

EXERCISE

WITNESS PREP

Background

You're on a litigation team for a case going to trial in two months. Your client, a bank, has been sued by several commercial customers. These customers feel they were not dealt with fairly in their transactions with the bank, and have alleged discrimination.

During discovery, you were responsible for several fact witnesses—current and former employees of the bank who played small roles in the transactions. They'll testify about the normal operations of the bank, and that the transactions were a routine part of the bank's business. For the most part, nothing occurred during their depositions that was too controversial or damaging.

One of the fact witnesses, however, used to work for one of the bank's customers, and knows that other customers got better terms in similar transactions. He suspects that these better terms were done as favors to certain customers. He said as much in his deposition, but was clear that he didn't know this for sure and was basing his suspicion on his past experience. The witness no longer works for your client and has independent counsel.

You're responsible for this witness during trial, and are doing the prep session next month.

Instructions

Come prepared to discuss these questions:

- What do you need to do in advance of the prep session?
- How does the fact that this witness is not a current employee impact your prep?
- What are some good preliminary and logistical items to explain to the witness at the outset of the prep session, before you get into the substance of his testimony?
- When you do a mock direct with the witness at the prep session, what kinds of things should you be looking out for?