

# **One Minute Witness**

**“How to be a successful witness. Everything you need to know.  
For depositions, jury and bench trials and ADR. ”**



**Robert Gordon, JD, PhD**

Trial & Settlement Scientist

**With Ami Gordon**

Attorney at Law

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## **Dedication**

To MG Gordon.  
Father, Grandfather, Teacher and Friend

## Introduction

**You know everything** you need to know to be a successful witness. You just don't realize it. I realize it from helping more than a 1000 witnesses testify persuasively and effectively over the past 30 years. You already know the dynamic principles of human behavior that make a person successful in life. Apply these principles when you give a deposition, testify in court before a judge or jury or before an arbitration panel. Apply them when you present yourself for mediation because mediation also involves a substantial amount of non-verbal testimony. The dynamic principles described in this e-book apply the same for fact witnesses as they do for experts.

**Our Team doesn't teach** the people we work with in our Witness Workshop to be successful witnesses. Instead, our strategy is to help them to confidently realize what they already know. We concentrate on helping bring out the best in each witness under challenging legal circumstances. This is the formula for their success, as well as ours. The lessons of the One Minute Witness show the way. Please open your mind and appreciate your own aptitudes, potential and likability. Overcome your doubts and fears. Prepare for the adventure of preparing for your testimony and enjoy the read.

**From our perspective,** if we share the most important things about being a successful witness in a brief and convenient ebook and if when you are done reading it, you say, "I know all this," you will get our point and we will have done our job.

**When you do well,** your testimony is presented in the context of your most cherished values. When it is delivered in the spirit of your convictions, it creates heightened awareness and appreciation in your listeners.

**Like most people,** you probably think testifying is different from a subset of other kinds of communicating. Movies and books reinforce this belief. But in great movies and memorable books about trials, the best testimony is communicated conversationally. Among our favorite Hollywood examples of movies with great witnesses are "Inherit the Wind" with Spencer Tracy, "To Kill a Mockingbird" with Gregory Peck, "A Few Good Men" with Tom Cruise and of course, "12 Angry Men" with Henry Fonda. Effective testifying is effective communication. That's all. It's just that simple.

**Testifying is a very important task.** Many of America's favorite movies about famous trials in history deal with big questions that define who we are and what we care about. This is why testifying is so important. For example, is it right to teach evolution in school? Can we overcome racial prejudice? Can we confront the arrogance of power? Witnessing has shaped human history. Consider the betrayal of Jesus, the death of Socrates, the trial of Nazis in Nuremberg, the televised trial of Saddam Hussein.

**But it was the tobacco trials** of the past century and the broadcast trial of OJ Simpson that focused our attention on the value of expert testimony about scientific matters such as the harm of smoking or the importance of the DNA assay. Decisions based on such testimony impact our health and well being and the future of our world. Testifying is part of the legacy we leave to young people. It is the truth presented in a stunning and

breathtaking way. Your testimony is part of a vital archive of our lives, concerns and disputes.

**This book is titled, "The One Minute Witness."** It's designed to be grasped quickly and retained easily. Regardless of the subject matter of the case or your role in it, it focuses attention on the most important aspects of being an effective witness. Along with my co-author Ami Gordon, we have organized the information in this book around 10 vital principles.

To write a book that can be easily grasped and retained is my goal. The idea for the book was born by a challenging circumstance of witness preparation. I was asked to change a reticent, frustrated CEO into an outstanding likable witness. I asked, "How long do I have?" The chilling answer -- you have minutes, not hours or days. Our Likable Witness workshops usually take a whole day and often involve a "day-before" refresher course. To accomplish the goal of teaching the witness how to do his best in minutes, we had to distill everything we knew into specific, simple principles that could be prioritized.

## Principle I. Tell The Truth

**The 10 Commandments** are good rules for people to live by. Most modern and primitive peoples subscribe to them. The Commandments are simply written and easy to remember. The 3<sup>rd</sup> Commandment says “Thou Shalt Not Bear False Witness.” What is a false witness? And what is the truth? And whose truth are we talking about?

This first principle of successful testimony does not specifically address the branch of philosophy called epistemology or the nature of scientific proof. It refers to the compelling features of our everyday perceptions.

**If you believe something is true**, it is true for you. This belief is the foundation for your effective testimony. The law requires you to take an oath to tell the truth. Though you try, you can't guarantee that what you say will be accurate, wise or fair. Nor can you assure that what you say will be, despite your best effort, completely accurate.

In the middle ages, Galileo was tried for a crime of irreverence called blasphemy. He said the earth rotated around the sun and not the other way around. He testified truthfully. But the judges didn't realize it. It wasn't his fault. Likewise, you are not responsible for the decisions other people make about what you say. You can say what you have observed or know persuasively and influence the listener, but you can't control the outcome of their perceptions and judgments. Their decision is not your job. Your job is simply to tell the truth as you perceive it and as you understand it.

## Principle 2. Be Prepared

**When I was a child**, my parents introduced me to Scouting. From day one, we were taught to recite the Scouts' motto, "Be Prepared." That's an excellent prescription for being a good witness as well. Preparation includes: Knowing what you're going to be asked. Why your testimony is requested or required by a subpoena. Why what you think, see or feel is important. Why it's relevant to the salient issues in the case and where it falls on a timeline of key events. Mentally and emotionally, preparing to testify is no different than preparing for a test in college. You've done it many times.

**Be prepared.** Know your audience. Think about how best to explain to them what you observed or know. Ask the attorney who presents your testimony, how are you going to be challenged? Remember, you can't prepare all by yourself. It's hard to be objective about ourselves -- to separate your testimony from yourself.

The most valuable process is interactive. Ask the attorney -- what's the case about? What are your best themes for the case? What are the other side's best themes? Ask the lawyer's advice about how best to present what you have observed or know and advise you about effective ways to defend it. When preparing to testify in court, ask about the mistakes and oversights you made in your deposition. What is the best way to correct them? A witness doesn't have to live with mistakes made in their deposition.

Contradictions are not lies. Make it right when you take the stand. "I know I said so in my deposition. But I've thought about it since then. I was wrong." Ask the attorney to give you a chance to practice and rehearse your answer. But when you give it, let it be spontaneous and from your heart.

**Why should you have to defend yourself?** After all, if you tell the truth, isn't that enough? Why should anyone want to attack you or your testimony? It's because of our adversary process of achieving justice. The adversary process says that out of the clash of evidence and argument, truth emerges. This historic method for defining truth is not necessarily the best way to discover it. Scientists don't think it is, nor do many teachers. In fact, lawyers are taught by the Socratic method, which is the method of learning by asking questions and not by arguing.

**Progress in modifying the adversary process** is gained through ADR, which is an acronym that stands for "Alternative Dispute Resolution". But for the time being, you have to work in the adversary system because it's the primary democratic method we have for resolving disputes. As the great British leader Sir Winston Churchill observed, "With all its faults and foibles, the Democratic process is the best devised."

**"Preparing" means different things** for different witnesses in different cases. In an automobile wreck, the preparation can be a brief conversation in a courthouse cafeteria. In an intellectual property case, preparation may require hundreds of hours of reviewing documents, crafting a complex time line and designing multimedia evidence including animations, graphs and charts. In the end, it all comes down to the Scout's motto- "Be prepared."

## Principle 3. Know Your Audience

**Visualize testifying** to a group of teachers, a team of Wal-Mart employees or to a convention hall of electrical engineers. Naturally, you're going to tell each group the truth. But can you tell the truth in the same way to each group? You can't do it the same way if you want to be understood and persuasive.

**If you're testifying before a judge**, find out what you can about his or her background. Since state judges run for office, there's lots of public information about their education, career, professional experience and their family circumstances. By browsing the Internet, you can learn whether they are Republican, Democratic or Independent. This can give you insight into their judicial philosophy. You want your testimony to complement their philosophy -- to harmonize. There are interesting published polls of lawyers which gauge the quality and nature of the judge's work. Sometimes, judges will post their views and the practices and procedures of their court on the Net.

**In the case of federal judges**, browse information about their education and training. Find out whether they have written "bench opinions" which gives you insight into their judicial philosophy. What political party did they belong to and who appointed them to the Court? The lawyer who prepares you to testify will have lots of information about the judge and the view of other lawyers you talk to allows you to synchronize your views with those of the Court.

**For jury trials**, get ready to testify by asking the preparing attorney to describe the jurors based upon their answers to the questionnaires which the court asked them to complete. These questionnaires usually tell you the juror's' age, education, occupation and marital and parent status. You will also learn in what part of town they live. This lets you preview their socio-economic status which may correlate with their attitudes and beliefs.

**Justice Oliver Wendell Holmes** once opined, "No generalization is worth a damn." But studying the culture of the community in which you testify positions you to testify in a meaningful and helpful way. Obviously you will frame your remarks to resonate with jurors from different venues. You won't testify to a jury in Marshall, Texas in the same way as you would to a judge in Silicon Valley or in front of an arbitration panel in Wilmington, Delaware.

**Giving a deposition** is interesting because your audience isn't even in the room. It would be a mistake to think your audience is the lawyer asking you the questions. Under recent legal rules, the lawyer who wants you to do well, who is presenting for your deposition can't intervene to protect you from misleading or vexing questions. You're on your own. Remember when you first learned to ride a bicycle and realized no one was holding on to steady you. Most depositions are videotaped so you have to remember you are talking through the aperture of the camera to the judge, jury or arbitration panel.

It is a strategic mistake to think you are testifying to anyone in the room. The cross examiner, in fact, is the least important member of your audience. Your feelings and

reactions to them are irrelevant unless you unintentionally and mistakenly show it on camera.

## Principle 4. Put Your Best Foot Forward

When I was growing up, my parents told me to “Put my best foot forward” in everything I do. Your parents told you the same thing. But what does the expression mean?

I think doing your best is understood in terms of first impressions. As a witness, your first impression sets the stage and forecasts how well you will do. It also determines how likable you will be. No matter how likable you are in everyday experiences, how you want to be perceived when you testify requires a bit more thought. Thinking about this will lead you to personal growth. To do well, you must acquire new skills for ways to show what you know in an important drama.

**People like people who smile.** It’s no wonder teachers praise young students by decorating their papers with smiley faces. It’s reinforcement. It’s approval. For some children, a smile is the best kind of grade. Adults like smiles too. Even in the most serious cases, there are times when it is appropriate to smile. For example, you might find yourself smiling when you talk about your family, your job or events in your background that make you proud. Even in the most serious of cases, there are times when it is appropriate to smile.

**When a football team** runs out of the tunnel before a captivated nationally televised audience, they do it together. Their group runs out and “high-fives” and says enthusiastically to the fans, “We’re a team.” The same is true of testifying. You and the attorney who is calling you are a team. Even a court-appointed expert becomes part of a team with the judge and the party who calls the expert to the stand. You can’t control what you are asked and how you are asked questions. Probably you can never be better than the person who is asking you the questions. It’s a team endeavor.

Reveal that you like and respect the lawyer asking the questions. It will result in your being perceived as more likable. Actually, you may like the attorney who is going to cross-examine you, and the cross-examiner may like you too. The cross-examiner will say, “I’m just doing my job.” Well, the same is true for you.

Spend enough time with your attorney to harmonize your answer with his questions. The importance of harmony was revealed to me on a trip to the Big Apple. My wife and I had traveled to NYC many times but we had never visited Carnegie Hall. When I realized it, I told Sue that on our next trip, we’re going to Carnegie. When the opportunity came, I walked to the box office to buy tickets for the evening’s performance. But the marquee wasn’t what I expected -- the Boston Philharmonic Orchestra or Isaac Stern in concert. It was “Barber Shop Quartet.” How could this be? Discouraged but determined, I bought the tickets and paid a premium for center section seats. After all, it was Carnegie Hall.

What I heard I will never forget -- the most beautiful melodies and harmonies without the benefit of musical accompaniment. As I listened with attentive rapture, I imagined lawyers and witnesses in court singing medleys in half-tone, six-part accord. My apologies to the fabulous artists who do barbershop that I doubted. I was too dumb to understand your art and talent until I heard and saw it.

**Opposing counsel** may call you to the stand before the side your testimony supports. This is referred to as “being called as an adverse witness.” Under these circumstances, the law allows the examining attorney to ask you leading questions. This means you have to wait a little longer to express your views in the best possible light. You have to wait till the opposing lawyer is finished and the lawyer who likes what you are going to say gets to ask questions.

“**Dress for the occasion**” was another expression my parents used. It means, of course, that there is no right or wrong way to dress. But there is an appropriate way to dress for any given occasion. For example, you will dress differently for a backyard barbeque than for church. And you will dress differently to attend a wedding in Kenya, Africa than you will in Anchorage, Alaska or Zurich, Switzerland.

**The best attire** for testifying isn't talked about in the popular book by John Molloy, “Dress for Success.” His book is outstanding. But when you testify, the best dress is unnoticed. It is marked by the decision makers remembering the important things you said but not what you wore.

**Give your testimony** some spice and appeal. Make it interesting. Think of examples of your key points from everyday life, work, parenting or sports. This helps the decision makers relate to what you are saying. Experts should ask the presenting attorney if you can use visuals in your testimony such as a chart, picture, animation or computer slide show presentation. It helps engage the decision makers and better explains your view.

## Principle 5. Reframe Your Fear

It's natural to be anxious about testifying. The stakes are high. In everyday life, we are seldom cross-examined by an expert. The purpose of the cross-examiner is not to compliment us. The purpose is to point out our vulnerabilities, contradictions and the confusion about what we think and say. The cross-examiner's questions can have a more invasive purpose -- to raise questions about the values of the witness. They may like and respect, but from their point of view, they are just doing their job.

**As a clinical psychologist**, I've testified hundreds of times in cases involving the best interest of children when their parents divorce. The questions to be decided involve helping judges and juries make the best decisions they can about the custody, access and parenting plans for children whose parents are going through divorce. In such cases, the stakes are high and the risks are great. I want to do my best.

**When I confront my fears** about giving a deposition or testifying in such cases, the threat is obvious. I'm afraid I'll make a mistake. I'm afraid I won't remember an important fact or say something wrong. I'm afraid I'll be personally embarrassed or possibly hurt the very children that my testimony is supposed to help. To cope with my fear, I focus attention on my respect and belief in the good will of the decision makers who will listen to me. Why?

**Contrary to what most witnesses think**, the judge, jury or arbiters want you to do well. They don't have an axe to grind. The attorney who tries to embarrass you on cross-examination usually ends up impressing himself more than the decision makers. The decision makers want you to make your points so they can benefit from hearing them. They are tolerant about your bungling a question or two on cross-examination because they are not perfect either. In a way, when you are not perfect, it reassures them. You are perceived as more human and more likable. The decision makers will take your mistake, imperfect recollection or contradiction with a grain of salt. Many witnesses from Asia have a cultural view that it's important not to be embarrassed in public or "not to lose face." I tell them not to worry about it. The decision makers want the witness to do well and will accept imperfections. You would too, if you were the judge, jury or arbiter.

**A great Olympic athlete** gives a winning but not perfect performance. A Nobel Prize winner makes mistakes in his research until he gets it right. Abraham Lincoln, arguably one of America's greatest presidents, failed many times in his activities. But he always had the humility to acknowledge it. And we loved him for it.

**Another emotion you must learn to manage** in order to be a successful witness is anger. Anger has no place in the testifying situation. When we are verbally attacked, we have a natural tendency to get mad. But when we do so, decision makers think we have lost control. Our testimony will not be taken seriously or appreciated.

**When you testify** be modest, be respectful to the person attacking you and slow to anger. Never be supercilious or arrogant. No one likes an arrogant person. Most smug people are actually insecure. It is better to be the underdog than to be the overdog.

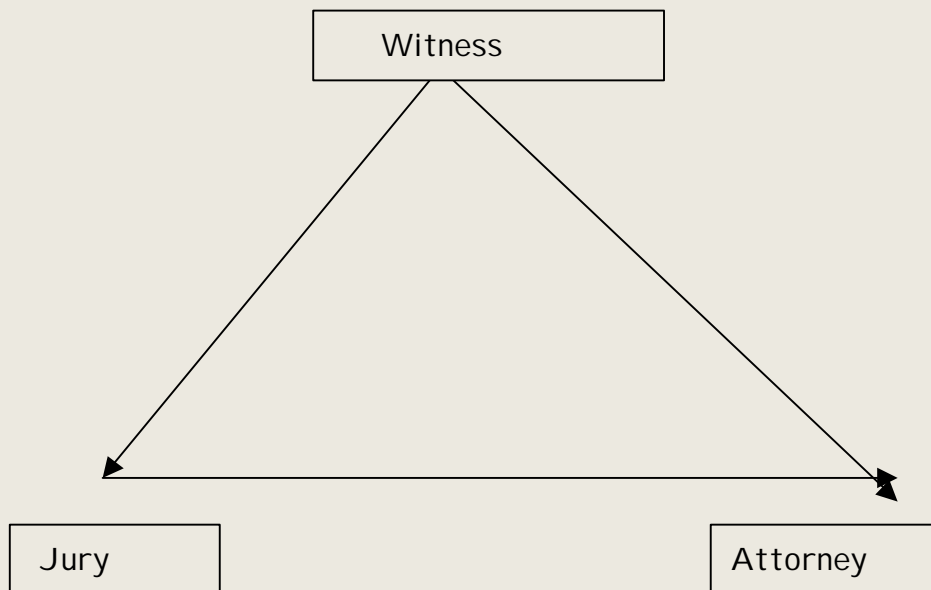
Everyone roots for the underdog in business, football and life. When the underdog does well, it reaffirms our faith in ourselves and our common future.

**When we are angry**, it only makes things worse to “catastrophize” our situation. An example of catastrophizing is to think, “What I just said is horrible. Now we will lose the case,” or, “This is the worst thing that could ever happen.” The truth is, what you just said was not said as well as you would like. That’s all. It’s not the worst thing that could happen. In a flash, decide to do better on the next question. Have you ever watched a frustrated child learning to hit a baseball or solve a math problem and say, “Relax, you’re trying too hard?”

**Life has taught me** that it’s sometimes good to think “as if.” We learn how to think “as if” when we are children playing games. We take the roles of our heroes -- real heroes like our parents or presidents, astronauts, surgeons, Supreme Court justices or great athletes. We learn how it feels to be like those we admire by acting like them. This is called modeling, role playing or psychological identification. It is different from the pathological state of losing contact with reality. It’s a very constructive process. When you walk into the courtroom, the deposition library or arbitration hearing room, do it with the determination to be the best and most confident witness you can be, and you are likely to be one.

## Principle 6. Look the Decision Makers in the Eye.

When you give a deposition or testify before a judge, jury or arbitration panel, the pattern of communication can be thought of as a triangle. The angle indicates the speaker, the audience and the attorney, positioned at right angles.



**Legal communication is unique.** The person who asks you a question is not your true audience. Your true audience is the judge, jury or arbiter. It's as if you were having dinner with a friend at your favorite restaurant and she asks, "How's it going?" Instead of answering her, you stand up, go over to another table and tell the folks at the next table, "It's going great." As I mentioned earlier, in the deposition format, the audience isn't even in the room. The audience should be in the mind's eye of your creative imagination. The audience comes alive when you look in the eye of the camera. The audience that matters wants you to succeed.

**When I was growing up,** my parents told me to look a person in the eye when I talk to them. Though not supported by the neurological facts, most people believe that you can see through a person's eyes to the deepest aspects of their personality; to their soul. Most Americans think that if a person won't look you in the eye, they are hiding something or are being deceptive. Working with witnesses from Japan and Korea, I learned that it can be a challenge for them to look a person in the eye in a formal situation such as the courtroom. The reason is that in those cultures, it can be considered disrespectful to look a person directly in the eye. A wonderful and talented people, they learn how to overcome their cultural inclination in an American courtroom.

**As a witness** you don't have many rights. They are few and precious. For example, you have the right to hear the question, to understand it and to finish your answer. Be a

good and careful listener. Spend more time and energy listening than speaking. That's the key to effectiveness. When you speak, don't equivocate. Tell it like it is.

**What you really think and believe** is a true and correct answer to any question asked. If you are an expert witness, give your true opinion – directly and specifically, without hesitation. Remember, as we teach our children, one of the wonderful things about telling the truth is that you don't have to worry about remembering what you say. When testifying, you are what you say. The decision makers look forward to learning about who you are and hearing what you have to say.

## Principle 7. Be Yourself

**Likability is credibility.** Decision makers are receptive to the testimony of people they like. Also, people like people who like them. Most defendants in a lawsuit don't show their liking for the decision makers. The reason is simple. Defendants are angry about being sued and alienated by the proverbial accusations of wrongdoing. This natural reaction is experienced by corporate managers as well as individuals. But remember, the decision makers are not the ones who filed the lawsuit. Being frustrated by being sued can create an unlikable impression on those who decide the case. It's a self-fulfilling prophecy. Similarly, those who bring a lawsuit are frustrated by their perception of injustice, breach of a duty, an obligation or wrongdoing, including fraud and patent infringement. Frustration turned against ourselves is often expressed as depression. Collective depression can be experienced by a board of directors as well as an individual.

**If you stop and think about it,** jurors don't want to be in court. They are paid practically nothing. They are kept in suspense about the main issues in the case prior to their being selected. Typically, they are not allowed to ask questions about the case. They can't talk to each other. They don't know exactly how long their service will be. Only occasionally do jurors become famous and their stories are printed, broadcast and web cast by the media.

**When their names are called** to come to the jury box, jurors typically go through predictable stages of disbelief, grief, depression and finally acceptance. Once they accept their plight of service, jurors typically agree to do their best job to be fair and do the right thing. There's no reason not to trust the jury. There is no reason to be angry with them. Even if the venue where the trial is held has a history of being adverse to your side, that does not mean the seated jury will have this propensity. The jury wants you to do well.

**Judges and arbiters** want the same thing. They appreciate your participation. In a trial, you are told you cannot talk to the decision makers during the proceeding. But who are we kidding? You are testifying before the decision makers all the time with your body language and with your eyes. As soon as you get out of your car at the courthouse, in the elevators, in the bathrooms and in the cafeteria, you are testifying. You can't talk to decision makers as the judge admonishes everyone not to do, but you are communicating with them all the time. In a real sense, the jury, judge and arbiters study your informal behavior and give more credence to what it suggests about you than from what you say out loud.

**When I went to Russia** to see their first jury trial, I hired a bright young law student from Moscow State University to be my interpreter. On the first day of trial, as we sat in the first row of the gallery of the courtroom, she continued to talk to me after the proceeding began. Finally, I turned to her and said, "Maisha, please be quiet. I've come a very long way to be at this trial. I'm trying to listen." During the first recess, Maisha said, "Forgive me, Dr. Gordon, I didn't realize that you understood Russian."

Stunned by her comment, I asked her apology in turn, "Please forgive me, Maisha. I don't understand a word of Russian. You were doing your job of interpreting for me." Why did I think I understood the proceeding? Returning to the States, I began to watch movies I had never seen, without sound and then with sound. I documented that most people have a much better appreciation of the fact that 85% of all communication is non-verbal.

**In order to be liked** by others you must like yourself. Tim Sanders has pointed out four basic elements of likability. They are:

1. Be Real
2. Have Empathy
3. Be Relevant
4. Be Friendly

I think he's right. Thanks, Tim, for your insight.

## Principle 8: Stand Your Ground

**The cross-examiner challenges** what you know, contests what you remember, confronts what you believe and questions your character. In the case of an expert witness, opposing counsel also disputes the validity of your procedures, attacks your credentials and challenges your ethics. Questioning the science you rely upon as the basis of your opinion is called a Daubert Challenge.

**Don't take it personally.** In psychological terms, cross-examiners wear a mask to be deceptive about their true intentions, feelings and reactions. From their point of view, the cross-examiner is just doing his job. If this verbal attack occurred outside the courtroom, your response might be to bloody his nose. But in a legal proceeding, you must maintain your composure, retain your civility and balance the conflict of words with a sense of humor and when appropriate, manage your best smile.

**The most important thing** for a witness to know about the cross-examination is that you can't win it. Not in the usual sense. It's like going to play a game of tennis. When you get there you discover your opponent is already there. He has leased the court he likes best, and has brought the racquets and the balls. Your opponent has memorized the rule book. He controls the scoreboard.

**Worse still,** the cross-examiner is trained and practiced in asking tricky questions, including the leading one. Leading questions are troubling questions that have a false assumption in them. For example, "Since you're not concerned about business ethics, Ms. Fish, you don't really care if the contract is enforced, do you?" Or, "Since you've been accused of defrauding customers in the past, you're likely to do it in the future, aren't you?" Another favorite sortie of the cross examiner is to ask a question using the phrase "always" or "never." These questions are hard to answer, since few things in life are "always true" or "never true."

**Lawyers love to ask** two or three questions in the same one, with the answers to each being different. "Since you're from Virginia, and you've complained against your employer before, you don't mind coming into this court and making outrageous complaints, do you?" Questions like these can make your head reel. The cross-examiner has excellent word skill. She gets to ask the questions. It reminds me of sitting in high school and reading Shakespeare and wondering if I could ever speak English with the ease he wrote it. I'm still dazzled by Shakespeare's "Midsummer's Night Dream," and his command of English when I read his prophetic statement, "that that is, is."

**On the stand** or in deposition, it is natural to wonder, "What's the next trap the attorney will spring on me?" The best way to handle this concern is, don't worry about it. If you don't know the answer to a question, say, "I don't know." If you don't remember a fact you are asked about, say, "I don't remember." If you have made a mistake, admit it. If you have contradicted yourself, acknowledge it and then clear it up. When you are asked to comment on a document, ask to see it and read it carefully before answering.

**The cross-examiner often asks** questions that imply you are lying. They do this by pretending to be incredulous when you give your answer. Do they know something you do not? Probably not. Will they confront you with this possibly devastating information in their next question? I don't think so.

Don't let the cross-examiner control the tempo of the Q and A. If he talks fast, you don't have to answer in kind.

**Stand your ground.** Stand up for yourself. But don't argue. What the cross-examiner will not give you a chance to say, the attorney who wants you to testify on their client's behalf will let you say at a later time. Telling the truth in response to either side's questions is not negotiable. Less obvious is the question of loyalty. Be loyal to the side that your testimony favors. Telling the truth is important, but being a good friend is also important. It's magical thinking to think that if you say something that hurts your side the cross-examiner will ease up on you. This won't happen.

**Psychologists call this fallacy** "identifying with the aggressor." It's the mechanism by which a person unconsciously cooperates and identifies with the person who is attacking him or who has kidnapped him in order to get better treatment. But a witness is not a prisoner of war, so don't act like one. Sit up straight and answer confidently with good eye contact.

**In testimony as in life,** balance protecting yourself with risking your comfort to help someone you think is right. As the prophet Hillel said, "If I am not for myself, who will be? If I am only for myself, what am I?"

## Principle 9. Visualize Success

**My friend Dr. Jim Will** is a psychologist who works with athletes and stars. He helps them visualize their success in life through positive self-talk. Positive self-talk also helps witnesses do their best. In our witness workshops, Dr. Jim asks the participants to focus on what they want to do in a given situation in a constructive way. His favorite example is when we decide to go to a grocery store. Most of us take a written or mental list of what we want to get. It wouldn't hardly do, says Dr. Jim, if we went with a list of things we don't want to buy such as spinach, popsicles or superglue. It would be a very long list.

Dr. Richard Carlson is the outstanding psychologist who wrote the best seller "Don't Sweat The Small Stuff." He reports on cognitive research that indicates each of us has about 50,000 thoughts per day. Can you imagine the impact if most of these thoughts were positive or if most were negative? We can increase the impact of the positive ones on our mental attitude exponentially if we concentrate on them. On the eve of a jury trial, when there was no time for empirical research, I conducted a thought experiment for a group of talented lawyers who were put to trial at the 11<sup>th</sup> hour. There was no time for a mock trial or jury survey.

I learned about the thought experiment technique by reading the creative methods of the great physicist Albert Einstein. Einstein used this technique to study things which could not be seen or accessed because of the limitations of our senses, technology or science.

I invited the Trial Team to imagine the entire legal proceedings as a group. I led them through a guided imagery experience, then to conduct the entire trial in their imagination in a compelling way that resonated with the jury. My job was to report on the jury deliberations and give feedback to the lawyers. The experiment worked. The trial was won and the lawyers credited the thought trial. Necessity is the mother of invention.

Close your eyes and imagine you are testifying to the judge, jury, arbitration panel or giving a deposition. Connect with the audience, and answer the questions honestly and persuasively in a meaningful and enjoyable way. In your imagination, manage the most penetrating questions thoughtfully and the most abrasive questions with good humor.

In this way, you are conducting your own thought experiment. It will become a self-fulfilling prophecy of your doing well.

## Principle 10. Believe in the System

The traditional adversary process teaches that only one side of a controversy wins. The other side loses. This process embraces the philosophy of “the winner takes all.” Famous Green Bay Packer football coaching icon Vince Lombardi once said, “Winning isn’t everything -- it’s the only thing.” The outstanding corporate architect of GE’s success goes around the country preaching the ethos of “winning.” He and his wife Suzy do so in a compelling and persuasive way.

But what does it mean to win? Is the definition of “winning” changing? Some smart people think the goal of the administering justice should be to create a “win-win” and not a “win-lose” situation. Many smart people are beginning to think that “win-win” is smart as well as just. Law schools from Harvard to Stanford, from Chicago to Texas, spend as much time teaching alternative methods of conflict resolution such as mediation, arbitration and summary jury trials than they teach about preparing cases for jury trials. Why? Sometimes no one can win a conflict, or if they can, the price is too high. That’s called a pyrrhic victory. If two countries with hydrogen bombs, for example, fired them at each other -- there would be no way to say which side won.

In “win-win” strategy, the adversary process leads to the resolution of the dispute in a way that the goal of resolution is the means as well as the ends. It is the result of sincere efforts of the parties and their lawyers as the end as well as the means. From this vantage point, even criminal cases seek to resolve through plea bargain arrangements. An advantageous example of this strategy is embodied in the collaborative law process used in family law cases. If the case isn’t settled, the lawyers and their experts have to withdraw from the case. The economic reward for the lawyers is placed on the process and not on the outcome.

Because of the refocus, reinvention and reframing of the idea of winning, your job as a witness is redefined. You become a teacher and not a soldier. As a teacher, it is your job to share information about what you have observed, know, believe or in the case of an expert, your opinions. Your audience will appreciate you just like you do your favorite high school teacher. The teacher that you admired cared about you and whether you learned. He or she presented their views honestly and informed you directly. They did so with energy and enthusiasm. They cared about the subject and about you. Like your favorite teacher, the best witnesses teach in harmony with the goal of contributing to justice. Their concern is for the audience.

Testifying is not an annoyance, inconvenience or a threat. For an expert, it’s more than a way to earn a living. Rather, testifying is an opportunity to engage in a meaningful, challenging and rewarding life experience.

As for our system of justice, its strength and vibrancy is that it accommodates change. It changes and improves as our lives change and improve.

## Epilogue

Now you've read "The One Minute Witness". It should be obvious that you already knew everything we wrote except one thing. You didn't know that these same principles of life are easily applied to giving a good deposition, providing excellent testimony in court or in arbitration.

Stay in touch with who you really are. Stay true to your beliefs. Let the drama of the legal context bring out the best in you. Do the right thing. Keep a smile on your face. Enjoy contributing to the administration of justice and we'll be cheering you on.

*Robert Gordon with Ami Gordon*