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# Tip the Scales

A newsletter brought to you by TrialTech, Inc./305-371-5991

## A New Addition to the *TrialTech* Team!

*TrialTech* is pleased to announce the addition of Ms. Cintia Calevoso to the company. Ms. Calevoso is the latest addition to the litigation consulting team, where she has taken on the position of Senior Research Associate. Cintia earned her Juris Doctor from Nova Southeastern University and was recently admitted to the Florida Bar. The addition of Cintia represents continued development and advancement for *TrialTech*. As our company continues to expand, we look forward to providing our clients with top quality litigation consulting services.

## Reaping the Benefits from Adequate Witness Preparation

Cintia Calevoso, Esquire  
Senior Research Associate, *TrialTech, Inc.*

During the last 20 years, *TrialTech, Inc.* has been employed on numerous occasions to prepare several important witnesses for upcoming depositions or trial testimony. During these preparations, recurring issues often arise with the witnesses *TrialTech* works with, that prove to all those involved that witness preparation cannot be solely comprised of a practice question and answer session. As some witnesses can anticipate the types of questions they will be asked and might think they have the knowledge that is needed to answer these questions most, if not all, witnesses will not understand how their testimony fits into the “big picture” of the case. This article serves to help attorneys better understand how to prepare witnesses for deposition and trial testimony, and shall serve to address difficult issues that often arise during the witness preparation process.

As issues arise during witness preparation, attorneys must understand that, unlike themselves, witnesses do not live in a world of litigation. For this reason, it is not surprising that when a witness is questioned, the witness’s natural decision-making abilities and logical thought processes take a back seat to impulsive responses and emotional reactions. The truth of the matter is that it is not easy for a witness to be questioned by a trained and skilled attorney. To counteract this difficulty, a witness should be thoroughly prepped before being put into that situation.

In this regard, it is imperative that in preparing a witness for an upcoming deposition or trial the witness must be made to understand what the purpose of the process is and how their questions and answers fit into the big picture. Likewise, a witness needs to

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be educated as to each side’s theory of the case. During one of our recent witness preparation sessions, it was not until the attorneys outlined the legal theories of the case, that the witnesses finally understood the possible implications of their testimony. It would appear then that once an attorney takes the time to break down the pertinent legal issues in a case, a witness can make logical sense of how their testimony “fits” into the overall design. Making witnesses aware of their role is instrumental to having a successful testimony experience.

Another challenge that often comes up is based upon a witness’s belief that if they are honest, competent, and intelligent then they will have no problem conveying their truth during their testimony. One couldn’t be more mistaken and it is important that a witness understands this point. Attorneys are masters at creating alternative truths which are brought about by subtle and powerful influences. These influences have a considerable impact on almost every witness. This is the very reason why witnesses must learn to fight for their truth against skilled and experienced lawyers.

Accordingly, there are several things witnesses must do in order to be successful at trial and depositions. The first thing that a witness has to do is **Listen, Listen, Listen!** The legal setting incorrectly assumes that humans are accurate speakers and listeners, and fails to take into account that humans are actually very poor listeners by their very nature. The human brain functions in such a way that as we are asked one particular question, we have a tendency to hear a completely different one. Fortunately, there are certain exercises that can be performed in order to reduce the number of listening errors. In other words, a witness can overcome listening shortcomings with training to develop a heightened level of speaking and listening that is atypical to everyday communication. For instance, if a witness does not fully understand a question or believes that by answering a question, an assumption built into the question will be deemed true, then the witness should be instructed to ask the lawyer for further clarification or to request that the lawyer *rephrase* the question. While this may seem obvious, this advice along with other recommendations can help a witness understand the difficulties in accurate listening and, in turn, produce more appropriate responses.

Another powerful tool that can be utilized by a witness is silence. In fact, silence is sometimes said to be the secret to being a good witness. Ordinarily, silence is equated with awkwardness when it comes to conversation. For this reason, attorneys, to their advantage, often use silence to intimidate witnesses during questioning. Therefore, becoming comfortable with silence during the process will help a witness battle the silence tactics and ensure that the witness answers effectively and accurately. Likewise, learning to manage the awkwardness of silence can allow a witness to turn the tables on his questioner, as attorneys are just as susceptible to the discomfort silence can cause, especially when a witness can competently answer the questioner in the face of the uneasy quiet.

Finally, while preparing one-on-one with witnesses is extremely beneficial, there are certain exercises that witnesses can do on their own often to gain a better understanding of the intricacies of testifying. At *TrialTech*, we often utilize video to record practice sessions. We strongly recommend that witnesses watch the videotapes of their mock depositions so that they are able to critique their own behavior and testimony. As is

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expected, people are their own best critics. Witnesses will be especially critical of themselves after they review a videotape of a mock question and answer session.

In sum, the preparation of a witness should be a collaborative effort between the witness, the attorney and the consultant. It is unrealistic to expect all witnesses to fully understand the complicated process involved in depositions and trials, however our goal is to help and teach the witness to listen very carefully to what is being asked and to understand that normal everyday behaviors may need to be modified in order to give successful testimony. Still, while people will probably never be truly comfortable with the process, these practical recommendations, when used properly, can assist witnesses in becoming more comfortable and successful with the process.