Essential Trial Skills Part 3:

Witness Preparation & Direct Examination

Table of Contents

Witness Preparation and Direct Examination, Course Outline	**Tab 1**
Checklist of Foundation Questions for Common Types of Evidence	**Tab 2**
Applicable Ethical Rules—Witness Preparation and Direct Examination	**Tab 3**
Ethics Opinions 79 & 234	**Tab 4**
Materials from *Novak* Case	**Tab 5**
Asbestos Case: Witness Preparation Memo	**Tab 6**
Exhibit Form, Superior Court of the District of Columbia	**Tab 7**
Witness Preparation: A Practical Guide for Executives, Managers, and Engineers Giving Sworn Testimony in Litigation *Patrick J. Coyne* *(with detailed table of contents)*	**Tab 8**
Bibliography of Trial Practice Resources	**Tab 9**
About the Speakers	**Tab 10**
MLE Course Information	**Tab 11**

Witness Preperation: A Practical Guide for Executives, Managers, and Engineers Giving Sworn Testimony in Legislation

Page(s)

I. Introduction 1

II. The Truth, The Whole Truth, and Nothing But The Truth 2

A. Perception and the “Whole” Truth 2

B. Knowledge, Information, and Belief 3

C. Common Sense 6

D. Opinions - Fact Witnesses and Expert Witnesses 7

E. Don’t Speculate 8

III. The Lawyers 9

A. Your Lawyer 9

B. Opposing Counsel 10

C. Third-Party Counsel 12

D. Unrepresented Witnesses 13

IV. The Psychology of Testifying 14

A. We Are All Social Creatures 14

B. Testimony Is Not a Conversation, It Is an Interrogation 16

C. The Power of Leading Questions 16

D. Loss of Control 19

E. Anxiety & Frustration 20

F. Embarrassment 20

G. Stress 21

H. Fear and Anger 21

I. Fatigue 24

J. Boredom 25

K. Regaining Control 26

V. How to Act and Dress When You Testify 27

A. The Human Lie Detector 27

1. Using “Heading” Phrases 28

2. Eye Movement 28

3. Silence 28

4. Pitch of the Voice 29

5. Facial Expressions 29

6. The Story That Is Too Good to Be True 29

7. Repetition 29

B. Be Yourself 30

C. Demeanor 30

D. Maintain Eye Contact 30

E. Dress Professionally 31

F. Speak Appropriately 32

G. Act Appropriately 33

H. Be Deliberate and Responsive 35

I. Be Humble 37

J. Be Gracious 38

VI. Preparation 38

A. Finding Out that You Will Be a Witness 40

B. Contact Your Counsel 41

C. Prepare with Counsel 41

D. Reviewing Documents and Prior Statements 43

E. Don't Withhold Information from Counsel 44

F. Avoid Self-Study 45

G. Practice Answering Questions 46

H. Being Asked About Preparation with Counsel 46

VII. How to Testify 48

A. Stay Cool 48

B. Remain Alert and Attentive 49

C. Make Sure that You Understand the Question 49

D. Listen to the Objections 50

E. Pace Yourself 51

F. Give Clear Answers 51

G. Limit Your Response to Your Personal Knowledge 51

H. Be Direct and Responsive 52

I. Be Specific and Accurate 52

J. "Dictate" Your Response 53

K. Avoid Qualifications and "Weasel Words" 53

L. Instead, Answer with Confidence 53

M. Don't Volunteer Information 54

N. Don't Fight with the Questioner 54

O. Discussing Your Testimony with Others 55

VIII. Corporate Representatives 55

A. Companies Speak Through Representatives 56

B. You Are the Face of the Company 56

C. Corporate Representative Testimony Extends Beyond Personal Knowledge 57

D. Information Available to the Company 58

E. Your Answers Bind the Company 58

IX. Expert Witnesses 59

A. Fact vs. Opinion Testimony 59

B. Being an Expert 60

C. Stay Within Your Area of Expertise 60

D. Giving Opinion Testimony 61

E. Don't Speculate 62

F. Don't Advocate 62

G. Give Up What You Have To 63

H. Preserve Your Integrity and Your Credibility 63

X. Depositions 64

A. The Setting 64

B. It Is Called "Discovery," Not "Hide the Ball" 67

C. Your Deposition Is a Step in a Process, Not an End in Itself 68

D. Why People Take Depositions 68

E. Dealing with Objections 69

F. Instructions Not to Answer 71

G. Review Your Deposition Testimony Carefully 71

H. The Errata Sheet: Reforming Your Deposition Testimony 72

XI. Trial 73

A. Trial Testimony Is the Main Event 73

B. The All-Seeing, All-Hearing, Twelve-Headed, Twenty-Four Eyed Monster 73

C. Answering Questions at Trial 74

D. Let Your Lawyer Develop the Case 74

E. Don't Ignore the Decision-Maker 75

F. Dealing with Embarrassing Admissions 76

G. Maintain Your Demeanor 76

H. There Will Be Fewer Objections at Trial 76

I. Protect Yourself 77

J. Rulings by the Judge 78

K. Changing Your Testimony 78

L. Impeachment 79

M. Discussing Your Testimony with Others 79

XII. Memory 79

A. Don't Memorize Your Testimony 80

B. Do You Know? 81

C. Feigning Lack of Memory 82

D. Taking Materials to the Stand 82

E. Refreshing Recollection 82

XIII. Mistakes 84

A. Common Mistakes by Witnesses 84

1. Treating Testimony like a Conversation 84

2. Not Paying Attention 84

3. Saying What You Think They Want to Hear 84

4. Being Defensive or Getting Angry 85

5. Withholding Information from Counsel 85

6. Too Busy, Too Expensive 86

7. Inadequate Preparation 86

B. Common Mistakes Made by Lawyers 86

1. Coaching or Objecting Too Much 86

2. Treating All Witnesses the Same 87

3. Failing to Anticipate Questions 87

4. Preaching, Not Teaching 87

5. Not Being Clear Enough 88

6. Too Busy 88

7. Inadequate Preparation 88

XIV. Conclusion 89