

PREP MEETING GENERALLY

Generally speaking, as a lawyer, our **goals in meeting** with you to prepare for trial are:

- **First**, to ensure that we have collected the evidence needed to prove our case
 - **Second** to ensure that the witness understands the different types of questions they will be asked in cross exam and
 - **Third** to explain what to expect at court generally so that they are not intimidated or unnerved.
- Some lawyers will start by explaining what they want to prove and how your evidence can help.
 - We usually prefer to ask the witness to tell me what he or she thinks this case is about and what their role is at trial.
 - This is a good time to raise any questions or doubts you might have. Your concerns are important and the answers can impact the lawyer's decision to call you as a witness.

PREP MEETING SPECIFICS 1

Once we get past the general information during the meeting I explain some specifics about going to trial like:

- the **exact location and layout** of the courtroom;
 - the **schedule** for the trial and **when** your testimony will be required
 - the **role of the judge** and the role of the jury
 - We explain what the **role of the opposing lawyer** is
 - We will answer whether the **parties will be present** in the courtroom during your testimony
- We would explain the two different types of questions – there are **leading** questions – those that ask for a "yes" or "no" answer; and the other type of is **open ended** questions, which start with "what", "where", "when" and "how"
 - the need for **subpoenas** – as David alluded to earlier AND
 - We would talk about "What the role of documents are at trial".

PREP MEETING SPECIFICS 2

But, perhaps the most important reason for the meeting is to go through the substance of your evidence and

- **where** there are **discrepancies**, to reconcile your evidence with the other evidence.
 - We would discuss the frailties your evidence might have, so that in chief, they can be dealt with and explained to diffuse their effect.
- Finally, during the meeting, you will be prepared for the Cross Examination, with a mock questioning period so that you are **INNOCULATED** from surprise in the courtroom.
 - I am going to talk more about **CROSS EXAMINATIONS LATER, BUT DAVID IS GOING TO TALK TO YOU ABOUT DIRECT EXAMINATIONS FIRST.**

CROSS EXAMINATION 1

I AM GOING TO TALK NOW ABOUT THE PART OF THE TRIAL THAT PEOPLE FEAR MOST
CROSS EXAMINATIONS. THE FACT THAT IT IS THE MOST FEARED IS THE REASON WHY PREPARING FOR IT IS SO IMPORTANT.

- There are essentially two reasons why the other lawyer may decide to cross examine you.
- 1. The first is to bolster your credibility and GET YOU TO AGREE TO SOME ASPECT OF THEIR CASE; OR
- 2. TO DIMINISH YOUR CREDIBILITY BY ATTACKING YOUR CREDENTIALS, OR BY ATTACKING YOUR ASSUMPTIONS, OR BY DEMONSTRATING BIAS.

THE ADVICE THAT I GIVE TO WITNESSES ABOUT CROSS EXAMINATION APPLIES JUST AS WELL TO GIVING EVIDENCE AT ANY TYPE OF HEARING:

- **go ahead and answer** all questions unless a judge tells you not to. Don't look to the lawyer who called you as a witness or ask us for assistance in answering a question.

- BUT listen to the **full** question **before** answering.
- **take your time** to think about your answer.
- **if you don't understand** a question say so and ASK FOR IT TO be rephrased.
- It is important that your answer is responsive to the question. So, if there are **multiple questions posed**, ask for each one to be repeated one at a time.
- **Make sure that you answer only** the question asked AND **do not volunteer any more** information unless it is necessary to answer the question.

IN FACT, WHILE WE ARE TALKING ABOUT IT, THERE ARE A BUNCH OF OTHER THINGS YOU SHOULD NOT DO:

- do not **guess** - if you do not know, OR your don't remember the answer, say so - its okay.
- **don't nod your head**, say yes instead, IN OTHER WORDS make all answers verbal.

CROSS EXAMINATION 2

- be aware that the **cross examiner may attempt to anger or irritate you** - **SO don't show frustration or get angry** - Instead- **be patient and polite** all the time.
- don't answer with a **joke or sarcasm**.
- A big part of cross examining is perspective - if your facial expression, or your tone, makes it look like they won, then the jury will think they did. Conversely, if you remain calm and composed, then you will maintain your credibility. And that is how you persuade the jury.
- Basically, you want to show that without bias, you are trying to be helpful to the court by simply answering the questions.

- You should know that some lawyers use Silence to **induce** you to expand on your answer, **but don't be fooled this way. Keep your answers short and again... answer only the question.**
- IF YOU ARE QUESTIONED ABOUT A DOCUMENT, ASK TO SEE THE DOCUMENT AND READ IT IN ORDER TO REFRESH YOUR MEMORY.
- This also stops the other lawyer from taking parts of the document out of context.

CROSS EXAMINATION 3

- When the cross examining lawyer asks you about "assumptions contained in your report. Be prepared to Admit which facts you were asked to assume and
- Be confident.
- Stick to your conclusions.
- And if the cross examiner tries to get you to assume some other set of facts tell them...

- **"I was not asked to give an opinion on that set of facts and I am not able to do so now without the same careful thought and analysis that went into my original opinion."**
- If you stick to this advice, the cross examining lawyer will not be able to reduce your credibility or get you to agree to their theory just because you are nervous.

CLOSING

So that is our cole's notes version of our trial prep. We only had about 35 minutes to talk to you today but it would obviously take longer for a real trial preparation meeting. We hope that if you have any questions that you would like to ask, please ask now, or give either David or myself a call or email.
