

# Surviving Your First OTR: Ten Tips for Young Lawyers

By Pete S. Michaels

When my clients must appear in securities regulatory (state, FINRA, SEC, DOJ) proceedings, I enroll them in what I call “charm school,” where I teach them the dos and don’ts of how to behave during testimony. These are born of my personal experiences (good and bad) and can materially help the young lawyer in getting the best possible result for his or her client. This is especially true in securities regulatory proceedings—where a good performance in on-the-record (OTR) testimony may mean that the case ends before your client is formally charged with wrongdoing that could spell the end of his or her career (or worse). The better your witness performs at his or her OTR, the better the chance that he or she remains only a witness—and not a target. That sounds easy, but it really isn’t. Many securities industry professionals treat regulators like prospects—and turn on the salesmanship; or like unworthy underlings—and turn on the contempt. I am not an advocate of either approach—smarminess will kill your client. Generally speaking, you want your client to blend in. You must present him or her as the “plainest vanilla” person who ever lived. Your client should not come across as the richest, smartest, or best-looking person in the room—even if he or she is. Here are some specific charm school tips for the young lawyer preparing his or her first witness for OTR testimony:

1. **No Cologne.** Don’t laugh. For all you know, a male FINRA regulator just lost his wife to someone wearing your client’s favorite scent. Similarly, maybe a female SEC attorney’s ex-husband smelled like your client. Just tell your client to leave it at home. Being bland never hurt anyone in a regulatory proceeding. Many OTRs are conducted in windowless conference rooms. Hours of breathing cologne in a poorly ventilated room will not be productive for anyone.
2. **No Loafers.** I require all male clients to wear lace shoes. Too many clients want to wear black Gucci loafers with the little gold bar. Don’t play into the stereotype of a slick Wall Street huckster. Rest assured that the regulator will be dressed far plainer than your client. I was born in Indiana, so don’t take this the wrong way—dress your client like he or she is from the Midwest.
3. **No Pocket Squares.** That “splash of color,” as one of my clients once called it, makes a client look like a jerk to a regulator—I have never seen one of them dressed that way. Remember, your client needs to blend in.
4. **No Italian Suits.** I have actually sent clients to Sears to buy a suit. If shopping at Sears is too painful, go to Brooks Brothers and buy your client a two-button sack suit. Make it a solid color, no stripes. Most importantly, make sure your client wears a conservative blouse or white shirt. Do not let them, under any circumstances, wear what the public affectionately calls a “broker shirt”—white collar and cuff with a colored body. While we are on the subject of cuffs—no cufflinks. Most regulators don’t wear them, and the goal is to dress just like regulators.
5. **No Jewelry.** Have your client wear the simplest watch he or she owns—if your client owns only a Rolex (or heaven forbid something more expensive), leave it at home. I have made clients go buy a Timex. And, never, ever, let a client wear a pinkie ring! A wedding ring is fine; other jewelry is not.
6. **No Cell Phones.** Most regulators make far less money than they deserve, and probably a fraction of what your client earns. Do not show off your client’s importance—real or imagined. If he or she must have a cell phone, it should be turned off or on “silent.” Tell your client to retreat discreetly to a private area when he or she is on a break to use the phone. The same holds true for BlackBerries.
7. **Don’t Make Friends.** I once had a client ask me at a break if he could “pitch some business” to the FINRA attorney who was questioning him. After I picked myself off the floor, I asked him why he thought that was a good idea. “Because,” he retorted, “they like me.” Not if I had let him pull that stunt. I am only thankful that he asked me first. Clients should never be seen as selling themselves to regulators. It will make them look slick, and by extension, deceitful.
8. **Be Humble.** “Yes sir, no sir” should be the rule. Have your clients pretend that they are meeting the parents of a date for the first time. And I am not implying that it should be Eddie-Haskell-like insincerity either. Your parents used to say “be on your best behavior,” and that will work here for your client. In other words, be respectful and polite—not obsequious.

**9. Don't Be "Smart".** My grandmother used to call it being "fresh." Don't let questioning get to your client—if you have a good case, there is no reason for the client to get angry, and if you have problems in the case you can't afford to have him or her get angry. The bottom line is that your client needs to be well-prepared far in advance of his or her testimony, and part of that preparation includes your admonishment that he or she must never get angry or argumentative. And make sure your witness leaves the chewing gum at home (though bringing breath mints for the witness is a good idea).

**10. Get Rest.** Regulatory testimony will be highly stressful for your client. You should use it to your advantage. A small measure of stress will help sharpen the senses of your client. That, in turn, can help him or her focus on questions (and responses) more acutely. However, too much stress can only hurt you. To that end, make certain that you have

spent adequate time preparing your witness before he or she testifies. That includes making sure he or she has plenty of rest before the day of testimony. I would also make sure the client has a good breakfast—OTR testimony is an endurance contest, not a sprint. A properly fueled witness is more likely to stay focused throughout his or her testimony.

These tips are intended to assist the young lawyer in preparing a witness to give testimony before securities regulators. They are not exhaustive. They also assume that all basic preparation ("tell the truth," "answer only questions that you understand") has already taken place. These tips are instead meant to give someone who is new to appearing before a securities regulator the benefit of my years of experience. ✨

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