

Top Strategies for Handling Witness Testimony

Witness Testimony, and How the Jury Perceives it, Can Make or Break a Case

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One skill that is absolutely essential for any good trial lawyer is the ability to work well with witnesses on both sides of the dispute. Witness testimony, and how the jury perceives it, can make or break a case.

In-house counsel have a significant role to play when it comes to witness testimony. They often have the best and most direct access to both company witnesses and any experts who may also be called upon to testify in the case. In-house counsel also generally take a significant role in choosing witnesses, though the trial lawyers they hire should have input as to whether or not a particular witness will help or hinder the case.

Putting any witness for the company on the stand involves rigorous and extensive preparation. In-house counsel are essential to this process. Trial lawyers rely on in-house counsel to make witnesses available for preparation, and to ensure that enough time is spent with each witness. Not having enough access to company witnesses can hamper a trial lawyer's ability to put on the best case possible for the client.

One trial strategy is to have company witnesses reveal and address all possible weaknesses and problems for the case in their testimony. This may seem like a counterintuitive approach, because it seemingly exposes the company to attack from the other side. The reflex response would be to protect this information at all costs during trial, hoping the other side will not bring it up.

That is exactly the reason, however, that weaknesses and problems should be addressed directly in witness testimony. There are two reasons for this. First, juries look more favorably on corporate defendants when witnesses speak candidly and plainly about the circumstances that gave rise to the lawsuit. By dealing with any potential issues up front, witnesses build trust with the jury. The second reason is that a trust bond with a jury is a fragile thing and can be easily broken. If company witnesses hide a weakness that is then exposed by opposing counsel, juries may well regard any information given to them by those witnesses as suspect. Only by being open and honest can a company's trial lawyer ensure jurors will trust what they are being told.



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Trust is also the main focus when a trial lawyer cross-examines opposing witnesses. In this case, the trial lawyer's job is to create doubt in the minds of jurors as to the trustworthiness of the other side. If opposing witnesses hide significant information, it's the trial lawyer's job to make sure the jury knows about it. For factual witnesses, this can involve questioning their memory of events or surfacing any possible biases that might be influencing their testimony. For expert witnesses, it's about drilling down beyond the technical jargon and exposing any errors in the evidence given, or making known a predisposition to support the other side's interests because it's how the witness makes a living.

Witness testimony is crucial to any trial. Whether or not those witnesses win the trust of a jury will make or break a case. Through careful preparation that focuses on providing honest and open testimony, trial lawyers and in-house counsel can increase the likelihood that a jury will side with them when handing down a verdict.

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