

Witness Prep: When is it Enough?

Typically, I get called in on cases where the attorney has a serious concern about how well their witness will do. They are doing or saying things that are clearly getting in the way of providing case-winning testimony, e.g., talk too much, interrupt, overly emotional, angry, scared, aren't clear, has problematic body language, or repeatedly says "um," "ah" or "like." Litigators ask me all the time, "How long will it take to prepare their witness?" The real question is – how long will it take to fix the problem?

THE SIMPLE ANSWER

The simple answer – when the witness can **do** what needs to be done. It's the **do** part that is critical. And it's the biggest mistake I see litigators make. They spend way too much time talking about what to do and not nearly enough time having the witness do it. In the end, it doesn't matter what your witness knows, it only matters what they can do, especially when the pressure is on.

BRAIN PATTERNS

I have a master's degree in cognitive psychology and I'm kind of a geek about how our brains operate. So, bear with me as I explain how to figure out when enough is enough. It's all about building new neuro pathways in your witness' brain. It's kind of like building a highway to a specific destination. Once you know how your witness' brain is operating, it's much easier and quicker for you to help them develop game-changing testimony.



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START-STOP APPROACH

Witness' problems come in two parts: (1) they need to **stop** or reduce a behavior and (2) they need to **start** a new behavior. When you come across problems with your witness, be aware they are probably deeply engrained in your witness' brain. It takes time and practice to stop old patterns. And it takes time and practice to embed new ones.

This approach works for a wide range of issues. You might need your witness to stop rambling and instead start giving clear, concise answers. You might need your witness to stop blaming everyone else and start accepting responsibility. You might need your witness to moderate their emotions.

THE INTERRUPTER

For the purposes of this article I will use a fairly simple example. Let's say your witness doesn't listen well and interrupts. The habit is so deeply embedded in their brain that they do it automatically. Breaking down this old behavior and replacing it takes diligence.

Think about what it would take for you to suddenly tie your shoes in a whole new way. First, you have to **stop** tying them the old way and then you have to **start** tying them a new way. It would certainly take more than a couple of tries to be able to do this automatically. The same is true of your witness.

OLD HABIT/NEW HABIT

Step one is stop the old habit. I have a great shortcut. In neuropsychology it's called "pattern interrupt." It involves ringing a bell to quickly stop

bad habits. With our interrupting witness, the instant they interrupt, I ring the bell forcing them to stop. I work in short bursts, a few questions at a time so they get a visceral feel for how to stop themselves. The witness is literally building a new neuro pathway in their brain for do-not-interrupt. It takes practice, practice, practice, so they will not go back to the well-traveled do-not-listen-and-then-interrupt neuro pathway.

Only when they stop the old habit can they build a new one – listen, pause and then answer. Again, they are building a new neuro pathway.

30-MINUTE TEST

As the old behavior begins to fade and the new behavior takes its place how do you know when it's good enough? Will it hold up in deposition or trial? That's when I run a 30-minute test. Can the witness go a full 30 minutes of questioning, flawlessly? If the witness can't listen and answer simple pedestrian questions without interrupting for 30 minutes, they absolutely can't do hour-upon-hour of deposition or cross examination in the courtroom.

Rinse and repeat until they can **do** it consistently. That new neuro pathway has to be built and maintained.

CONCLUSION

With witness preparation it's not about what they **know**, it is about what they can **do**. It's about stopping counterproductive behaviors and then starting new behaviors that will help your witness provide the best possible testimony. Don't stop your preparation until your witness has proven to you they can do what you need them to, over an extended period of time.