The Evolution of Witness Preparation

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Some may pine for the "good old days" of witness preparation of 25 to 30 years ago, before judicial restrictions on attorney deposition behavior turned us into the "potted plants" of Brendan Sullivan's famous quote from the Iran–Contra hearings. In those good old days, attorneys could prepare their witnesses by coaching them at the deposition with speaking objections, railing at opposing counsel with speeches intended to edify a witness, and if the heat got too high or the witness was in danger of crashing and burning, instructing a witness not to answer on grounds other than privilege. Those days are long gone, thankfully. Now witnesses must be thoroughly prepared before their depositions and need to be able to stand on their own and defend themselves.

In the good old days before video depositions and electronic courtrooms, key witnesses were often prepared by attorney instructions not to recall basic events and communications that could later be fixed at trial when the attorney could decide what the witness would recall. We once had a case in which a real estate developer was coached by opposing counsel not to recall any substantive issue during his deposition. That strategy was turned on him when we called him as an adverse witness and effectively nullified his not-yet-remembered recollection by leading him through each question he did not recall and impeaching him with his deposition. In another case, an executive's voluble direct trial testimony was effectively impeached by videotape of his smug, grinning lack of recollection from his deposition. Those days of ethically suspect gamesmanship in witness preparation are gone, too.

Before electronic discovery, parties produced hard copies of documents, and from that finite universe of documents, a witness's testimony could be crafted and themes developed. If documents contrary to that theme or testimony existed but were not produced—either by ethically challenged counsel or a party—it took luck and hard work to uncover those missing documents with, for example, the help of former disgruntled employees. Those days are gone because almost every communication now leaves an indelible footprint and witnesses rarely communicate by telephone, which would ordinarily cause each to recall something different.

When depositions could last for days, witnesses could be prepared by cramming, and if they forgot something on day one, they could change it on day two, or shift testimony on redirect on day three, making effective impeachment at trial difficult. In the old days of unlimited voir dire and fewer restrictions on courtroom behavior, charismatic trial counsel could overcome problem witnesses through force of personality or by obfuscation by entering the jury's space and drawing attention from the witness through a leading and growling direct exam that focused attention on counsel. Depositions are now limited, and witnesses have to get it right the first time. Outsized personalities of trial lawyers have been down-sized by limited voir dire and judicial restrictions. Woe from either the judge or the jury to the trial counsel who now get into a jury's space and draw attention to themselves to distract from the witness. No longer can counsel crank the noisy, fulsome Wizard of Oz from behind the screen. In these days of reality television, YouTube, and MySpace, jurors are highly skeptical of any whiff of performance art from trial attorneys.

Yet, jurors expect a performance, and a well-directed one at that—but one that looks like the real thing, not artifice. Jurors expect to be illuminated by visuals while witnesses testify and attorneys speak. They expect a polished, concise rendering of a story. Witnesses who stumble, perspire, twitch, sneer, lose their tempers, or otherwise cannot deliver a smooth presentation are forgotten or not believed. Lawyers who think

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jurors are entertained by the lawyer's personality or by time-consuming detours and sidebars are wrong. Jurors have been required to leave their daily lives and do not appreciate having their time wasted. They want lawyers to get to the point in a simple and clear fashion to allow them to do their jobs and get back to their normal lives.

Although much has changed since the good old days, the fundamentals of good witness preparation remain the same. Early on, trial counsel must doggedly gather and analyze all the facts, identifying themes and legal theories consistent with the facts, and relentlessly test them against the opposition's likely arguments. Witnesses must be prepared thoroughly over time in short meetings where their attention does not wane. They must be comfortable with and accepting of the themes, and be able to tell their stories consistent with the themes. They must be prepared for every line of inquiry or attack they might face. They need to be ready to handle questions on every document they will be shown. They have to be probed to determine whether there are any issues or secrets of which counsel needs to know. They need to be prepared to face pressure and stress and to come off as credible and sincere without counsel coming across as a Svengali or worse.

Witnesses can no longer be saved during or after their depositions by aggressive trial attorneys. Moreover, in a world where litigation is so expensive and the stakes so high, trial attorneys can no longer rely on only their instincts about which themes will work and which witnesses will shine. We have all had the experience of having a charismatic executive who resisted preparation crumple on the stand or a theme rejected—or worse, not even understood—by a jury. In the past, trial attorneys could go with their gut, as we all fancy ourselves directors capable of wringing great performances out of our cast, or psychologists who know what will play with a jury and what won't. We can't do this anymore, and so witness preparation, at least in high-stakes litigation, has adapted into a collaborative process with trial consultants, jury consultants, and graphics consultants, and the collaborations bring with them a host of new issues and ethical minefields that did not exist in the good old days.

Trial consultants come in all shapes and sizes. There is no such thing as a "licensed trial consultant." Anybody can hang out a shingle and call himself or herself a "trial consultant" or a "jury consultant." But the ones who tend to get hired for the "bet your company" cases, and the ones who have tended to have a real impact on the practice of law, are usually social scientists and psychologists who hold doctoral degrees. So, with the trial consultants comes the "science" and "psychology" of persuasion and effective communication.

Although witness preparation may be as much an art as a science, it has become fairly well accepted that the science of courtroom psychology is relevant to the process. And, most important, adding some of that science to the witness preparation process can yield tangible advantages. The science of legal psychology helps inform the big-picture issue of how a witnesses's testimony will be perceived in the overall context of the case. It also helps inform the little-picture issue of how one particular witness might be perceived in isolation.

On the big-picture issues, the field is mostly dominated by two concepts—the "story model" and the "trial theme." Generally speaking, the story model is the most widely accepted model of juror decision making. The story model is not new. Social scientists have been working on it for decades. *See* Nancy Pennington & Reid Hastie, "A Cognitive Theory of Juror Decision Making: The Story Model," 13 *Cardozo L. Rev.* 519 (1991) (describing story model research they had been working on since the early 1980s). Not only is the story model generally accepted among legal psychologists, but over time it has become increasingly accepted, at least superficially, among trial lawyers. It's not clear, however, whether most trial lawyers really know what the story model is. The theory's name—"story model"—is deceptively simplistic and likely has particular appeal to most trial lawyers simply because most trial lawyers fancy themselves good storytellers.

Basically, the story model, which was first developed and tested in the context of criminal trials, provides that as jurors listen to evidence and arguments, they go through a process of constructing a mental narrative that fits the various facts and evidence together into a more or less coherent whole. That coherent whole is the "story." Jurors then learn the various verdict categories during the final instruction phase of the trial. And, finally, they work to select a verdict that best fits as the natural consequence of the overall story. The story that will be accepted by the jury is likely to be the story that provides the best coverage and coherence and that fits best with what they think they have seen and heard.

As jurors construct these stories, they don't just rely on the evidence presented in the courtroom. They also rely on their preexisting knowledge about similar events and their experience with how stories tend to unfold. That is, just from living, we all have a sense of when a story makes sense as compared with when a story just doesn't quite add up. It is the story that "makes sense" that tends to give jurors confidence and that tends to win the case. Also at work throughout this process is a phenomenon by which jurors tend to fill the gaps in a story with information that is not in evidence. Again, jurors draw on their preexisting knowledge of how the world works. If the evidence presented is 1, 3, 4, and 5, then a juror is likely to fill in the gap and actually misremember the evidence as having been 1, 2, 3, 4, and 5 because that makes more sense and is easier to retell. Finally, once a story is being constructed by a juror, that juror will tend to search for confirming evidence and ignore disconfirming evidence. For that reason, once a juror begins to believe in a story he or she is constructing, that story can gain momentum even in the face of contrary evidence. Obviously, witness preparation benefits from thinking about how a witness's testimony fits into the broader story you are attempting to tell and how that testimony will contribute to the coherence of that overall story.

An increased focus on developing and testing trial themes is the other big-picture contribution of the jury consulting industry. A story can, and should, have a theme. But themes are different from stories. A theme is the central truth that the trial team is trying to convey. We think of a theme as the lens through which a case is perceived. Think of the old adage "looking through rose-colored glasses." In a trial, you want the jury to view your client's story through rose-colored glasses. Your theme can serve as that lens. Unfortunately, coming up with a good theme can be remarkably difficult. Sometimes, especially in complex litigation, there simply has to be more than one theme; and sometimes, especially in science-heavy litigation, the theme ends up looking more like a thesis statement—but that is not always bad. What is key, however, is to be able to sum up the big picture simply and effectively. Doing so gives the jury a perspective that helps them fill in

the gaps and focus on the evidence that supports your client's position. Almost every trial consultant will tell you that theme development is critical to success and that a trial theme must be repeated throughout the trial—in the opening statement, in witness examinations, and in closing argument. If your witnesses don't know what your theme is, don't agree with your theme, or are likely to provide testimony that is inconsistent with your theme, then it becomes very difficult to maintain your theme with any credibility, particularly when it is under nearly constant attack by opposing counsel. For that reason, focusing on the trial themes becomes one critically important aspect of the witness preparation process.

In terms of the "little picture"—the perception of a particular witness's testimony in isolation—trial consultants bring to the table the science of persuasion and person perception. At bottom, whether a witness is effective depends on whether the witness is credible. But, what is "credibility"? What makes one person credible and another not? Again, social scientists have been studying this for decades. The answer is, essentially, that credibility consists of multiple constituent components that relate to both the substance of the message and the manner in which the message is delivered. Over time, different jury consultants and social scientists have come up with different formulations of the elements of credibility. One time-tested formulation is that credibility consists of (1) expertise (whether the witness seems to know what he or she is talking about), (2) reliability (whether the witness is consistent both in the substance of his or her testimony and in demeanor), (3) trustworthiness, (4) objectivity (whether the witness is free from bias or self-interest), and (5) dynamism (whether the witness presents with an appropriate level of affect and emotion, including appropriate non-verbal behaviors). *See generally* V. Hale Starr, *Witness Preparation* (Aspen Law & Business Publishers 1998).

Usually, no witness has 100 percent of all of these attributes. But the more of them a witness has to a greater degree, the more likely that the witness will be perceived as "credible." So, evaluating a witness along these various metrics during the preparation process, and working on the components on which the witness is weak, can result in substantial gains in overall credibility. We recently worked with a key witness in a fraud trial, for example, who was a dynamic and engaging speaker, and whom jurors wanted to trust. But his explanations regarding the handling of certain checks struck mock jurors as internally inconsistent, which caused low reliability ratings and undermined all the good will he otherwise was able to establish. The witness's explanations, in fact, were not logically inconsistent, but he could easily see, upon a video replay, that the apparent inconsistency resulted from an incomplete explanation. Once that was corrected, his reliability ratings with mock jurors and, in turn, his overall credibility, soared. While working with a witness on these components of credibility, you cannot lose sight of how the witness's testimony fits with the big-picture story and how the witness effectively will communicate the trial theme.

All of this is a lot for one trial lawyer to keep track of, especially when also trying to cover the basics, such as understanding the facts of the witness's testimony while simultaneously coping with seemingly hundreds of other trial preparation tasks. That's part of the reason that so many trial lawyers have come to rely increasingly on trial consultants, who have more experience and expertise with the psychology of credibility perceptions and jury decision making. Their involvement has led to innovative, and often highly effective, witness preparation techniques that were uncommon or even unheard of 25 years ago. These techniques include mock examinations in which groups of mock jurors rate witnesses on various components of credibility in an effort to identify, and then improve upon, weak spots. The techniques also often involve video-recording mock examinations so that the witnesses' practice testimony can be captured, dissected, and evaluated by the trial team, sometimes with the witnesses' input. Trial consultants have also taken to scouring the Internet to ensure that a witness's likely testimony is not contradicted by the witness's own postings on blogs, MySpace, and the like, all of which can become fodder for a surprise cross-examination at trial. On the other hand, having a trial consultant involved in the witness preparation process and using these types of innovative techniques can raise new issues, such as ethical questions and whether all of this preparation will become discoverable and damagingly or fatally embarrassing to trial counsel, who could look like a puppet master crafting each witness's performance. Enter Dr. Phil.

Credibility consists of multiple components that relate to the substance of the message and the manner in which it is delivered.

Before Dr. Phil McGraw first appeared on *The Oprah Winfrey Show* and was catapulted into stardom, he was a trial consultant. In fact, he met Winfrey because she hired him to assist with her Texas trial about mad cow disease. At one point in his previous life as a trial consultant, McGraw assisted lawyers representing Ernst & Young in litigation against Cendant Corporation. McGraw helped prepare Simon Wood, a former Ernst & Young manager who prepared certain Cendant financial statements that were at issue in the litigation, to give deposition testimony and did so in the presence of Ernst & Young's counsel. At Wood's deposition, Cendant's counsel began asking questions about whether Wood had ever met with McGraw in connection with the case. Cendant's counsel also inquired about the nature and substance of those meetings. Ernst & Young's counsel objected, citing the attorney work-product doctrine and attorney-client privilege. Initially, a discovery master upheld Ernst & Young's objection. The district court then overruled the discovery master. The issue was appealed to the Third Circuit. *See In re Cendant Corp. Sec. Litig.*, 343 F.3d 658 (3d Cir. 2003). The Third Circuit resolved the issue in favor of Ernst & Young based on the attorney work-product doctrine, but with an important qualification. The Third Circuit held, "[t]hese communications merit work product protection. . . . Nonetheless, we believe Wood may be asked whether his anticipated testimony was practiced or rehearsed. But this inquiry should be circumscribed. As with all discovery

matters, we leave much to the sound discretion of the District Court." *Id.* at 668. Because the issue could be resolved based on the attorney work-product doctrine, the Third Circuit never reached the issue of attorney-client privilege. But in his concurrence, Judge Garth wrote, "[w]hile I recognize that in certain respects the attorney-client privilege has more narrow parameters than the work product doctrine, I nevertheless am satisfied that the attorney-client privilege was operative when Dr. McGraw, the client Wood, and E&Y's counsel were engaged in contemporaneous and simultaneous discussions concerning the instant litigation." *Id.* at 668.

In 2008, a California district court addressed a similar issue. *See Hynix Semiconductor Inc. v. Rambus Inc.*, No. CV-00-20905RMW, 2008 WL 397350 (N.D. Cal. Feb. 10, 2008). In *Hynix*, the defendant filed a trial motion seeking to preclude questions concerning jury consultants at trial and "specifically regarding their meetings with jury consultants to help them prepare to testify at trial." Unlike *Cendant*, however, the witnesses that were the subject of the *Hynix* motion were expressly deemed by the court most likely not to be "clients" for purposes of the attorney-client privilege. Had they been clients, the *Hynix* court noted, "the substance of any communication between the jury consultant, the client, and the attorney is probably privileged." *Id.* at *3. Looking to *Cendant* for guidance, the *Hynix* court concluded that even though the witnesses were not clients, the attorney work-product doctrine applied and would protect much, though not all, of the information relating to meetings with trial consultants. The *Hynix* court noted that the more nuanced question was how to circumscribe the witness examinations to protect work product, while still allowing permissible questioning, without "creat[ing] a sideshow and distract[ing] the jurors from the factual issues." *Id.* at *4. Ultimately, the court issued the following order:

> [P]arties may ask a witness whether he or she met with a jury consultant, the purpose of any such meeting, who was present, the duration of the meeting and whether the witness practiced or rehearsed his or her testimony. However, questions about counsel's or the consultant's views on important facts of the case, trial themes or strategy, strengths or weaknesses of the witness, or advice to the witness as to how to improve his or her appearance or credibility are forbidden.

Id.

Having a trial consultant involved in witness preparation can raise ethical questions.

In light of the new and emerging techniques for witness preparation used by trial consultants and in light of the evolving law regarding the discoverability of these techniques, the landscape is changing in terms of "best practices" for witness preparation. On the one hand, the increasingly accepted best practice is to have a trial consultant assist with witness preparation, especially in high-stakes litigation where the outcome could turn on the testimony of a few key individuals. On the other hand, courts are making it clear that although the work-product doctrine protects the substance of communications involving a trial consultant, the fact that a trial consultant helped prepare a witness is not off limits as fodder for potentially embarrassing cross-examination. So what is a trial lawyer to do?

The optimal solution is to work with a J.D./Ph.D. trial consultant who acts as the witness's counsel, not just a consultant, thereby clearly bringing all conversations within the scope of both work-product protection and the attorney-client privilege, and allowing the meetings to be characterized primarily as meetings with counsel. Where that is not an option, the safest approach may be to avoid having a consultant communicate directly with a witness and have all of the consultant's suggestions or instructions funneled through you as the trial attorney. As a practical matter, though, that approach interferes with the consultant's ability to effectively do his or her job. The best balance may be struck by making sure that you are personally involved in every witness preparation meeting your non-lawyer trial consultant conducts. Further, you need to recognize that a witness may be cross-examined about meetings with jury consultants and prepare each witness for that line of questioning. Obviously, you don't want your witness to be caught off guard and to start fidgeting, sweating, and looking at you when asked by opposing counsel why she needed to meet with a jury consultant. If you prepare the witness for this question, she will not be caught by surprise and, with the right response, can easily defuse the situation. Imagine, for example, a witness who can confidently respond, "Well, I have never testified in court before, and so it was just helpful and comforting to have somebody there who was not a lawyer and who could explain to me in layperson terms what I should expect." *See* Bill Grimes, "The 'Prep' Question," 22 *The Jury Expert* 63 (2010).

Whether a decision is made to involve a trial consultant in witness preparation or not, it is clear that another best practice is to focus on trial themes as part of witness preparation. A focus on trial themes, however, does not under any circumstance mean telling the witnesses what to say or otherwise manufacturing testimony. The Model Rules of Professional Conduct are clear that "[a] lawyer shall not . . . counsel or assist a witness to testify falsely." Model R. Prof'l Conduct 3.4(b). The Model Rules also state that "[t]he procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibition against . . . *improperly influencing witnesses*." Model R. Prof'l Conduct 3.4 cmt. 1 (emphasis added). And, of course, the responsibility falls on trial counsel to ensure that his trial consultants abide by the rule of professional conduct applicable to counsel. *See* Model R. Prof'l Conduct 5.3. A failure to appreciate the distinction between helping a witness prepare versus coaching a witness to shade the truth, or delegating witness preparation to someone who fails to appreciate that distinction, can lead to a finding of ethical violations and resulting sanctions.

Consider *Ibarra v. Baker*, 338 F. App'x 457 (5th Cir. 2009). In *Ibarra*, various Harris County, Texas, law enforcement

agencies and officers were named as defendants in a case alleging wrongful arrest and detention under 42 U.S.C. § 1983. Two Harris County attorneys initially undertook the defendants' representation. They hired a commander with the Texas Department of Public Safety, Albert Rodriguez, to consult with them and to provide expert testimony. *Id.* at 461. Rodriguez met with several of the defendants, without counsel present, to assist with their deposition preparation. One of the defendants who met with Rodriguez showed up at his deposition with a page of notes defining "reasonable suspicion" and listing eight key facts that gave rise to his "reasonable suspicion" that justified his detention of the plaintiffs. *Id.* at 463. The eight facts listed in the defendant's notes happened to be the same eight facts in Rodriguez's preliminary report, including the notions that the events occurred "in a high crime area" and that there was "retaliation." The plaintiffs moved for sanctions against defense counsel, asserting that "Rodriguez had drawn the concepts of 'high crime area' and 'retaliation' out of thin air to help the defendant avoid . . . liability." *Id.* The trial court granted the plaintiffs' motion, finding that the defense expert's "true purpose in holding the meetings had been to 'coach' the witnesses to ensure that their deposition testimony 'would conform to facts that supported his opinion.'" *Id.* at 465. On appeal, the Fifth Circuit affirmed "the findings of misconduct . . . for improperly coaching witness testimony." *Id.* at 467. Specifically, the court found that defense counsel had used their expert witness to coach witnesses to introduce "two new concepts that were becoming entrenched in the litigation as defense theories." *Id.* at 466. The court observed that "[a]n attorney enjoys extensive leeway in preparing a witness to testify truthfully, but the attorney crosses a line when she influences the witness to alter testimony in a false or misleading way." *Id.* at 465 (citing John S. Applegate, "Witness Preparation," 68 *Tex. L. Rev.* 277 (1989)).

Of course, there is a big difference between the conduct described in *Ibarra* and the best practice of focusing on trial themes as part of witness preparation. It is one thing for a trial lawyer or trial consultant to explain to a witness a theme that tends to summarize many of the facts that will come into evidence. It is quite another to send an expert witness to meet independently with fact witnesses for the purpose of ensuring that the fact witnesses provide testimony that will support the expert's opinion without regard for the truth of those facts.

Ibarra underscores a couple of important and fundamental points. First, the facts must come from the witnesses, and a trial theme is developed to frame those facts. The process cannot happen the other way around. You cannot give your witness the theme and then coach him or her to manufacture facts that support the theme. Second, if certain aspects of witness preparation are delegated to a non-lawyer, it must be a non-lawyer who understands and will abide by the rules of professional conduct, and you need to stay involved in the process to ensure ethical conduct. Ultimately, it is your license to practice law that is on the line regardless of whether or not you were involved in the witness preparation meetings. Third, testifying experts should not prepare fact witnesses for their testimony. Witness preparation should be the purview of trial counsel and non-testifying trial consultants who know what they are doing.

When developed in an ethically appropriate manner, however, trial themes can help witnesses to elucidate the facts for a jury and to provide clear, concise, and truthful testimony. Particularly in complex commercial litigation, key witnesses can be on the stand for days reciting fact after fact. Without a clear theme, it can be difficult for both the witness and the jury to comprehend how all that factual minutia really affects the big-picture questions the jury must decide.

For example, we defended a homebuilder in a class action lawsuit brought by a large class of homeowners who alleged construction defects. We settled the class action through an agreement under which the homebuilder inspected, evaluated, and, where necessary, made repairs to the class members' homes. We then filed third-party claims on behalf of the homebuilder against various subcontractors who constructed the homes, including the bricklayers who laid the exterior brick on the homes. One of the themes we used in that case was "you have to stand behind your work." The theme worked because it was simple, it was supported by the facts, it captured what most jurors in our Midwest venues already believed, and our client was on the right side of that theme because it had already stood behind its work by making the necessary repairs to the class members' homes on its own dime. Now, we were asking the subcontractors to stand behind their work. It was important that this theme also resonated with our witnesses.

A witness who understands and believes in the case theme is typically more confident and better positioned to handle difficult or unanticipated questions. In one of our homebuilder cases, a superintendent who worked in the field overseeing the construction of the homes was grilled in deposition about the homebuilder's responsibilities during construction: "Isn't it true that the homebuilder had a responsibility to the homeowner to oversee the construction of the home?" But, where a witness has fully embraced an effective theme, it is hard to throw the witness off. The superintendent's answer: "Yes. That's why we stood behind our work and paid to have every home repaired. But, now the subcontractors are refusing to stand behind their work that they did for us."

Most witnesses just want to do a good job, and so they worry that they will "say the wrong thing." Even when they believe 100 percent in the case, they often agonize over the possibility that a tricky lawyer will trip them up and they will say something that will damage the case. But where a case theme is based in the evidence, understood by the witnesses, and embraced by the witnesses, each witness can tell his or her story with less anxiety and more confidence and conviction. Witnesses begin to lose credibility when they are perceived as hedging or sidestepping key questions or too many questions. Witnesses tend to fall into the habit of hedging or equivocating on question after question when they fear that they might "mess up the case."

But where they have a solid theme to fall back on, there is less for the witness to fear, and credibility is enhanced. In the homebuilder litigation, imagine a homebuilder employee who is not particularly fond of public speaking and is uncomfortable around lawyers and who gets asked: "You agree that the homebuilder had an obligation to fix the problems with the homes, don't you?" To an anxious witness with no theme to fall back on, this question may seem like a trap and result in a series of "ums" and "uhs" followed by an odd-sounding and generally nonresponsive answer. In contrast, the witness who believes in the case theme and has it on the tip of his or her tongue might be quick to respond, "Yes, we had an obligation to the homeowner to deliver a good house and we stood behind our work by fixing the subcontractors' mistakes. Now,

we need the subcontractors to do the right thing too, and stand behind the work they did for us." When witness after witness reinforces the theme in that manner, the result can be a powerful lens through which the jury begins to see the evidence.

So, what has changed since the good old days? In some ways, everything has changed. Most courts now have a zero-tolerance policy for attempts to control testimony whether through intimidation or force of personality. We're now living in an always-on, visual society with unlimited instant information where if you don't get to the point with the jury fast and with infographics, you might as well not get there at all. Witness preparation, which used to be the trial lawyers' art, is increasingly becoming the psychologists' science. But in other ways, nothing has changed at all. Witnesses can't be expected simply to show up and testify; they have to be prepared because opposing counsel will do everything in his or her power to undermine your witnesses' credibility. And good witness preparation can't happen without the extraordinary efforts of counsel to marshal the facts and arguments, and then present them through a credible and coherent story. Witnesses have to testify truthfully, and the burden is on you as trial counsel to persuade the finder of fact to see that truth in the light most favorable to your client. And all of this, of course, must be performed within the bounds of the currently reigning ethical norms. In the end, effective witness preparation remains, as it always has been, key to whether a trial will be won or lost.