Preparing a Witness to Testify at Trial

Attorneys should share certain basic principles on testifying with their prospective witnesses, which apply regardless of the subject matter of the testimony. By arming a witness with an understanding of the various aspects of testifying, counsel can help ensure the witness presents testimony clearly and accurately, and minimize the potential of a savvy cross-examiner taking advantage of the witness's lack of preparation or confidence.

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Preparing a witness to testify is a critical aspect of getting a case ready for trial. Whether the case is being decided by a judge or jury, the witness has an essential role in presenting the key facts that may determine the trial's outcome. Therefore, counsel must not underestimate the importance of extensive and thorough witness preparation. A witness who is prepared to testify will be more likely to remain calm and convey information effectively while on the witness stand, and will be better able to handle unexpected situations that might arise.

Although it is impossible to plan for every scenario that might occur while a witness is testifying, an attorney can take certain

steps to equip the witness to appropriately present information that supports the case. In particular, the attorney should:

- Obtain preliminary information about the witness and gather relevant documents.
- Explain the direct examination, cross-examination, and redirect examination stages to the witness and provide strategies to help the witness navigate each of these stages.
- Highlight best practices for effective testimony to the witness.
- Consider additional issues that apply to expert witnesses.
- Address logistical and other practical considerations relevant to the testifying process.

Search Preparing for Trial in Federal Court for more on the issues counsel should consider and tasks counsel should perform when preparing for a civil trial in federal court.

Search Depositions: Preparing to Defend a Deposition for information on how to prepare a witness for a deposition.

PRELIMINARY CONSIDERATIONS

After identifying a witness who might testify, the attorney should:

- Have an initial meeting with the prospective witness.
- Gather any documents that may illustrate the different points about which the witness can testify.

INITIAL MEETING

During the first meeting with a prospective witness, the attorney should:

- Build a rapport with the witness.
- Gauge the witness's level of comfort with testifying.
- Learn what information the witness has and determine what topics the witness can cover based on the witness's personal knowledge, if the witness is a lay witness.

Sometimes, a lay witness offers information as if personally aware of the matter, only for the attorney to later discover that the witness is relaying information learned from others. It is important for the attorney to make sure the lay witness will discuss only topics of which the witness has personal knowledge to ensure that:

- The witness's testimony is admissible under Federal Rule of Evidence (FRE) 602. For expert testimony, to which FRE 602 does not apply, the attorney must ensure the witness meets the requirements of FRE 703 (see below *Expert Witnesses*).
- The witness does not guess at information while testifying and can withstand a vigorous cross-examination.

DOCUMENTS FOR POTENTIAL EXHIBITS

Once the attorney has determined what topics the witness can testify about based on personal knowledge, the attorney should gather any documents the witness has that are relevant to the subject matter of the testimony. It is important to gather and identify key documents because they can:

- Corroborate the witness's testimony.
- Help the witness remember the testimony.
- Keep the judge and jury engaged.

If the documents are in someone else's possession, the attorney should seek to obtain the records through a subpoena (if a third party possesses the documents) or through document requests (if a party to the litigation possesses the documents and they have not yet been produced during discovery).

Search Document Requests and Subpoenas in Federal Court Toolkit for a collection of resources to assist counsel with drafting, serving, and responding to document requests and subpoenas in federal civil litigation.

After collecting the documents, the attorney should incorporate references to each document in the direct examination (see below *Direct Examination*). The attorney should also describe to the witness how the documents will be introduced and used in court so that the witness is not confused by this technical process while on the stand. For example, the attorney should explain that:

- The attorney will ask the judge for permission to approach the witness.
- After the judge gives permission to approach the witness, the attorney will walk up to the witness and hand the document to the witness. The attorney will refer to the document by its exhibit number.
- To admit the document into evidence and have it shown to the jury, the witness must authenticate the document by describing the document and explaining how the witness is familiar with it.
- After the document is authenticated, the attorney will ask the court for permission to admit the document into evidence and show it to the jury or, in a bench trial, to the judge.

When describing this process to the witness, the attorney should use the same language that will be used in court (for example, "I move to admit the exhibit into evidence and publish it to the jury").

Search Using Documents as Evidence Checklist (Federal) for more on authenticating evidence in federal court.

STAGES OF TESTIMONY

When preparing a witness to testify at trial, the attorney should make sure the witness understands the three main stages of the testifying process, which are:

- Direct examination, which occurs first and is when the attorney calling the witness to the stand asks the witness questions.
- Cross-examination, which occurs after the direct examination ends and is when opposing counsel asks the witness questions.
- Redirect examination, which may occur after cross-examination ends if the attorney who called the witness to the stand wants to ask follow-up questions to opposing counsel's cross-examination.

DIRECT EXAMINATION

The best way to prepare a witness to testify is to make it as easy as possible for the witness to remember her testimony and the order in which the attorney would like the witness to discuss each topic. To help accomplish this, the attorney should carefully craft the direct examination questions so that they are simple, direct, and targeted to elicit each important point. The questions should ask the witness to discuss only one topic at a time. For example, when asking about the witness's education, the attorney should avoid broad inquiries, such as "Please describe to the jury your education." Instead, the attorney should ask a series of targeted questions, such as the following:

- "Could you please describe to the jury where you went to high school?"
- "After you graduated high school, did you enroll in college?"
- "Which college did you enroll in?"
- "Did you obtain a degree from that college?"
- "What degree did you obtain?"
- "After obtaining your college degree, did you do any post-graduate work?"
- "Where did you do your post-graduate work?"

By breaking down the general question into a series of specific questions that explore the witness's educational background, the attorney can:

- **Ease any fears the witness might have of forgetting to mention an important fact.** The attorney should point out that the witness need answer only the particular question being asked. This will help the witness to:
  - keep answers short;
  - trust that the attorney will ask the questions needed to elicit all of the important information during direct testimony; and
  - remain relaxed while testifying.
- **Control the witness's testimony.** Asking multiple well-crafted questions allows the attorney to control the order of the testimony and the length of the witness's answer. This in turn will reassure the witness that the examination is going exactly as planned.

Additionally, when finalizing the direct examination questions before trial, the attorney should review the questions with the witness to determine how the witness will respond to the questions as phrased. If the witness gives an answer that the attorney does not expect, the attorney should ask the witness how the question should be rephrased so that the witness knows exactly what information the attorney is trying to elicit. This is particularly helpful if the witness is testifying about a subject that is foreign to the attorney, such as if the witness is a medical expert testifying about a type of surgery.

Overall, however, the attorney should keep in mind that the witness is the one with knowledge and expertise on the subject of the testimony. Rather than directing the witness on how to answer a question, the attorney should work with the witness to make any adjustments to the question that are necessary to ensure the witness discusses the topic the attorney would like to cover in court. This will increase the likelihood of a smooth direct examination.

CROSS-EXAMINATION

To effectively prepare a witness for cross-examination, the attorney should directly address with the witness:

- **The weaknesses in the case.** All cases have bad facts. In deciding to put the witness on the stand, the attorney likely already determined that the benefits of having the witness testify outweigh the risks of eliciting or highlighting any bad facts. During the preparation process, the attorney should ask the witness every tough question the attorney expects opposing counsel to raise, and advise the witness to answer truthfully because the testimony will be given under oath. The attorney should explain to the witness that, in the greater scheme of the case, the answer to a tough question does not outweigh the strengths of the witness's credibility and testimony, or the overall case. The more confidence the witness has while answering the questions, the more forthcoming the witness will appear to the jury. By contrast, any hesitation the witness shows may lead the jury to doubt the testimony as a whole.
- **Problems with the witness.** The attorney should inform the witness that opposing counsel may ask about any of the following:
  - prior inconsistent statements;
  - criminal convictions;
  - familial relationships with the party;
  - prior work for the attorney (if the witness is an expert);
  - the amount the witness was paid (if the witness is an expert);
  - the number of times the attorney met with the witness to prepare; and
  - the length of each preparation session.

The attorney should consider whether to address these subjects during the direct examination to lessen any negative effect the information will have on the judge's or jury's perception of the witness or the overall case. For example, if there is a good explanation for a prior inconsistent statement, the attorney should consider asking the witness about that statement during the direct examination and advise the witness on how to answer the question effectively. However, if the attorney is not sure whether opposing counsel is aware of the prior inconsistent statement, the attorney should consider preparing the witness to respond to any questions about it from opposing counsel during cross-examination. The attorney should also prepare the witness to explain it on redirect examination, but inform the witness that the attorney will address the issue during redirect only if opposing counsel first raises it during cross-examination.

Additionally, the witness should know how to answer any question about the number of times the witness met with the attorney. The proper response may depend on how the question is phrased, as demonstrated by the following questions:

- **"How many times did you meet with the attorney to prepare for today's testimony?"** The attorney should instruct

the witness to answer this question accurately, but if the witness cannot remember the exact number, the witness may properly give "I do not remember" as an answer. If opposing counsel presses the witness to guess at the number (for example, "More than five times or more than 20 times?"), the witness can truthfully respond "I would just be guessing."

- **"How many times have you met with the attorney?"** This is a broader question not limited to witness preparation meetings. The attorney should explain this distinction to the witness. For example, if the witness is a long-time employee of the party or an expert in a certain field, many of the meetings may have been held for the purpose of educating the attorney rather than preparing the witness to testify. Attorneys often spend months, or even years, learning how a client transacts business in a complicated or heavily regulated industry. In these cases, the attorney should instruct the witness to explain that there were several meetings but that many of them were informational sessions for the benefit of the attorney and not witness preparation meetings.

REDIRECT EXAMINATION

The redirect examination allows the attorney to rehabilitate the witness following cross-examination by giving the witness the opportunity to provide explanations for responses to questions asked during the cross-examination. To the extent possible, the witness should save any explanations for the redirect examination.

Although there is some risk that the judge will allow opposing counsel to conduct a second cross-examination or that opposing counsel will subpoena the witness to return to the stand later in the trial, opposing counsel usually will not have the opportunity to use the information provided during the redirect examination to ask more probing questions. Typically, the judge will not allow a second cross-examination and opposing counsel will not subpoena the witness unless the testimony provided during redirect examination delves into an important subject matter not previously discussed.

TIPS FOR EFFECTIVE TESTIMONY

The attorney should advise the witness to apply the following best practices while on the witness stand:

- Avoid absolute terms.
- Be precise.
- Avoid guessing.
- Ask the questioning attorney to rephrase confusing questions.
- Keep answers short.
- Avoid using pronouns, acronyms, and technical jargon.
- Expect evidentiary objections.
- Know where to look while testifying.

AVOID ABSOLUTE TERMS

The attorney should instruct the witness to avoid using language that describes events in absolute terms because doing so leaves the witness open to vigorous cross-examination if opposing counsel can identify even a single exception. For example, witnesses often want to impress on their audience the likelihood that an event occurred by making absolute statements, such as "Johnny never bought coffee at that coffee shop." If opposing counsel can establish that Johnny bought coffee at that coffee shop just one time, the witness's entire testimony will be overshadowed by opposing counsel's exposure of this inaccuracy and can create the perception that the witness is a liar or an exaggerator who is not credible.

Therefore, witnesses should avoid using the following terms:

- Always.
- Never.
- Best.
- Worst.
- Anytime.
- Definitely.

BE PRECISE

The attorney should explain to the witness the importance of choosing words carefully, particularly where the witness does not have prior testifying experience. For example, there is a difference between saying "Johnny never bought coffee at that coffee shop," which uses absolute language, and "I do not remember seeing Johnny buy coffee at that coffee shop," which is more precise if there is a possibility that Johnny bought coffee at that coffee shop. The second statement explains that the witness is testifying based on the witness's own observations and memory (which may be faulty).

To help the witness be precise and protect the witness from making inaccurate statements, the attorney should ask the witness to specify the basis for the testimony, such as whether the testimony is based on:

- Personal observation.
- Memory.
- A diary.
- A business record.

As discussed above, the nuance in language is important to avoid making inaccurate statements that create the impression that the witness lied if opposing counsel confronts the witness with the mistake. By making clear that the witness does not recall the event or that the event occurred outside the witness's presence, the witness can leave open the possibility that Johnny may have bought coffee at that coffee shop while still conveying the unlikelihood of the event's occurrence.

AVOID GUESSING

Sometimes, a witness will attempt to answer a question without actually knowing the answer because the witness wants to help the questioning attorney or is afraid of appearing less knowledgeable about the subject matter. However, it is important to repeatedly advise the witness not to guess because any wrong answer can cast doubt on the rest of the witness's testimony. The attorney should instruct the witness that if a

question raises any uncertainty, the witness should pause and think through the question and answer before speaking. The attorney should also make sure the witness understands that "I do not know" is an acceptable answer.

For example, if Johnny's wife is asked on the stand whether Johnny buys coffee at that coffee shop, she may think the answer is no because Johnny has never mentioned it to her. However, it is possible that Johnny buys coffee at that coffee shop every day and that fact has simply never come up in conversation with his wife.

ASK THE QUESTIONING ATTORNEY TO REPHRASE CONFUSING QUESTIONS

The attorney should instruct the witness during preparation to refrain from answering a confusing question, as this essentially amounts to guessing at the answer the questioning attorney is seeking. For example, a question may be confusing because it is a compound question, meaning it is actually asking two different questions.

If a question is confusing, the witness should ask the questioning attorney to rephrase the question. There is no limit on the number of times a witness can ask the attorney to do so. By requesting clarification rather than guessing at the answer, the witness can lower the risk of giving a wrong answer and losing credibility.

KEEP ANSWERS SHORT

The attorney should advise the witness that short answers during any testimony are best. Short answers provide several benefits during direct examination in that they:

- Force the attorney to ask more questions and better control the testimony. When a witness gives long answers, it can become difficult for the attorney to keep track of whether the witness covered all of the necessary points.
- Help the witness remember all of the points to cover because the attorney formed a precise question to elicit each particular point.
- Allow both the witness and attorney to be engaged in the storytelling, making the direct examination more interesting for the listener. Brief answers also help capture and keep short attention spans, which may be an issue with jurors especially during long trials.
- Avoid drawing an objection on the basis that the witness is testifying in the form of a narrative.

If the witness is undergoing cross-examination, keeping the answers short helps the witness avoid volunteering extraneous information or giving the cross-examiner ideas for more topics on which to question the witness.

AVOID PRONOUNS, ACRONYMS, AND TECHNICAL JARGON

To avoid confusing the judge or jury about who the witness is talking about, the witness should avoid using pronouns (for example, he, she, her, him, or they) and should instead refer to individuals by their names during testimony. This is particularly important if the witness is speaking about multiple people.

Additionally, the witness should avoid using acronyms and technical jargon unfamiliar to laypeople, especially if the witness's testimony concerns work in a specialized field. For example, a witness who is a nurse might refer to chronic obstructive pulmonary disease as COPD or testify that someone was taking medication QID, meaning four times per day.

Because it might be difficult to break the witness of the habit of using technical jargon or acronyms, the attorney should practice the direct examination with the witness several times and on different occasions, pointing out every time the witness uses that type of language. If the witness forgets and uses acronyms and technical jargon while on the stand, the attorney should make sure to ask the witness to explain to the judge or jury what that language means.

EXPECT EVIDENTIARY OBJECTIONS

At some point during the witness's testimony, it is likely the witness will make a statement that will draw a legal objection, whether from opposing counsel or the attorney offering the witness. It is important to prepare the witness for this process to help prevent the witness from becoming confused or flustered, or losing a train of thought. The attorney should explain to the witness that:

- The objecting attorney will stand up and say "objection."
- An attorney may object to testimony for several reasons, such as because the witness is:
  - speaking in a narrative rather than answering questions;
  - offering hearsay, that is, testifying about what the witness heard, rather than what the witness saw (for more on hearsay issues, search Evidence in Federal Court: Overview on Practical Law);
  - offering an opinion that the witness is not qualified to offer; or
  - offering testimony that is not relevant.
- If an attorney objects, the witness should stop speaking and wait for the judge to rule on the objection. The judge may sustain or overrule the objection.
- If the judge sustains the objection, the witness should wait for the questioning attorney to ask another question.
- If the judge overrules the objection, the witness should answer the question again from the beginning. This point is important because the interruption caused by the objection may have distracted the jurors and made them forget what the witness was saying before the objection. By beginning again, the jury will have the benefit of the witness's complete answer.

KNOW WHERE TO LOOK WHILE TESTIFYING

When giving testimony in a jury trial, a witness should try to look at the jury because, ultimately, the witness is speaking to and educating the jury on the facts of the case.

During the preparation process, the attorney should explain to the witness the logistics and layout of the courtroom. Typically, the jury will sit to the witness's side and the questioning attorney will be directly in front of the witness. Attorneys often move the podium closer to the jury, forcing the witness to turn towards

the jury when answering the attorney's questions. However, because the courtroom's layout or the judge's rules may prevent the attorney from doing this, the attorney should instruct the witness to look at the jury while testifying.

On the other hand, if the attorney is dealing with an especially nervous witness (see below *Addressing Witness Anxiety*), the attorney should focus on the content of the testimony rather than pushing the limits of the witness's comfort level. If the content is well-prepared and engaging, the jurors will follow along regardless of whether the witness looks at them during the testimony.

If the witness is testifying in a bench trial, the witness should:

- Aim to look at the judge while answering questions. However, the witness might find it awkward to look at the judge, who will likely be sitting to the witness's side and in an elevated position. If so, the witness should aim to look at the judge only when answering particularly important questions.
- Be prepared that the judge may be more likely to ask the witness questions directly in a bench trial.

EXPERT WITNESSES

Along with the principles discussed above, the attorney should consider certain additional issues when preparing an expert witness to testify. Unlike lay witnesses who testify on facts about which they have personal knowledge, experts apply their expertise to the facts of the case and form opinions. Therefore, an expert is the only witness whose testimony can rely on hearsay.

When working with an expert who will testify, the attorney should:

- Ensure that the bases for the expert's opinions meet the substantive requirements of FRE 702.
- Establish the expert's credentials.
- Prepare the expert for cross-examination.

Search Expert Toolkit for a collection of resources to assist counsel with the use of experts in federal civil litigation.

SUBSTANCE OF THE EXPERT'S TESTIMONY

An expert's testimony must be based on "sufficient facts or data" (FRE 702(b)). To help satisfy this requirement, the attorney should inform the expert about the relevant facts of the case. The attorney should consider reviewing with the expert:

- Depositions.
- Business records.
- Videos.
- Tape recordings.
- Affidavits.
- Any other type of record that contains information about the case.

The attorney should make sure the expert understands the type of record being reviewed. For example, if the attorney provides the witness with a deposition transcript of an important fact witness, the attorney should make sure the witness understands that the transcript is of a deposition and not a court proceeding. Regardless of the type of record, the attorney should make sure the witness understands the information the record conveys and how to quickly locate the relevant facts that support or undermine the expert's opinion.

The expert must be able to competently testify about the experience and knowledge that led the expert to reach a particular conclusion based on the facts of the case. If there are facts that undermine the expert's opinion, the attorney should craft direct examination questions designed to elicit an explanation from the expert as to why those facts do not discredit the expert's opinion. The attorney should take into account any suggestions the expert may have on drafting the questions.

Additionally, the attorney should help the expert convey information simply and effectively on the witness stand by:

- Considering the use of any visual aids at trial that will assist the expert in presenting the information.
- Making sure the expert refrains from using technical language or industry-specific acronyms (see above *Avoid Pronouns, Acronyms, and Technical Jargon*).

EXPERT'S CREDENTIALS

An expert witness must be qualified as an expert before the court will allow the expert's testimony (FRE 702). To establish the expert's qualifications, the attorney should craft detailed direct examination questions that elicit each of the expert's educational and work experiences. The attorney can use the expert's curriculum vitae to prepare a first draft of the direct examination questions. The direct examination should include information about the expert's:

- Educational background. This includes:
  - the names of all universities the expert attended (for both undergraduate and graduate education);
  - the graduation years; and
  - the degrees obtained.
- Post-graduate work. This includes any:
  - internships;
  - residencies; and
  - fellowships.
- Professional work experience.
- Research grants.
- Teaching activities.
- Publications. This includes questions about any relevant articles the expert has published in peer-reviewed journals.

EXPERT'S CROSS-EXAMINATION

To help prepare for cross-examination, if there are any publications that seemingly contradict the expert's opinion, the attorney should make sure the expert is ready to explain why either:

FEDERAL TRIAL TOOLKIT

The Federal Trial Toolkit available on Practical Law offers a collection of resources to assist counsel with preparing for and conducting a civil trial in federal court. It features a range of continuously maintained resources, including:

- Bench Trials in Federal Court
- Civil Jury Trials (Federal)
- Corporate Counsel Trial Readiness Checklist
- Social Media: What Every Litigator Needs to Know
- Scheduling Order Under FRCP 16(b)
- Final Pretrial Order Under FRCP 16(e)
- Motion for Continuance of Hearing or Trial
- Opening Statements and Closing Arguments in Civil Jury Trials
- Mock Jury Exercises
- Drafting Jury Instructions and Verdict Forms
- Issue Preservation Checklist
- Post-Judgment Motion Comparison Chart

- The methodology employed by the author is faulty.
- The article does not apply given the facts of the case.

The attorney should also ask the expert if a court has ever excluded the expert's opinions and, if so, take steps to address the exclusion. The fact that a court has excluded the expert's opinion in another matter does not necessarily mean the attorney should not put the expert on the stand. However, the attorney should understand the reasons for the exclusion. For example, the witness's opinion may have been excluded simply because it was duplicative of another expert's opinion and not because of the merits of the opinion itself.

If the basis for the exclusion does not cast doubt on the expert's qualifications and the explanation for the exclusion is reasonable, the attorney may want to wait and see if opposing counsel raises the exclusion during cross-examination and address any concerns with a well-prepared redirect examination. This is because opposing counsel may not even be aware that the expert's opinion was previously excluded by another court and volunteering that information during direct examination risks providing fodder for cross-examination.

OTHER PRACTICAL CONSIDERATIONS

In addition to guiding the witness on the procedure and substance of the testimony, the attorney should make sure to address with the witness:

- Any anxiety the witness may have about testifying in court.
- Logistical matters relating to the witness's court appearance.
- Special considerations that apply to foreign language speakers and hearing-impaired witnesses, if applicable.

ADDRESSING WITNESS ANXIETY

A calm witness is more likely to remember and apply the best practices for testifying learned in the preparation process. During preparation, the attorney should make sure to address any anxiety the witness may feel at the prospect of taking the stand. For example, the witness's nervousness may stem from the fear of being in court and speaking in public. The attorney and the witness should review the questions expected to be asked of the witness as many times as the witness needs to feel prepared.

The attorney can also help ease the witness's anxiety by clearly explaining the different steps in and logistics of the proceeding so that the witness knows what to expect on the day of the testimony. For example, as applicable, the attorney should inform the witness that:

- The witness will need to wait outside of the courtroom until the court is ready for the witness to take the stand.
- Others will be present in the courtroom during the testimony, such as:
  - any audience watching the proceeding, who may consist of members of the public or press;
  - bailiffs or other courtroom security personnel, who may have a gun visible;
  - the judge's staff, such as the courtroom deputy or law clerks;
  - the court reporter;
  - an interpreter (see below *Foreign Language Speakers and Hearing-Impaired Witnesses*);
  - the attorneys on both sides; and
  - the jury (if the witness is testifying at a jury trial).
- To get to the witness stand, the witness may need to walk past some or all of these individuals.
- The court reporter or courtroom deputy will ask the witness to take an oath.
- The court reporter might ask the witness to spell the witness's first and last name.
- Questioning will occur during direct examination, cross-examination, and redirect examination (see above *Stages of Testimony*).

- At any point during the witness's testimony, the judge may ask the witness a question directly or the attorneys may raise objections that interrupt the witness's testimony (see above *Expect Evidentiary Objections*).

Additionally, the attorney should:

- Consider visiting the courtroom with the witness in advance of the testimony to help familiarize the witness with the environment. The attorney can show the witness where the witness will sit while testifying and where others, including the jury, the judge, and opposing counsel, will sit while the witness is testifying. If the opposing party or the party calling the witness has several attorneys involved, the attorney should explain that so the witness is not surprised to see multiple people sitting at counsel's table.
- Inform the witness if it is likely that the media will be present or that a lot of technology will be involved in the proceeding, such as trial graphics, TV monitors, or projectors.
- Advise the witness in a jury trial to focus only on the attorney rather than the jury for the first few questions, if the witness feels uncomfortable with public speaking. This will give the witness a few minutes to become familiar with the environment and the questions being asked, and to calm down. The attorney and witness could decide on a particular question that will signal to the witness that it is time to begin looking at the jury (see above *Know Where to Look While Testifying*).

ADDITIONAL LOGISTICAL MATTERS

The attorney should make sure to address the following additional logistical matters with the witness before testifying:

- **Where and when the witness will testify.** In particular, the witness must know:
  - where the courthouse is located;
  - the courtroom number;
  - the name of the presiding judge; and
  - the date and time of the proceeding.
- **Appropriate courtroom attire.** The witness's appearance can influence the jury's first impressions of the witness. The attorney should discuss with the witness what is considered appropriate courtroom attire in the relevant jurisdiction, because some jurisdictions are more formal than others. If the witness's occupation is relevant to the testimony, the attorney should consider whether the witness should wear any designated work uniform. For example, police officers often wear their uniforms to court when testifying.
- **Attorney communications with the witness.** An often overlooked logistical issue is that the witness is not allowed to speak to the attorney who called the witness to the stand once the witness begins testifying (except during the actual direct or redirect examination). This usually presents a problem only when the witness testifies over the course of multiple days. To avoid confusion as to why the attorney has suddenly stopped speaking to the witness, the attorney should advise the witness during preparation that the attorney may not speak to the witness from the time the witness takes the stand until after the witness has finished testifying.

FOREIGN LANGUAGE SPEAKERS AND HEARING-IMPAIRED WITNESSES

If a witness does not speak English, the attorney should explain to the witness that:

- **There will be an interpreter in court.** The attorney should practice questioning the witness with an interpreter before the witness takes the stand to make sure the witness learns to wait for the interpreter to finish translating before the witness begins speaking. Many foreign language speakers can understand English and will want to start answering the question posed before the interpreter finishes translating.
- **The witness can alert the interpreter and counsel if the witness notices that an interpretation is incorrect.** For example, although Spanish is spoken in North America, Central America, South America, and Spain, there are regional differences in the language that may cause interpretation issues. If the witness is shy and does not want to speak up during the examination, the witness can raise a hand to alert the attorney of a potential interpretation issue. That way, the attorney can interrupt the proceeding to alert the court and the opposing party of the interpretation issue rather than relying on the witness to do so.

If a witness is hearing impaired, the attorney should:

- **Ask the witness what can be done to assist the witness on the day of the testimony.** For example, if the witness needs to be able to clearly see the attorney's mouth, the attorney can ask the judge for permission to examine the witness from a closer distance.
- **During direct examination, ask the witness a question that addresses any hearing issues.** The attorney should ask the witness a question that gives the witness an opportunity to explain to the jury that the witness is hearing impaired so that the jury understands the reasons behind any special accommodations that are made for the witness.