Effectively Examining the Difficult Witness

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1. Introduction

The career of a trial attorney will undoubtedly include examining uncooperative witnesses. Difficult witnesses can occur in many forms: lying witnesses, witnesses who cannot remember, witnesses who are hostile or refuse to be led, evasive witnesses, witnesses who refuse to answer the question posed—indeed, there are an infinite number of ways a witness can be difficult, with or without trying to do so. This paper examines strategies to effectively examine some common difficult witnesses.

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2. Examining Adverse Witnesses

Although your difficult witness will sometimes be your own, most often, your difficult witnesses will be adverse witnesses. While cross examination can be difficult, it is sometimes the most enjoyable part of trials for the lawyers involved. Cross examinations can often be complicated, because as the attorney, you are essentially trying to prove or disprove certain facts or elements through a witness who is factually, legally, or morally opposed to your client. Luckily, there are general strategies that will help you gain ground against a wide variety of difficult witnesses:

- **Ask "small" questions.** The longer a question is, the better chance it will have of being objectionable, unintelligible, or difficult to understand. Perhaps more importantly, the longer a question is, the more opportunities your witness will have to hedge his answer. Instead, make a habit of asking small questions, that ideally are statements of fact.

  - *Example:* Instead of asking, "Mr. Jones, isn't it true that on the day of the robbery, you and the defendant stole the car from your neighbor, drove it to the convenience store, robbed the store at gunpoint, and ultimately ended up shooting Mr. Babcock?", try instead a series of short questions:

    - "Mr. Jones, on October 21, the defendant came over to your house?"
    - "The two of you then walked over to your neighbor's garage?"
    - "Where you broke in?"
    - "There were two vehicles in the garage?"
    - "You walked up to your neighbor's car?"
    - "You then broke the window of that car?"
    - "You opened the door?"
    - "You got inside?"
    - "You started the car?"
    - "Then you drove down Beacher Street?"
    - "To the convenience store?"

  This strategy has two main benefits: first, it allows you to tell your version of the events in the way that makes the most sense for your side. Secondly, it ensures that the witness will have very few chances to respond anything but affirmatively. The golden rule of asking short questions is this: if your question contains any punctuation other than a question mark, it is too long. Think about your examination as a slow-motion movie, and move through it frame by frame. Ask short, reasonable questions that your witness will be unable to disagree with.

- **Talk like a regular human being.**
Trial lawyers spent significant amounts of time around other lawyers, around judges, and in court. Jurors do not. To the extent you can, keep your legalese to a minimum. Avoid using words like "utilize" when "use" would work just as well. Large words and technical language often work to turn jurors off completely, so when you are able to avoid them without sacrificing clarity, do so. A difficult witness can use complex questions to derail your line of questioning, so keep your language as simple and straightforward as possible.

- **Ask the important questions.**

A common mistake that young lawyers make is eliciting too much information or too many details from the witness. While you will want to make sure your witness testifies to the important facts and events, you want to be sure not to dilute that testimony with unimportant information. Your jury will find it difficult to sort through and pick out the critical information if there is too much testimony. Likewise, lawyers must also be careful not to go too quickly through the testimony that is critical to your case. Be targeted and thoughtful about the information you are seeking to elicit from a particular witness, and do not waste time on other matters. This is particularly important with difficult witnesses - asking unnecessary questions will give the difficult witness too much latitude.

One caveat to this general rule, however, is the "rule of three." If you have something that is critical, bring it out three separate times. Studies widely confirm that repeating information at least three times will properly emphasize important details, and improve retention and recollection for the jury. For instance, if it is important to your case that a getaway car was red, make sure you elicit that response from your witness. Then, refer to it as the "red car" during your questioning. The jury will recall your description and understand that the car was red:

**Q:** What color was the getaway car that you witnessed?
**A:** It was a red car.

**Q:** You could clearly identify it as a red car?
**A:** Yes, it went right by me.

**Q:** And when that red car sped past you, were you able to see the driver?

You won't be able to do this for every important point - and you shouldn't. But this is a helpful technique for emphasizing your most critical points.

- **Where you can, use exhibits or demonstrative aids.**

Using exhibits or demonstrative aids is helpful in several respects. First, jurors are often better able to follow the testimony when they can link it to something that they are simultaneously seeing. Secondly, you will sometimes be able to communicate information better visually than you would be able to by using words alone. Further, studies show that people retain information at much higher rates when they are exposed to the combination of testimony with visual images, rather than with just testimony alone. Finally, technological advances in the area of demonstrative aids continue to increase at dramatic rates, and there are now many different ways to incorporate exhibits into your trial. The benefit of using these exhibits is that you will be able to communicate your message to juries and judges more efficiently and more effectively.

- **Use impeachment techniques appropriately.**
Impeaching a witness properly requires two things from you: figuring out when to impeach a witness, and then effectively impeaching that witness.

Determining *when* to impeach a witness can be harder than it seems, and young litigators will have to make determinations about when an impeachment is worth it, versus when it is just likely to irritate the jury. Certainly, when a witness's testimony about a key issue conflicts with his earlier deposition testimony, or other evidence, you should impeach the witness. However, where the testimony is about a relatively minor detail, use your best judgment about whether or not impeachment makes sense, or whether it will just create a sideshow.

When appropriate, impeaching a witness can be a very effective way of undermining that witness's credibility to the jury, especially if the witness also have a motive to be untruthful. Impeachment works best when you have deposition testimony to refer to, so be careful to ask deposition questions that will elicit the answers you want to have considered by the jury.

When a witness testifies to something that is incorrect, start by confirming the witness's testimony. This gives the witness a chance to change her testimony if she's just mistaken, but it also signals to the jury that something important may be happening:

Q: Ms. Frank, you just testified that the light was still green when Mr. Schmidt's car hit my client. Is that correct?
A: Yes, from where I was standing on the sidewalk, I could see the light, and it was green.

Q: And you are sure about this?
A: Yes, I'm sure.

After confirming the witness's trial testimony, question the witness about her deposition testimony, and find ways to credit or bolster that earlier testimony:

Q: Ms. Frank, do you remember coming to my office two years ago to give your deposition for this trial?
A: Yes, I remember - you sent me a subpoena, and I took a day off work to come and testify.

Q: And do you recall that the defendant's attorney was there?
A: Yes.

Q: And there was also a court reporter present who took down everything that everyone said?
A: Yes, I remember that.

Q: And do you remember that the court reporter put you under oath and that you testified to answer the questions truthfully?
A: Yes.
Q: And did you answer those questions truthfully?
A: Yes, the best that I could remember.

Q: And after the deposition, the court reporter sent you a transcript of your testimony?
A: Yes, I was supposed to read it and make any corrections.

Q: And did you read your deposition transcript?
A: Yes, I did.

Q: And you gave that deposition six months after the accident occurred, correct?
A: Yes, it was six months later.

Q: And that deposition was two years ago next month, correct?
A: Yes, it was a long time ago.

Q: Is it fair to say that you remembered the details of the accident better at your deposition than you do as you sit here today, two and a half years after the accident?
A: Probably, that’s probably fair to say.

After crediting the witness’s deposition testimony, you will want to confront the witness about the discrepancy and contrast the two pieces of testimony:

Q: Ms. Frank, let me show you your deposition. Is this your signature at the bottom?
A: Yes, it is.

Q: Ms. Frank, on page 93 of your deposition, line 21, I asked you what color the light was when Mr. Schmidt's car struck my client. Do you see that?
A: Yes, I do.

Q: And your answer was then, "I could see the light clearly, and it was definitely red." Is that correct?
A: Yes, I guess I did say that.

Q: And when you reviewed your deposition transcript for errors, you did not change that testimony, correct?
A: No, I didn't change it.

If you think the witness is biased or has a reason to be untruthful—or may be inadvertently influenced by one side—you will want to follow up with questions that will expose that bias to the jury. If the witness has an actual reason to be untruthful, it will make the impact of the untruthful testimony even more poignant.
• Treat the witness with respect and be nice.

Although this will often be hard, particularly with difficult witnesses, it is important to always be respectful and polite. First, there is a chance that your witness may end up responding to your pleasant attitude—after all, some witnesses will find it difficult to be consistently and openly hostile to someone who is being kind. More importantly though, juror interviews consistently show that jurors despise rude lawyers, and long for more civility in the courtroom. If you can look calm and reasonable to jurors, even in the presence of a difficult or hostile witness, you will look more credible, while your witness will be interpreted as unreasonable or biased. Even when a witness is lying, aggressive follow-up questions will rarely help your case—only rarely will a witness back off an untruthful statement, and in the meantime, the witness will be continuing to repeat a lie. Instead of the jury hearing the untruthful statement once, it will now have heard it multiple times.

At the very least, avoid getting aggressive with a witness unless and until she is aggressive first. To the best of your ability, use short questions that are statements of fact to help you maintain control of the questioning. Ultimately, very few witnesses will respond to a "tough guy" routine, and you will end up with a witness that is fighting you, an alienated jury, and an annoyed judge.

3. Specific Types of Difficult Witnesses

While general strategies will be helpful with all witnesses, there are specific strategies that are available for certain types of difficult witnesses trial lawyers encounter.

a. The witness that refuses to be led.

Cross examining a witness who refuses to be led can be a difficult task. When examining this type of witness, it is particularly important to ask short, concise questions that are statements of fact. Anything else will surely land you in hot water—this witness will take advantage of any opportunity to derail your case with his version of what is important for the jury to know. Or perhaps this witness will just be combative—either way, there are ways to control such witnesses effectively.

First, do not argue with the witness. The minute you are arguing with the witness, you are not going to win. When a witness tries to interject his own answer to one of your questions, or otherwise refuses to answer, smile, and then offer to rephrase the question. Be persistent, but polite. For instance:

Q: Mr. Smith, isn't it true that you were fired from Moreland Shipping International?
A: I got fired because my boss is a liar and that whole company is corrupt.
Q: Mr. Smith, I'm sorry, but that's not the question I asked you. Let me ask my question again: were you fired from Moreland Shipping?
A: That's not the whole story, though. My boss -
Q: Mr. Smith, let me interrupt you there. I'm asking you whether or not you were fired from Moreland. Do you understand the question?
A: I'm not an idiot, of course I understand the question.
Q: So your answer is yes, then?
A: Yes, I -

Q. Thank you, Mr. Smith.

When a witness is being difficult, be sure to stick with leading questions. To the extent possible, do not allow the witness to explain his answers—this will almost certainly require you to stick only to questions that can be answered with a yes or a no. Be as brief as possible, and conclude as soon as reasonably possible. Do not trying to make ultimate conclusions with witnesses who are fighting you—get the testimony that you need, and save your big conclusions for closing arguments.

If all else fails, seek help from the judge. If the judge has to admonish the witness or instruct the witness to answer your question, the witness will likely take the proceeding more seriously, and the jury will understand that the witness is behaving badly.

b. The witness with diminished capacity.

A witness with diminished capacity can take a number of forms. The witness may be a witness with a handicap or a developmental disability; perhaps the witness is hard of hearing and thus the typical questioning that takes place during examinations will be difficult. Or, the witness might be a small child whose testimony is crucial. In most respects, the advice in this chapter will apply most especially to these witnesses. It will be important to remain particularly calm and patient with such witnesses, whose specific situation will likely be exacerbated by the tension of testifying in court. It is especially important to remain in control, because this witness's testimony will usually be very important. Because these witnesses are often not the ideal way for you to present your case, you are likely calling them on direct only because their testimony is so important.

If the witness is your witness, prepare the witness exhaustively, or at least as much as the witness can handle. Make sure the witness understands what testifying will entail, and if you can, familiarize the witness with the courtroom ahead of time. Make sure you ask questions in a way that the witness will be able to understand your question—oftentimes, this will mean especially short and direct questions, using simple words. If the witness hesitates in answering questions, acknowledge the witness's feelings: "Suzie, I know this is difficult to talk about, and you are doing great, but it's important that you tell us as much as you can remember about what happened." Give your witness positive reinforcement through your body language and words; while nodding your head, you might thank the witness for her response.

If you will be cross examining one of these witnesses, it is important to tread lightly. The last thing you want to do is seem like a bully to the jury; you are not going to win points by making a child cry on the stand. However, you can gently ask questions that can expose inconsistencies in the witness's testimony. Try to do this with as much kindness as possible, while being genuine, and conclude as quickly as you can. You will always be able to make your more forceful points in closing arguments, using the testimony you elicited from the witness.

Above all, remember to treat witnesses with diminished capacities gently and respectfully.

c. The witness who cannot remember, or "cannot remember."

Either by nature or by circumstance, some witnesses will not remember important details, or claim not to remember important details. The forgetful witness may be one of the most frequently encountered types of difficult witnesses, and it is important that you learn how to deal with the all-to-
frequent testimony of "I don't remember," or "I can't recall," or "That was a long time ago, and I can't say for sure."

First, if you are cross examining the witness who doesn't remember, be especially careful to limit your questions as much as possible to elicit only yes or no responses—any place where the witness can add in unnecessary verbiage will likely not be good for your case. Remember the cardinal rule of cross examining and ask only short and simple factual statements.

It will be easy to get angry and frustrated with an evasive, non-responsive witness. It is important to stay calm, because only then can you stay in control. Also, when it comes to the jury's perception, you want to continue to make sure you are the one who looks credible and forthcoming. If the witness cannot remember key details, you will sometimes have deposition testimony or other extrinsic evidence to rely on, which will be helpful in refreshing the witness's memory:

Q: Mr. Lindor, when did the defendant first talk to you about his idea to rob the bank?
A: I don't really remember.

Q: Didn't you say in your sworn statement that the defendant first brought up his plan when the two of you were drinking at Elston's Pub on January 23, 2011?
A: I guess I said that.

If the witness will not commit to his earlier testimony, prod him to confirm that testimony:

Q: It's important that we get this correct, Mr. Lindor. Did you tell the police that the defendant first discussed his bank robbery plan with you on January 23, 2011?
A: If you say so, I can't remember.

Q: It's not if I say so Mr. Lindor, it's important for us to determine at this trial what actually happened. Yes or no, Mr. Lindor, you told the police that the defendant discussed his plan with you for the first time on January 23, 2011?
A: Yes.

If you do not have earlier deposition testimony or other evidence to refresh the witness's memory, your task is different. If you believe the witness is being dishonest about his memory, or even if you believe the witness truly doesn't remember, try to ask him questions about related subject matters that might jog his memory. Then, go back to the questions he claimed not to remember the answers to, and try asking those questions again. Or, if you have exhibits that would jog a witness's memory, use those to refresh the witness's recollection—while a witness will likely not remember in the abstract an email he wrote several years ago, showing him that email will almost certainly elicit a different response. Be sure to exhaust the witness's possible methods of trying to find out the information you are asking about—if the witness doesn't remember a particular thing, ask her if there are any people she could talk to to determine the answer, or any documents she could look at that would help her remember. You may be able to find information in this way.

If none of those techniques work, and you are still faced with a witness who claims not to remember important details, try to minimize the witness's testimony by showing that he has no recollection of any of the relevant subject matters. If the witness truly does not remember, no amount
of legal maneuvering will elicit the answer you are looking for. You can also ask questions in a way that allows you to put forth your theory of the case:

Q: Mr. Ellis, you have no memories of any information that would contradict the defendant's testimony that he was at work all day on the day the robbery occurred, correct?

A: I really don't remember if he was there or not.

If the witness truly does not remember, you will not be able to force him or her into the testimony that you want. However, you should make sure that if the witness has any reason to be untruthful, you bring that to the jury's attention:

Q: And Mr. Ellis, isn't it true that you are currently in a romantic relationship with the defendant's sister?

A: I am, yes.

Q: And she would be very upset if her brother went to prison, correct?

A: I suppose she would be, I guess.

Q: And you would not want to intentionally upset your girlfriend, isn't that correct?

A: I wouldn't want to, but my testimony here is the truth. I really don't remember.

If a witness claims to forget key information, and the witness has a reason to be intentionally forgetful about that information, make sure that is clear to the jury, as it will go a long way to discrediting the witness's testimony.

d. The witness that is a surprise.

Pretrial discovery will, hopefully in most cases, make surprise witnesses rare. However, in the event that you are confronted with a surprise witness, start by staying calm. Depending on what the witness has said, quickly determine whether or not you even want to examine the witness. If the witness has not said anything that has damaged your case, or has been relatively neutral, it might be best to just decline to examine the surprise witness at all. After all, you have not prepared for this witness, and probably do not know what the witness is going to say. Moreover, examining this witness will give your opponent another opportunity to get testimony on re-direct. If you can avoid the examination altogether, it may be your best strategy.

In cases where you have to examine the surprise witness, try to control the witness's examination very tightly. Where the witness has offered testimony that is potentially devastating to your client, try to focus on what the witness missed or couldn't have had knowledge of:

Q: Ms. Thames, you said that you recognized my client as the person who robbed First Kentucky Bank on March 3, 2009, correct?

A: Yes, I was there, and I saw that man right there rob the bank.

Q: Isn't it true though, that the robber forced everyone to lie down on the floor with their heads down?
A: Yes, that's true, but I still saw him.

Q: Isn't it true though, that you saw him from your vantage point on the floor?
A: Yes, but I could still see him.

Q: And isn't it also true that the lobby of the bank has six pillars and several partitions in it?
A: I'm not sure, but that sounds right.

Q: And isn't it also true that from the place you say you were on the floor, to the place where the bank robber was standing, there were several pillars?
A: I'm not sure.

Q: And isn't it also true that the bank robber was wearing a mask?
A: Yes, but when he took it off for a brief second, I saw his face.

Q: So your testimony here today is that you can identify my client, a complete stranger to you, from a glimpse you had for a "brief second," three years ago, while you were lying face down on the ground, and your view was obstructed by several pillars?

When you can, ask the witness why he or she came forward, and why he or she did not come forward earlier. Try to focus on any bias the witness might have and any gaps in the witness's testimony. Surprise witnesses are certainly inconvenient, but thankfully, are rare.

e. Examining the experts.

Many lawyers believe that expert witnesses have the upper hand; and in some respects, they do. Many expert witnesses testify regularly, and are comfortable in front of juries. Expert witnesses also often get the benefit of appearing to be disinterested parties, which will frequently inure these witnesses to jurors, who often see them as trustworthy. Additionally, expert witnesses also have the benefit of actually being experts in the subject matter at hand, which will often be difficult and complex. However, cross examining an expert witness can be less difficult than it seems.

1. Begin by using your expert witness effectively.

Before trial, study all expert reports carefully. Always work with your expert witness to identify weaknesses or assumptions in the opposing expert's report and testimony. Be sure to ask your expert witness about technical areas that you may not fully understand. Lawyers are not expected to be experts in every field, but you need to know enough about the subject at hand to effectively understand the case, question the witnesses, and appear credible to the jurors. In short, the trial is not your opportunity to learn about the case. You should know everything you need to know far before stepping into the courthouse on the first day of trial.

This checklist will help you master expert witness examinations:

- To the extent possible, read every substantive piece of writing that the expert has published. In some cases, the witness will be a prolific author and this will just not be possible. In most cases, witnesses will have no more than a couple dozen
works. Be familiar with all of them. As necessary, use your expert witness for help in understanding the publications.

- Study the expert witness's curriculum vitae carefully. Determine what experience the witness has that is specific to the subject of this case. Perhaps the witness has written extensively on cognitive neurology, but if your specific trial involves a particular psychiatric condition, the expert's experience may not be entirely relevant. This will be important information for you to know, and can help you to discredit an expert witness. Your expert witness should be able to help you discern what topics and experiences are on-point, and which are not.

- Be as knowledgeable as you can about the subject area at hand. This will oftentimes be difficult. However, you owe it to your client to have a substantive understanding of even the most technical subjects. It is part of your expert witness's job to help you understand the subject of the litigation. Have your expert define complicated or meaningful terms for you, and for the jury.

- If the opposing witness tilts away from field standards in any way, make sure you understand how and why. Your expert should be able to help you identify this information. This can become important during testimony, and it will be extremely useful for you to know.

- Use the "funnel" approach; that is, start by examining the general, and work your way into the specific questions. While this is a helpful technique for all witnesses, it is particularly helpful for expert witnesses who are testifying about complex matters. Your expert witness should be able to help you identify areas of questioning.

2. Always—always—ask about assumptions.

Perhaps the most fruitful area of questioning for expert witnesses will be the assumptions they relied on in coming to their conclusions. Almost universally, expert witnesses will base their opinions and reports on a multitude of assumptions. In many cases, varying any one of those assumptions would alter the expert's opinion. To the extent that the expert witness's conclusions rely on many assumptions, a thoughtful trial lawyer will be able to quickly show that the expert's opinion might be less than sound.

Before cross-examining an expert witness, be familiar with each of the assumptions that the witness makes in her report. Then, when questioning your expert witness, employ a formulaic style that attacks each assumption in turn:

Q: Doctor Jones, in your report, you stated that the debt coverage ratio exceeded the ratio allowed under the loan documents, correct?

A: Yes. Because of the additional debt incurred by the borrower, the ratio exceeded the amount allowed under the loan.

Q: That calculation assumes a capital improvement budget of $50,000.00 on the property will be required this year, correct?

A: Yes.
Q: If a $50,000.00 capital improvement turns out not to be necessary, your calculation would be altered, would it not?

A: Yes, it would be. But my understanding is that the improvement will end up being necessary.

Q: That calculation also assumes that the prime rate will continue to rise, correct?

A: Yes, it does. But I believe that is a safe assumption.

Q: But an assumption nonetheless, correct?

A: Yes.

Q: And if the prime rate did not continue to rise, that would affect your ultimate conclusion, correct?

A: Yes.

Q: And your calculation also assumes that the property management costs will be a "market rate" of 5%, correct?

A: Yes, it does. I think that's a fair assumption.

Q: If the property management costs end up being anything other than 5%, your opinion would change, correct?

A: Yes.

The key is to identify as many assumptions as possible, and show that for each one, any substantive alteration would result in a change of opinion. Certainly this will not be true for trivial assumptions—but oftentimes, experts are relying on substantive assumptions that simply may not be accurate. In your closing arguments, you will be able to make the point that the witness identified, for instance, eleven different assumptions, and testified that an alteration in any one of them would change the expert's opinion. And hopefully, you will also be able to show that at least some of those assumptions were inaccurate.

3. **Question the expert witness about what he failed to do.**

The things that an expert failed to consider or do can be its own theme for cross-examination. If you can show that the expert witness failed to consider important facts or events, the expert witness will lose credibility. This line of questioning can be relatively straightforward, and can be easily coupled with questioning the expert's assumptions. For instance:

Q: Doctor, you have told you all of the things you examined, the studies you have reviewed, and the case file you read. For a moment, I'd like to discuss the things that you did not look at.

A: Sure, okay.

Q: Did you ever complete an examination of the deceased?
A: Well, no. But by the time I was involved with this case, the deceased had been buried. There was no way I could have examined the body at that point.

Q: Did you speak to the nurses that were on duty during the operation?
A: Well, no - but I had the information I needed in the medical report.

Q: You didn't talk to even one of the nurses?
A: No.

Even if the expert witness's review of the available information was reasonable, you can certainly call an expert's opinion into question by pointing out all the things she failed to do. If done properly, this can be a very effective way to discredit an expert witness.

4. Expose the expert witness's motives.

To the extent that you can reasonably and politely do so, show that the expert is not the disinterested truth-seeker she presents herself to be. Complete your research ahead of time and be prepared to ask your witness pointed questions about her motives. For instance, it will be important for you to know if your witness always testifies for one side. If out of one hundred suspicious fires, the opposing expert concluded that every one of them was the result of arson, that will be helpful information to you—especially if your own expert is testifying that arsons are infrequent and hard to prove conclusively.

Obviously, expert witnesses will almost always be receiving compensation for their time and efforts. Bring this to the jury's attention as well. Oftentimes, the fee that an expert witness is charging will seem exorbitant to an average jury and will perhaps diminish the witness's credibility.

4. When Your Witness is the Difficult Witness

When the difficult witness is your own witness, your strategy will be different. When your witness is going rouge, you will have competing interests: you will be trying to control your witness, while at the same time attempting to extract your witness's story in a way that lets your witness build credibility with the jury and still be the so-called "star of the show." It will often be difficult to meet those two goals simultaneously. In other cases, your witness might be forgetful or nervous or simply make misstatements. When your witness starts to go awry, it is important to take control quickly.

a. Correcting Your Witness's Misstatements

All too often, a witness—even one who has been properly prepared—will get nervous and stumble when testifying in court. Trial lawyers should expect this to happen; most people do not spend much time in court rooms, and testifying in front of a jury or a judge can be a stressful experience. In most cases, correcting the testimony will be a fairly simple matter.

If the subject of the incorrect testimony is nonmaterial, think a moment about whether or not it even makes sense to correct it. If your witness just testified that she has been working at her company for eighteen years, and you happen to know that she has actually been employed there for nineteen years, the value of correcting that testimony may be miniscule, assuming the fact is inconsequential. In some cases, correcting that testimony may do more harm than good: it could cause your witness to get nervous, it could make your witness seem unreliable, and it can draw attention to an unimportant detail.
In some cases, though, you will want to—or have to—correct your witness's testimony, because your witness gave an answer that was confusing, incomplete, or just plain incorrect. When this happens, it is usually in your best interest to correct the offending testimony as quickly as possible. As soon as you are able to question your witness, you can correct your testimony through questioning:

Q: Do you remember answering a question earlier to Ms. Mitchell about what doctors you sought treatment from?
A: Yes, I do.

Q: You mentioned that you saw Dr. Jones and Dr. Singh. Was that a correct answer?
A: I did see Dr. Jones and Dr. Singh, but I forgot to mention that I also sought treatment from Dr. Jennifer Morrissey.

Q: Did you see another other doctors for treatment?
A: No, just those three.

While this may draw some objections from your opposition, it is important that you correct your witness's confusing or incorrect testimony as quickly as possible.

b. Prepare, Prepare, Prepare

Many lawyers will prepare their clients for testimony immediately prior to their client giving that testimony—for instance, lawyers will frequently instruct their clients to "show up a half hour early" to "go over some things" before a deposition. This is rarely sufficient preparation for a witness.

Proper preparation of your own witness should include an exhaustive preparation session where you review each area that you think may come up during your witness's testimony. It should also include you preparing your witness to deal with surprises that may occur, and you should instruct your witness on how objections will work during the trial. You should role play where appropriate, and if you can, you should take your witness to the courtroom where the examination will occur, so your witness will have some sense of familiarity with the way the room will be set up, who will be located where, etc. Ahead of your witness's testimony, you should figure out a way to bring your client's weakest testimony out in a way that you and your client can deal with effectively, and in a way that will undermine your opponent's ability to use inconvenient information against your client. This will include reviewing bad facts with your client ahead of time, and figuring out the way to bring that testimony out on direct in the least damaging way possible.

While you would not want your witness to sound mechanical and rehearsed, you will want your witness to feel as comfortable as possible as the trial approaches. Because most people do not testify often, part of making your witness comfortable will be just going through the process with them until he or she is at ease. Try to remember that for most witnesses, testifying in a trial setting is an anxiety-ridden and unfamiliar experience. Part of your job as a trial attorney is to successfully navigate your clients through this experience.

5. Conclusion

Mastering the art of examining a difficult witness is anything but a thankless task. If done properly, it will be an invaluable skill that will benefit you immensely during your career. Ultimately, this is a skill that you will learn through experience, and you will develop your own style of
questioning. Developing techniques to effectively examine difficult witnesses will be critical to your career as a trial lawyer.