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Strategies for Witness Examination: Yours and Theirs

Thursday, October 17, 2024 | 12:00 pm – 1:00 pm

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Strategies for Witness Examination: Yours and Theirs

Thursday, October 17, 2024 | 12:00 pm – 1:00 pm

Program Instructor:

Claude E. Ducloux

*Director of LawPay Education,
Ethics and State Compliance,
LawPay*

Strategies for Witness Examination: Yours and Theirs

Thursday, October 17, 2024 | 12:00 pm – 1:00 pm

Agenda

12:00 pm – 12:05 pm	Welcome
12:05 pm – 12:15 pm	Determining Why and Whom you need as Witnesses • Knowing your elements of proof for the claim or defense • Explaining the witness’s role – demeanor and presentation • The importance of credibility: body language, certainty, and skill • Witness advisories for training
12:15 pm – 12:25 pm	Comprehension and Clarity • Understanding your own case theory • Planning your “story” – the elevator speeches • Making your questions comprehensible • Making the answers comprehensible
12:25 pm – 12:33 pm	Use of exhibits, objects, and space • Choreography and use of exhibits • Framing issues and witness preparation • Using the witness stand • Special skills for handling experts
12:33 pm – 12:43 pm	Trial Tactics to Improve your Credibility • Avoiding improper objections and arguments • Admitting your weak points and finding theirs • Reading the opposing witness’s body language • Listening skills: critical to success
12:43 pm – 12:48 pm	Being Aware of Different Learning Modes • Never forget your audience – different age groups learn differently • The danger of cross-examining a non-credible witness

CLE Credit:

NY: 1.0 Skills | NJ: 1.1 General | CA: 1.0 General | PA: 1.0 General



12:48 pm – 1:00 pm

Ethical Rules and Traps to Avoid

- Ethical considerations involving the presentation of evidence

CLE Credit:

NY: 1.0 Skills | NJ: 1.1 General | CA: 1.0 General | PA: 1.0 General

Strategies for Witness Examination: Yours and Theirs

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Notes on Faculty

Claude E. Ducloux is an Attorney licensed in Texas, Colorado and California who speaks regularly on Legal Ethics, Law Office Management, and Trial-Related topics. His career is heavily involved with bar service, and in 2011 won the State Bar of Texas' highest honor for lifetime achievement in CLE, the Gene Cavin Award. He is Board Certified in both Civil Trial Law and Civil Appellate Law by the Texas Board of Legal Specialization and served on the Texas Supreme Court Committee on Disciplinary Rules for 6 years from its creation January 1 2018, through Jan 1, 2024.

Strategies for Witness Examination

(Yours and Theirs)

Presenter – **Claude E. Ducloux**

Board Certified – Civil Trial Law and Civil Appellate Law, Texas
Board Legal Specialization

**National Director of Education and Ethics,
LawPay - Austin, Texas**

*Including material from presentations by John F.
Nichols, Sr., Jaine E. Fraser, and Charlie M. Wilson III*

New York City Bar Association

Webcast CLE October 17, 2024

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Claude E. Ducloux

Attorney at Law

- 46 year seasoned attorney
- Board certified in Civil Trial Law and Civil Appellate Law, Texas Board of Legal Specialization
- Former President, Austin Bar Association
- Recipient of the Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education



What we will cover

Preparing your own witnesses:

- Why do you need witnesses?
- What roles and holes do they fill in your case?
- Training demeanor and courtroom behavior/body language
- Comprehension

Cross-examination:

- Determining the weak points
- Eviscerating a liar in cross exam
- Reading body language
- Listening skills—critical to success

Why do we need witnesses?

- To establish elements of proof
- To identify documents, signatures, or custodianship
- To corroborate facts
- To rebut opposing party's testimony
- To provide expert guidance
- To impeach or assert bias
- To assert a privilege

Prior to using any witness, consider

How does this witness help you?

- Establishes a necessary element of proof?
- Proves up documents?
- Rebuts damaging testimony?
- Expert explanation of complex facts?

Also ask yourself if you will have time to prepare the witness.

Always have a good reason to use a witness!

Preparing the lay witness



Your first job:

- Listen to the witness' story intently and fully
- Listen to the witness' concerns
- Begin assessing credibility and discuss that concept with your witness

Preparing the lay witness



Your second job:

1. Explain the physical process of testifying
 - In deposition
 - In trial
 - The back-and-forth
 - “This is not a conversation”
2. Clarify the difference between direct and cross-exam

Preparing the lay witness

Your second job (continued):

3. Explain leading and non-leading questions
4. Point out differences in trial and deposition testimony
5. Explain objections
6. Discuss the limits of hearsay

Preparing the lay witness



Differences between parties and non-party lay witnesses:

1. Explain to all witnesses the elements of your case (or defense)
2. Explain what YOUR SIDE has to prove
3. Explain why that particular witness is needed, *i.e.*,
“You know [how much time it took][what it cost] and that’s important.”
4. Explain how much time it should take and if they are to be present for the whole trial

Preparing the lay witness

Exhibits

1. Discuss exhibits you intend to introduce
 - a) Show witness actual exhibit and have them review it for particular areas of importance
 - b) Walk through (explain) the exact “predicate” you will have to develop with witness for the exhibit

Preparing the lay witness



Exhibits (continued)

2. Discuss exhibits tendered to the witness by the adverse party
 - a) Explain what opposing counsel is trying to do
 - b) Explain proper response to new exhibit: what is this?
“I don’t know—I don’t believe I’ve ever seen it before.”

Witness advisory sheets



Typical witness advisory sheet (never overlook how important this is)

1. **ALWAYS** tell the truth. No stretching, bending, or contorting facts.
2. **LISTEN FULLY** to the question asked. Do not talk over the opposing counsel.
3. **PAUSE** and take a moment to re-play the question in your head. YOU control the tempo, not the opposing counsel.

Witness advisory sheets



Typical witness advisory sheet (continued)

4. **ANSWER ONLY THE SPECIFIC QUESTION ASKED.** For example, just like I asked you today "Do you know what time it is?" The answer is EITHER "yes" or "no." You do not need to offer "5:45 p.m.," nor do you need to add that your spouse gave you your watch on your fifth anniversary. Only answer the specific question asked.
5. **BE BRIEF.** Answer only the specific question asked as briefly as possible. Generally, the answer is EITHER "yes" or "no." Do not volunteer information.

Witness advisory sheets



Typical witness advisory sheet (continued)

6. **NEVER GUESS.** If you don't understand the question, don't answer it. Tell the questioner that you don't understand the question and courteously ask them to rephrase it for you. Do not GUESS what the question means.
7. **NO MEASUREMENTS.** Don't be led into speculating on anything subject to scientific certainty, i.e., speed, distance, times, dates, locations, or sequences.

Witness advisory sheets



Typical witness advisory sheet (continued)

8. **ANSWERING I DON'T KNOW.** If you do not know something, the ANSWER is “I do not know.”
9. **NO ASSUMPTIONS ON DOCUMENTS.** Remember our discussion about exhibits, both ours and theirs.
10. **I DON'T RECALL.** If you do not recall something, it's OK to say you honestly do not recall. Just recognize that it appears insincere to invoke “I don't recall” 10 times in a row unless that is the absolute truth. Do not use this as a standard answer.

Witness advisory sheets



Typical witness advisory sheet (continued)

11. **USE WORDS.** Answer with words. No nodding or shaking your head.
No “uh-huh.”
12. **ABSOLUTELY NO CUTE ANSWERS.** Your demeanor needs to be serious for the ENTIRE deposition. No cute jokes—don’t “lighten the atmosphere” with humor. The other side is attacking your case. There is simply nothing humorous about what they are doing and how they are doing it.

Witness advisory sheets



Typical witness advisory sheet (continued)

13. **BE CONSISTENT.** If you are asked the SAME question (or similar question) more than once, stick to your guns and BE CONSISTENT if the answer is truthful.
14. **EXPLANATIONS.** Do not offer explanations unless you are specifically asked to offer explanations. Again, we will be able to unravel any “hot topics” that need to be addressed.

Witness advisory sheets



Typical witness advisory sheet (continued)

15. **NO ARGUING!** If opposing counsel is being argumentative (which we can assume they will be), that will look bad to the judge or jury. Just be the VICTIM in this event, which you are.
16. **WAIT UNTIL IT'S YOUR TURN.** When you are asked a question, don't turn it into your full explanation of your side of the story. This is a huge concept to embrace! You need to expect that opposing counsel will ask you questions that are intended to only reveal HALF-truths or PARTIAL stories.

Witness advisory sheets



Remember the prime rule:

Be brief, answer the question honestly, and then KNOW THAT WE WILL REVISIT IT, if necessary, to allow you to elaborate. In other words, we will have the ability to have you explain what you meant IF AND WHEN it needs any further explanation.

How to lose the confidence (and patience) of judges and juries

1. Ask too many repetitive questions
2. Use legalese with witnesses without explanation
3. Confuse the jurors, who generally can't ask questions (this may be changing)
4. Argue with witnesses over nonsense

Things juries most enjoy about examination of witnesses

1. Being able to connect the testimony to matters you mentioned in voir dire and opening statements (giving them the “roadmap”)
2. Watching the body language of witnesses
3. Watching the lying witness squirm on cross-examination
4. Watching a difficult witness have their “come-uppance”

Golden rules of witness examination

1. Be prepared
2. Be brief
3. Be professional
4. Be seated



Golden rules of preparing your own witness



1. Follow your trial story: plan every critical question and how to honestly answer for greatest effect
2. Remind witness what you will have already explained (as a foundation for the case) to the judge or jury by time this witness is expected to testify.
3. Explain to witness what “bricks” she is laying for the case (the elements of fact and proof her testimony fills)
4. Rehearse critical testimony for utmost clarity
5. How to handle cross-exam and what to expect

Preparing your expert



1. Review with your expert the designation for this case, per your state's expert witness rule. Make sure you fully plan questions that provide a basis for "expert" designation.
2. Make the expert understandable—what would a "person on the street" need to understand? Work with the witness to answer crucial questions in "plain language," (*not provisional, incomplete or confusing terms*).
3. Make the testimony relevant and reliable:
 - Getting from A to B—discuss the "flow" of testimony.
 - Has your theory been tested?
 - Is your opinion reliant on your subjective interpretation?
 - Is your theory generally accepted? Error rate?

Preparing your expert



4. Is the expert's opinion tied to the facts of YOUR case?
5. Will it aid the court/jury in resolving a factual dispute?
6. Guidelines for finding a qualified expert:
 - Expert is not disqualified simply because not “the best” qualified.
 - Differences in expertise is not about admissibility of your expert's opinion, but weight to be given to that opinion by the trier of fact.
 - No particular lack of license, degree, or certification. In many professions, practical experience suffices.
 - Reverse is true: academics only (no practical experience) is not bar to admissibility.

To object: secure a pretrial ruling from the court



As the gatekeeper, the court must determine whether the expert's testimony is admissible at trial. The party calling the expert bears the burden of proof that:

- a) The expert is qualified in the field in question;
- b) The expert's testimony must be sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute, and therefore, relevant;
- c) The expert's testimony must be based on scientific knowledge, and therefore, reliable;
- d) If an objection is asserted, the expert's testimony outweighs the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay or cumulative evidence

IMPORTANT CAUTIONS to ALL your Witnesses



You're not expected to know every term or fact.

STAY IN YOUR LANE.

Do not be goaded into adding things you don't know.

STAY IN YOUR LANE

Do not guess at anything, or agree to opposing counsel's guess

STAY IN YOUR LANE

Stick to Opinion and your Story

"I don't know" is not a bad answer to a question from left field.



Planning Cross Examination

**Secret: only movie stars with scripts can “wing-it”
You need to plan!**

PLANNING CROSS- EXAMINATION

Remember your goal- to knock down their case, and help your case

“The progress of science has been largely a matter of discovering what questions should be asked.”

- Dr. Steven Weinberg, Theoretical Physicist
& Nobel Laureate

“The best cross-examinations result from discovering what questions should be asked.”

- Claude Ducloux, 6th Grade Spelling
Champion, St. Bernadette's School

Dos and don'ts of witness examination



1. DO sell yourself on a point before cross-examining a witness
2. DO cross-examine the witness for the right reasons
3. DO cut out the small talk and get down to business with the witness
4. DO forget about stereotypes
5. DON'T give up—if you get knocked down, get back up
6. DO show your anger or disgust, when appropriate
7. DO listen to the answer and be learning

Dos and don'ts of witness examination (cont'd)



8. DO be in charge of your cross-examination
9. DO get, be, or feel comfortable in examination
10. DO stay hot on a point until the point is established
11. DO be positive—expect some bad answers
12. DON'T make the witness examination look and feel like you should be replaced
13. DO put your whole effort into it
14. DO leave your disgust with the witness in the courtroom

The biggest “don’t” of witness examination



Don't cross-examine a witness who hasn't
“laid a glove” on your case
(This includes “know-nothings” and “crazies”)

**BOTH THE JUDGE AND JURY WILL
APPRECIATE YOUR WISDOM**

Selling yourself with the judge/jury on examination of witnesses

1. You are a salesperson—look professional (A study shows: younger jurors choose the lawyer they like early in the case).
2. Always be selling your story. Set up the story in voir dire/opening statement (what's your “elevator speech” – describe case in 60 seconds).
3. In direct or cross-examination, you are a **SELLER** of **A PRODUCT** to **A BUYER**, the jury.

Fundamental concepts of selling your case to the jury on witness examination



1. Decide on a story model
2. Build on the story with the jury through direct or cross-examination
3. Follow or track your opening statement
4. A credible witness is a believable witness
5. A credible lawyer is a believable lawyer
6. Anchor to your theme or story model on direct or cross-examination

Remember: the judge has wide latitude

Fed. Rule Evidence 611 gives judges “reasonable control” so as to:

1. Make it effective for finding the truth;
2. Avoid wasting time; and
3. Protect witnesses from harassment or embarrassment.

[Generally same in state court: i.e., Tx Rule Evid. 611]

Thus, keep judge informed why exam is important.

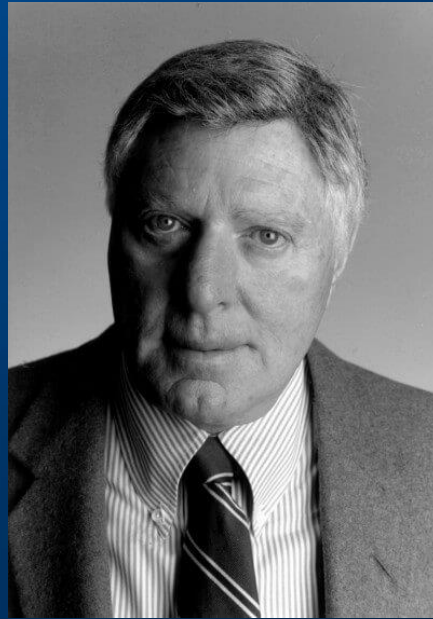


Telling your story through their difficult witness



- Juries generally dislike difficult witnesses and enjoy a good “gotcha”
- Talk in as much narrative as the judge will let you (“What really happened was this...right?”)
- Set at least a couple of traps when the witness disagrees (Facts you can prove)

...THE JURY IS YOURS FROM THEN ON...



**Joe Jamail's (1925-2015)
Famous
“TRAP” Cross-Examination
Technique**

Making your case with the opposing party witness



Using Joe Jamail's "TRAP"- using hypotheticals to lay the trap.

T – “Take” the witness at their word- referring to the allegation of negligence in the case - “you’d never do that, would you?”

R – Have them **“Renounce”** the activity or conduct they denied doing

A – Have them agree that the person who does that [conduct] should **“Accept”** responsibility for it

P – “Punishment” is appropriate if evidence shows it happened.

A word about body language

1. Everyone communicates with non-verbal signals
2. Jurors perceive communication through sight (85%), hearing (8%), and other senses (7%)
3. Your character equals believability
4. Analyze: is the witness sending “buy” or “lie” signals to the jury?

“Buy signals” sent by witnesses



1. Open palms
2. Relaxed body posture
3. Happy face
4. Synchronized body movements
5. Expression of positive feelings
6. Talking directly to the jury

“Lie” signals sent by witnesses*

1. Changes in mood, stance, posture, and facial expression
2. Fingers over mouth shows intuitive thinking about answer to question
3. Overstated feelings can be concealment of the truth
4. Freudian slips with immediate editing
5. Decrease in gestures

**Remember these are perceptions by typical audiences: they may be misleading... but make your witnesses aware of the danger!*

“Lie” signals sent by witnesses (cont’d)



6. Decrease in words used
7. Incongruent body signals
8. Decrease in eye contact—talking away from the jury
9. Autonomic (lack of control) signals such as sweating, breathing, dry mouth, etc.

Lesson: advise your witnesses how conduct may falsely influence perceptions!

Believability scale of witnesses – most believable to least believable*

(*Caveat: these descriptions are not science-based- ie., a truthful witness could suffer from these affectations. But many are judged by these acts)

- Verbalization of clear testimony delivered calmly- *Most credible*
- Coordinated hand movement
- Appropriate face movement
- Uncoordinated face hand or body movement *Curious*
- Inappropriate emotion - *Suspicious*
- Autonomic signals (sweating, panting, being flushed) – *Least credible*

Cross Exam: Setting up the adverse witness



Ask versions of questions that require easy answers:

- “The question I asked was...”
- “Do you think you answered that question?”
- “So your answer is _____”
- “Do you know the difference between fact and opinion?”
- “Can you give us factual answers to these short questions?”

Lead...lead...lead...

Attacking the expert witness



The U.S. Supreme Court (in *Daubert*, 509 US at 591) listed four non-exclusive factors for determination or reliability of an expert's testimony:

1. Is the methodology tested or susceptible to testing?
2. Is the methodology peer reviewed?
3. What is the known or potential error rate?
4. Is it accepted by the scientific community?
5. Determine what experts' weaknesses are!

What if Your Client Lies?



Are your duties different in Deposition v. Trial?

- TX DR 3.03 (a)(1) – can't offer false evidence before “tribunal” (similar rules around U.S – e.g. AZ Rule 3.3; Mo Rule 4-3.3; Co. Rule 3.3; Calif Rule 5-200; Ohio 3.3);
- TX DR 3.03 (b) must disclose if efforts to have client correct the record are unsuccessful.

But that's just court stuff, right? What about depositions?

- TX DR 4.01 (a) – (similar rules in AZ 4.1, MO, CO, Ohio, IN, etc) requires disclosure lawyer can't knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid aiding and abetting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6. ← *not much wiggle room in 1.6. Likely you'll have to disclose it if it involves prospective damages.*

Avoiding disclosure of confidences



Lawyers love to tell war stories. Contain yourself around trial time:

1. Avoid courthouse gossip
2. Avoid inadvertent disclosures
3. Review what you send via mail or email
4. Don't rely on friendship to save you if you've disclosed important facts

Dealing with unrepresented persons



Occasionally, you will deal with *pro se* parties, or simply unrepresented witnesses:

1. Don't threaten—it always gets back to the judge
2. Don't pretend you're neutral—you're not
3. Keep notes and records of all contacts and conversations—best protection
4. Don't become the victim—always reply to contact appropriately

Avoiding improper arguments



Know what opening statement is for:

- It **is not** to show evidence.
- It **is** to give the jury your “trial theme” and a roadmap of what to look for and what you expect they will find. Also, it’s your best chance to address negatives of your own case including difficult witnesses (“We often don’t get to choose who ends up as a fact witness”).

Avoiding improper arguments

Know what constitutes error in closing statements:

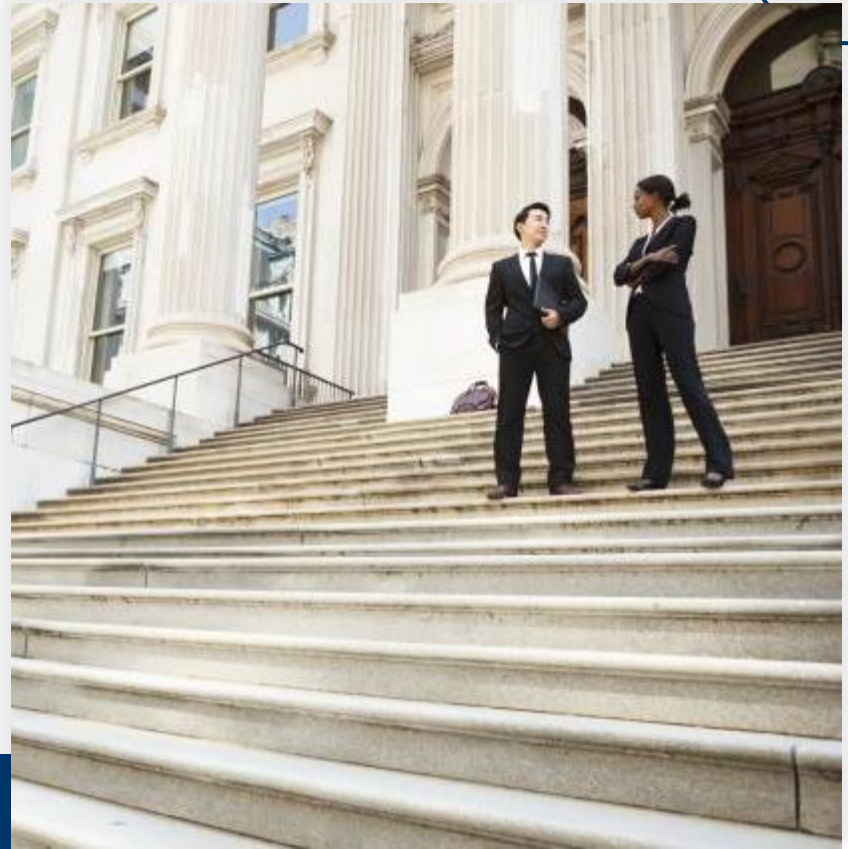
- Although you may argue the bias or interest of the witness, or the reasonableness or unreasonableness of testimony, you may not “vouch” for your own witness: “I KNOW HE IS TELLING THE TRUTH!”
- Never try to appeal to prejudice or personal criticism of race, religion, national origin, or occupation.

Finally, know how to object and always secure a ruling!

Honesty: the best policy—and your duty

Your ethical role requires complete candor in:

- Communications with opposing counsel
- Communications with clients
- Communications with the court



The client triumvirate

AKA “CLAUDE’S 3 RULES”

1. Remember to treat that client like you are going to live next door to them.
2. Always tell the truth—there is far less paperwork when you do.
3. Never whine or complain (at least not publicly). Private practice—never sue for a fee unless you must. Go make new money.



Improve and defend your profession

Support the fair administration of
justice

Our Legal Profession will be:

- Courteous – if you are
- Strong – if you are active in it
- A source of service – if you serve
- A source of resolution – if you share your talents



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Thank You!

Claude E. Ducloux

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PREPARATION OF THE LAY WITNESSⁱ

A. CRITICAL CONCEPTS FOR YOU, THE ATTORNEY.

1. Listen to and learn client's story and concerns;
2. Discuss the concept of credibility;

B. GENERAL CONSIDERATIONS.

1. Explain the process -
 - a. explain the physical process of testifying;
 - (1.) In Deposition;
 - (2.) In trial;
 - b. the back and forth between witness and attorney;
 - c. Testimony is not a conversation;
2. Clarify the difference between direct and cross;
3. Explain leading and nonleading questions;
4. Point out difference in trial and deposition testimony;
5. Explain objections;
6. Discuss the limits of hearsay;

C. EXHIBITS.

1. Discuss those Exhibits you intend to introduce.
 - (a.) Show witness actual exhibit and have them review it for particular areas of importance.
 - (b.) Walk through the exact predicate you will have to develop with witness for the exhibit.
2. Expectation of Exhibits tendered to our witness by the adverse party.
 - (a.) Explain what opposing counsel is trying to do.
 - (b.) Explain proper response for strange exhibit: What is this? "I don't know - I don't believe I've never seen it before."

SAMPLE WITNESS PREPARATION SHEET

1. ALWAYS tell the truth. No stretching, bending, or contorting facts.
2. LISTEN FULLY to the question asked - do not talk over Opposing counsel.
3. PAUSE and take a moment to re-play the question in your head. YOU control the tempo, not Opposing counsel.
4. ANSWER ONLY THE SPECIFIC QUESTION ASKED. For example, just like I asked you today "do you know what time it is?" - the answer is EITHER 'yes' or 'no' - you do not need to offer "5:45 p.m." . . . nor do you need to add that your spouse gave you your watch on your fifth anniversary . . . Only answer the specific question asked.
5. ANSWER ONLY THE SPECIFIC QUESTION ASKED AS BRIEFLY AS POSSIBLE, generally the answer is EITHER 'yes' or 'no.' DO NOT VOLUNTEER INFORMATION.
6. If you don't understand the question, don't answer it. Tell the questioner that you don't understand the question and courteously ask them to rephrase it for you. NO GUESSING what the question means.
7. NEVER GUESS or BE GOADED INTO AGREEING ON A GUESS. Don't guess or speculate on anything, including sequences, times, dates, speeds, distance, or locations etc.
8. IF YOU DON'T KNOW: That is your Answer: "I do not know." (no other colloquial phrases, like "I GOT NO EARTHLY IDEA" or "I ain't got the foggiest!" -you will be more credible with respectful answers)
9. Remember to review anticipated Exhibits - both ours and the theirs.
10. IF YOU DON'T RECALL something . . . it is O.K. to say you honestly do not recall something. Just recognize that it appears insincere to invoke "I don't recall" 10 times in a row - unless that is the absolute truth. Do not use this as a standard answer.

11. ANSWER WITH WORDS. No nodding or shaking your head. No "Uh Huh" or "Un Uh."

12. ABSOLUTELY NO CUTE ANSWERS. Your demeanor needs to set a very serious tone the ENTIRE deposition. No cute jokes to try to break the seriousness of the questioning -- please do not try to lighten the atmosphere with humor. The other side is contending your claims in this case are without merit. There is simply nothing humorous about what they are doing and how they are doing it.

13. If you are asked the SAME question (or similar question) more than once . . . stick to your guns and BE CONSISTENT if the answer is truthful. STICK TO YOUR ANSWER.

14. DO NOT TRY TO EXPLAIN ANYTHING UNLESS YOU ARE ASKED TO EXPLAIN. Again, we will be able to unravel any "hot topics" that need to be addressed.

15. NO ARGUING! If Opposing counsel is being argumentative (which we can assume they will be), that will look bad to the judge or jury. Just be the VICTIM in this event, which you are.

16. When you are asked a question, THAT IS NOT YOUR TIME TO TELL YOUR SIDE OF THE STORY. This is a huge concept to embrace!

BEING PATIENT: You need to expect that Opposing counsel will ask you questions that are intended to only reveal HALF-truths or PARTIAL (their side) stories.

Be prepared to answer yes or no . . . and then KNOW THAT WE WILL REVISIT IT TO ALLOW YOU TO ELABORATE . . . IF WE NEED TO.

In other words, we will have the ability to have you explain what you meant by it IF - - AND WHEN - - it needs any further explanation.

ⁱ Compiled (with grateful appreciation) from an article by Attorney Charles M. Wilson, III, Dallas Texas, from his paper, "*Witness Preparation*" presented at Advanced Trial Strategies, New Orleans 2019,

PREPARATION OF THE LAY WITNESSⁱ

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2. LISTEN FULLY to the question asked - do not talk over Opposing counsel.
3. PAUSE and take a moment to re-play the question in your head. YOU control the tempo, not Opposing counsel.
4. ANSWER ONLY THE SPECIFIC QUESTION ASKED. For example, just like I asked you today "do you know what time it is?" - the answer is EITHER 'yes' or 'no' - you do not need to offer "5:45 p.m." . . . nor do you need to add that your spouse gave you your watch on your fifth anniversary . . . Only answer the specific question asked.
5. ANSWER ONLY THE SPECIFIC QUESTION ASKED AS BRIEFLY AS POSSIBLE, generally the answer is EITHER 'yes' or 'no.' DO NOT VOLUNTEER INFORMATION.
6. If you don't understand the question, don't answer it. Tell the questioner that you don't understand the question and courteously ask them to rephrase it for you. NO GUESSING what the question means.
7. NEVER GUESS or BE GOADED INTO AGREEING ON A GUESS. Don't guess or speculate on anything, including sequences, times, dates, speeds, distance, or locations etc.
8. IF YOU DON'T KNOW: That is your Answer: "I do not know." (no other colloquial phrases, like "I GOT NO EARTHLY IDEA" or "I ain't got the foggiest!" -you will be more credible with respectful answers)
9. Remember to review anticipated Exhibits - both ours and the theirs.
10. IF YOU DON'T RECALL something . . . it is O.K. to say you honestly do not recall something. Just recognize that it appears insincere to invoke "I don't recall" 10 times in a row - unless that is the absolute truth. Do not use this as a standard answer.

11. ANSWER WITH WORDS. No nodding or shaking your head. No "Uh Huh" or "Un Uh."

12. ABSOLUTELY NO CUTE ANSWERS. Your demeanor needs to set a very serious tone the ENTIRE deposition. No cute jokes to try to break the seriousness of the questioning -- please do not try to lighten the atmosphere with humor. The other side is contending your claims in this case are without merit. There is simply nothing humorous about what they are doing and how they are doing it.

13. If you are asked the SAME question (or similar question) more than once . . . stick to your guns and BE CONSISTENT if the answer is truthful. STICK TO YOUR ANSWER.

14. DO NOT TRY TO EXPLAIN ANYTHING UNLESS YOU ARE ASKED TO EXPLAIN. Again, we will be able to unravel any "hot topics" that need to be addressed.

15. NO ARGUING! If Opposing counsel is being argumentative (which we can assume they will be), that will look bad to the judge or jury. Just be the VICTIM in this event, which you are.

16. When you are asked a question, THAT IS NOT YOUR TIME TO TELL YOUR SIDE OF THE STORY. This is a huge concept to embrace!

BEING PATIENT: You need to expect that Opposing counsel will ask you questions that are intended to only reveal HALF-truths or PARTIAL (their side) stories.

Be prepared to answer yes or no . . . and then KNOW THAT WE WILL REVISIT IT TO ALLOW YOU TO ELABORATE . . . IF WE NEED TO.

In other words, we will have the ability to have you explain what you meant by it IF - - AND WHEN - - it needs any further explanation.

ⁱ Compiled (with grateful appreciation) from an article by Attorney Charles M. Wilson, III, Dallas Texas, from his paper, *"Witness Preparation"* presented at Advanced Trial Strategies, New Orleans 2019,

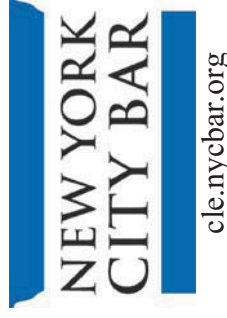


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	California	New Jersey	New York	Pennsylvania
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Evaluation Form	CA Activity Evaluation Form	NY evaluation form	NY evaluation form	NY evaluation form
CLE Certificate	NY CLE Certificate with CA Bar Number	NJ CLE certificate	NY CLE certificate	***CLE certificate not provided
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Email or Phone Number	888.800.3400	609.984.2111	212.428.2105 (CLE) 212.428.2700 (General)	717.231.3230

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** If you don't know your New Jersey Bar number you can call 609.984.2111 or go to <http://tiny.cc/NJBarNo>

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