

10 Tips For Preparing The Crazy Witness For a Media Frenzied Trial

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*“Everyone, in some small sacred sanctuary of the self, is nuts.”
Leo Rosten, author (1908-1997)*

Introduction

When TJE Editor Rita Handrich asked if I would write about preparing witnesses, especially clients, for “celebrity” trials at first I hesitated. For some reason, I never get asked to help prepare run-of-the-mill celebrities in Hollywood Trials. Nor do I get asked to prepare regular CEO’s of big corporations whose lawsuits garner national headlines. Nor do I get asked to prepare plain, ordinary, well-known people whose cases seem to have as many reporters as there are big law firm associates in the courtroom gallery for a large “public” trial.

Don’t misunderstand me. I’ve been involved in cases in all those “big time” legal arenas. It’s just that I’ve only worked with witnesses in “spotlight” cases who, in the words of the beloved Jewish literary icon Leo Rosten, are “nuts”.

In this article, my goal is to give some advice on how to handle the delicate situation of *The Insane* meeting *The Worldwide Public* in the courtroom. I imagine some of this advice will also apply to *The Non-Insane* meeting *The Worldwide Public* in the courtroom. I am looking forward to the day when I get to find this out ... through my own personal experience.

First a word of warning – I am not a psychologist or psychiatrist. I do not have a PhD in psychology or an MSW. I did not go to medical school (I was the one who flunked lab in biology in the 9th grade because I refused to pith a frog). I know that many of my colleagues who are members of ASTC hold such degrees. I also know that there are much nicer and more professional words to call the famous lunatics I somehow get called on to deal with. But I shall be referring to them by several colloquial terms that I have picked up over the years.

I know that I have a reputation in the marketplace for being able to “fix any witness.” I always warn the lawyer with whom I am working, “Darling, you know I can’t fix organic problems.” That means “I can’t make crazy people un-crazy.” But attorneys generally feel that whatever I manage to figure out is better than the past solutions they have tried from whomever they have hired to help with a client who is bonkers. I regard this as much a result of familial ties as it is of my thirty-five years of experience as a trial consultant. If you grew up with as many “not quite right” Great Aunts and Great Uncles as I did you, too, might have learned at an early age how to deal with crazies.

Ten Top Tips

1. When the media and public relations teams are meeting with the legal team to make the big “plan,” do not include the witness who is bonkers.

The following is as good as it has ever gotten in my career with a crazy person and making a media and PR plan for a big public trial.

- By the time a trial consultant arrives on the scene, in my experience, the media people and public relations people have a fantastic plan in place to handle the media that **does not** involve the client. Why? Because all the clients I have dealt with are too crazy and unpredictable to participate in such a level headed meeting with any kind of positive mental health.
- No planned news and media conferences involving the client as an actual physical presence. The crazy client can’t say nutty things nor can they give off whacky nonverbal communication if they are behind closed doors and out of the “official messages.”
- The takeover of all social media (Facebook, Twitter, etc.), normally handled by the client, by the media and PR teams. So much better than letting this loose cannon blab freely on the World Wide Web.
- The legal team is completely cooperative with the media and PR teams and has memorized the perfectly crafted messages that have been worked out for them. NO lawyer on the legal team will ever say the nightmare invoking, “No comment.”
- •The crazy witness is getting a massage, working with a trainer, on the beach soaking up rays while the coordination of the media and PR is taking place.
- •The witness is taught how to give neutral and relaxed nonverbal communication and a neutral one- to three-word verbal comment which has been created by the media, PR and legal team. This will be used while the witness is calmly, like a sane person, going to and from the courthouse in full view of the media. How will you know your crazy person knows how to do this? Practice, practice, practice. This is not a time for lectures – you must practice this!

2. Diagnosing what kind of “crazy” this “crazy” is.

Is this person a narcissist? A big druggie? Bi-polar but anti-medication? Ra, The Sun God forced to deal with the rest of us on this earthly plane for reasons that are still not yet clear to him? Etc., etc., etc. Yep, been there done that, bought the tee-shirt with all these categories several times (actually I only met someone claiming to be Ra once, many have just acted that way). There are as many kinds of crazy in my experience as there are crazies. The important thing is you have to figure out what exactly is this particular brand of lunacy. *Why?*

Because then you can make direct deals with the witness around the mental health issue for preparation time and testimony time.

For example, for narcissists, I force “*The Eleanor Roosevelt*” rule for all testimony, so we have to practice that in all preparation sessions. It comes from a famous Eleanor Roosevelt story from a reporter for the Saturday Evening Post. It seems that he had an interview with Mrs. Roosevelt for three and a half hours. During that time period, she never used any words that referred to herself (no me, I, mine, my, etc.). He said she was the most selfless human being he had ever met. That’s the goal with the narcissistic witness. As much as is humanly possible – get them to stop talking about themselves.

In the media frenzied trial every word this person says will be scrutinized with far more depth with much more innuendo read into it than with most juries.

3. Planning on conducting a direct examination? It can’t be any longer than your witness can act like a normal person.

Do you have to put this person on the stand? Okay, let’s say that the answer is “yes.” How much water do they have to carry? The goal in the ideal world is “none.” Clearly, since the person is testifying, we aren’t able to achieve the ideal goal. Fine. We have to achieve the next-to-the-ideal goal.

Start by going down the list of all the testimony that is needed from this witness. With each and every item, ask the question, “Who else besides our dear fruitcake could give this information to the jurors and the free world?” Each segment of testimony that is determined must be given by the client, must be gone through a second time and asking the question, “Okay – but does our beloved wing nut need to be responsible for every nuance of this information?”

Now, when you role-play direct examination you are down to the maximum amount of information that you are going to use with this witness. It will be answered with no more than the minimum answers imparting that information.

How does this work practically?

The attorney is going to ask pointed questions – not leading, but not global questions that invite narrative answers. Not ever, ever, ever. Yes, this will cause you and the attorney to work harder than you ever have in your lives to develop these questions. Fine. That is your job. Do not put a lawyer in a position of asking a crazy person a regular lazy direct question such as “Could you please explain that to the jurors?”

Practice getting the witness to act calm, serene and relaxed during these role-playing sessions of direct examination. Experiment with whether or not you want them to direct their answers to the jurors. With normal people, you want all answers directed to the jurors. But if you get very nervous when the crazy witness looks in your eyes, like you start thinking about whether or not your life insurance policy is paid up and if your spouse knows that you love him or her, then it is time to consider NOT letting the crazy person look into the eyes of the jurors.

Serene, serene, serene – relaxed, relaxed, relaxed. The jurors should always get this message from any witness. But in the frenzied media trial the whole world needs to get this message. If it is appropriate for the witness to get a bit teary-eyed in a spot, then that's fine. However, truly it does no one any good to have a reporter overhear your witness saying under her breath in the direction of opposing counsel, *"Die, you obnoxious beyotch!"* with the accompanying nonverbal communication.

In the middle of direct but sensing that the witness is going to lose it and blow? Have a safe word/question for the lawyer that he or she can use as soon as someone on the trial team picks up on those signals from the witness. I suggest something like, *"I am now going to ask you a question that my Aunt Elvie would be asking right about now."* I would of course use my Aunt Elvie because she was the crazy older sister of my Grandma Louise. Aunt Elvie would be my safe word for, *"You are acting like a nut job just like my Aunt Elvie. I'm warning you to chill out!"*

4. Cross Examination – teaching the insane how NOT to try to advance the ball.

Practice, practice, practice. Role-play, role-play, role-play. Forever and a day until this particular crazy person answers every cross exam question you can think of with an economy of words and a horn of plenty full of serenity. Great answers are things like "yes" and "no" and "Half right and half wrong."

Any time a crazy person answers with an explanation in cross is a very dangerous moment for the case. Practice getting them not to do it. Practice what it will be like when you come back and "clear it all up" in redirect.

Teach them the trick of not looking opposing counsel in the eyeballs when opposing counsel is asking him or her a question. Have them practice, practice, practice concentrating on your mouth or the knot of the tie or the hollow of the throat as you pretend to be opposing counsel.

Neither the jurors nor the reporters will know that your crazy witness is not being sucked into the vortex of doom of the eyes of opposing counsel.

Can you imagine how great it will be to read, *"She answered the questions of the lawyer in cross examination calmly and clearly. When she talked about the stalker her voice waivered a little, but she stayed strong and clear eyed."*

5. For God's sake, don't let the witness wear that crazy outfit.

Costuming in a regular trial is always important. Costuming in a media-rich trial is crucial, causing me to ask many rhetorical questions. Like: Why do crazy people ignore the lingerie section of the department store? Don't these people know that when you are wearing a translucent skirt without a slip in front of people with flash bulbs in their cameras that the whole world is going to see your blue thong underwear?

What a celebrity or important person wears has been reported by the media for as long as there have been public trials. For example, did you know that to her execution Marie Antoinette wore a white cotton dress with a black petticoat, and a white cap with a black ribbon? Did you know that she wasn't trying to make a fashion statement, as was reported by the press of the day? Since she wasn't allowed to wear black to her execution she wore the only other outfit she had with her in prison. So what? You think the literally blood thirsty media of her time did their due diligence and looked into that fact?

Have things changed that much? Oh, no. They've gotten worse.

Remember – you are dressing a person whose every thread is going to be scrutinized by the media with extraordinary care.

Then make sure that what you have chosen is “all” that is worn that day. Double check. Then triple check. Crazy people tend to act like rebellious young girls with dress codes in the 8th grade. The ones who wear one thing when they head out the door to the school bus and arrive at school wearing something quite different they had hidden in their best friend's backpack.

***6. If they don't get why they shouldn't drive that car,
find someone who will take the keys away.***

This person is not allowed to arrive at the courthouse in the \$350,000 car. This person must be driven by someone else. Someone else who is not in a chauffeur's cap and suit. Someone who is driving a “normal” car.

You know this is true in all cases – but in a case which is being tweeted about it is vital.

7. Choosing a “wrangler” or two for the trial.

Are you the one who is going to be sitting at the right hand of this witness keeping this lunatic appearing sane throughout the trial? Someone, at least one someone needs to be assigned to the care and feeding of this witness and to have no other assignment. If you are female and the person is male, you need at least one more someone to take the guy to the bathroom. These people can never be left alone.

Why not?

Because they can't be trusted to keep their nonverbal communication perfect and their verbal communication non-existent without supervision.

I almost always choose to have a paralegal or an associate help wrangle “just in case.” I am one small woman who is now sixty years old. I was never much of an athlete in any decade of my life, let alone this one. And my sport of choice has always been dance rather than wrestling.

Sometimes you need more than one.

Recently, when a crazy witness in a widely watched case sprang free and ran from the courtroom screaming into a cell phone, “*That #\$\$*@ lawyer just ruined my #\$\$%^@ business!*” and all the reporters ran after him I needed stronger arms than mine to help me corner him in the stairwell. I also needed one young able-bodied person to block the reporters from crashing through the stairwell door while I tried to talk the guy down.

I almost never choose to have someone from the person's entourage on this detail. That person might give us a head's up that the lunatic is getting ready to blow. But I don't trust the inner sanctum of the great and the near great. Too many of them are suppliers of drugs, etc. to their “bosses.”

Think of the last 24 hours of Elvis' life. Do you really want to be with your Elvis and his Grace-land Groupies and no one else in court?

***8. It isn't enough to have a Plan "A".
Always have a Plan "B" and a Plan "C".***

Think ahead on physical movement as though you are the head of the Army instead of part of a trial team.

Here's an example:

Planning on avoiding the reporters by coming in the back instead of the front? That's Plan "A".

When the back is blocked by the smart reporters know how to get through the side entrance. That's Plan "B".

When the side entrance is magically under construction come through the secret tunnel. That's Plan "C".

Now, here's the most important part of this example.

Don't explain any of this to the crazy person. Just say, "Follow me, sweetheart – it's all good! I swear on the lives of my children! Did I tell you how great you look right now?"

9. Debriefing at the end of today before it all starts up again tomorrow.

See "1" on this list. You are back to square one in general and point "1" on this list.

No, no, no – do not think that just because today went well that you can let your guard down tomorrow with a nut job witness. You cannot count on life being a cumulative learning experience for the insane.

Worst and most dangerous days to look out for – the whole time after the witness has testified.

Normal people want to get back on the stand and set the record straight on a daily basis after they are off the stand. This gets majorly exaggerated for those of questionable mental health.

In normal trials, you can try to figure out how not to have the client witness in court every single day. You will need to figure out if this is even possible or desirable with your particular media-rich trial.

If this is a daily white knuckle ride, you and the whole team are going to have to concentrate and practice at the end of every day and at the beginning of every day what kind of behavior is desirable courtroom behavior. A daily analysis of what kind of feedback you are getting from the nonverbal communication of the jurors as well as what the media is saying about this witness is vital. Again, the nutty witness needs to be on a "media fast" – that is, a total absence of media coverage of this case in any form.

You and the team will analyze without the crazy witness in the room, and then plan a strategy to report what is "being said" in and out of the courtroom to the crazy witness.

10. What's a "win"?

In a regular case, a win is "we won the case and got all the money we asked for" or "we didn't have to pay that much in damages" or "she was acquitted" or "he got a really light sentence."

The media frenzied case with the whack job witness has a whole other layer of "win" to it that often goes far past these normal "wins."

I always ask the team at the beginning of one of these cases, "What does a win look like?"

Sometimes the "best case" scenario is, "The reporters get our message and the witness acts like a person pretty much all the time and no one ever sees the tattoo or the fangs."

Hey. Whatever the criteria is, we all need to be on the same page.

Conclusion:

When dealing with a crazy witness in a case under intense media scrutiny you need to bring along a few "P's":

- patience
- practice
- persistence

Hey, if I ever get to work on a media frenzied case with a "normal" witness, I'll let you know whether or not my hunch that a lot of these principles apply is borne out.

Good luck to us both!