Chapter 19

Preparing Clients to Testify

Robert Ware Killorin

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19.1 If You Lie You Lose

If you lie, you lose. That bedrock principle has been my polestar in preparing my own clients to testify ever since I heard the phrase. That catch phrase is one used by a very successful plaintiff's attorney in South Georgia who has successfully handled hundreds of asbestos related plaintiff's claims. It is not uncommon for one of his clients, when giving a deposition, to step into a room full of defense attorneys who have had ample opportunity to study that witness's complete history, including medical records, testimony of co-workers, testimony of former employers, and investigative materials regarding that witness's life. The best way to lift the spirits of the cadre of defense lawyers in the room (and break the unending tedium of multitudinous plant worker depositions) is for the witness to tell a lie. The second that happens, the souls of the lawyers that are awake and actually paying attention are stirred. They immediately realize that there is, evidentiarily speaking, fresh meat on the table. Once the deponent has told the first lie, the astute defense attorney will abandon his previously prepared outline and "chase the rabbit." The instincts of a hunter will kick in and the questioning attorney will spontaneously devise a series of follow-up questions that give that witness every opportunity to run the primrose path by embellishing the lie and attempting to support it with further misstatements. The best result that the defense attorneys can achieve is for the witness to get the sense that his attempted deception is working and thus feel emboldened to try to go even further with the fictions that he has concocted to "help his case." All the while, the plaintiff's attorney is sinking lower into his chair knowing that the bounds of ethics prohibit him from kicking his client under the table, and knowing at the same time that the value of his client's case is being lowered with every false answer. This scenario also creates ethical problems for the plaintiff's own attorney when he either knows or suspects the witness is lying. At what point he has the duty to withdraw as counsel if the client insists on committing perjury (or take other appropriate action) is beyond the scope of this article. Suffice it to say that untruthful reponses can create problems for the client and the value of his case, as well as for his attorney.

While the above scenario is not typical, the same principles are at work anytime that a party to a lawsuit gives sworn testimony. There is an adverse party who has strong incentives to expose any misstatement of the truth. Further, while the requirements of modern civil discovery are far reaching, we are not to the point where each side has to carte blanche open their litigation files to the other side. Therefore, one can never know exactly how much the other side knows, and therefore a witness always runs some degree of risk by telling anything other than the truth. Therefore, without needing to delve into the area of morality for support, it is, in my opinion, a very sound litigation practice to emphasize to any witness "if you lie, you lose." Of course, this is also what the law requires, and the laws against false swearing and perjury have some teeth.

19.2 First Things First

Good trial practice is 90 percent perspiration and 10 percent inspiration. This is another old saying that has been around which I believe. I have enjoyed some successful moments of "glory" in the courtroom where "justice is done," meaning that things take a turn for the betterment of my client (and

thus the betterment of my chances to collect a fee for services rendered). In retrospect, I attribute most of those moments to 90 percent perspiration and 10 percent to inspiration. If you know the case thoroughly and intimately and better than your adversary, then the pump is primed for you to seize moments of opportunity when they appear in the courtroom. Witness preparation is a critical part of priming that pump.

When I talk about preparing a witness to testify I am not only talking about preparing your own client, but also your own hired expert, or any witness friendly to your side with whom it is appropriate to discuss their testimony. A caveat is that any discussions with a witness other than your client would not be protected by the attorney-client priveledge and may be discovered by the other side.

The first step in preparing a witness is to prepare yourself. Before attempting to prepare a witness to testify, you should be thoroughly and intimately acquainted with the available facts and details of a file. Further, you should have already analyzed the various legal and procedural considerations and have your own theory of the case, and litigation strategy worked out. Of course, the first time that you prepare a witness to testify is often for their deposition, and that may be after minimal or, in certain cases, no written discovery. However, every effort should be made to serve written discovery at the earliest opportunity and attempt to schedule depositions after responses to written discovery have been made. Attempt to delay your witness's deposition until the other side has responded to written discovery and hopefully given deposition testimony of their own. As an aside, when I am opposing cases that I believe to be unfounded or frivolous, I often attempt to schedule the opposing witness's deposition before serving any interrogatories, because I do not want him to have a written guide prepared by his attorney as to how to answer the salient questions. Other times I prepare basic interrogatories, but leave out the salient questions. This sometimes forces the opposing witness to craft answers on the spot during depositions, without benefit of having prior knowledge of the questions that I consider to be the most important.

At any rate, the first step in preparing a witness to testify is to prepare yourself thoroughly regarding every aspect of the case. This of course is a lofty goal, and has to be balanced with the realities of speedy and efficient representation of your clients.

19.3 Rehearsed Trial Testimony

I remember a tale from evidence class in law school about a factory worker called to testify on behalf of a factory owner after a great fire had killed a many workers in the factory. The story goes that the factory had the doors boarded shut in violation of local fire codes, but nonetheless, this particularly worker took the stand to testify on behalf of the owner. Her testimony, the story goes, was lengthy and precise, but without any emotion. At the end of the lengthy and detailed statement, the astute plaintiff's attorney simply asked her to repeat her version of the facts. She then began reciting the exact same detailed testimony verbatim, work for word, without a single difference from the first recitation. It became apparent to the jury that she was not testifying spontaneously, but was instead reciting a memorized a statement prepared in advance of trial. This revelation, so the story goes, greatly diminished the credibility of her testimony. This is an example of over-rehearsed testimony at its worst.

The other end of the spectrum is the practice of one very successful plaintiff's attorney that I know. He has elicited truly moving and gut wrenching testimony from personal injury victims by putting them on the stand with almost no prior rehersal of the portions of their testimony having to do with the most painful aspects of their injuries or losses. His philosophy is that the intensity of their experience will come out best before the jury if allowed to do so naturally and spontaneously. He does not want prior rehersals make real and moving testimony that comes from the heart seem jaded and rehearsed.

My approach falls somewhere in the middle. My goal is to review every aspect of the testimony that my witness will be expected to give at trial. I like my witnesses to know every question that I intend to ask them on direct in advance. I also want to hear every answer that they intend to give in advance. This is not done in an overly rigid manner. My witnesses understand that I reserve the right to ask additional or new questions during the course of direct, and they often change the way they craft answers to my questions by the time of trial. But, by having one relaxed rehersal, I am better able to avoid surprises and explain to them the level of detail I am looking for in their answer. I am also able to caution them about not volunteering irrelevant or inappropriate material in their testimony. For example, in personal injury cases in Georgia there are strict rules excluding evidence regarding insurance. The best way to be sure a witness fully understands how to give their testimony without violating these rules is to go through it with them once.

I tell clients who are plaintiffs to avoid bottling up or hiding the depth of the emotions they feel while on the stand. The pain they feel is present throughout the trial preparation process, which brings their memories to the forefront. I do not think much is lost by an orderly review of their testimony in advance of trial. Furthermore, I do not want to run the risk of a witness having their mind clouded and their emotions

overwhelmed on the witness stand by speaking of painful experiences for the first time after many months or even years.

My favorite way to explain the uncertainties of a jury trial to a client is to tell them that it is like putting on a play without the benefit of a single rehersal, and the jury members will be the critics that review it. However, you can at least reherse your questions on direct with your witnesses. This helps minimize the uncertainty.

Finally, when preparing and practicing with a witness, an attorney should review each and every area that is critical to the case that is likely to be delved into. If this is a car accident or personal injury case and there is a chance that the witness will be asked to sketch a diagram from memory, the attorney preparing the witness should have the witness practice that in advance. The attorney should direct the witness's attention to all areas of inquiry and should prepare a list of questions that the opposing side is likely to ask on cross-examination. The witness needs to be familiar with the different, more adversarial, style of questioning that they can anticipate from opposing counsel, and the witness needs to be prepared to answer the most difficult and probing questions that the other side can be anticipated to ask.

19.4 Listen to the Question

The second most important guideline that I give witnesses when preparing them to testify is to listen to the question asked. I emphasize to them to not say a word until they are thoroughly satisfied that they heard every word of the question and understand it fully. I also instruct them to try to go a step further and not just understand what is being asked by the question, but what the questioner is attempting to elicit. In other words, just as law school students learn, the witness must anticipate where the questioner is trying to lead them and what trap or trick may lie ahead. In my sixteen years of litigation practice, I have experienced little outright intentional trickery on the part of opposing counsel questioning my witnesses. However, opposing counsel would not be doing their job if they did not ask leading questions that elicit and encourage the witness to state the facts that are most harmful to my side of the case. Indeed, they attempt to lead the witness into positions and answers which do the most damage. It is my job in preparing a witness to make them well aware of this practice and make them realize it is their duty to not be intimidated or cajoled or coaxed into saying more than they intend to or phrasing things differently than they intend.

The next thing that I tell a witness regarding answering questions is that, once they fully understand the question, they only answer the question that was asked. I emphasize to them the fact that any additional or superfluous or irrelevant information that they tack onto their answer could easily harm their case and be used against them. Further, additional superfluous and irrelevant information tacked onto answers simply gives the opposing attorney extra rabbits to chase and trails to run down in questioning. At the very least, that type of information unnecessarily lengthens the time that the witness will be deposed. At worst, it provides opposing counsel with information very harmful to plaintiff's case that they might otherwise never have gotten if left to their own skill as a questioner. This is one of the hardest things for witnesses to understand.

It is important that a witness understand their right to phrase things in their own words. A witness should understand that they need not agree with a leading question from opposing counsel that subtlely restates the testimony in a way that is more favorable to the other side.

The next thing that I tell witnesses, which is related to the last, is to watch their emotions and to not allow themselves to become angry or flustered. Should the other side get them into an angry or hostile state, they are more likely to give poorly thought out answers and make superfluous irrelevant comments that only hurt their case. If I sense a witness becoming unduly agitated and hostile I will openly caution the witness to calm down and just answer the questions that are being asked to them. Opposing counsel usually appreciates this, as it is usually not their intention to cause the witness's emotions to flare up and they appreciate the fact that I am attempting to focus the witness on their duty of answering the questions asked.

19.5 "I Don't Know"

"I don't know" is, in my opinion, one of the finest answers that a witness can give. It is also one of the most underrated. Witnesses have a misconception that it is their duty to have an answer to every question asked to them, just as if they were taking some sort of a test in grade school and guesses count. I believe that some of the false answers that I have seen given during depositions and trials are more the result of this misconception than they are the result of an actual intent to lie. I always tell my witnesses that they are not expected to know everything and that if they don't know the answer to a question the very best thing that they can say is "I don't know."

Along those lines, I also tell witnesses that there is no shame in being uncertain or having a less than perfect recollection of any fact or event that took place. I caution them that it is very important that they not state things as un-

equivocal fact if they have some uncertainty in their mind. I teach them the importance of what I call "wiggle words" such as: "probably," "most likely," "maybe,""perhaps," and "possibly." Those are the words that can protect a witness from impeachment and/or charges of perjury or false swearing if their recollections turn out to be faulty. Witnesses need to know that their duty is to tell the truth, but not to overstate the truth. They must avoid giving the false impression that they are more certain of a proposition than they really are. Of course, I tell them that if they know a given fact to be true that they should state it as such.

I advise my witnesses to keep their answers succint and to the point while on cross. I tell them that that "yes" or "no" answers, if accurate and not misleading, are fine. I make them well aware that the opposing attorney will have every opportunity to ask follow up questions if he is not satisfied with the detail of their answer. I also tell them that they can rest easy in not elaborating on their answers or trying to answer questions that were not asked, because if there is any important aspect of their case that I think needs to be brought out, that I will ask questions to bring out that information during their testimony.

19.6 Ethics

I instruct witnesses that I am not allowed to wink or nod or pull my ear or tap their foot under the table to give them any secret signals regarding how they should answer or how I think their testimony is going. However, I also tell them that I will protect them from unfair, improper, intentionally misleading questions and that they should listen to my objections to understand what I think is improper about a question. For example, if an attorney who is suing my client in a personal injury car wreck case, and that attorney asks whether or not my client filed an income tax return last year, I would object to that question as being improper and not reasonably calculated to lead to the discovery of admissible evidence. It may be proper for post-judgment discovery, but it would have any relevance as to whether or not my client was at fault in the accident. It would be helpful for the client to listen to that objection carefully so that if opposing counsel should follow up with a question about how much money my client made last year, he would realize that I may have another similar objection and not blurt out his annual salary.

I tell witnesses that they have a right to request to take a break any time they feel that they need it. I recently produced a witness, whose doctor ordered her to avoid undue stress. Before doing so, I obtained an agreement on the record that it would be a low-stress deposition and that she could take frequent breaks as needed. All sides lived up to the agreement and the deposition was completed successfully.

19.7 Simple Matters Regarding Depositions

My first few years of practice I carried a notecard, which had the following checklist items for depositions:

1. Arrange for court reporter;
2. Be sure witness is sworn before starting deposition;
3. Deal with predeposition stipulations.

Always remember to make sure that it is clear who has responsibility for scheduling the court reporter and, if it is you, make sure that has been done. Remembering to do this can help avoid stress in your life.

19.8 The Dream Witness

To set a heading and plot a course toward preparing a witness to testify, I believe that an attorney should ask herself what would be the ultimate witness. The most formidable witness that I could imagine would be a personable and eloquent person who had successful career experience as a trial attorney, a judge, a politician, and a psychiatrist. That witness would have also a thorough knowledge of all the law and the facts involved in the case. Obviously, there is not enough time, given the accelerated discovery schedules in federal court these days, to bring each and every witness to this level of skill. Therefore, compromises are necessary. However, the more that the witness knows about the law, the facts, and public speaking, the more persuasive that witness will be.

19.9 A Typical Witness

A typical witness will have little or no experience with the legal system. A simple point, yet one to remember, is to be open and responsive to the witness's questions and concerns regarding giving their testimony. You should automatically explain the general context in which their testimony will be given. When preparing a witness for a deposition I explain that no judge will be present; and if any irreconcilable conflict arises between the attorneys, the deposition may be terminated or suspended pending a ruling from a judge. However, many witnesses have very individualized concerns, questions and even misunderstandings regarding our legal system and what will be involved in them giving their testimony. You should make yourself available and solicit any questions that they have in order to ensure a understanding of the process. Having a videotape of the basics about giving testimony to show your clients can save some time. However, if you use a commercially available video to help prepare witnesses to testify, watch the video closely youself and

make an outline of additional points that need to be covered with the witness.

19.10 Special Matters

When preparing a witness to testify, it sometimes comes up that that witness has certain sensitive or confidential areas of their past which may be relevant and discoverable to the other side, but which are painful and embarrassing or otherwise problematic for the witness. My experience has been that typically in this situation, all sides can agree to a consent protective order whereby all parties agree to keep certain information confidential. In my experience, judges are agreeable to signing protective orders that are narrowly drafted and specifically served to protect the legitimate privacy interests.

Part of the value of rehersing testimony is to review the little things that help form the sum total of the trier of fact's impression. Of course, the standard jury charge instructs the jury that they are the sole judge of the credibility of a witness. It is human nature to have that judgement affected by small things in a person's demeanor. Indeed entire books are devoted to the subject of body language. In that spirit, I will typically practice having a witness take the oath as if they were actually on the witness stand in court before a jury. I tell them that it is important to stand up straight and tall and to look me directly in the eye as I administer the oath. Or, look the judge directly in the eye as she administers the oath, and to hold their arm rigid and their palm flat as they raise it and to speak loudly, clearly and forcefully "I do."

19.11 A View From the Jury Box

I recently beat the odds, for better or worse, and was selected to sit on jury in spite of the fact that I was a lawyer. The trial took 4 1/2 days. The experience strengthened my belief in certain time honored principles of witness preparation.

One of the things that struck me about being on a jury was the sensory deprivation that a juror experiences. Jurors remain sequestered to some degree from the outside world with eleven strangers for days on end. They quickly realize from watching objections and confidential bench conferences that there is a great deal of evidence that each side knows, that they the jurors are not being allowed to hear. As a trial lawyer I felt a certain sense of frustration, because I am used to knowing everything that goes on in the courtroom. Jury members tend to be intelligent, thoughtful and dedicated to doing their duty. They have nothing but time on their hands and tend to devote their full mental energies to figuring out the truth. Thus, my fellow jurors were also frustrated at all the things that they were not allowed to hear or see. To them it seemed contradictory to the admonition given them to "listen carefully to all of the facts in the case" before making up their mind. Further, if their duty is to be the trier of fact and the decider of truth, then why is so much information that one side or the other feels to be important being kept from them. The problem is that jurors try to make up for this feeling of sensory deprivation by taking in every little bit of information they are allowed to gather, and sometimes placing udue emphasis on small details. Thus small details can take on large importance at a trial.

One such detail is dress. The harsh reality is that human beings and thus jurors can be overly suspicious, judgmental and prejudicial. They are in the middle of a conflict that they did not ask to decide, surrounded by strangers telling conflicting stories, and (as discussed above) the judge is not letting them hear all of the testimony available. They will resort to being critical of every aspect of the witness standing before them. Anything they feel is odd (i.e. different than they would personally do) as to the way a juror dresses will often diminish that witnesses credibility. Therefore the polestar is for a witness to wear items that go down the middle of the road. Avoid flashy clothes, avoid being underdressed and avoid flashy jewelry and hairstyles. For men short hair is better than long, and the less facial hair the better. You can tell your witness that you realize that none of these external things have to do with the real truth of their testimony, but it is important that they dress in such a way that gives the least offense to anyone. Complete neutrality it the best a witness can hope to achieve in dressing.

On another note, a witness should be instructed to avoid improper courtroom etiquette. The witness should be prepared to listen to the judge's directions and to show proper respect to the judge. The witness should be forewarned to show respect to the opposing attorney and not be baited into talking back or getting into a verbal discourse or argument with the cross-examining attorney. This can be extremely difficult for a strong-willed witness who has his or her own sense of fairness and right and wrong. Every so often, such a witness comes out ahead in a wrangle with opposing counsel, but usually they get the short end of the stick. Witnesses should be instructed to avoid heated colloquy with opposing counsel.

If you are preparing a witness to testify for a second time, such as at trial when their deposition has been given, it is also of paramount importance to get them a copy of their previous sworn testimony. Provide them with it well in advance of trial, and instruct them to read it carefully to refresh their recollection of their prior testimony. You should explain the game to them that the opposing counsel has this transcript, and any variance in their wording at trial may be used

by opposing counsel as an attempt to impeach the witness. Even innocent misstatements or different wording used may provide an opportunity for opposing counsel to attempt to impeach the witness based on the hard black and white transcript. Therefore it is critical that the witness refresh himself or herself on the wording that they used at the deposition, which opposing counsel will be using as his guide for cross-examination.

19.12 "I Can Tell It Hot or I Can Tell It Cold"

As every good trial lawyer, every good politician and every good storyteller knows, communication is an art form. Human beings listen to the manner and style of speech as part of the process of evaluating its importance and veracity. Jury members and judges and (for settlement purposes) opposing lawyers are no different. Therefore, the manner in which a witness communicates and tells his story is of great importance. While an attorney has to be on guard against the details and pitfalls and complications of modern litigation, he must also not lose sight that his client's case will often hinge on how persuasive their testimony is. Further, his client's damages to be collected or damages to be withheld will often depend on the persuasiveness of the witness' testimony. As I have said, conducting a trial is like putting on a play without benefit of a rehearsal. No one can be sure exactly how the jury will view the entire drama at the end of the trial.No one can know in advance exactly how all the evidence, testimony, exhibits and colloquy between the judge and the lawyers and jury instructions will unfold until it is all over and the dust has settled. However, as my wise and seasoned trial attorney father has said, "you have got to make sure that the witness puts the pathos into their testimony." The emotion and the heart have to be there along with all of the facts and details and procedures. After all, the critics of the drama are laypeople who have no personal interest in the outcome. Losing the pathos amid the technicalities of trial is like not being able to see the forest for the trees. Lose the pathos and with it can go the victory.

19.13 A Cautionary Note

There is an old saying that the best negotiation is negotiation from a position of strength. The same could be said for trial work. There is no better backdrop for witness preparation, than being on the right side of a case and having abandoned superfluous and incorrect arguments that are losers. Every side must honestly assess their strengths and weaknesses, and be willing to accept that they are only entitled to as much as their strengths permit. Therefore, the first step to good witness preparation is to structure litigation properly so that one does not find oneself defending the indefensible or chasing the unattainable.

19.14 The Expert Witness

There are two main challenges in preparing experts to testify. First make sure you and your expert fully understand each other regarding the subject of the testimony. Second, make sure the expert can and will communicate in an effective manner.

Trial lawyers have to quickly learn as much as they can about whatever technical areas their case involves. They may need expert testimony to support one or more elements of their case. Make sure the expert you have chosen can really support the proposition you have chosen her to support. Be sure that you, the non-expert lawyer, really understand what the expert's opinion is. Granted the expert is willing to say what you hired them to say. But you must sound out the depth of her opinion. You must make sure that she fully understands the facts surrounding your case, and that you fully understand her opinions. Otherwise, there can be ugly surprises at trial when opposing counsel elicits damaging testimony from your own expert that you did not anticipate. Try to conduct a mock cross-examination of you own expert in advance to make sure there are no unexpected weaknesses.

Expert witnesses are usually expensive and very busy. It is diff~cult to make time to prepare them to testify, but it is important. The more seasoned and talented they are the less time that is required. I have dealt with experts that have a genuine interest in becoming more effective as expert witnesses and appreciate the time you spend preparing them to testify.

Many expert witnesses are technically proficient in their chosen field. What separates the good ones from the bad ones is their ability to communicate that expertise to a jury. A good expert can deliver her testimony on a level that a seventh grader could understand. A great one can deliver it on a level that a fourth grader can understand. The great expert will be understood by most, if not all, of the jury members. This is new concept to inexperienced experts, who assume that they have been hired to speak in the technically precise jargon of their specialty. That would be fine if they found themselves being used to testify in a bench trial before a judge who happened to be an expert in that field. Other than that rare circ,umstance, the expert witness must understand that technical jargon is usually completely wasted on the average juror (and judge) unless followed by a very understandable explanation.

Most of the aspects of witness preparation addressed in this article apply equally to expert witnesses. They must usually be reviewed quickly, if at all, due to time constraints. However, if you need the same type of expert testimony repeatedly, it can be worthwhile to help an expert witness become seasoned and skilled at courtroom communication.

I also offer the following observations, for whatever they are worth. In my opinion the best expert witnesses are the ones that have not sacrificed their integrity. While they will not go as far as your client may wish in support of their case, they often exude a sense of confidence and trustworthiness that a jury senses. The jury is the ultimate judge of credibility. The best way I know to play the game is to use credible expert witnesses.

You may certainly find yourself facing an opposing expert that has sold their soul to either the plaintiffs or the defense bar. Such experts will rely on hyper technical vagaries to avoid being exposed. If motions to strike their testimony as sham testimony and junk science fail, then you will have more work to do with your own expert witness's preparation. Sham experts often have Achilles heels that can be found with good background investigations, and copies of all transcripts where that witness has test)fied before. Your own expert witness will be helpful forming your plans to expose and discredit a sham expert before the jury.

19.15 The Debriefing

After a deposition an attorney should spend ten or twenty minutes, at a minimum, debriefing the witness. The attorney should answer any questions that the witness has and explain to them how their testimony went. He should explain to them the significance of the things that they said that helped their case and the significance of the things they said that hurt their case. If he learned new information himself from the deposition, which often happens, he should evaluate and explain to them the significance of that. If they made mistakes in their style of presentation that could be improved upon in trial, then he should gently explain that with a constructive attitude in order that they might make a better appearance when they appear before a jury. Because of the fact that a deposition is often the first of two times a witness will testify, a thorough and effective debriefing may be considered to be the first stage of preparation to testify at trial. Once an attorney has had the opportunity to listen to the opposing counsel's questions on cross-examination, he also has a much better idea of the opposing counsel's trial strategy and opposing counsel's theory of the case. He knows which areas opposing counsel is intently interested in and often which areas opposing counsel has little or no interest in pursuing. You should explain to your witness the new insight that you have gained regarding the case (assuming your witness is your client).

19.16 Learn from Humpty Dumpty

Words are power. Power is the underlying issue when a cross-examining attorney conducts a war of words with a well prepared witness: the power to persuade juries, the power to win cases, the power to succeed in the practice of law. Author Lewis Carroll was familiar with this concept in 1871, when he wrote *Through the Looking Glass*. Listen to the advice of Humpty Dumpty as he discussed the use of words with Alice:

"When I use a word," Humpty Dumpty said, in rather a scornful way, "it means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you can make words mean many different things."

"The question is," said Humpty Dumpty, "which is to be master—that is all."

Your witness will not have the arrogant power of Humpty Dumpty and his selfproclaimed ability to arbitrarily assign new meanings to words. However, you witness will be able to carefully choose the right words and the right shades of meaning of those words to present powerful and compelling testimony, and defend against the attacks of the other side.

In conclusion, witness preparation is an important part of winning trial advocacy. There is nothing unethical about reviewing your own client's testimony in great detail with them, and this should be done. It is also important to advise your client on all the rules of the game. Their performance (and it is a performance) will be greatly enhanced by their understanding of how the system works. You should help them understand the art of persuasion as it applies to their case, as wel! as how it will be used against them by the other side. Finally, we end where we began. I believe you should caution your witnesses to always tell the truth, lest (like Humpty Dumpty) they take a great fall.