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by Dan Small and Robert F. Roach

Powerful Witness Preparation: Be relentlessly polite

- » Business executives, as witnesses, will not score points for arguing with counsel.
- » For witnesses, being relentlessly positive is a survival technique.
- » Be proud of your testimony.
- » Don't let antagonism get you flustered. Kill them with kindness.
- » If the questioner becomes frustrated, see that as a compliment.

In this series of articles, lead author and seasoned trial attorney Dan Small sets forth ten, time-tested rules to assist you in the critical task of preparing witnesses. Robert F. Roach assisted Dan in this series by providing additional "in-house" perspective and commentary. The first installment of this series was published in our January/February issue.

Corporate officers and other key employees often share personal qualities found among successful professionals in many occupations. They are intelligent, often competitive, and frequently willing to argue a point when they believe they are right. Being successful, they are also often used to being treated with a degree of deference and respect. Accordingly, it is important to prepare business executives for the artificial and often challenging environment of testifying in a deposition, hearing, or trial.

Rule 4: Be Relentlessly Polite

We don't tell witnesses to be polite—we tell them to be *relentlessly* polite and relentlessly positive. This is not etiquette advice. It's a survival technique.

Being polite in this environment can be a tough, often thankless, job but one that is essential to being a good witness. It's hard work, but necessary. The experience of being a witness can run the whole gamut from a polite, friendly session to an angry, adversarial one.

Some matters are more emotional than others, and some questioners are more confrontational than others.

It doesn't matter. Whatever the tone of the questioner or the questions, your response should always be the same: coolly, unflappably, relentlessly, even infuriatingly polite and positive. Start that way at the beginning, and do not change until it's over. The reasons for this are fairly simple.

Be positive

This is your testimony. Be proud of it—all of it! Say it positively. Yes, I did that! Yes, I wrote that! Don't let a lawyer—playing aggressive or accusatory—influence your attitude. If a witness *sounds* negative or defensive, those who listen will assume that he or she has something to be negative or defensive about. Don't make that mistake. Regardless of the substance—good or bad—remain positive.

Keep your cool

Being a witness is a surprisingly emotional experience. Why? Most people are used to others being positive, pleasant, and, if all else fails, diplomatic. Suddenly, in front of strangers, in a strange environment, witnesses are under



Small



Roach

attack. Their work, profession, employer, competence, credibility, friends, family—all this and more are fair game. Keep your cool. No lawyer's question changes reality. You are the same good person, trying to do your best, that you were before you began. Be positive. Stand your ground, but do it politely, persuasively. Anger rarely persuades.

This is not a game. Your job as a witness is not to argue or score points. Rather, your job is to listen hard, think carefully, and answer questions if you can. Anything else is just an unnecessary distraction, which will only diminish your credibility. All good questioners know that an upset witness is an unfocused witness, so if they can throw in a garbage question or three, why not? Any antagonism is often just an act to get you flustered. Do not let it happen.

Everyone here has a job to do. Their job is to ask questions. Do not waste your time and energy belittling or attacking their job, or thinking, saying, or implying negative things about the matter or investigation, the questions, or anything else. You will accomplish nothing, distract yourself from *your* difficult job, and needlessly antagonize the questioner. If the questioner represents the government, that makes unnecessary antagonism particularly pointless—and foolish.

Your lawyer is there to be both your advisor and, to some extent, your buffer or protector. If there is a reason for things to get difficult, leave that to your lawyer. Stay above the fray. Your lawyer can give and take the heat without it reflecting directly on you.

Meanwhile, if there are discussions, objections, or arguments among counsel, take the opportunity to listen and learn: What are the issues and problems, and how can you best handle them in your answers? After *any* discussion or distraction, take the opportunity to ask for the question again, so you can listen to it without disruption and with the benefit of having heard the preceding debate.

Take their frustration as a compliment

Dan has a family story that illustrates this point well. Years ago, he went to his son's first football game. He played defensive line, did well, his team won, and Dan prepared to congratulate him as they came off the field at the end. But to Dan's surprise, he was very upset. Dan asked why. "It's not fair," he said. "They kept putting two guys on me, and I couldn't get to the quarterback!" Dan smiled and said, "Use your math. Both sides only have 11 guys. If they have to put two on you, what does that mean?" He looked a little less upset, and replied, "It means they have one less to stop everyone else?" Yes, it means you're doing something right—use their frustration as a compliment. If they put two guys on you, think to yourself, "Thanks for the compliment, now get out of my way!"

Same thing for witnesses. Witnesses often assume that the questioner's frustration means they've done something wrong. No! More often than not, the questioner's frustration means the witness is doing something right! Don't change. Use their frustration as a compliment. If you were doing something that helped your testimony, keep doing it—and more! You are there to give the truth, the whole truth, and nothing but the truth, not to fulfill the questioner's fantasies.

A prepared and disciplined witness needs to avoid anything that will make that unnatural discipline even more difficult. You need to keep your cool throughout the process. The more careful and precise you are in listening and answering, the more frustrated the questioner may become. Remember, though, that nothing the questioner says is evidence unless you agree to it. Their frustration—whether real or exaggerated—should not push you to agree. Anger and argument will interfere with the work you have to do, so don't play that game: Be relentlessly polite. *

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