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The Indispensable Witness Wrangler

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You, Young Associate, are going to trial or arbitration. You're not lead counsel, but second, third, or fourth chair. You've been researching, drafting, revising, filing, and serving heaps of pretrial motions, briefs, exhibit lists, objections—the list is endless, but somehow it's all getting done. You're asking questions, listening to the judge, preparing exhibits, working on outlines, and learning more about litigation and trials in the month preceding the first day of trial than you learned in three years of law school. You're mature, dependable, and efficient, but there is one more thing you can do to be indispensable.

Please keep the witnesses out of my hair.

In TV or movie courtroom dramas, we rarely see realistic depictions of the long and tedious hours spent preparing fact and expert witnesses, educating them about the rules of the court, reviewing exhibits, calming their nerves, and answering questions, including such classics as *Why doesn't the judge just throw the case out?* and *What are our chances of winning?* In many complex commercial cases, the most important witnesses might be the client's own senior managers, key employees, customers, or suppliers. This puts an extra dollop of pressure on the lead trial counsel to make sure her witnesses are receptive, relaxed, rested and ready to go when called to the stand.

You can ease that pressure by taking full charge of the care and feeding of friendly witnesses during the inevitable downtime that occurs in every trial or arbitration. In addition to the other tasks you might be assigned, take the initiative to build interpersonal rapport and trust with those witnesses by identifying yourself as the go-to person to talk to and coordinate any kind of logistical help when they are at loose ends. Let the partner focus on preparing other witnesses, communicating with opposing counsel or the court, and making hundreds of big and small decisions.

Witnesses from out of town might need any or all of the following: a private place to make cell phone calls, restaurant suggestions, directions to the hotel or local landmarks, thoughts about which law school their niece or nephew should attend, and where and how to get a taxi back to the airport. Anticipate those needs and divert your witnesses from approaching lead counsel to ask about matters that you or the appropriate person on the trial team can address.

Witnesses might be nervous, shy, resentful, arrogant, vastly more intelligent than you, or frighteningly dense. Don't be tongue-tied or overly reticent. You should be prepared to converse with all types of people about the case, current events, and other appropriate topics. You might not choose your witnesses as friends, but you can still be responsive to their needs, keep them engaged in the process, and make them feel like well cared-for members of the team. Think these efforts will pay off when the witnesses testify?

And after you have done all that work—and, yes, it is work—for the duration of the trial, the tired partner will look up from her trial binders at the end of it all and realize she couldn't have done it without you.

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