

# WELL PREPARED: HELPING WITNESSES BE THEIR BEST

*Liskow & Lewis partners see big differences in witness performance after witness prep consulting by Litigation Insights.*

**W**itnesses can be difficult. They can sometimes come across as harsh, arrogant, evasive – even unlikely and unbelievable. Providing sworn testimony is stressful and Gene Fendler, a partner at Liskow & Lewis, knows how important it is to prepare witnesses for the experience.



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– Gene Fendler  
Partner, Liskow & Lewis

Fendler also knows how effective well-prepared witnesses can be when they have the skills to communicate their knowledge in a way that easily informs and ultimately helps persuade judges, juries and arbitration panels.

“Our cases often hinge on expert witnesses and their opinions,” said Fendler, who handles commercial litigation cases for a variety of energy and construction clients. Those cases typically involve toxic tort and contract performance matters related to gas and oil exploration.

“You have to get them (witnesses) to feel as comfortable as possible so they can relay their knowledge in a way that is understandable – even if it’s with an arbitration panel of experts who are very smart people,” Fendler said.

That’s why Fendler has Litigation Insights work with his witnesses, whether it’s for a mock trial or the real thing. They know how to help a witness share pertinent facts and opinions, and do it calmly and confidently.

## MAKING GOOD WITNESSES GREAT

A recent case in point, Fendler had a witness who was a brilliant subject matter expert. He had a habit of using highly technical terms which made his testimony difficult to understand.

“The technical facts he possessed were important and it was critical to get them across,” Fendler said. “He knew what to say, he just needed help making it clear and concise.”

The team at Litigation Insights spent hours with the witness, guiding him through elements of delivery and consistency in phrasing. The witness was very professional and effective on the stand and Fendler was pleased with the results.

In another case, there was a witness who was already very good, but Fendler thought his testimony could use some additional fine tuning.

"Being a witness is stressful," Fendler said. "Merrie Jo and her team at Litigation Insights can make a witness more comfortable and confident - and more effective - through their outstanding preparation."



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– Jana Grauberger, Partner, Liskow & Lewis

## TESTIMONY THAT STAYS ON POINT

Jana Grauberger is also a partner at Liskow & Lewis who has worked with Litigation Insights on jury research and witness preparation. She was impressed with the way they surveyed attitudes and impressions and organized their mock trials. Their witness prep abilities stood out as well.

Working with Litigation Insights, Grauberger was able to implement jury-friendly strategies that were more persuasive and credible.

"A good witness has the ability to handle many types of questions and support a trial theme at the same time," said Merrie Jo Pitera of Litigation Insights. "They are confident and can easily adapt to the ebb and flow of testimony while holding fast to the message they need to communicate."

And having a strong theme for a case is also an important part of what Litigation Insights does, said Grauberger.

"They are some of the most conscientious and thorough consultants we work with," Grauberger said. "They bring real clarity and focus to a case, and help us better understand how opinions and judgments are likely to form."

"They guide us on the right themes, and words and phrases to use, and also tell us which ones to definitely avoid. Their insights are invaluable."

## MOCK JURY AND THEME RESEARCH

Fendler and Grauberger agree that when the pressure is on they appreciate having Litigation Insights in their corner. Mock juries and theme testing are time-sensitive and crucial to case development and Litigation Insights comes through.

Arbitration is a growing component of all commercial litigation practices. Fendler has worked with Litigation Insights on these cases, too.

"They've helped us sort out complex arbitration arguments, helping us determine what's understood and what's not so we can make points more clearly," said Fendler.

Grauberger said she likes the fact that Litigation Insights formulates strong opinions. She gets solid advice and guidance.

"The findings from the people at Litigation Insights are always useful," said Grauberger. "We receive straightforward opinions from them that teach us something we didn't know before. They give us an edge that can sometimes make a big difference."

## WITNESS PREP ESSENTIALS

### 1 Watch, listen and learn.

What are your witnesses saying, how are they saying it, and does it fit with your case theme?

### 2 Educate and involve.

Fill your witnesses in on trial strategy and themes. Make sure they understand what you're trying to get done, and where pitfalls may lie.

### 3 Evaluate and improve.

Provide detailed feedback on testimony. Help them use economy in words and body language.

