

# Introduction

In recent years, this country has seen an explosion of government and private investigations, litigation, and other legal inquiries. With this explosion has come a great increase in the number and variety of people who have been called into these proceedings as witnesses—whether for interviews or testimony. The result is that a large number of laypeople who have never been witnesses, and many lawyers whose practices have not previously involved witness preparation, have had to venture into this strange new world. Yet being a witness is often a significant event for the individuals involved and for the integrity of our system of justice. It demands careful attention and preparation by lawyer and client alike.

Scandals in recent decades show that being called as a witness can happen to anyone. A young White House intern becomes the focus of a major criminal grand jury investigation with everyone from her maid to her mom to the president of the United States becoming potential witnesses. A stockbroker's assistant brings down a homemaking icon. Whether the witness is a young student facing a disciplinary board, a businessperson facing the Securities and Exchange Commission, a health-care provider facing a jury, or any other ordinary person in this extraordinary process, it can be a bizarre and frightening experience. In an ideal world, any inquiry ought to be an open and shared search for truth. In reality, we operate in an adversarial system in which people get wrapped up in their "side." As a result, they lose perspective and "see what they want to see" or try to achieve some sort of emotional vindication in the process. They focus on defending themselves, sometimes at the expense of the reality.

First and foremost, the job of a witness is to tell the truth. It sounds simple, but it is not. The job of a witness is to keep perspective: not on some cosmic truth, but simply on the truth as they knew it then and remember it now. This includes the truth about what they did *not* know and what they

do *not* remember. This is neither an easy nor a natural assignment: to do it right takes hard work. Preparation regarding the process of *how* to be a witness—not just reviewing the facts—is based on the fundamental difference between communicating in normal conversation and communicating in a precise and unnatural question-and-answer format.

The purpose of this book is to help lawyers improve their witness preparation skills. Parts of it are written in the “voice” of speaking to a client because learning *how* to best communicate these ideas is often as important as the ideas themselves. Going through the general concepts, focusing on a series of simple rules, then discussing how to adapt those rules to different situations can assist you in that preparation effort.

At times, the writing speaks directly to the witness; this is to give lawyers the option of sharing this book with clients. We all learn best by gathering information and understanding from more than one source in more than one way. Think about how you learned a foreign language or other challenging subject in school: you listened to your teacher, read from a book, and practiced. No one learns as well by doing only one of those three tasks.

The same principles apply to learning this strange new language. This book is not legal advice. It is simply intended to be *another* source of learning, to complement what clients hear from counsel and absorb from practice. Properly used, it should make the time a lawyer and client spend together more productive and more efficient.

The message to both lawyer and client is: Don’t be intimidated. You can learn this new “language” (actually, it is not so much a language as a communications process). Many people who go through the whole process are surprised at how intense and interesting the experience turns out to be. But it will be very difficult unless you and your client understand one simple fact: This is not a conversation. It is, as they say in *The Wizard of Oz*, “a horse of a different color.”