



PROGRAM MATERIALS

Program #31113

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Trial Skills: Weaponizing Lead Witnesses for Killer Testimony

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TRIAL SKILLS:

Weaponizing Lead Witnesses for Killer Testimony

ILYA LERMA

LAW OFFICE OF ILYA E. LERMA

TRIAL STRUCTURE™

“

YOU'VE TO BE REALLY CAREFUL IF YOU DON'T KNOW WHERE
YOU'RE GOING BECAUSE YOU MIGHT NOT GET THERE.....

”

- YOGI BERRA



----YOGI BERRA

UNDERSTANDING CREDIBILITY

Credibility:

Degree/essence of *believability* in the LAY or PARTY
WITNESS

3 Components

- ✓ Trustworthiness
- ✓ Transparency
- ✓ Consistency


BUILDING CREDIBILITY:

Memory

v.

Experience/Visual. . .

- Flat
 - Material
 - Immediate
 - “Drop-out”
 - Inconsistent
 - Tied to words
- Dimensional
 - Sensorial
 - Timeless
 - Retrievable
 - Consistent
 - Tied to images

- 
1. Procrastinate
 2. Underprepare
 3. Undercommit/Underinvest resources
 4. Describe
 5. Assume
 6. Coach
 7. Overwhelm with facts
 8. Have them read/memorize
 9. Overlook the ordinary
 10. Neglect masculine v. feminine
 11. Send them to acting class
 12. Ignore trauma/emotional or psycholgoidal conditions
 13. Overmanage the environment

DON'T!

Planning Strategies

1. UNDERSTAND LIMITS

- A. Memory
- b. Emotion

2. DON'T OVERWHELM

- a. Stress
- b. Performance

3. BE PATIENT

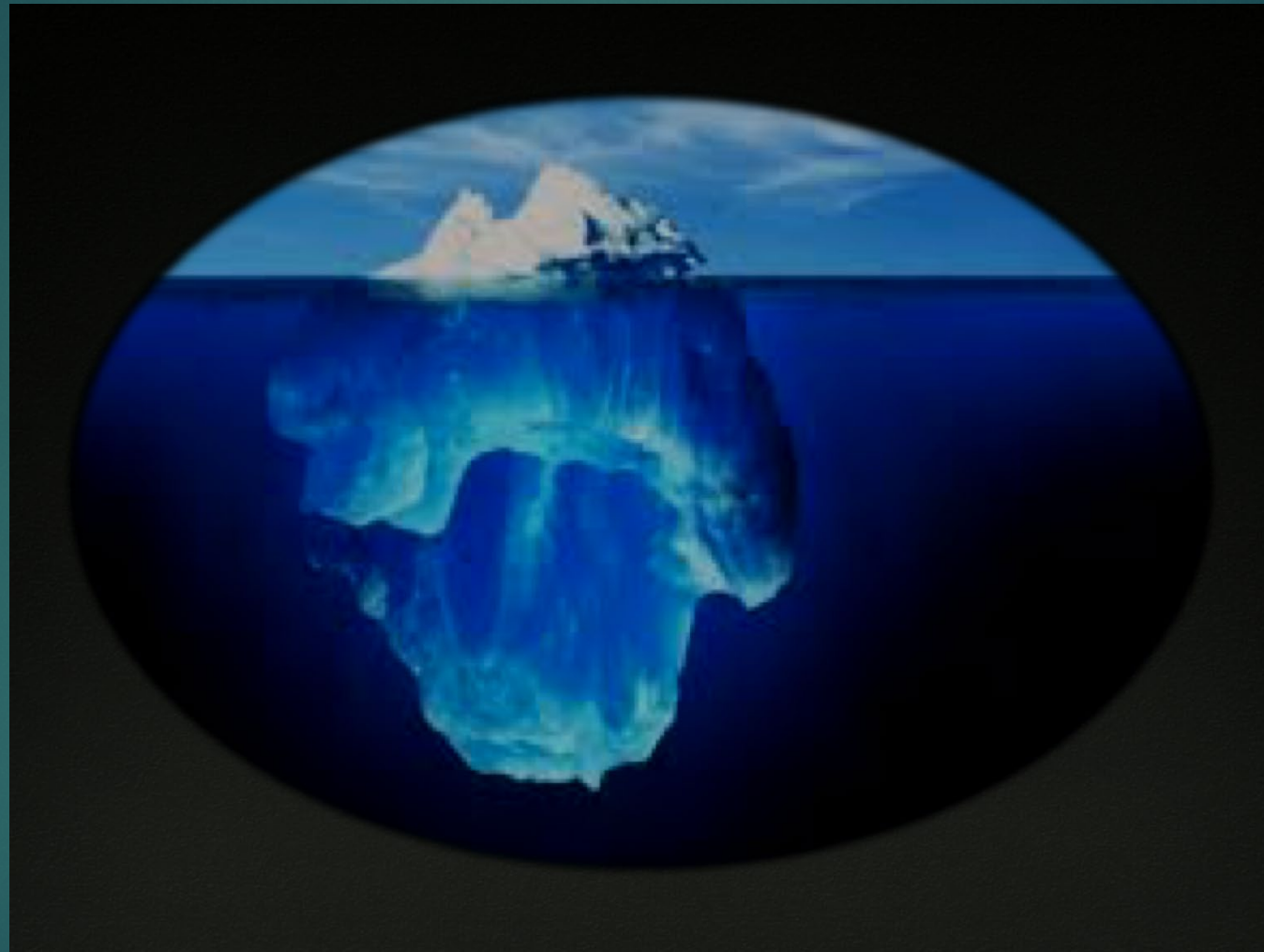
4. PLAN AHEAD

5. PRACTICE

6. MANAGE ENVIRONMENT




UNPACKING THE WITNESS . . .



Understand Memory access limits

- Physical
- Social
- Intellectual
- Emotional



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1. Start early
 2. Build trust
 3. Build the toolbox
 4. Know the destination
 5. Address narratives
 6. Address emotions
 7. Explain the opposing case
 8. Uncover defensiveness
 9. Role play
 10. Deal with non-verbals
 11. Work from images

DO!

15. Pay attention – Learn to see and respond to client needs
16. Always be practicing
17. Lawyer up – they don't need another friend
18. Learn *their* story -- separate *their* agenda
19. Tell *their* story -- separate *your* agenda
20. Special considerations -- get a professional
21. Build a roadmap
22. Video
23. Imagineer

DO's (con't)



Purpose of Testimony

Who is the Witness?

What is the information they have that builds/collapses the case?

What is to be accomplished with this deposition?

- ▶ Support case facts/theories
- ▶ Challenge credibility
- ▶ Elicit facts/details, close gaps, draw assumptions
- ▶ “Nail down” the testimony for trial
- ▶ Set up cross-examination

QUALITY FEEDBACK



MODEL

VIDEO REVIEW

FOCUS GROUP

HOMEWORK

PRACTICE

HUDDLE

TRY AGAIN

The Lawyer's Role



- Relax
- Assure
- Guide/Navigate
- Allow
- Teach
- Demonstrate
- **OBSERVE!**
- Demonstrate

Know YOUR Case. . . and Share it with the Witness

- A firm understanding of the case delivers cohesiveness with other witness testimony on direct and also insulates the witness on cross. A linear, and focal regurgitation of facts places a witness at ground zero responding only to the next most immediate confrontation and exposes them to being dismantled on a well-plotted, strategic cross-examination.

Know the Opposition's Case . . .and Share it with the Witness

- Break down the elements of the opposition. Detail the case they are trying to prove and the manner in which they endeavor to dismantle your case. Help the witness understand what each side is saying and where *their* testimony fits in the over-arching view of the case before beginning the process of .

DELIVERY and CONTENT matter

- An old study in 1967 from UCLA and researcher Albert Mehrabian is often cited for the proposition that somewhere between 4-7% of communication is in the actual words that are used (Mehrabian & Wiener, 1967) . Everything else is tone, inflection, facial expression, non-verbal cues, and body language, etc. The study was specific for content that was “incongruent” (where there are deliberate inconsistencies in verbal and non-verbal delivery) but still affirms the importance of delivering congruently.

The 3 C's

- Content
- Clusters
- Congruence

LEARN TO BUILD and USE STORY EXAMPLES

- ▶ SETTING?
- ▶ WHO IS THERE?
- ▶ WHAT IS THE ACTION TAKING PLACE?
- ▶ WHAT IS THE CONVERSATION or WORDS BEING SPOKEN?
- ▶ WHERE DOES WITNESS THINK THE STORY BEGINS & ENDS?
- ▶ EDITS and TRANSITIONS

TIMING AND SEQUENCE MATTER



Having a witness testify in the wrong order (too early in a case, for example) or elicit prolonged emotionally charged testimony can make jurors uncomfortable and resistant. A well-intentioned lawyer trying to make the witness appear sympathetic can experience consequences that backfire. Instead, consider using other witnesses to relay key testimony where possible and use party witnesses sparingly in order to unfold a compelling story.



Don't Undermine powerful testimony with your own actions!

- Pay attention
- Stay off the Page
- Honor **their** emotion
- Create and follow along with
the visual