

**Part III: Characteristics for Improving the Credibility of Your Witness:  
Positive Witness Characteristics  
Merrie Jo Pitera, Ph.D.  
CEO**

**PART III: Positive Witness Characteristics**

While well-credentialed witnesses' messages can be undercut by their engagement in undesirable witness characteristics (as discussed in our previous two Insights), the result of adopting good witness qualities can have the opposite effect: jurors are *more likely to believe* witnesses are telling the truth *when they are* telling the truth. Working with witnesses to help them adopt the following positive characteristics can increase their credibility and the persuasiveness of your case.

- **Short, Direct Answers.** Jurors perceive witnesses positively if they provide prompt, short, direct answers. Succinct responses are perceived by jurors as projecting confidence, demonstrating that the witness is engaged in the process, listening and has a strong command of the subject matter, therefore increasing the witness's credibility.
  - **Powerful Speech.** Unlike powerless speech, powerful speech is an assertive speech style that is defined by the absence of linguistic markers such as hedges, fillers, disclaimers and tag questions. Witnesses who speak confidently are perceived as sure of themselves and knowledgeable (interestingly, this is true even if they are not telling the truth). This is how jurors believe an opposing side's witness who is "playing loose" with the facts; that is, s/he says his/her message with such confidence, jurors believe him/her.
- **Give the Good with the Bad.** Especially with witnesses who are company employees, jurors are on the lookout for signs that the witnesses may be biased toward the company/their employer. Any indication of bias adversely affects a witness's credibility, as they are often deemed a "company man/woman." However, witnesses who give both positive and negative testimony (i.e., "gave the good with the bad") on the company's behalf are viewed as more credible. It will be important to educate and empower your witnesses such that, with the right question or topic, it is appropriate to answer honestly, even if that testimony may not paint the company in the best light.
  - **Counter Concern about Internal Pressures.** In general, jurors tend to be concerned about the credibility of a witness when they perceive him/her as a company representative unable to give honest answers because of internal pressures. In many instances, jurors want to know if the witness feels s/he may lose his/her job if s/he provides testimony unfavorable to the company/employer. For example, one juror asked, rhetorically, about a witness, "Does she feel if she says the wrong thing she will be fired?" Consistent with the above bullet, to the extent that your witness can provide testimony that occasionally includes both positives and negatives about the company, the less likely jurors will be to question the witness's integrity.
- **Thorough Research Review.** A witness who has prepared for his/her deposition or trial testimony will engender jurors' positive feedback. A familiarity and comfort with the case information and documents increases jurors' perceptions of the witness's knowledge of the subject matter and comfort with the situation and materials.

- **Hands-On Research.** In addition, standing alone (e.g., without cross-examination) a witness who has conducted his/her own on-point research or has, for example, in a medical products liability case, examined the plaintiff directly, is afforded added credibility and viewed as an expert on the subject matter.
- **Be a Teacher.** Experts who build in a teaching component to their testimony are well-received by jurors. Getting witnesses out of the chair and working with exhibits/animations helps increase their credibility, as jurors appreciate the witness explaining technical concepts in a way that is understandable and informative.
- **Stay Inside Their Scope of Knowledge or Expertise.** Usually, we see at least one witness who tries to cover too much territory in his/her testimony. When this happens, it adversely affects a witness's credibility. However, jurors appreciate a witness who stays within his/her scope of knowledge by politely informing the questioning attorney of an inability to answer the question that is outside his/her expertise, experience or knowledge.
  - **Know When to Say "I Don't Know."** When witnesses are unsure about an answer (on direct or cross-examination), it will be helpful for them to know it is appropriate to say, "I don't know." If it is an important point, counsel can educate witnesses on the role of their attorney such that the witnesses rely on counsel's ability to structure the line of questioning and/or, in the case of cross, to rehabilitate them.
  - **Defining Boundaries.** To help witnesses know the boundaries of their testimony, it is helpful to educate them about their discrete role in the trial. They are but one puzzle piece that helps create the entire picture [i.e., to use another analogy, "It's *not* your job to win the game. Just tell *your part* of the story. Leave the rest to your team (the other witnesses) and your coach (your attorney)"]. If witnesses understand that they are not there to carry the "weight of the trial" on their shoulders, it will reduce their anxiety and allow them to focus on their specific message points.
- **Use Thematic Message Points.** Witnesses who are prepared to use three to five overarching themes to combat the opposing side's cross-examination questioning are perceived as more organized, prepared, firm and knowledgeable. These message points serve to make a witness a strategic thinker by providing him/her safe harbors to handle the opposing counsel's misleading or mischaracterized questions.

### **Conclusion**

Having strong credentials and a message to communicate to jurors are only two components of being viewed as a good witness. As this series of Insights has outlined, these two components are not necessarily sufficient to ensure jurors will believe and assimilate the witness's testimony. Engaging positive characteristics helps to increase a witness's credibility among jurors, while a fact or expert witness who engages in the undesirable witness characteristics adversely affects: his/her own believability and, consequently, jurors' evaluations of his/her testimony (and, potentially, of the case as a whole). Identifying negative characteristics in your witnesses and working with them to overcome these behaviors will help to ensure the message a witness is communicating is positively received.