

From Deer in the Headlights to Credible Witness: Overcoming the Freeze/Appease Response



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OVERCOMING THE FREEZE/APPEASE RESPONSE

In the high-stakes world of litigation, witness performance can make or break a case. For defense attorneys, especially when facing skilled plaintiff counsel, understanding the psychological dynamics at play is crucial. Witnesses often experience fight or flight survival responses that negatively impact their ability to testify effectively. They may either become defensive and argumentative (fight) or evade questions and attempt to pivot away from difficult issues (flight). While these primary responses are well-known, a third survival response exists. The freeze/appease reaction—less understood but equally detrimental—can significantly undermine testimony. This occurs when the witness becomes a “deer in the headlights” and robotically agrees with everything the questioner suggests. This article explores the freeze/appease response, its impact on witness credibility, and strategies to mitigate its effects.

To illustrate the freeze/appease response, consider the classic 1983 holiday film "A Christmas Story." The main character, Ralphie Parker, is a young boy who fervently desires a Red Ryder BB gun for Christmas. He dreams about it, obsesses over it, and even writes an essay on it at school. In a pivotal scene, Ralphie waits in a long line at the local mall to sit on Santa's lap and make his Christmas wish known. After the seemingly endless wait, Ralphie finally gets his turn with Santa, who asks, *"What do you want for Christmas, little boy?"* This is Ralphie's big moment, one he has rehearsed countless times. Yet, when the moment arrives, Ralphie is overwhelmed and speechless. He freezes, unable to articulate his desire. He becomes a deer in the headlights. An impatient Santa then suggests, *"How about a nice... football?"* Ralphie, still stunned, nods reluctantly in agreement. As one of Santa's irritated elves escorts him away, Ralphie suddenly realizes his mistake and blurts out, *"Wait!!!!... I want Red Ryder Carbine Action 200-shot Range Model air rifle!"* To which Santa famously responds, *"You'll shoot your eye out, kid."* Ralphie succumbed to the freeze/appease survival response: he knew exactly what he wanted but froze and acquiesced to Santa's suggestion to take the football instead of expressing his true desire.

More common societal examples of the freeze/appease response frequently occur in public speaking, job interviews, social interactions, and customer service situations. A person who has prepared extensively for a presentation or job interview suddenly freezes when standing in front of an audience. They might forget their lines, stumble over words, or agree with any suggestions or interruptions from the audience without thinking them through. Socially, during a heated discussion among friends or family, an individual might freeze and nod in agreement with the most dominant speaker's opinion to avoid conflict, even if they disagree internally. In business, a customer who is unhappy with a service or product may intend to express their dissatisfaction but, when faced with a firm or intimidating service representative, they might freeze and end up agreeing with whatever the representative says to appease them (or vice-versa). These examples illustrate how the freeze/appease response can negatively impact an individual's ability to effectively handle various everyday situations.

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SURVIVAL RESPONSES IN WITNESS TESTIMONY

To generate and maintain effective witness testimony, the witness's brain must be trained to perceive, process, and deliver information in logical, non-emotional ways. The brain's prefrontal cortex (PFC) plays a central role in cognitive control functions, and dopamine in the PFC modulates cognitive control, thereby influencing attention, impulse inhibition, prospective memory, cognitive flexibility, and execution of high-level tasks (Michael T. Murray ND, John Nowicki ND, in Textbook of Natural Medicine (Fifth Edition), 2020). When witnesses are trained to maintain PFC activation throughout their testimony, they can articulate accurate and effective answers at both deposition and trial. This usually results in economically favorable case settlements and avoidance of excessive verdicts for the defense, as fact witness performance is a leading determinant of verdict and damage awards (Kanasky, W. F., Speckart, George, "The Nuclear Verdict: Old Wine, New Bottles," For the Defense, April 2020, 14-21). However, skilled plaintiff attorneys have learned how to disrupt witness PFC functioning via various hostile questioning tactics, leading to disastrous witness performance and unfavorable outcomes.

Survival responses are the brain's automatic reaction to threats in the environment. They result in neurochemical and physiological changes to survive an unpleasant or dangerous situation. Cross-examination is an adversarial process, and the witness' brain often perceives the questioner as a threatening stimulus. When the witness's brain shifts from logical thought patterns (PFC activation) to a fight-or-flight reaction (amygdala-hippocampus activation), the entire neural system is hijacked. This amygdala "hijack" prevents the witness from accessing the strategic responses learned in witness preparation sessions. As a result, the witness abandons the testimony game plan generated during witness preparation sessions and instead answers questions with the goal of defending and protecting themselves (Kanasky, W. F., Chamberlain, A., Eckenrode, J. T., Campo, J. R., Loberg, M., & Parker, A., "The Effective Deponent: Preventing Amygdala Hijack During Witness Testimony," For the Defense, June 2018, 12-21).

THE NEUROCIRCUITRY OF THE FREEZE/APEASE RESPONSE

While many defense attorneys are familiar with how the fight or flight response can deeply impair a witness's ability to testify effectively, few are acquainted with the third potential neurological landmine: the "freeze/appease" response. The autonomic nervous system (ANS) consists of the sympathetic (SNS) and parasympathetic (PNS) nervous systems. The SNS drives the fight-or-flight response, while the PNS drives freezing/appeasing. While the SNS prepares a person to fight or escape a dangerous situation, the PNS leads to decreased arousal and conservation of energy. In other words, PNS activation within a witness is typically the goal, as it places the witness in a relaxed state which allows them to optimize their attention, concentration, and overall cognition. However, when the parasympathetic nervous system is *hyperactive*, the freeze/appease response sets in.

In general, the freeze/appease response is when people react to a threat by attempting to become more attractive and sympathetic to the threat. In testimony, the freeze/appease response occurs when the witness' brain decides that it cannot effectively take on the threat (argue/defend) nor is able to escape (explain). This results in double trouble: the freeze reaction severely impairs and blocks effective cognition, and the connected appease response can be particularly damaging to the defense case. Witnesses that fall into a freeze/appease response during testimony have great difficulty saying "no," they fear answering questions in a way that contradicts the questioner, and they abandon the strategic game plan to avoid conflict, criticism, or disapproval. Specifically, these witnesses often hop on what the author describes as "Taking the Yes Train directly to Yesville," repeatedly agreeing with all the cross-examiner's statements, even if the agreement is inaccurate or illogical, to ensure survival in the situation.

Litigation, by definition, is a deeply confrontational process that is often emotionally traumatic to the people involved. Many witnesses have experienced emotional trauma in the past, usually outside of defense counsel's knowledge. The freeze/appease defense mechanism often sets in when someone grows up in an abusive or trauma-filled environment. To cope with the trauma or avoid abuse, a child may develop people-pleasing behaviors where slowly they may begin to lose their sense of self, their needs, and desires. With time, the freeze/appease response to trauma can become a pattern well into adulthood. This behavior pattern can affect not only overall wellness but can affect professional and personal relationships as well (Sharma, S., "Fawn Response To Trauma: What Is It And Ways To Unlearn Your Fawn Response," Calmsage.com, November 27, 2021). Therefore, some witnesses are unknowingly more susceptible to the freeze/appease response due to their personal history and experiences in difficult situations.

CONSEQUENCES OF THE FREEZE/APPEASE RESPONSE

By succumbing to the freeze/appease response, witnesses inadvertently undermine their credibility and weaken their testimony. They may come across as overly agreeable, lacking independence of thought, and excessively accommodating to the opposing party's position. Furthermore, the freeze/appease response impairs effective cognition, making it difficult for witnesses to think critically, recall relevant information, and provide effective answers. These witnesses, despite hours or even days of preparation with their attorneys, often "give away the farm" to plaintiff's counsel. The strategic and economic consequences of such responses can be catastrophic to the defense.

To illustrate the impact of the freeze/appease response on witness effectiveness, consider the following example: In a transportation case, the plaintiff attorney questions the safety director of a trucking company who is nervous and has never testified before. The witness, due to their freeze/appease response, agrees with every statement made by the questioning attorney, even those that are factually incorrect or contradicted by other evidence. The witness may unintentionally and continually agree with leading questions, such as:

"Your driver was operating the truck dangerously, right?"

"Your company's safety training program is insufficient, correct?"

"Isn't it true you should have never hired this driver in the first place?"

By consistently aligning themselves with the opposing party's assertions, the witness weakens their position and fails to provide accurate and objective testimony. While strategically detrimental to the defense case, these responses accomplish the witness' ultimate neurocognitive task: personal survival. Put another way, saying "yes" eliminates the immediate threat of opposing counsel. Moreover, opposing counsel will often use operant conditioning tactics to positively reinforce the witness' agreement and fuel further agreement (Wood, S. M., & Kanasky, W. F. (2023, July 28). Operant conditioning: Tactics that can derail your witness. Law 360.).

The most difficult scenario where the freeze/appease response can hamper witness effectiveness is when the witness is subjected to aggressive cross-examination tactics. Opposing counsel may employ intimidating or hostile questioning techniques to trigger the freeze/appease response and manipulate the witness's answers. Under this intense pressure, witnesses may abandon their strategic responses and agree with the opposing counsel's assertions out of a desire to appease or avoid further confrontation. This not only compromises their credibility but also allows the opposing counsel to control the narrative and shape the testimony to their advantage. This often happens when a defense witness correctly disagrees that "Safety is always the company's top priority," a common plaintiff Reptile-EDGE question at deposition and trial. After the witness' disagreement, the plaintiff attorney may verbally and non-verbally attempt to intimidate the witness by smirking, rolling their eyes, increasing the volume of their voice, and repeating questions in an aggressive manner. When faced with such a threatening counter-maneuver, some witnesses will retreat to a freeze/appease agreement to the statement to eliminate the threat. Such an agreement can prove very costly to the defense, particularly when the witness provided the correct response to the original question.

PREVENTING THE FREEZE/APPEASE RESPONSE

It is important for defense attorneys to recognize the signs of the freeze/appease response in witnesses and address them proactively. First-time witnesses who have high levels of trait anxiety (people who have the general tendency to feel anxious in most situations) are highly susceptible to the freeze/appease response. These witnesses tend to fall into freeze/appease responses quickly during mock questioning exercises. By providing appropriate support and guidance, counsel can help witnesses overcome this response and maintain their cognitive functions, allowing them to provide accurate, consistent, and persuasive testimony. This may involve techniques such as stress management, relaxation exercises, rehearsal of assertive responses, and operant conditioning methods (Kanasky, W. F., & Wood, S. M. (2023, August 1). Operant conditioning: Techniques to prepare your witness. Law 360.). Witness coaches with advanced training in cognition and emotion can assist counsel in both assessing and training witnesses to testify effectively in this regard.

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Additionally, counsel should create a supportive environment where witnesses feel empowered to say "no" or "it depends on the situation" when appropriate, adhere to their answers when challenged, and provide testimony that aligns with the facts and their personal knowledge. However, blunting survival responses requires gradually and repeatedly exposing the witness to negative stimuli in a mock questioning environment. This process, known as systematic desensitization, involves steadily exposing witnesses to simulated cross-examination scenarios that mimic aggressive questioning. By coupling this exposure with relaxation techniques, witnesses learn to maintain emotional composure and cognitive clarity during actual cross-examination. Repeatedly exposing witnesses to increasingly challenging interrogation situations helps reduce the fear, anxiety, and survival responses associated with confrontational cross-examination (Kanasky, W. F., Chamberlain, A., Eckenrode, J. T., Campo, J. R., Loberg, M., & Parker, A. (2018, June). The effective deponent: Preventing amygdala hijack during witness testimony. For the Defense, 60, 12-21.).

CONCLUSION

In civil litigation, the ability of witnesses to provide clear, coherent, and consistent testimony is often the fulcrum upon which a case balances. The freeze/appease response, while less commonly understood than the fight or flight responses, can be particularly insidious, undermining a witness's credibility and the integrity of their testimony. Witnesses who fall prey to this response become overly agreeable, failing to provide the independent, factual testimony that is crucial for a strong defense.

Techniques that foster prefrontal cortex activation, such as stress management and relaxation exercises, are essential in maintaining cognitive control during testimony. By doing so, witnesses can stay grounded, articulate, and consistent, even under the pressure of hostile cross-examination. Moreover, attorneys must be vigilant in identifying witnesses who are particularly susceptible to the freeze/appease response. This susceptibility often stems from past emotional trauma or high levels of trait anxiety, which can predispose individuals to this survival mechanism. Tailored witness preparation, including cognitive and emotional training, can significantly mitigate these risks. Witness coaches with expertise in these areas can be invaluable, helping witnesses to navigate the complexities of cross-examination without succumbing to detrimental survival responses.