

# EXCEL 2010: Part Two

## Building Investigator Skills



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### Topics in Session Two



#1 Taking Testimony Difficult Witnesses	#2 Writing RFI's Some Tips	#3 Preparing the File	#4 Writing the Report
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### Your Responsibility

- ❖ A witness might be reluctant to speak for a 100 reasons.
- ❖ It is your job to behave in such a way that you elicit the best testimony the witness has to offer.
- ❖ Here are some ways to improve your chances to do so!

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**Skills Related to Taking Testimony**

- ❖ The importance of **how** you speak as opposed to **what** you say.



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**“Claims” vs. “No-Claims” Doctors**

- ❖ Anecdotally speaking, savvy malpractice lawyers tell us that people don’t sue a doctor they like and trust.
- ❖ Audiotapes of actual patient-doctor interactions were examined to determine any significant differences between doctors who were sued (“claims”) and doctors who were not sued (“no claims”).
- ❖ Primary care physicians and surgeons were examined separately.

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**Primary Care Physicians**

- ❖ **No significant difference in content (the “what”)**
- ❖ **But... “No-claims” doctors spent more time with patient (18.5 vs. 15 minutes);**
- ❖ **Oriented the patient to the process;**
- ❖ **Empowered the patient (“If you have any questions, just interrupt me....”);**
- ❖ **Addressed the emotional aspects of the interaction through smiling or humor and the like.**

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**Surgeons**

- ❖ No significant differences detected.
- ❖ So, a second team of researchers edited 40 seconds of interaction (from the first and last minute of the interaction) for each surgeon
- ❖ And filtered out the words spoken, leaving only the tone-of-voice (pitch, speed, pause patterns and so forth).
- ❖ Gave each 40 second segment to 12 judges to judge certain qualities.

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**Surgeons**

❖ Results?

- ❖ Judges were significantly more likely to judge the “claims” surgeons as high in **DOMINANCE** (the need to control the interaction) and
- ❖ Low in **CONCERN** (attention to the emotional portion of the communication).

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**Effective Speaking**

We reduce the emotional distance.



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**Speaking With IMMEDIACY**

- ❖ Avoid or reduce physical barriers.
- ❖ Sit relatively close to the other person.
- ❖ Lean toward the person and look into his/her eyes without staring.
- ❖ Use a confiding tone-of-voice; making slight sounds to show you are listening.
- ❖ Do not lean so far away from the person you have to drop your chin to see him/her.

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**How Can We Create Immediacy Over the Phone?**

- ❖ Any suggestions?
- ❖ Tone of voice (interest, openness, patience, non-interruption, not hurrying, not speaking in run-on, elliptical sentence fragments)
- ❖ Avowal of commitment to accuracy. Please correct me if I get something wrong.
- ❖ Active listening

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# The Six Great Persuaders

From Robert Cialdini



*Influence: Science and Practice*  
 (Allyn & Bacon, 4<sup>th</sup> Ed. 2000  
 Influence at Work.com

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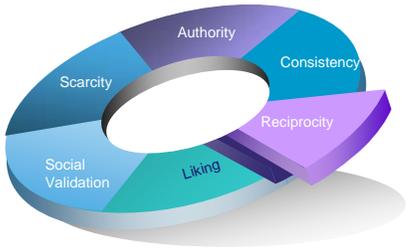
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## Persuasion



Authority  
 Consistency  
 Reciprocity  
 Liking  
 Social Validation  
 Scarcity

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## Reciprocity

- ❖ People strongly tend to reciprocate the behavior they perceive has been extended towards them.
- ❖ For example, investigating in an abusive work environment is made harder by the reluctance of witnesses to speak freely.
- ❖ They are working in an atmosphere of mistrust where speaking out can hurt the employee.

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 **Reciprocity**

- ❖ Nevertheless, think of the small cup of green ketchup!
- ❖ You begin the interview by giving something to the witness and he or she feels a slight pressure to give you something back.
- ❖ You start a positive loop that influences the tone of the entire interview. This is called “mirroring” behavior.

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 **What Can You Give the Witness?**

- ❖ An explanation of the process, especially how they got involved.
- ❖ A show of humility (“I need your expertise and observations to properly understand how to evaluate this complaint. In short, I need your help.”)
- ❖ Setting up the interview at a convenient time/place.
- ❖ “Thank you for taking the time to come over and be interviewed.”

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 **Examples**

- ❖ “It’s only fair that I take a moment to explain how it is I came to request your testimony today.”
- ❖ When you are done this introduction, you ask, “Before I start, do you have any questions for me?”
- ❖ Thus, you touch upon fairness, empower the witness and give up some control to get control.

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**This will put the witness in your debt.**

**A debt he will most likely repay.**



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**Another Example: The Concession**

- ❖ Witnesses have a tendency to respond to a concession on your part with a concession of their own.
- ❖ “Tell me exactly what he said that morning.”
- ❖ “Or at least tell me the gist of what he said as best you can remember it.”
- ❖ The witness responds to the less difficult task with energy. (the contrast effect)

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**Consistency**

- ❖ Remember the Israeli charity.
- ❖ People like to think of themselves as consistent.
- ❖ Get the witness to agree to a specific proposition. It will influence the entire interview.
- ❖ “So, we agree it is important to get this right. Do you agree to recall what you saw to the best of your ability and tell me about it?”

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### An Appeal to Authority

- ❖ This is why Moses was President of the NRA, why former smokers talk about the evils of smoking, people in ads selling drugs wear white coats.
- ❖ Casually, make a reference to your years of experience or how well you understand the witness's dilemma. (You've seen it many times before and worked out a solution.)
- ❖ It is not effective to actively invoke your authority. The witness merely bridles.

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### An Appeal to Authority

- ❖ The well-prepared interviewer appears **competent**. If you are seen as knowledgeable, poised, unwilling to rise to argument or anger, you have already made an unconscious appeal to authority.
- ❖ In a country like the USA, where freedom is defined as freedom from compulsion, cooperation must be elicited.

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### Liking

- ❖ People do more for persons they like.
- ❖ Think of the car salesperson and the Sales Manager (the good guy---bad guy).
- ❖ Recalling what happened, talking about conflict are hard things to do. You need the witness to want to engage in this effort **for you**. Even over the phone, do what you can to get the witness to see you as a likable individual, not a soulless bureaucrat.

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**Examples**

- ❖ Waiters who smile when giving you the bill get bigger tips.
- ❖ **“Excellent choice!!!!”** (You gourmand you.)
- ❖ **“SO, you live in North Flyspeck, eh? What a small world. My \_\_\_\_\_ grew up in that pretty little town himself.”**
- ❖ Open your briefcase and accidentally display a picture of your family.

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**Flattery**

- ❖ Please don't underestimate the power of flattery.
- ❖ People are better at taking in “bad news” after their \_\_\_\_\_ has just been noted.
- ❖ **“I see that you have prepared well for this interview!”**
- ❖ **“Wow! Not many people can recall things in such an organized fashion!”**

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**Your Goal**

- ❖ The interview is not about you.
- ❖ Your goal is to be the friendly but invisible reporter.



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### Social Validation

- ❖ Remember: Behavior in the breakdown lane.
- ❖ Most of us strongly want to fit in. Before we act, we have a tendency to see whether others are doing something similar.
- ❖ Suggest to the witness that it is OK to be a witness in this investigation.
- ❖ “Don’t you be the only one who doesn’t cooperate!”

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### Examples

- ❖ “I’ve already interviewed a series of people from your department and their efforts to help *me* (not the faceless “agency”) address this complaint have been most helpful.”
- ❖ Do not emphasize how hard it is to recall long ago events or what courage it takes to cooperate. These comments simply give the witness permission to fail like everybody else. (Think of the loss of material in the petrified forest.)

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### But Wait!

- ❖ If you are dealing with a “pioneer” (the kind of person who is the first to own a \_\_\_\_\_), switch strategies.
- ❖ Then, emphasize that it is only the select few who step up to the plate and work hard to help reconstruct the events that are part of a complaint.
- ❖ In other words, give them the pioneer role to play and they will play it.

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**Scarcity**

- ❖ Remember the Australian beef.
- ❖ “Operators are on call now, waiting to assist you.”
- ❖ “Be one of the first 25 persons to call and win a free watch-a-ma-call-it.”
- ❖ We tend to value things in proportion to their rarity. This is true of information as well.
- ❖ Give the witness a chance to be “in on” the inside track of this investigation.

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**Selling The Interview**

- ❖ It might seem tawdry to approach interviewing as a sales proposition but so much in life depends on how you frame an issue.
- ❖ Once the process begins, then accurate and thorough content become your main values.
- ❖ Here, we focus on getting the interview going. On what it takes to get the witness to feel comfortable enough and to find it hard **not** to cooperate.

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**The Power to Persuade**

From Kevin Dutton



*Split-Second Persuasion: The Ancient Art and New Science of Changing Minds*, Houghton-Mifflin-Harcourt (2010)

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**Split-Second Persuasion: SPICE**

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**Simplicity**

- ❖ “Easy to swallow, easy to follow.”
- ❖ The shorter, sharper, simpler the message, the more amenable we are to its content.
- ❖ Do not obfuscate or ameliorate your message by calling attention to your extensive vocabulary.
- ❖ Do not lose sight of your three anchors: fairness, accuracy, thoroughness.

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**Perceived Self-Interest**

- ❖ Remember the car wash loyalty card.
- ❖ The two bags with roses, one labeled lawn clippings.
- ❖ It’s all about framing.
- ❖ The key is to present the interview not as something that is in your best interest but in the witness’s best interest.

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**Examples**

- ❖ Emphasizing the seriousness of the EEO investigative process, you give an example that addresses a WIIFM concern of the witness:
- ❖ In a disability case, any one of us might need the ADA some day; in a harassment case, I wouldn't want my daughter to have no recourse if she faced harassment at work; in an age case, ...
- ❖ Plant the thought: It might someday benefit you that we have this process available and that it is an effective process.

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**Incongruity**

- ❖ "Free delivery within ten feet!"
- ❖ Humor can hijack the other person's mood.
- ❖ It is based on the unexpected. It grabs their attention (essential to persuasion), distracts the other person and leaves them open to suggestion and change.
- ❖ It gives us a chance to reframe the situation from impasse to exploration.

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**Example**

- ❖ To the witness who sticks to "yes," "no" and "I don't recall," but who stumbles and adds some tiny bit, you lean toward the witness, smile and say, "Whew! For a second there I thought you were going to really say something."
- ❖ To the angry witness, smile and say, "I know. I know. Sometimes these investigations can be so irritating!"
- ❖ Then slip in your zinger.

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**Confidence**

- ❖ Confidence is catching. Hence, “con” men.
- ❖ We can hardly help awarding correctness to a confident demeanor or an opinion uttered with confidence.
- ❖ Whatever surprise the witness pitches you, never seem at a loss. Everything is A-OK by you.

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**Confidence**

- ❖ “Confidence is a wormhole into truth. In ambiguous, dynamic or fluid situations, not only does it have the right air --- it also has the air of being right.”
- ❖ --- Kevin Dutton



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**Empathy**

- ❖ Remember the New Zealand war hero who was tongue-tied when meeting Winston Churchill.
- ❖ Nothing reduces the emotional distance like the empathic gesture.
- ❖ Remember the twice-sued surgeons and their dominating, distancing speaking style.
- ❖ Show the other person that you “get” them.

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**Topics in Session Two**

#1	#2	#3	#4
Taking Testimony	Writing RFI's	Preparing the File	Writing the Report
Difficult Witnesses	Some Tips		

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**Getting Documents**

- ❖ Use univocally numbered requests.
- ❖ Maintain pace by staggering reply dates.
- ❖ Don't negotiate against yourself; ask for information in the form ideally useful to you and adjust as needed.
- ❖ If records have been destroyed, learn under what circumstances in order to give the agency a chance to assess the possibility of spoliation and adverse inference.

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**Getting Documents**

- ❖ If e-mails or other electronic data are in evidence, determine how the chain of custody has been maintained to assess reliability.
- ❖ Understand when you will need to observe and/or describe the physical setting in a workplace or a full work cycle in an equal pay or emergency duties case.

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## Preparing the File

**Organizing Principles**

Source   Relevance   Special Tabs   Special Format

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## Writing Up Your Report

**Phase 1**   **Phase 2**   **Phase 3**

Start your report as soon as you receive the complaint so you don't ignore any issues.

Organize the report one issue and basis at a time

Don't simply repeat data, analyze it, state its value to the decision.

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## Thank You!

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