



CITATIONS

JULY – TWO THOUSAND SIXTEEN

FIVE STEPS TO GETTING TRUTHFUL INFORMATION FROM WITNESSES

By Jay Sherman

Have you ever wondered how to get witnesses to open up to you, either at a witness interview or deposition? According to Westlake Village attorney Adam Treiger, “I have always wondered why many lawyers take on an adversarial tone and manner in depositions and witness interviews. I have found that I get way more information from a witness who likes me than I get otherwise.”

Several research studies involving police interviews reached the same conclusion. According to witness interview experts Ronald Fisher and Edward Geiselman, police detectives who received training on how to help witnesses relax and feel comfortable elicited 50 percent more useful information than police detectives who used harsher interrogation techniques. (Fisher and Geiselman, *Memory-Enhancing Techniques in Investigative Interviewing: The Cognitive Interview* (1992) at page 5.)

Additionally, as will be explained later in this article, another advantage of using this relaxed interviewing approach is that it may help interviewers to determine when someone is lying.

The five steps to helping witnesses to relax are:

1. Establishing rapport
2. Asking witnesses to tell you what they know without interruption
3. Using a technique called an “extender” to help jog witnesses’ memories
4. Listening with an open mind
5. Listening with empathy

To establish rapport, professor Geiselman states, “Strike up a conversation first. Start with a neutral topic.” Picking a neutral topic that resonates with the witness is an especially good way to build rapport. For example, if you know the witness has children, ask the witness about her children’s ages and where they go to school. Similarly, if a witness is wearing a shirt with a logo of a sports team, ask him to tell you about his favorite sports team. Interviewers can also reveal that they share common interests with the witness as a way of establishing rapport. (Geiselman, “How to Interrogate Someone,” *New York Times Magazine*, April 24.)

Once rapport has been established, the next step is to ask witnesses to tell you in their own words what they saw or heard, giving witnesses free reign to tell you what they know without interruption. If witnesses are interrupted, they may lose their motivation to tell you everything they know. Refraining

from interrupting requires patience because witnesses sometimes tell things out of sequence or leave out essential facts. In such cases, it is best to wait until the witness is finished with his narrative before going back and asking questions to clarify what was said.

If a witness is unable or unwilling to provide a detailed narrative of an event, the interviewer can use a technique referred to by Professor Geiselman as an “extender” to gain more information. For example, the interviewer might ask witnesses to draw a diagram of the scene or to recall any smells or background noises they remember from the event. Asking a witness to close his eyes and visualize an event may also help jog the witness’ memory of an event.

Listening with an open mind will also promote witnesses giving full disclosure. Even unspoken skepticism or judgments might be detected by witnesses. Once a witness detects that the interviewer disbelieves him or holds a negative judgment, he may become withdrawn or uncooperative. Therefore, listening with an open mind is the best way to encourage witnesses to reveal what they know.

Demonstrating empathy toward witnesses is another way to encourage disclosure. Fisher and Geiselman state, “For the eyewitness to reveal her story, she must be made aware that the interviewer understands her feelings...”

The most straightforward way to do this is periodically to make comments like, “I can understand your feelings [of fear, of injustice, of helplessness...].” Saying to the witness, “I can understand your feelings” is not agreeing with the witness. It is merely an acknowledgment that the interviewer is aware of the witness’ feelings and concerns.

Demonstrating empathy will often cause the witness to relax and open up to the interviewer. (Fisher and Geiselman, *supra.*, at page 24.)

Up to this point, the interviewer has not yet challenged the witness or confronted the witness with conflicting evidence. By following the five steps set forth above, this now sets the stage for introducing more sensitive matters and to assess if witnesses are lying.

Assessing witness credibility based on demeanor or body language is not an exact science. Fortunately, in most legal cases, there are documents, physical evidence or corroborating witnesses to help to prove which witnesses are being truthful. However,

sometimes a case will turn on whether one particular witness is believable. In these cases, assessing witness credibility based on demeanor can be of great importance.

In dozens of research studies, observers could accurately determine if someone was lying based on demeanor only about 55 percent of the time. However, by first observing witnesses’ baseline behaviors and then comparing those baseline behaviors with witnesses’ behaviors after being confronted with conflicting evidence, trained interviewers were able to accurately detect lying 85 percent of the time. (Hartwig et al., *Strategic Use of Evidence During Police Interviews: When Training to Detect Deception Works*, 30 *Law Hum. Behav.* (2006) at page 603.)

Workplace investigators Amy Oppenheimer and Craig Pratt explain how baseline behaviors can be used to detect when a witness is lying: “Some nonverbal clues, such as changes in an individual’s posture, shifting in his or her seat, stiffening, or looking away when he or she is questioned about something he or she is not being truthful about, can help you in determining credibility. It is important to observe the person’s posture (to get a baseline) before you ask questions that may elicit an untruthful response.” (Oppenheimer and Pratt, *Investigating Workplace Harassment* (2008) at page 114.)

Thus, by first building rapport and getting witnesses to relax and tell their story in detail, interviewers will have an opportunity to observe a witness’ baseline behaviors. If those behaviors significantly change when the witness is confronted with conflicting evidence, interviewers will have a supportable basis for determining that witnesses are lying.



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