

Don't Make These Mistakes When Preparing Your Witnesses

By Deborah Johnson



Is this familiar? You're worried about how your client will do at deposition. He strays off topic, rambles or rants. You know there are going to be problems if he gives away too much information to opposing counsel. You've coached and talked and told and explained, but to no avail.

The First Mistake

I see attorneys innocently make this mistake all the time. It's simple – having your client *know* what to do is only the first step. If you stop there, you'll never get the results you must. Your client has to be able to *do* what you tell them, consistently.

Train Their Brain

In order to be able to do something new – consistently – your brain needs repetition. If you do something once, your brain makes one neural connection. Do it again and again and again and your brain turns that narrow path into a highway. You don't have to “think” about tying your shoes; your brain instantly accesses that skill because you've done it so many times.

Your rambling client needs to turn what you've told him into actual behavior. You want him to build a highway in his brain leading to the new behavior of “short, clear answers.” To be successful, he needs to have quick, smooth, easy access to that highway. If he can't find the on-ramp, he will revert to the old behavior of rambling, with disastrous results.

The Take-away Game

I've developed several practices to help clients break old habits and learn a new one. Here's one of my favorites.

In this one, you're giving your client a visceral experience of how much rambling will cost him. In the real world, if he testifies poorly, he could lose his house, his reputation, his business, custody, etc. This practice helps him understand the costly connection between poor testimony and “losing.”

Get a pile of poker chips or quarters or something of value. Put them in front of your client. Tell him the goal is to keep his poker chips by answering briefly and concisely. In the beginning, start by drilling him on softball questions. For example, “Tell me about your last vacation.” Every time he rambles, take away a poker chip. Be tough. The least little stray into rambling will cost him.

When your clients starts to ramble, do *not* start talking or explaining. Simply take away the poker chip and immediately ask the exact same question. Keep going. His answers will become shorter and shorter and shorter. In my experience, clients wise up quickly. It doesn't take long before you ask, “Tell me about your last vacation,” and he responds with, “We went to Disneyland.” Period.

Now, go on to the next softball question, like “Tell me about your car.” Take away poker chips until he gets it short and concise. But do not stop! Two questions is not enough. Ask at least 10-15. Make them harder, more complicated. “What's wrong with our political system?” or “Why are you good at golf/cooking/your job?”

The Second Mistake

Now, you can move on to actual testimony. The secret is to make sure he embeds the correct behavior when the questions are tough and emotional. Be ruthless. If his answer is too long, take away a poker chip. Immediately go back and ask the *exact* same question. Repeat as many times as needed. It's so tempting to jump in and correct the answer. Do not make that mistake. Your client has to do it himself. His brain and body need to have the experience of hearing a question and then giving a short and concise answer.

The Third Mistake

This practice takes patience. Don't make the mistake of shortcutting this process of

drilling the skill. If you don't embed the new behavior, when your client is under stress – at deposition or in court – he will revert to his old behavior of rambling and ranting.

Does This Really Work?

You might be wondering if this seemingly silly technique really works with sophisticated or smart clients. It does! I was training a very high-IQ entrepreneur for a high-stakes depo. I knew he loved pistachios. We started practicing and the instant he talked too much, I reached over and took away a couple of pistachios. The look of shock on his face was hilarious. It only took him a couple more take-aways before he was cutting down answers to crisp, short sentences – and guarding his pistachios.

More Practices

In next month's article, I will give you another secret to preparing witnesses (one that no one else will tell you).

Deborah has consulted on a variety of cases, including business disputes, contracts, SEC fraud, mortgage fraud, mail fraud, civic rights, workers' compensation, medical malpractice, personal injury, employment, rape, sexual assault, manslaughter and divorce. One recent client won a multimillion-dollar divorce settlement and another won a \$5.3 million award in a civil rights case. She is a six-time Emmy Award-winning writer and producer. She has a master's degree in cognitive psychology and television production from the University of Washington. Her one-on-one approach teaches skills to help witnesses and professionals become confident communicators in the courtroom, boardroom or in front of the media.

