

Tips on Interviewing Witnesses

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It is troubling to see how many lawyers are unable to question a witness. It is an acquired skill which reflects a lawyer's experience and interpersonal skills. Lawyers are not sensitive souls. They have a hard time reading people because they are not so comfortable with themselves (some may say that is why they entered the practice of law).

That does not apply to every lawyer. There are some who have the ability to make witnesses comfortable and to extract everything they can from a witness. It is interesting and instructive to watch those talented

lawyers conduct witness examinations.

Lawyers need to be patient and they need to “read” the witness. That means watching the witness' face, eyes, body language and listening carefully to the words, the tone and the manner in which the witness answers questions. If a lawyer goes in for a “kill” question, or to start to launch vitriolic threats, they are guaranteed to fail. It is a dance – which can sometimes be slow and sometimes fast.

Here are some basic steps that a lawyer conducting an interview needs to take:

- 1. Prepare for the interview** – Find out everything you can about the witness before the interview — everything is relevant: background, personal story, likes and dislikes, reputation. Review every document connected to the witness. Prepare an outline of topics. Do not write down questions which you plan to ask verbatim. You need to watch the witness, not look down at your list of questions. The list of topics and documents you plan to use is only a guide for conducting the interview. Keep you head up, your body upright and focus on the witness.
- 2. Put the witness at ease** – in the beginning the witness is always nervous and uncomfortable. Ask easy questions and let the witness talk about his or her education, family, accomplishments and career. Make the witness comfortable.
- 3. Ask open ended questions** – Let the witness tell his or her story. Flesh it out with details and do not try and confine the witness by asking narrow or leading questions. Use the relevant documents to get out their story. The witness, if prepared correctly, will have a story and an explanation for everything you think may be relevant.
- 4. Identify the weak points** – watch the witness and see where he or she is uncomfortable. You will know when those issues come up. It will be the ones where they have been prepared or focused their attention. Combine the weak points from your preparation list with the additional weak points you learn during the interview.

5. Circle back and focus on the weak points – no witness ever tells the truth in the first interview. It has never ever occurred in any context. Anyone who tells you that a witness told everything they knew in the first interview is delusional.

You need to come back to the weak points, use your documents to highlight the weaknesses in the witness' version of events, or to underscore separate troubling issues which are inconsistent with the witness' versions of events. By doing so, you send a message to the witness – you know where he or she is withholding information and you will slowly build pressure on those points against the witness. This process is delicate but is extremely important. The dynamic in the room shifts and you need to be emotionally and tactically present for this portion of the interview, watching the witness, phrasing the questions carefully and doggedly pursuing the answers. When the witness gives a half truth or is evasive, never let the witness go. Keep the pressure on but do so professionally and calmly. The witness will become uncomfortable. It is here where you need to put the witness at ease while keeping the pressure up. You need to make it easy for the witness to confide in you, to trust you and to make disclosures. Your first interview will not be the last and you need to start the confidence-building process. This is where the grand inquisitors perform at their best. It is a skill and an art form.

Every lawyer has his or her own tricks of the trade for conducting witness interviews. There is no right or wrong style. You have to be comfortable with yourself and your tactics. If you try to copy someone else, you will invariably fail. Honest self-assessment is the only way to learn and the more interviews you conduct, the better you will get.

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