Powerful Witness Preparation:
*Practice and Ethics*

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Powerful Witness Preparation: Practice and Ethics

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Listen for the Song in Your Witness's Head

By Samuel D. Smith

Within the Quarter of a Mile, 2014

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Ethical witness preparation: the extreme case

By Daniel S. Small

The extreme case of witness preparation is challenging. It's a story that often falls into the category of "the elephant in the room." Witness preparation is an essential part of the legal process, yet it can be a minefield fraught with ethical considerations. The goal is to prepare a witness to be as credible and reliable as possible, while adhering to ethical standards. However, the line between preparing a witness to be persuasive and preparing them to lie can be a fine one.

The case in point is the example of a witness who was asked to fabricate testimony to support a client's defense. The witness, who had no knowledge of the case, was given a scenario and asked to provide testimony that would be favorable to the client. The witness, who was a trusted individual, was promised a significant financial reward for their cooperation.

The ethical considerations in this case are numerous. On the one hand, the witness has a moral obligation to tell the truth. On the other hand, there is a potential conflict of interest, as the witness is being compensated for providing testimony that is likely to be beneficial to the client. The witness may also be under pressure to comply with the client's wishes, and may feel threatened if they refuse to cooperate.

The ethical implications of this case are serious. If the witness is discovered to have provided false testimony, the consequences for both the witness and the client could be severe. The witness may face criminal charges, and the client may be subject to sanctions by the court.

In conclusion, the case of the extreme witness preparation is a cautionary tale of the potential hazards of preparing witnesses to lie. It serves as a reminder of the importance of adhering to ethical standards in the legal profession.

*This is a fictional case and does not reflect actual legal events.*
Find the balance in ethical witness preparation

By Daniel I. Smail
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An unprepared witness is a lost witness

By: Daniel J. Small  August 22, 2013

An ordinary person walks into a room full of strangers. Someone with an odd-looking machine is taking down every word. A stranger is waiting to ask difficult questions and pick apart the answers. Then someone tells the person to raise his right hand and swear an oath.

As Dorothy exclaimed upon entering the bizarre Land of Oz, "Oh, Toto, I've a feeling we're not in Kansas anymore!"

When someone is called as a witness in any kind of legal matter, it's usually a new and disturbing experience. Still, too few people — lawyers included — understand just how completely new and different it really is. It's not a conversation. It doesn't look like one or feel like one, so no one should expect it to be like one.

Communicating effectively in a question-and-answer format is an extraordinarily unnatural and difficult process. A witness must learn a new and strange language and a discipline that's different than anything we use in our normal lives.

I was fortunate enough to learn this lesson early in my legal career. Just out of law school and still trying to find my way around the labyrinthine hallways of the U.S. Department of Justice in Washington, I was assigned to the team prosecuting Bert Lance, the former federal budget director and lifelong friend of then-President Jimmy Carter.

It was an opportunity for a new lawyer to learn many lessons, including one from the testimony of President Carter's mother, "Miss Lillian."

The defense made a strategic error (one of few in a well-tried case). It presented the judge with a list of 50-odd people it intended to call as character witnesses for Lance.

Character testimony has largely faded from trial practice today, but the idea was fairly simple; in essence: "Bert's a good guy; he would not have done this terrible thing."

Since such testimony has questionable value, it can be severely restricted under federal law. Facing the specter of weeks of such testimony, the judge used his authority to do just that: The defense could ask character witnesses only a handful of narrow, legalistic questions.

The defense went forward and called a few of these witnesses, including Miss Lillian. Knowing that the questions would be mumbo-jumbo to someone with no legal experience, preparation was essential and relatively easy:

"Miss Lillian, the judge has limited us to these few crazy legal questions. I don't understand them any more than you do, so let's talk through them carefully. But if at any point you're stuck, just talk about Bert. Tell us why you think he's such a good, honest person, and give us a few examples that make you believe in him!"

What could the prosecution have done? Tried to interrupt the sainted elderly mother of the sitting president in her beloved home state? That would have been an even better show for the defense then the testimony itself. No, we would have sat there and tried to act as if we didn't care, while she talked on, in her own words.

But whether it was lack of time or opportunity, or another reason, Miss Lillian apparently had not been prepared. She came into the courtroom looking frail, bewildered and out of place, and it never got much better. She was clearly put off by the legalistic questions, gave short, unclear answers, and it was over.

This extraordinary witness was on the stand for only two and a half minutes, according to one reporter. As she left the courtroom, she looked over at Lance and said, "I wish it could have been longer."

I assume that if you sat on the front porch with Miss Lillian over a glass of iced tea and asked her to tell you about Bert Lance, it would have been longer. She would have had lots to say — high praise, heartwarming stories and much more.
Instead, the questions were asked in a strange environment, with an artificial formality and an unnatural language. Without adequate preparation, an ideal witness was lost. It was not a question of substance; she presumably had relevant testimony. It was a problem of process. She had not been prepared to communicate in this strange new world.

In every walk of life, at every level of education, profession or experience, we are all Miss Lillian. We know what we know (or think we do), but if we can’t communicate it effectively, we’re lost.

Fortunately, it’s possible for anyone to learn to communicate in this "question-and-answer" language. However, it takes time, effort and the assistance of a trained guide.

Preparation is not something to be embarrassed or defensive about. Giving testimony or a statement of any kind is an important and difficult process. You won’t be doing your job if you do not prepare your witness extensively.

More important, a witness who does not take the process seriously enough to prepare carefully isn’t doing his or her job either.

It’s critical for witnesses to understand that good preparation is not some kind of improper cover-up. It’s not someone telling them what to say or making up a story. On the contrary, the point is to make witnesses’ statements more truthful by helping them to be more thoughtful, careful and precise.

There’s no magic to preparation, no wand a lawyer can wave to turn a client into “SuperWitness.” All you can do is work together to try to develop some of the understanding and discipline that will ultimately make the client’s experience as a witness much easier and more successful.

Preparing witnesses is one of the most difficult and important challenges many lawyers face, yet too many take it for granted and forget how unnatural and incomprehensible the process can be for a witness.

This biweekly column will explore a wide range of witness issues, including the gaps between the witness’s and the lawyer’s understanding, what makes the witness environment so different, the challenges of certain types of witnesses, and the 10 rules for all witnesses.

Like anything in litigation, we learn from each other, and your input and ideas are always welcome. Let us begin.

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Mind the gaps, fellow counsel
by Daniel I. Small
Published: September 5th, 2013

"Why is this difficult?"

It’s a question many witnesses have asked. The answer is that there are surprising and enormous gaps between a witness’s real-world experiences and the very strange, unnatural world of being a witness.

The reasons are easily stated, but their impact is profound:

It’s under oath.

Everything is transcribed.

Everything will be picked apart.

Each of these extraordinary facts is far beyond a normal person’s experience. Put together, they form the basis for a series of critical gaps. To prepare a witness, lawyers must help the witness — and themselves — define, understand and bridge each gap. This column will look at the first two, perception and audience. Conversation and control will be addressed in the next column.

The perception gap

The problem:

Witness: “Lawyer wants me to toe the company line.”

Lawyer: “I want to help witness tell the truth.”

The solution: There is, for a surprising and disturbing percentage of witnesses, an extraordinary “perception gap” between what the lawyer assumes he or she is asking and what the witness assumes the lawyer wants.

One small example: As part of my work with witnesses, I frequently get called by clients around the country to prepare executives or others for depositions or other witness situations, often working with existing trial, corporate or personal counsel.

Several years ago, I walked into the conference room in which counsel and the witness were waiting and started to introduce myself to the witness. She interrupted me and said, “I know who you are. You’re the guy who’s come to tell me what to say!”

I responded: “If that’s your understanding, then that guy is leaving.” I walked out, waited five minutes and returned, introducing myself as: “The guy who’s come to help you tell the truth.”

Where does that gap come from? Most lawyers think of themselves as ethical professionals, there to give advice and help guide the witness through the process. We’re there to have an open and honest dialogue, to help the witness understand and tell the truth. However, the sad reality is that is not how most witnesses develop their perceptions of lawyers, particularly trial lawyers.

Those perceptions are developed in very different contexts. On TV, unethical and devious characters get the best ratings. On the Internet, stories of outrageous conduct by lawyers abound. From friends and family, tales of sleazy lawyers are far more interesting to tell, and thus far more frequently repeated, than tales of ordinary professionals acting appropriately.
So it should come as no surprise that so many witnesses assume the attorneys are there not to get at the truth, but rather “to tell them what to say”; to make them “toe the company line”; to make sure everyone’s “singing from the same song sheet”; or just to tell whatever story is most likely to win.

There’s an old story from the late House Speaker Thomas “Tip” O’Neill: In his first congressional election, he campaigned all over his home town and worked hard, but he found out that his next-door neighbor, an elderly woman, had said she would not vote for him. He went to her house and said, “Mrs. Finley, you’ve known me all my life. I shoveled your driveway, mowed your lawn, delivered your paper, beginning when I was 10 years old. Why aren’t you going to vote for me?”

“Tommy,” she answered, “you never asked me.”

Don’t make that mistake. Ask your witness for the truth, not as an offhand comment or an assumption. Ask for the truth — early, clearly, humbly, passionately and repeatedly.

Do they understand you want all of it, not just the easy stuff? Encourage the client to talk about sometimes difficult matters. Questioning in different types of legal proceedings can often reach into areas that the witness views as private, sensitive, embarrassing or even incriminating.

As a lawyer, you cannot effectively represent your client as a witness if he or she is not fully candid and forthcoming. As a person, you must understand that you are asking someone to say and admit things that he may not have admitted before, sometimes even to himself. That can be a long, hard process that must be handled with patience and feeling.

Lawyer and witness must work together to close the perception gap.

**The audience gap**

The problem:

**Witness:** “Why doesn’t he understand?”

**Lawyer:** “Because he’s not listening!”

The solution:

“Come have a seat at the table!”

“Come talk with us!”

We are social animals, and we treasure invitations to join others.

Your spouse or relative invites you for a meal, your friend invites you for a drink, your co-worker invites you for a meeting. From a very young age, we learn and enjoy being social.

We respond to and interact with those at the table. Maybe they’ll agree with us, maybe they won’t, but we know they will listen. We know whom we are talking to. Our “audience” is clear, right there in front of us. Our mission is to communicate with them, to understand them, and to help them understand us.

But what if the “table” we are invited to is the witness table; a deposition, a hearing or the like? The most common and fundamental mistake many witnesses make is not understanding who the real “audience” is, and that the person asking the questions is often not the principal audience.

What a bizarre gap for a normal, sociable person: The person you are talking to is not actually the audience. Stranger still, in a deposition or some other witness setting, you may be talking through the court reporter to the real audience, which is not even in the room. Indeed, we may not even know yet who it is: some yet-to-be-determined juror, judge, arbitrator or other finder of fact.

This “audience gap” is not the witness’s fault. It’s the lawyer’s fault for not understanding how profound this misunderstanding can be and for not making it clear in preparation.
The gap is truly a wide one. It goes against all our upbringing, our socialization, our normal interactions. The idea that the person asking the questions may not be the person to whom the answers are directed is hard to say and even harder to understand and deal with.

Explain why the questioner is not the audience. They are often paid advocates, hired to win, and unmoved from that advocacy no matter how personable and persuasive the witness may be. It’s not a reflection on the witness; it’s just the way things work.

Fill in the gap from both sides — first, with an understanding of who the audience really is. Is it Juror No. 6, a judge, an arbitrator? Who are they, what are they like, what are they looking for? Second, the questioner can take advantage of the gap in many ways, including:

• "The Friend" — The questioner pretends to be the witness’s friend to try to get the witness to tell him more and what he wants to hear, or at least try to bend things his way and avoid or minimize any disagreements. He’s not a friend. Make sure your witness doesn’t lose focus.

• "The Interpreter" — He tries to be “helpful” and puts the witness’s testimony in his own words: "So, what you’re really saying is ..."; "Let me see if I can sum this up ..."; "Then, wouldn’t you agree that ..."; etc. This is your witness’s testimony. Don’t let anyone put words in his mouth.

• “The Jerk” — We’ve all met him: the infuriating person who offends you and goads you into an argument. But here, the questioner knows that if a witness is busy arguing, he’s forgetting about — and likely making a poor impression with — the real audience. Don’t let your witness engage the questioner.

• "The Cynic" — How frustrating it is to be at the table with someone who just won’t agree with you no matter what you say. That frustration can cause you to go overboard in making your point, or to just shut down and not bother. But the questioner is not the audience. The witness is not going to change the questioner’s mind (or at least he’ll never admit it). If the witness reacts to the questioner as "the cynic" in any of the normal ways, the questioner knows it’s much harder for the witness to communicate with the real audience.

Close those key gaps.

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Complete URL: http://masslawyersweekly.com/2013/09/05/mind-the-gaps-fellow-counsel/
Mind the gaps, Part 2
by Daniel I. Small
Published: September 18th, 2013

There are surprising and enormous gaps between a witness's real-world experiences and those in the very strange and unnatural world of being a witness.

Lawyers must help witnesses — and themselves — to define, understand and bridge each gap. In my previous column, I looked at the first two gaps — perception and audience — that impact how witnesses view their roles. This week, I'll examine the last two gaps, conversation and control, which impact how witnesses respond.

The conversation gap

The problem:
Witness: "I'll just go talk to them!"

Lawyer: "Question. Pause. Answer. Stop!"

We pride ourselves on a familiar form of communication that's informal and fun — namely, conversation. Casual, interesting and free-flowing, good conversation is an integral part of our day, our relationships and even our self-esteem.

There's a wonderful quotation from Guy de Maupassant, a 19th century French writer, who described conversation as "the art of never seeming wearisome, of knowing how to invest every trifle with interest, to charm no matter what be the subject, and to fascinate with absolutely nothing."

All of us would love to be so graceful.

Yet consider the gap between that and being a witness. Conversation is casual because the setting is informal. What if it were all under oath? Conversation is interesting because we can be open and creative. What if every word were being transcribed? Conversation is free-flowing because we feel free to say whatever we want. What if every word, once transcribed, were to be picked apart and used against us or others in the future? That's not a conversation!

I give a copy of the Maupassant quote to virtually every witness I work with, because all the wonderful qualities he found in conversation are inappropriate for a witness. If conversation is an art, being a witness is a science. If the goal in conversation is to be interesting, the goal of a witness is to be precise.

A witness is not there to entertain, just to tell "nothing but the truth" in a clear, simple way. If doing that feels boring or uncomfortable, that's far better than being charming but in trouble because you said too much.

A good conversation "flows" along well, and a good conversationalist is someone who listens to where it's going and helps it get there.

Good testimony, alas, does not flow. It's very awkward and stop-and-start: Question. Pause. Answer. Stop. Then start all over again.

A good listener as a witness is not someone who focuses on what the questioner meant or where he is going, but only on the words that come out of his mouth — in other words, the words the court reporter hears.

Several years ago, the TV series "The West Wing" had a string of episodes about a scandal in
the White House. News had broken that the president had multiple sclerosis, and an investigation was launched into whether top aides broke the law in initially covering up the diagnosis.

The president’s press secretary, C.J., was subpoenaed to testify and called to meet with the White House counsel to prepare. C.J., an intelligent and talkative character, was clearly nervous and angry about the situation — both being called as a witness and having to meet with counsel. She took it out on counsel by being sarcastic, uncooperative and not eager to take advice. Counsel tried to make her understand the need to prepare, but in the middle of talking about what happened, he stopped. To paraphrase:

Counsel: Do you know what time it is?
C.J.: It’s 5 past noon.
Counsel: I’d like you to get out of the habit of doing that!
C.J.: Doing what?
Counsel: Answering more than was asked!
(Pause)
Counsel: Do you know what time it is?
(Long pause)
C.J.: Yes.
Counsel: Now we’re making progress. We’ll take a break and meet again later today.

If you teach your witness nothing else, teach him the answer to the question, “Do you know what time it is?” The answer is the difference between a conversation and testimony.

In a conversation, questions are not really questions; they’re prompts, a means of moving the conversation in a particular direction. It’s rare that anyone is really looking for the precise answer or will be offended if he doesn’t get it.

In a conversation, the answer “yes,” while precisely accurate, is a bad one. It’s not what the questioner is seeking. That’s not where the conversation is flowing. In a testimony environment, however, the question is important, and “yes” is the right answer.

That’s the core difference between a normal conversation and a testimony environment.

**The control gap**

**Problem:**

Witness: “It’s their deposition. I just have to sit here and take it.”

Lawyer: “Why is he letting this questioner walk all over him?”

Even to highly accomplished individuals who are well accustomed to being in command of every situation, the witness chair gives all the appearances of the questioner being in control. It’s that person’s subpoena, his case, his arena, his life’s work.

The questioner walks in with a list — written or in his head — of questions designed to trip up the witness, and a variety of battle-tested follow-up techniques if the prepared questions don’t work. It seems obvious who’s in control.

However, if the witness, or the witness’s counsel, buys into that deception, he puts himself at a terrible disadvantage. What both lawyer and client need to understand is that all that impressive stuff is just that: stuff, designed to get the witness’s testimony. The witness is the only one under oath, so he has the right and the responsibility to control his own testimony.

Controlling the testimony includes controlling the pace (slow and careful); the rhythm (question, pause, answer, stop); and the language of both question and answer (if not 100-percent clear, don’t answer). A witness cannot tell the truth as he knows it unless he’s in
Control, in this circumstance, does not mean emotion or volume. Most witnesses have plenty of experience with other forms of interaction with strangers — meetings, conference calls, etc. Those interactions are rarely controlled by who shouts the loudest. They are controlled by a set of rules, stated or understood, of professionalism and courtesy.

The same applies here. The witness is there to answer questions, but the questions and answers must be clear, simple and fair. It’s up to the witness to impose the discipline.

Counsel needs to help witnesses understand such a deceptive environment. In upcoming columns, I’ll provide a framework of 10 rules to help witnesses take control of their own testimony.

Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. His practice focuses on external and internal investigations, witness preparation and white-collar criminal matters. A former federal prosecutor, he is the author of the American Bar Association’s “Preparing Witnesses” (3d Edition, 2009). He speaks across the country about witness issues. He can be contacted at dan.smal@hklaw.com.

Complete URL: http://masslawyersweekly.com/2013/09/18/mind-the-gaps-part-2/
What it means to prepare a witness
by Daniel I. Small
Published: October 2nd, 2013

Too many lawyers — including some very good ones — don’t prepare witnesses adequately because they fail to understand that being a witness is dramatically different than anything else the client has experienced.

Testimony is not a conversation. Much of what makes for a good conversation makes for bad testimony. And what it takes to be a good witness is often contrary to our normal experiences.

As a result, it takes an extraordinary level of preparation to learn to do it right. Too many lawyers’ idea of preparation falls short in at least two key ways: It’s not comprehensive enough, and it’s not tough enough.

Not comprehensive enough. It happens too often. We’ve been working hard to prepare a witness for hours or days, and he expresses surprise at the length of the process: “I was deposed before, and my lawyer just told me to meet him half an hour before the deposition and we’d prepare.”

That’s not preparation; that’s malpractice. True witness preparation is an extensive and intensive multi-step process. It demands a high level of time, energy and effort from both client and counsel.

Not tough enough. Lawyers don’t serve their witnesses well by being too kind and gentle in preparation. I tell witnesses that the tougher and more realistic we are with them, the better prepared they’ll be for the real thing.

At the end of the whole process, every witness should come out of the experience and say what many of our witnesses say to us: “You guys were much tougher!” That’s a sign of success, relief and high praise. Make it happen.

There are seven key steps to the process, each requiring careful thought and thorough implementation:

1) Introduction

Imagine sitting down on a park bench and having a total stranger come up and ask you about your most private details and troubling secrets. You’d think the person was crazy and certainly wouldn’t answer in any depth.

Why are we lawyers so arrogant that we think we can do that with someone just because they have the label of “client” or “witness”? You can’t. It won’t work. You’re a stranger, no matter what the environment — whether you’re representing the person personally or you’re an agency or a corporate lawyer. The fact that you’re a stranger makes the person doubly uncomfortable.

Take the time to get to know your witness and get comfortable with each other, both before you meet, through other people or the Internet, and at the outset of the meeting. What do you need to know about your client’s background? His interests? His family? What does the client need to know about yours? How can you find a common bond? The time invested up front is well worth it.

2) Review the facts

Encourage your witnesses to go over as much as they know about the likely subject matter of the questioning: who, what, when, why, where, how? What do they remember and what might someone else remember?
Going through it the first time is rarely enough. Go back over the facts in slow-motion to catch more of the details and issues. I tell witnesses that sports is repeated in slow motion because in real time it happens too fast for most people to follow and understand. Nobody can talk about it and explain it as fast as it happens. It's the same for witnesses.

Witnesses often ask, "Should I study?" The question of whether or how much to review past documents, events and so on will vary from case to case. Sometimes it's important to be familiar with the facts or documents to anticipate and rebut biased questions. Sometimes you risk re-creating inaccurate memory. Sometimes it may be best to let sleeping (or forgotten) dogs lie. This is an important issue for you and your client to consider and discuss.

3) Review the process

No matter how many episodes of their favorite legal TV show they've seen, no matter how many times they've been a witness, don't make the mistake of assuming that witnesses really know or understand the bizarre process.

Apologize, if you feel you must, for erring on the side of too much information, but then do precisely that: err on the side of too much information.

Every witness needs to hear and understand the basics of who, what, when, why, where:

WHO — Who's involved in the litigation? Who will be there? Who will ask questions? Who will object? Who will see/read it later? Who else may testify, and what will they say?

WHAT -- What happens when and in what order? The oath? The questions? Which side when? What should I bring? What should I wear?

WHEN — When does it start/end? When are the breaks? When does the day end? When do I hear more about it?

WHY — What is the meaning, importance and goal of this testimony, for each party concerned?

WHERE — Where is it? How do I get there? What type of place/what type of room?

4) Put it together

Understanding the facts and the process, how do you communicate effectively in a question-and-answer format? The facts do not change, but the method of answering questions takes a lot of getting used to. Most of witness preparation — including the "10 Rules," which will be addressed in later columns — is directed at that crucial part of the preparation.

5) Anticipate problems

Now is the time to identify things that may be potential problems and prepare accordingly. Witnesses can have a large range of concerns. Counsel has to ask and listen for them.

For example, one common problem is nervousness: "How do I avoid being nervous?" "How will I be able to think clearly when I'm so nervous?" I give witnesses the same answer I give when I teach trial practice to law students and lawyers: Don't be nervous about being nervous. Everyone is nervous and that's OK. You should be nervous; this is an important process.

Moreover, I want you to be nervous. It's the best way to sustain the kind of energy and intensity required to handle this process properly.

So how does your witness overcome it? By not worrying about the disease and just dealing with the symptoms. Tell your client: Don't worry about the fact that you're nervous; just think about what it is you do when you're nervous and deal with that. For example, if you talk too fast when you're nervous, make an extra effort to slow down. Whatever it is, do the best you can, but don't worry about it.

Anticipate other potential problems and address those problems before testimony is given. Does your witness need a translator? Does the witness stutter? Does he need any special accommodations? What are the witness's fears about the process?

Finally, prepare the witness for questions about the preparation! If the witness is a client,
explain the attorney-client privilege and that the questioner may ask about the logistics of preparation, but not what was communicated, orally or in writing. If the witness is not a client, make sure he understands the absence of privilege so he’s not caught by surprise.

Moreover, make sure he understands your first, last and fundamental message: Always tell the truth.

6) Dry run

Some years ago, I had to help teach my twin girls to ride bicycles, with all the scrapes and bruises and tears that came with that process. It was traumatic. All I could hope was to help cushion the blow when they fell and console and teach them when it happened. The same is true for teaching someone to be a better witness.

No amount of discussion can fully explain the question-and-answer process. Like anything difficult and unnatural, doing it right takes practice. The best approach is to do a dry run so your client can experience the process firsthand. It doesn’t need to be formal or cover all the possible topics as long as it gives a clear sense of the process.

The tougher and more realistic it is, the more helpful it will be to the client in the long run. I often have another lawyer in my office ask the questions, both to make it less awkward for everyone in role-playing and to show witnesses how I might act in representing them.

Do a dry run with every witness. You’ll be amazed at how productive it is. After you’ve gone through all the background information, reviewed the facts and the rules with them, they can see it in practice. Ideally, a dry run should be recorded in some fashion, if practical, and if covered by the privilege.

Adapt the dry run to the proceeding. If you’re preparing a witness for a deposition, you may want to have a transcript of the dry run prepared, since the goal of a deposition is to produce a clear and accurate transcript. That will emphasize the strengths and weaknesses of the witness’s testimony, allow him to appreciate the final product, and address any weaknesses. Most clients have never seen their spoken words in print. It’s a revelation.

If you’re preparing someone for videotaped or live testimony, the transcript isn’t quite as important, but the appearance is. The important thing is to record the testimony in whichever way it will help you and your witness.

7) Review transcript

Another great benefit of doing a dry run is to generate and review a transcript or video. Depending on the case and the resources, that can mean anything from a full, videotaped session with a court reporter to a simple recording that can be typed up for review. If there are inaccuracies, it can prepare you and your client for the inevitable mistakes in any real transcript.

Reviewing a video and/or transcript is the best way for both lawyer and client to see and understand how and why the rules we will discuss in later articles work, and what your client can do better.

The witness environment is terribly unfair and deceptive. It has all the appearances of the questioner being in control. If the witness and counsel accept that deception, they have lost. This is, after all, the witness’s testimony.

True witness preparation is all about leveling the playing field and helping the witness to take control. You can and must make a real difference.

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Complete URL: http://masslawyersweekly.com/2013/10/02/what-it-means-to-prepare-a-witness/