

Top 10 Coaching Tips for Mock Trial Witnesses

1. Be true to the **Whole Truth**. You must believe what you are saying. There are **bad facts that are unavoidable** in every case: give 'em up rather than sound defensive or argumentative. Once upon a time there was a legal doctrine named "*Falsus in uno, falsus in omnes*": "False in one, false in all." It used to be a jury instruction, but is no more. The concept, however, is useful to keep in mind. Remember: "**Conceal a flaw, and the world will imagine the worst.**" (Martial, c. 100 A.D.)
2. Prepare, prepare, prepare! And it is not enough to simply memorize the witness statement. You must prepare properly!
 - a. Even though it doesn't feel like it, the witness **is ultimately in control if s/he is properly prepared**. The most powerful people in the world fail as witnesses if they don't prepare properly. It is natural to feel uncomfortable with the question/answer format: **feeling disconcerted and out-of-control is normal! But THE WITNESS HAS ABSOLUTE CONTROL of her/his ANSWERS. No one but the witness can control either the answers or the attitude!** So take and maintain control of what is yours, including the pace! Attain this through **preparation & practice. Practice does not make perfect. Perfect practice makes perfect.**
 - b. Prepare both the facts and their characterization.
 - i. Mock trial is a special environment: the witness statements are loaded with more than just facts, they also are loaded with characterizations that operate to undercut the witnesses' credibility. This gives the cross examiners lots of ammunition.
 - ii. So **be sure of nuances, fine distinctions, and weak and strong inferences, and be able to articulate them EXACTLY**. Be so well prepared that there are no surprises, and that you have thought things through to such an extent that **THE TRUTH IS YOUR SHIELD! Know the exact boundaries of what you are going to give up and what you are going to defend!** (For example, saying that "Everyone liked him except me" does not necessarily mean that "I don't like him." Think about it.)

3. Good testimony starts with listening to the question. **LISTEN, LISTEN, LISTEN!!!** Understand the question exactly and literally. Note that listening skills cannot be developed only for the courtroom. Either you've developed the skills outside the courtroom or you don't have them. Most people are much more intent on being heard than in listening.
4. Answer the question **completely** and **completely balanced** in as **few words as possible**, and **STOP!**
 - a. For direct: prepare a script, know it well enough to tick off each point easily (**do NOT learn the script by heart**), then destroy the script and follow the flow in court. Otherwise you will not be able to listen effectively, nor have the flexibility to respond if others' evidence doesn't come in as you expect it to. The examination will take on a life of its own. Go with it. Depend on counsel to keep you on track. No matter how well one rehearses, direct **NEVER** goes as planned.
 - b. On cross: The typical recommended process for answering during cross is Listen, Pause for possible objections, and Answer the question. Note that this is an attorney-centric directive: i.e., the pause is for the attorney to jump up with an objection, and is not primarily a benefit to the witness.
 - i. Remember: the essential use of the pause is to sort out BOTH **the whole truth** and **its presentation**, and NOT merely to wait for a possible objection.

ii. Talking ≠ Control!

Effective PAUSING, silence, is often more effective.

Talking too much and too fast is normally a sign that the witness may be veering out-of-control. A pause, however, shows confidence, increases the audience's tension and anticipation, and emphasizes what the witness is about to say. Use pauses effectively.

- iii. This does not mean that the witness should never pause and wait for an objection. The most effective way to do that, however, is to **know the possible objections, and pause and wait after bad questions** for the proper objection. This is more effective than waiting after each and every question as it creates a more natural flow. The most effective witnesses know the rules of evidence as well as the attorneys do.
- c. Anticipate the next question, (that's normally a good thing), but DO NOT extend your answer to talk about it!
- d. **The characterization of the whole truth is a matter of presentation.** Determine in advance the characterization of the witness and the facts **that will be most credible**,

taking into account the nature of the character the witness is playing. Then, craft the language of the answers to suit both the whole truth and the character.

- e. On cross, make the attorney ask precise and exact questions. A high percentage of your answers on cross should be: “yes,” “no,” “I don’t know,” “I don’t remember,” “I don’t think I understand your question...”
5. Don’t argue with counsel. Beware the dueling monologues! DO NOT respond to provocation. For the most part, don’t use any poor-sounding tones of voice, such as **“You stupid idiot...”** **Don’t try to score TOO MUCH on cross: let counsel handle most of that on re-direct. Keep your answers short and to the point. (But, if the attorney gives you a shot by asking an open-ended question, take it.)**
6. Make sure that as a result of your testimony there simply cannot be any misinterpretations or misimpressions.
7. Find your own way to **balance the requirements of numbers 4 to 6**, above.
 - a. Be prepared for character assassination by the cross examining attorney’s use of innuendo and tone of voice (**“You stupid idiot”** may figure prominently), displays of anger, etc.—and don’t fall for it, don’t get defensive. Defensiveness can sound like argument, whining, evasiveness or lying.
 - b. **Treat counsel for both sides identically. Neither counsel is your friend, neither is your enemy.** You are under oath, they aren’t. Both will pose questions that require clarification.
 - c. Remember especially to treat the cross examining attorney **as if s/he were your very favorite sister’s genius child. You would never use the “you stupid idiot” tone of voice because, after all, s/he is a genius and is a child. Be kind. But you also would not let the child leave with any possible misunderstanding because, being a genius, the child just may do harm to him/herself as a result of a misunderstanding.** A careless discussion about baking soda could result in blowing up the kitchen. **Be firm, but have patience.**
8. **Speed detracts from articulation. The more important the point, the more difficult the point, the more deliberate the witness (and direct examining attorney) need to be.** As a result, there will be natural changes to the pace of your testimony. Slow down when you sense a need to be careful, or for emphasis. Same thing for volume/projection: get a little louder. The temptation is to speed up in order to get it all said. Do Not Succumb!

9. **Don't get "rolled" by opposing counsel:** rushed into a string of quick answers. Adrenalin has a tendency to accelerate the pace of answers. If the cross-examining attorney interrupts your answer with another question, even slightly, **DO NOT GET ROLLED, but DO NOT talk over the attorney. OWN THE PACE,** but own it tactfully.
- a. When you are interrupted by counsel while answering, let counsel finish the new question, then ask, sincerely, if you may finish your answer to the previous question. If the question was complex, or if you can't remember where you were in your answer, start the answer from the beginning, or ask for the previous question to be repeated.
 - b. If you aren't permitted by the judge to complete your answer to the prior question, then ask the attorney to re-state the new question.
10. **Key Words, Phrases, Figures and Techniques** to consider using in testimony
- a. **"Not exactly."**
 - i. When counsel asks a question that has an assumption buried in it that is not fair, consider using "Not exactly" to put the onus on that counsel to fix the question, without arguing it with him/her. If it happens on cross and counsel does not fix the question, then you have given the attorney the opportunity and your subsequent disagreement will appear more reasonable. In any event, the words "not exactly" signal the direct attorney to come back to that point on re-direct.
 - ii. If the question is very bad indeed and clearly unfair, as in "Mr. Witness, have you stopped beating your wife?" then you may answer with something like, "I just can't answer the question the way you asked it." But it has to be a very bad question to go that far. If it is not in response to a very bad question it may well sound evasive.
 - iii. Be alert for opportunities after you answer "Not exactly," or "I just can't answer the question the way you asked it." Opposing counsel may well goof, and ask "What's the matter with my question?" or "Why not?" Be prepared to blast though any open door or any open-ended question on cross.
 - b. **"Inference," "reasonable inference," or "the most reasonable inference available given these facts..."**
 - i. Speculation is of course forbidden.
 - ii. Opinion testimony is allowed only in certain circumstances.
 - iii. Still, at times a witness can testify to what they think or thought, for example a present sense impression. If the present sense impression is not in fact a smoking gun, then labeling it a reasonable inference may get it in while getting the witness credit for a balanced, thoughtful answer.
 - c. Most people new to speaking in public prepare presentations as an essay, and this results in text that sounds like it is being read, and is forced and unnatural. Learn how

to prepare testimony by writing a text that will work when spoken—prepare your direct testimony in speaking phrases complete with breaths/line breaks at all the appropriate places. This helps memory. Then throw it away and testify cold. This results in a more natural flow.

- d. If the cross-examining attorney makes the mistake of asking an open-ended question, run with it. Give him, the Court, and the jury the full benefit of a complete repetition of your direct testimony, to the extent it is responsive to the question.

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