

PREPARING WITNESSES

Act II

Remember back in Chapter 2 – **Preparing Witnesses** I left out Act II (the actual-practicing-testimony bit) and promised that another article would talk about how to structure that part of the pretrial interview? Well I did. And guess what? Unless you skipped ahead you just read it, Chapter 5 – **Direct “Examination.”**

“But wait,” you respond perplexed, “that Chapter was about testifying in court, what about getting ready to do that?” There you go, that’s the trick. Your approach to Act II should be the same as your approach to in-court testimony. No script, just a guided conversation that will allow the witness to become more familiar with the process of telling their story in their words, unrehearsed.

Familiarity will generate comfort. As the witness gets accustomed to sitting in the witness stand and telling their story, with you guiding them along when necessary, their comfortable level will grow. They will be used to just telling their story, rather than robotically anticipating the next question and giving the same answer to it they have every time you have “practiced” it. Thus, once the witness enters the courtroom to testify, that conversational process will be second-nature to them and the confidence it inspires in them will shine through on the witness stand, enhancing their credibility with the trier of fact (that is the plan of course, and you know what I have said about best-laid plans and “the enemy”). So treat Act II just as you would a direct examination.

You will need to do a couple of additional things in Act II. This is your chance to preview expected cross-examination. That cross examination should be written out in advance and delivered aggressively, preferably by a different counsel than the one planning on handling the direct. Based on the witnesses’ performance, counsel should then coach them on format of answers (short) and demeanor (respectfully calm, unless indignation is called for). While you should craft an effective cross-examination (one that controls the witness), it is also important to prepare the witness for a bad cross-examination (one that unintentionally allows them to provide answers other than “yes” or “no”). Though you should not tell them what say, you absolutely can discuss what an appropriate answer to a particular topic would be if given the chance to explain. If, surprise surprise, the cross examination defies the odds and is effective, the witness still may need to explain something on redirect so this preparing to do so during Act II will get them ready to do just that on redirect.

Logistically, it is probably best to talk to the witness about what they intend to wear to court and what they should and should not bring (basically nothing, and certainly not anything with them to the stand). I also like to talk to them about anything that could distract them from their testimony (*e.g.*, work issues, child care, other appointments), with a goal of seeing if there is anything we can do to alleviate that additional stressor. A comfortable, prepared, and undistracted witness will do wonders for your case.