• Contains evidence for each element of non-compliance.
• Minimizes the need for follow-up questions or additional information requests.
• Answers: who, what, when, where, why, and how?
Example

A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste, per 40 CFR 262.34(a)(1)(i), ref. 40 CFR 265.173(a).

Who, What, When, Where, Why, and How?
On July 12, 2016, in the northwest corner of the paint booth (see map attachment 3), I observed one, open, 55-gallon satellite accumulation container (photo 1). I asked Mr. Helpful, the painter, what he used the drum for. He said he cleaned his painting equipment at the end of his shift and put the used spent solvent in the drum. He said he stored the used solvent in the drum until it was full then moved it to the hazardous waste storage area. I asked him what solvent he used. He said he used Mecos lacquer thinner MSDS- attachment 9. I asked if the spent solvent was a hazardous waste. He said yes, that he managed it as F003/F005 hazardous waste. I looked inside the drum and verified it was 75% full.

Who, What, When, Where, Why, and How?
Riverdale Mills Case
(show video)
Issue 1: Consent

• EPA inspectors conducted an inspection of Riverdale Mills
• Notes taken at opening conference did not address issues of entry.
  • EPA inspectors thought they had consent to sample wherever they wanted—but had not recorded that in their notes
  • Owner later alleged that consent included a caveat that a company representative must be present at all times.
Consent Issues

• During the inspection, on-site sampling extended into the lunch hour. The company representative left for lunch but allowed the inspectors to continue sampling.

• No written record of the conversation with the owner was documented in the inspection notes.
What Happened Next

• Samples taken during lunch of one of the manholes outside the facility indicated a pH outside 5-7 which is a permit violation.

• Inspectors contacted EPA Criminal Investigation Division (CID)

• CID used the information to obtain a search warrant.
Issue 2: Inspector Notes

• Company alleged falsified data.
  • Original data not “lined out.”

  • Logbook showed data that was altered with no explanation about why numbers were rewritten. Correct pH data collected from facility was rewritten over incorrect data (7’s were rewritten into 4’s to reflect new pH readings).

  • Original data recorded with a roller-ball pen. Corrected data made with a ball-point pen.
Inspector’s Notes
Key Points

• Documenting Consent
  • Clearly document the nature of the consent provided to you and ask if there are any conditions placed on this consent.
  • If you have a company escort, make sure the owner has delegated his/her authority to the facility representative assigned to accompany inspectors.
  • If you change a handwritten note, clearly line it out and make note of the new entry.
Judge’s Decision

• A criminal case was filed.

• A federal judge suppressed the sampling results, finding that the EPA had violated Defendant’s Fourth Amendment rights by sampling wastewater without a representative of the company present.

• Inspector felt authority was granted based on the opening conference, but there were no written record or notes on the issue.
Judge’s Decision (cont’)

- Judge issues scathing condemnation to EPA/DOJ
- US Attorney drops criminal case due to suppression of evidence and other issues
- Case over. Right? **Wrong!**
Company Goes on the Offensive

• Filed a Federal Tort Claims case against the EPA inspectors for violation of their civil rights.
• The trial court initially denied the inspectors’ motion for summary judgment based on qualified immunity,
• After an appeal, the appellate court dismissed the case and the inspectors were not liable. They were awarded costs of legal fees.
What This Mean to You?

• Clear and accurate notes are your best line of defense.

• Obtaining consent to inspect and note taking are two fundamental parts of your job. It is critical that you develop procedures and a routine for taking your notes and, more importantly, correction of your notes.
Inspector Liability

- Anyone can sue anyone at anytime for a good reason or not
- The best way for the inspector to protect himself/herself is to follow established agency procedures.
- Do your job and stay within the boundaries of your job responsibilities.
Comments?
Interviewing Skills
Overview

• Interviewing is critical to the inspection process
• It is a basic fact-finding and communication tool
• It should be one of the most important tools in your “tool box”
It is a Skill

• Interviewing is a skill that can be learned, polished, and improved through practice.

• Interviewees will exhibit varying degrees of cooperation, reluctance, and hostility.

• Polished Interviewing skills will foster a greater degree of cooperation.
Practical Exercise
Process: you have three (3) minutes to:
Look at the photo and write down who, what, where, how and when

Your partner will ask you these questions and you need to have answers.
Interviewing Different People

• Plant Manager or Environmental Manager
• Workers
• Administrative staff
• Neighbors
• Complainants
Preparing for an Interview

- Anticipate special problems
- Determine goals and objectives
- Obtain background information
- Formulate questions
- Choose a location for the interview
- One vs. two interviewers
The Five Phases of a Comprehensive Interview

Introduction Phase
Rapport Phase
Questioning Phase
Summary Phase
Closing Phase
The Introduction Phase

- Identify yourself (and partner) and provide agency credentials, business cards etc...

- State purpose of the interview
The Introduction Phase

- Studies show that a person’s impression of you is made within the first 60 seconds of the initial contact.
- Professionalism
  - Dress
  - Language
  - Respect
To Help Establish Rapport

- Identify yourself immediately, without using acronyms

- Comment on a topic of apparent interest to the interviewee (most people love to talk about themselves, or their business, let them)
The Rapport Phase

- Keep the conversation informal and easy
- Display pleasant emotional responses and avoid unpleasant expressions
  - Pacing an interview comes with experience.
- Use caution not to patronize the interviewee
Different Types of Interviews

• Often there is no time to develop rapport

• The inspector is providing an enforcement presence, answering short questions, asking pointed questions, getting specific information, and moving on.

• An in depth inspection and rapport development, etc is impossible because there is simply no time.
Verbal Barriers to Rapport

- Premature comments and evaluations
- Interrupting others
- Talking too much
- Talking down to people
- Asking loaded questions
- Placing emphasis on blame
- Arguing
Nonverbal Communication

• Body Movement
• Eye Movement
• Space and Distance
• Touch – Don’t
Body Movement

- Facial expression
- Position of arms and legs
- Touching and grooming behavior
- Breathing changes
- Eye movement
Behaviors that may Indicate Dishonesty

- Slumping over or leaning back in the chair.
- Sitting in a way that protects the abdomen.
- Shifting position in the chair.
- Placing the hand over the mouth.
- Movement of legs and feet.
- Legs crossed with the knee raised to protect the abdomen.
- Legs crossed with arms holding the leg in place as a barrier.
- Head down can indicate a negative attitude or submission.
- Head back looking down the nose.
- Head nodding or head shaking.
Some Verbal Indicators of Dishonesty

- Skipping around in sentences.
- Stopping sentences or leaving off the end.
- Inappropriate laughter.
- Starting to speak in the third person.
- Telling the interviewer that they have done things (similar to the things currently under investigation) wrong in the past.
- Repeating the interviewer’s question.
- Overgeneralizations (any, all, never, always etc).
Space and Distance

- Intimate Zone: 0 – 1.5 ft
- Personal Zone: 1.5 – 4 ft
- Social Zone: 4 – 12 ft
- Public Zone: 12 – 25 ft
Questioning Phase

• This is the heart of the interview process and one of the most challenging

• There are a variety of techniques and types of questions to use, however, the bottom line is determining the who, what, when, where, why and how
• Open ended (free narrative) questioning is productive but time consuming. However, it is generally best to start with these types of questions to help put the person at ease.

• Once you have the general narrative answer you can start working to more specific questions and answers.

• Listen attentively
Types of Questions to Avoid

Leading

Negatively Phrased

Compound Questions

Complex questions
Questioning Phase

Types of Questions to Use:

• Backward reaching questions “What happened before that?”
• Empathy or sympathy questions
• Opinion questions “What do you think?”
Questioning Phase

• Get rid of distractions
• Don’t give up too soon follow up all components of answer
• Ask simple direct questions, then listen and wait for the answer
• Use “dead” space
SILENT PAUSES

ARE USEFUL MOTIVATORS
Follow Up Questions

• **How** do they know (they saw it or did someone tell them?)
• **When** did they know it (at the time of the event or found out later?)
• **Who else** knows/saw/heard?
• Are there any documents?
• Is there anything else you think I should know?
Additional Guidelines

• Known/Unknown
  • Always work from the known to the unknown
• Use Standard References
  • Always use standard references for time, distance, size, etc.
Summary Phase

- Summarize to insure notes and mental recollections are complete and accurate

- Provide information so interviewee can get back with you – and get a call back number/information
Closing Phase

• Continuation of rapport and courtesy to ensure the door is left open for future contact

• Give the interviewee the opportunity to address matters not specifically covered in the interview

• Ask the interviewee how, when, and where to contact him or her again if necessary (where appropriate)

• Thank them.
Interview Note Taking

• Crucial to preserving and documenting important information
• A challenge for the single interviewer
• Slow the interview down
• Stop taking notes if it becomes an obvious inhibition in the interview
Communication Filters

Communication is influenced by:

- Emotions
- Experience
- Culture
- Language
Reluctant Interviewees

- Involves merging a variety of “people skills”
- If interviewee seems unwilling or unable to talk, try to determine why
- Start with general, non-threatening questions

- Recognize that interviewees may employ evasive strategies

- Allow a hostile interviewee to blow off steam
- Be patient and persistent
Confronting Interviewees

• Generally, step up the intensity as the situation warrants, but also know when to back it down a notch
• Specifically address conflicts and inconsistencies
• Be flexible in your approach and techniques
Hearsay

• A statement made by someone other than who you are talking to
• Example: “The manager told me.…”

• Don’t let it stop you from noting what you hear – simply get the information and let the attorneys worry about how to present it in court.
• If you can, verify with the person who made the statement
Citizen Complaints

• Likely calling because witnessed a violation. Their identity may or may not be protected. Some witnesses request that their names be kept confidential. What is your policy?

• Obtain detailed information regarding circumstances, dates and times, frequency, persons involved.
Employee Informants

• Employee Informants have information regarding:

• Details of the company structure, management and operations
• Day-to-day workings of the facility
• Record keeping and location of records
• Former employees are who were injured on the job
Employee Informants (cont’d)

- Diagrams of the facility, e.g., drains and pipes, etc.
- Methods of disposal and disposal sites
- Actions by high managerial agents with authority to bind the company
- Knowledge and intent by the violator
Summary

• Interviewing is critical to the inspection process
• A skill that can be learned, polished, and improved through practice
Tactical Communication (Verbal Judo)

- [https://calcupa.org](https://calcupa.org)
  - Click on training
    - Video training library
      - Last of 7 pages from 2008 conference
      - Same site from 2011

The Importance of Ethics in a Regulatory Environment
QUESTIONS?
Alternative Compliance Monitoring Methods

Multi media awareness and process based inspections
EVOLUTION OF INSPECTION COMPLEXITY

MULTIMEDIA COMPLIANCE INSPECTION

SINGLE-MEDIA COMPLIANCE INSPECTION
Overview: Multimedia Inspections and Enforcement

• Define multimedia

• Advantages and disadvantages of multimedia inspections

• Targeting and resources

• Skill requirements
Multimedia Violations at Concrete Mixing Plants
How a cement plant works

• Bulk raw materials in overhead silos
• Metered into truck waiting below
• Water added, Mixing occurs on truck
Air issues

• Process emissions
  --- primarily particulate matter (PM)
• Transfer points
• Material stockpiles
• Fugitive dust
Process Emissions
Emission Controls

Dust Collector
Fugitive Dust

• Raw material stockpiles
• Transfer points – conveyors, chutes, loading
• Haul roads
• Use “reasonable precaution” to minimize
• Shielding, sprinklers, chemical suppressants
Dust Suppression: “Reasonable Precaution”
Water issues

• Significant amounts of wastewater produced daily
• Highly contaminated
• 300-500 GPD per truck
• Wastewater handling must be properly permitted
• NDPES general permits
Stormwater

- “Contact” stormwater must be handled with process water
- Properly designed site drainage will minimize contact
- Stormwater permit required NDPES
- Keep it on site (BMP)
Water Pollutants

- Total suspended solids
  - Aggregate and truck washing
- Oil and grease
  - Truck washing
- pH
  - Acceptable water pretreatment standards are usually ph 5-6
  - Mixer drum washout up to pH 13
Stormwater

• “Contact” stormwater must be handled with process water
• Properly designed site drainage will minimize contact
• Stormwater permit required
• Keep it on site (BMP)
Best Management Practices
Construction sites

• Hay bales
• Silt fences
• Grass cover
• Must be properly maintained
Process Water

- Truck mixer drum washout #1 source
- Exterior truck washing
- Batch plant leaks
- Contaminated stormwater runoff
Proper wastewater handling

- Impoundment or lagoon system
- Total retention or discharging?
- **Must be properly permitted**
- Specific design, construction, and maintenance requirements
- May vary by state
Improper handling
Recycling Wastewater

• Contain truck washout wastewater
• Use for further rinsing or put into the next batch
• Solids may also be separated and reused
• Increases handling time and costs
Solid Waste

Leftover concrete used to cast retaining blocks or highway dividers
Hazardous Waste

- pH less than or equal to 2.0 or greater than or equal to 12.5
- Dump leftover concrete at pour site
- Wash off chute at same time
- Waste concrete and washout water can be characteristic HW, with pH up to 13
- Hydrochloric acid routinely used for cleaning concrete
- Admixture chemicals
Evolution of Inspection Complexity

PROCESS-BASED INSPECTION

MULTIMEDIA COMPLIANCE INSPECTION

SINGLE-MEDIA COMPLIANCE INSPECTION
Process-Based Inspections

“Process-Based Investigations Guide”

EPA-330/9-97-001
NEIC Library: (303) 236-5111 x287

https://www.epa.gov/enforcement/process-based-investigation-guide
Process-Based Inspection

• comprehensive understanding of facility processes.

Includes:
• tracking raw materials into and through plant
• identifying by-product, co-product and products,
• identifying wastes generated
• determining how wastes are ultimately managed
Process-Based Inspection

Purpose:

• obtain in depth knowledge of facility operations

• use knowledge to make more informed investigative evaluations and determinations
Why Conduct Process-Based Inspection??

Often only method to:

- Determine complete universe of regulated facility wastes/activities
- Evaluate accuracy and completeness of facility self-reporting data/permit application information
- View large or complex facility “holistically”
Process-Based Inspection

- Raw Materials
- Air emissions - controlled and fugitive
- Solid Wastes, Wastewater, Recyclable Materials, & By-products
- Product/Co-product
Process-Based Inspection Tools

- Knowledge of process operations
- Process flow diagrams
- Material balance sheets
- TRI reports (EPCRA 313)
- Process observations
So, tell me about your EMS
Evolution of Inspection Complexity

EMS EVALUATION

PROCESS-BASED INSPECTION

MULTIMEDIA COMPLIANCE INSPECTION

SINGLE-MEDIA COMPLIANCE INSPECTION
EPA EMS Policy Statement

"Implementation of an EMS has the potential to improve an organization's environmental performance and compliance with regulatory requirements. EPA supports and will help promote the development and use of EMSs."
EMS Definition

ISO 14001

The part of the overall management system … for … implementing … the environmental policy.
Industry Without an EMS

Environmental Requirements

Raw Materials

Wastes, Recyclable Materials, & By-products

Product
Industry with an EMS

Environmental Requirements

Environmental Management System

Raw Material

Wastes, Recyclable Materials, & By-products

Product
Compliance-Focused EMS

"A system for identifying pertinent environmental requirements - statutes, regulations, permits, enforceable agreements, etc - and translating them into sustainable compliance activities at a facility."
12 Key Elements in EMS

1. Management
2. Organization
3. Accountability
4. Requirements
5. Assessment/ Prevention
6. Incident Investigations
7. Training
8. Planning
9. Records
10. P2
11. Evaluation
12. Public Involvement
Causal Analysis

Answers "why" noncompliance occurred

Aids in developing solutions to prevent recurrence
Factors That Most Frequently Cause Violations

Violating Environmental Requirements

(Lack of) Assessment, Prevention and Control

(Lack of) Environmental Training, Awareness, and Competence

(Poor) Maintenance of Records and Documentation
Any Questions?
How to be an Effective Witness
Testimony

- In systems of proof based on the English common law tradition, almost all evidence must be sponsored by a witness, who has sworn to tell the truth.

- Testimony is presented by question and answer; it is awkward and not the way we are used to communicating or learning.
Q: What gear were you in at the moment of the impact?

A: Gucci sweats and Reeboks.
Where You May Testify

• Administrative hearings (enforcement, personnel, worker’s comp)
• Civil cases
  • Depositions or Trial
• Obtaining inspection or search warrants
• Criminal trials
  • Preliminary hearings/ pre trial motions
  • Trial
  • Sentencing
Keys to Success

• Patience
• Listening
• Preparation
• Tell the truth
Preparation

- Know the evidence
- Know the facts
- Know your own documents
- Know your background and experience
- Know the questions that will probably be asked (on direct and cross)
Its Your Tone.....

• Speak up
• Speak s...l...o...w...l...y
• Professional, prepared, objective
• No sarcasm
  • Does not work in person and
  • Really does not work in the cold transcript
When Testifying You Are Making a Record

- Court Reporter or audio recording
- Gestures must be explained
- “Yes” or No” not “uhuh” or “yeah”
- Only one person at a time
The Pace of Testimony

- Question….wait for the end of the question…
- Pause…
- Answer
- People ignore mistakes their questions (questions are not evidence)—they remember witness mistakes in answers
What do you know and how do you know it?

- I saw it
- I heard it
- I smelled it
- I did it
Example

Q: Who else was there?
A: Don Smith arrived at 10am
Q: How did you know he was there?
A: I saw him arrive
Q: How did you know it was 10am?
A: I looked at my cell phone and wrote it in my report
Reports

• Know your reports, your previous reports and reports by others regarding the same matter.

• Be prepared to testify without referring to your report but for important details ask to refer to your report to refresh your recollection

• Do not take you report with you onto the witness stand
Don’t Try Too Hard

- Just tell the truth (the whole truth and nothing but the truth)
- If you make or made a mistake, just say so
- Be professional and objective
Direct Examination

• Laying out the government’s case
• First moment “an out of body experience”
• Relax; listen to questions carefully
• Tell your story; questions will be open-ended
• Use visual aids – integrate into story / refer to documents
• Educate jury / judge
Direct Examination

• Witness qualifications / expertise
• Description / context of work
• Opinion testimony (if an expert)
• Basis for opinion
• Facts of the Case
Direct Examination – Witness Goals

- Convey depth of education / experience
- Educate jury / judge
- Place case (or your part of case) in proper context
- Establish credibility
- PERSUADE
Objective of Testimony

- Personnel were qualified
- Chain-of-custody was intact
- Appropriate sampling / analytical methods were used
- Data obtained were reliable
- Expert opinions were reliable
Cross Examination Objectives

- Gain
- Concessions
- Improbability or Impossibility
- Witness Lying
- Attack Perception
- Bias or Prejudice
- Not qualified to give this opinion
- Attack Memory
- Conflicting Statements
Cross Exam: Looking for mistakes, holes and weaknesses

- Witnesses not interviewed
- Mishandling of evidence
- Incomplete reports
- Treating this defendant differently than others
- Having an “Agenda” (bias)
Never Assume What the Lawyer Says is Correct

- Lawyers are NOT under oath
- They may misstate what another witness has said or what a report said
Q: Did you include everything in your report?

• How would you answer this?
Q: Did you include everything in your report?

Answer #1: No.
Answer #2: Everything that was important at the time.
Answer #3: Everything I had time to write.
Answer #4: My report is a summary, it does not include everything that occurred during the inspection.
Q: You never told the defendant he could not use the bag house?

• What’s the problem with this question?
Q: You never told the defendant he could not use the bag house?

- If you answer "No"-- does it mean
  - No, I never told him or
  - No, this statement is not correct, I did tell him that?
- If you answer “Yes”
  - (meaning yes, you never told him)
- Best to explain “I never told the defendant he could not use the bag house”
Beware of using defense characterizations

Q: What did you do after trespassing on my client’s property?

A: I wasn’t trespassing, I was conducting my inspection. After completing my inspection, I returned to my car.
Q: Was one of the purposes in issuing the Notice of Violation to help educate the company?
A: I’d have to say no.

Q: So the purpose of issuing the NOV was simply to prosecute the company, correct?
A: I would not use the word prosecute. The NOV was to inform them that they had a violation that they needed to correct by a certain date.
Cross Exam: Looking for Concessions

Isn’t it true …
Wouldn’t it be fair to say …. Would you agree….
Be polite even when it hurts

Cross exam attacks your credibility
Don’t take it personally, it's the job
Anger clouds thought and lessens your credibility
Do Not Answer a Question You Do Not Understand

Look to the Judge
If there is no judge, just say you do not understand
Be Careful of Documents

• If asked about a document, asked to see it
• Read it, read all of it, then ask for the question to be repeated
• Are you sure its authentic? Current version?
Its OK to Say You Don’t Know

I don’t know (and I never knew)
I don’t recall (but maybe I used to know this)
Trick Questions

• “Did you talk with your attorney (i.e. the government's attorney) before testifying?

• “Have you ever made a mistake?

• “Isn't it possible that . . . ?”
Listen to Objections

• argumentative
• asked and answered
• calls for speculation
• calls for a conclusion
• compound question or narrative
• hearsay
Listen to Objections

• irrelevant
• lack of foundation
• leading question
• privilege
• vague
• assumes facts not in evidence
• question misstates prior testimony
Depositions are a little different

- Can be used in civil cases
- Part of pre-trial discovery
- Out-of-court oral testimony of a witness
- Done in offices not in a courtroom
Depositions

• There is no judge
• Usually you have to answer questions even if there was an objection
• Scope is very broad, can be anything that might lead to relevant evidence
Deposition: scope is very broad, whatever might lead to relevant evidence

- What grade did you get in chemistry?
- What facilities similar to the defendant's have you inspected?
- What did you do the morning before the inspection?
At the End

• When you are done, leave
• Don’t talk to other witnesses about your testimony
• You do not have to talk to the defense attorney or their investigator. If you do talk to them have a another witness there (like our investigator)
Common Misconceptions

• “This case will never go to trial, so why worry about the details.”

• “I know what I’m testifying on, so I don’t need to prepare.”

• “If I get into trouble, my lawyer will protect me.”

• If I leave the agency I won’t have to testify
Keys to Effective Testimony

• Carefully document work during investigation

• From the outset - understand the case and your role

• Know the limits of your expertise

• Prepare for testimony

• Good presentation skills
Questions