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Deposition Drills

How to Teach Deposition Skills

By Frank Ramos

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DEDICATION

To Ana
You've shown me there are
no limits to what we can do

To David and Michael
The power to transform is inside of you

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Introduction

Taking effective depositions is a crucial skill for litigators and trial lawyers, a skill that can be taught and learned. But how should deposition skills be taught? Simply telling others how to take depositions is a start, but is not enough. Sharing deposition transcripts is a start, but is not enough. To teach deposition skills in a manner that is instructive, that is effective, that works, that sticks – requires conducting a series of hands on exercises so lawyers can learn the skills they need to take and defend depositions. This book shows how to teach deposition skills in such a manner that is memorable, that instills confidence and that works. Law school doesn't teach deposition skills and to be honest, many firms don't effectively teach deposition skills either. This book fills that gap. It provides exercises to teach most every deposition skill needed to take and defend depositions. A lot goes into taking effective, powerful depositions. A lot goes into properly defending depositions. This book walks you through over 60 exercises to use with your young lawyers to help them take the depositions they need to win at summary judgment, at mediation and at trial. A legal team that knows how to take and defend depositions will produce good results for their clients and will develop a reputation as a go to law firm. This book will help you develop the reputation as a go to firm.

Why Teach Deposition Skills

I've had the pleasure and privilege of teaching deposition skills to many young lawyers over the years. I've approached teaching deposition skills from different perspectives and vantage points and have found the best approach is to run through exercises with young lawyers, where we role play and they experience first-hand the skills I'm trying to teach them. These exercises are memorable, fun, effective and good for firm team building. And these exercises are easy to learn, use and incorporate into any associate or deposition training program. Firms have a responsibility to provide their clients impeccable work product, and to do so, their team must master certain skills, including deposition skills. Therefore, it is incumbent on all litigation firms to teach deposition skills, and that involves more than simply having associates shadow partners at depositions or read deposition transcripts. It requires more formal, in person, training. That is what this book is about.

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Why Write a Book about Teaching Deposition Skills

Most litigation firms teach their young lawyers deposition skills, but many have no formal approach to do so. Often, it is a hodgepodge approach of shadowing partners, reading deposition transcripts and attending skills CLE. This approach helps, but is far from ideal. Creating a more formal deposition skills program, implementing it and tweaking it as you go is the best approach to teach deposition skills. This book walks you through a library of exercises and drills you can use to effectively and efficiently teach deposition skills. This interactive approach allows firms to role play with their young lawyers and show them first hand why we do what we do in depositions and how to do it.

Teaching Deposition Skills

Anyone who has taken their share of depositions can teach what they do to others. Each of us can sit down, analyze our process of taking and defending depositions, and share our wisdom, approach and skills. The more depositions we take, the more we learn and the better we get and the more insightful the knowledge we can pass onto others. So, whether you think you can or not, if you're a litigator and have spent years taking depositions, you can pass along and entrust that skill set to others. It requires self reflection and deep thought as to why you do what you do in depositions and why it works (and when it doesn't work, why it doesn't). And the act of thinking through what you do and why you do it, will not only facilitate you teaching others, you will be teaching yourself in the process. You will find yourself questioning what you do, how you can improve yourself and make your next deposition even better.

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How Law Schools Teach Deposition Skills

Most law schools do a poor job teaching deposition skills because most professors don't actively take depositions. This trend has changed in recent years, with more law schools hiring practicing attorneys to teach pre-trial and trial skills. Even with these seasoned veterans in the classroom, law school does not lend itself to being a suitable environment for teaching deposition skills. Working off of mock fact patterns, most deposition skills taught in law school focus on the rudimentary skills of taking or defending a deposition which can, frankly, be taught in an afternoon. Law schools do not effectively teach all the ins and outs of depositions, all the do's and don'ts, all the tricks and traps. They teach you how to take a decent deposition, but far from an effective one. Law schools continue to improve how they teach skills, but they have a long way to go.

Deposition Skills Can Be Taught

Deposition skills, like any skill, can be taught. The process, actually, is quite simple. You analyze what you do in depositions and why you do it. You reflect on your own learning process, mistakes you made, lessons you learned, experiences you had, and how they, collectively, improved your deposition skill set. And then you reduce all that to a process, to action steps, to a list of to dos to prepare and take depositions and you share that with others. I've shared my deposition taking process in several of my books. In the process of writing my books, I analyzed what I do, what works for me and what doesn't, and reduced it to a series of checklists. This process made me focus on how I take depositions, made me aware of where I fell short and forced me to tweak my approach here and there to improve my depositions.

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How Deposition Skills Are Learned

The best way to learn a skill is to do it. Of course cutting your teeth by taking lots of depositions, and making mistakes along the way may have been the way past generations learned, but today, this is far from ideal. The preferred method is to perform drills and exercises with young lawyers, where you role play with them and provide them feedback on how they did. Trying to replicate what happens in depositions through exercises, and using those exercises to teach specific skills decreases the learning curve and increases the speed with which skills are learned.

How to Teach Deposition Skills

This book will walk you through exercises for most every skill set necessary to take and defend depositions. It will provide you the purpose of each exercise, how to conduct it and questions to ask after doing it. The hope is that this interactive, hands on approach will provide young lawyers insight on not only what to do, but why to do it, and how to do it better. The exercises are simple, direct and easy to do and each teaches a discrete deposition skill. It is entirely up to you which exercises to use, what order to use them and how to incorporate them into any existing associate training program you may have. Consider this book another tool in your tool box of teaching deposition skills to your team.

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Who Can Teach Deposition Skills

Who should lead the exercises in this book? Any attorney with several or more years experience taking and defending depositions. I'm remiss to provide a hard number of depositions taken and defended for instructors. Some attorneys have taken hundreds, even thousands, of depositions. Some have only taken dozens. Yet, each of those attorneys, depending on the depositions they've taken and defended, and the preparations that went into them, may be equally qualified to teach others deposition skills. Being an effective teacher isn't dependant on having taken hundreds of depositions. It's dependent on learning from whatever depositions you have taken and constantly improving your skill set, ensuring your future depositions are more productive and more effective. Curious, thoughtful, reflective deposition takers make the best deposition instructors.

How to Train Others to Teach Deposition Skills

If you have a large firm with many young associates, you will need numerous deposition instructors. You should pick those who enjoy mentoring and teaching and who have displayed a good rapport with your young lawyers. Share this book with them and have them read through it and the exercises it contains. The drills are self explanatory and easy to master and use. If you're going to teach deposition skills using several instructors and many young lawyers, it's best to have one or more sessions with your instructors where you decide how often instructors will meet with young lawyers, what exercises they will lead and what feedback they will provide. You want consistency and direction to ensure any training is helpful, fruitful and constructive.

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The Power of Smartphones

Your most powerful deposition tool is in your hand – your smartphone. Use it to record young lawyers as you teach them deposition skills and then watch the videos with them. Point out their style, their cadence, their body language, their fillers, etc. and help them improve their voice, their delivery, their presence and their confidence. I didn't have smartphones when I was a young lawyer and I would have learned so much by recording myself with one and studying my presence and behavior to improve my delivery.

What Deposition Skills Result in Effective Depositions

Effective depositions can be reduced to mastering certain skills, including conducting thorough due diligence before a deposition, thinking through and relying upon your case theme during the deposition, securing all relevant information the witness has to offer and directing the witness to provide you the information you want in the manner you want it. Some have the misconception that a deposition is purely a fact gathering expedition. That is one of the purposes of a deposition, but generally only a minor one. More often, you're trying to get a witness to make admissions that make your case and undermines your opponent's. You're securing what you need to win at summary judgment, mediation or trial. Teaching deposition skills that win cases is what you're aiming for.

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How to Teach These Skills

When teaching deposition skills, do it either on a one to one basis or limit it to a small group of young lawyers. Teaching deposition skills to large groups at once is not as effective as a more personal approach. I suggest a ratio, at most, of 1:5 between instructors and students. You don't necessarily have to have a 1:1 ratio. In fact, teaching through small groups may prove more effective than a one to one approach, because young lawyers not only learn from their own efforts but from the efforts of other young lawyers and from each other's feedback. Having taught deposition skills in a variety of settings and to a variety of group sizes, I've found groups of 4 or 5 young lawyers prove to be the most interactive, effective and fun.

Consider meeting weekly, either first thing in the morning or at lunch, for about an hour, and run through two of more exercises during each session. Create a schedule over several weeks (or even over several months) where you run through some (or if time permits, most, if not all) of the exercises in this book. By the end of the process, the young lawyers will have a new found appreciation of what to do at depositions and how to do it.

How to Fine Tune These Skills

After you've run through the exercises and want to do more advanced training with your associates, share depositions you've taken and explain, step by step, your preparations for the depositions, why you asked the questions you asked, why you asked them in a given order and how you asked the questions. Consider these sessions master classes – where you get into the weeds and explain the how, why and what of advanced deposition skills. And again, studying a deposition you took and analyzing what you did will help you improve what you do in future depositions.

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Deposition

The remainder of the book is a series of exercises you can do with your attorneys to teach them deposition skills. Each Exercise below is divided into three parts:

EXPLANATION

The exercise begins with an explanation of what skill you're teaching and its importance and relevance. I provide brief explanations that provide a general overview. You can elaborate and augment on this explanation as you wish.

EXERCISE

The heart of each exercise is the exercise itself. The exercise will be explained and sufficient detail will be provided for you lead the exercise. As with the explanation, feel free to adapt the exercise to your needs.

LESSONS LEARNED

After the exercise, you will lead a post mortem discussion addressing what the participants learned from the exercise and how they can apply it. This section will provide some "lessons learned" and pose some questions to facilitate discussion.

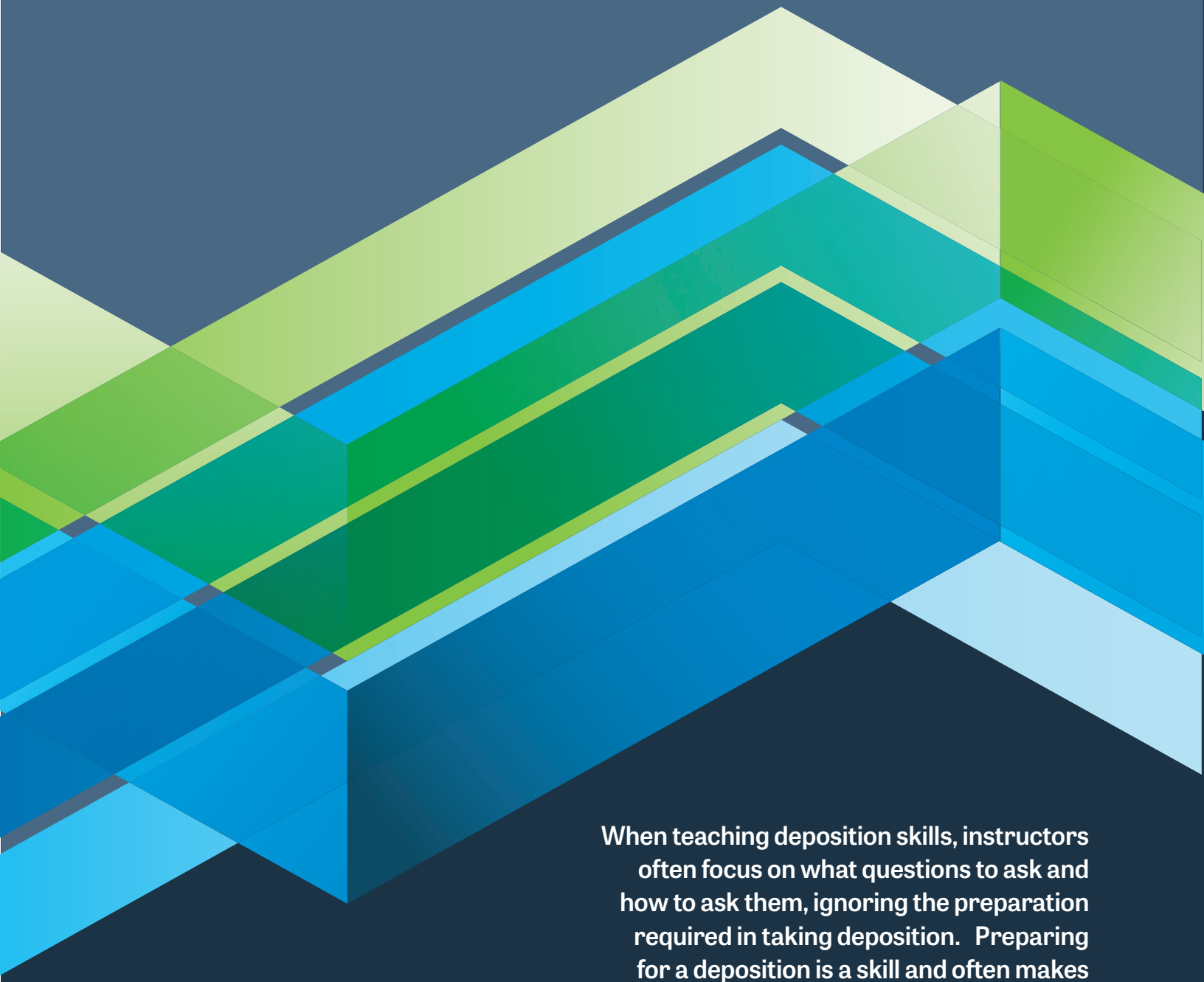


n Exercises

Before employing these exercises, a few caveats...

- Pick and choose which exercises you believe will best serve your attorneys.
- Feel free to change, augment, or refine any aspect of any of the exercises to best serve your attorneys
- Create a supportive environment for your attorneys to participate in the exercises.
- Spread out the exercises over several weeks or even several months. You shouldn't teach all these skills all at once. Your attorneys won't retain it all.
- For each training sessions, group several related exercises, and run through them consecutively.
- Appreciate that there is no substitute for doing when it comes to learning. That's the purpose of these exercises – learning through doing. The idea of doing exercises and drills may seem odd, even childish to some, but they provide a practical, hands on way to learn deposition skills.

Preparations



When teaching deposition skills, instructors often focus on what questions to ask and how to ask them, ignoring the preparation required in taking deposition. Preparing for a deposition is a skill and often makes all the difference in the answers you secure at deposition. This section includes several exercises to improve your attorneys' skills when preparing for their depositions.

Document Gathering

An effective deposition begins well before the first question is asked, and one of the necessary prerequisites is securing relevant documents. Securing documents isn't a task simply assigned to a paralegal or legal assistant. The attorney deposing the witness is responsible for securing every document needed for the deposition.

EXPLANATION

This exercise teaches how to define what relevant documents must be secured for a deposition and how to secure them.

EXERCISE

Choose two or three types of cases your firm or practice group handles. Ask the participants to state all the relevant documents that may be available in those cases and how best to secure them. As the exercise leader, have a list of the types of documents you rely upon and how you secure them and at the end of the exercise compare the participants' lists to yours.

LESSONS LEARNED

This exercise teaches participants to think through all the available relevant documents and how to secure them. The larger the group of participants, the more ideas they will have about what documents to secure and how to do so.

A FEW QUESTIONS TO DISCUSS

Why are documents important in a deposition?

How can they be secured?

What are unique ways to secure documents?

Are there ways to secure documents without tipping your hand to opposing counse or the witness that you have them?

How can a document lead to other documents?

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Information Gathering

As with documents, it is important to secure all relevant information before a deposition. The more you know about a witness, what she knows, her role in a case, and what she is likely to say, the more effective the deposition.

EXPLANATION

This exercise teaches how to define what relevant information must be secured for a deposition and how to secure it..

EXERCISE

Choose two or three types of cases your firm or practice group handles. Ask the participants to state all the relevant information that may be available in those cases and how best to secure them. As the exercise leader, have a list of the categories and types of information you rely upon and how you secure them and at the end of the exercise compare the participants' lists to yours.

LESSONS LEARNED

Participants will learn the importance of conducting a thorough case investigation before taking the first deposition. Thorough due diligence improves the effectiveness of a deposition.

A FEW QUESTIONS TO DISCUSS

Why is learning as much as you can about your case important for taking effective depositions?

What information do you need in every case?

What information do you need for specific types of cases?

What are formal ways to secure information?

What are informal ways to secure information?

How can you conduct your investigation privately, out of the eye of opposing counsel?

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Developing Themes

Your objective in any case is to win, and to win, you need to develop a theme for that case, a theme which runs a throughline - an invisible thread – through your case. This theme is developed through your case investigation, your written discovery, your interviews and your depositions. Teaching deposition skills requires, by extension, teaching how to spot, grow and develop themes. Themes keep us and the fact finder focused on why we win. Define your theme, embrace it and use it.

EXPLANATION

This exercise teaches how to brainstorm and develop case themes.

EXERCISE

Choose two or three types of cases your firm or practice group handles. Ask the participants to brainstorm themes for those cases. Lead a discussion about possible themes and how to develop them in depositions. Have a list of case themes you have used and discuss their birth, development and use in depositions and at trial.

LESSONS LEARNED

This exercise teaches the importance of themes, how to conceive them and how to develop and use them.

A FEW QUESTIONS TO DISCUSS

Why are case themes important?

Where else do we see themes used? How are they used? Discuss themes in literature and cinema and their power and impact.

What are the sources of potential themes?

Where can you find themes during the course of your day?

How does one give birth to a theme?

How can you develop a theme?

How can you incorporate a theme in your depositions?

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Developing Goals

As with everything we do in a case, one needs goals when taking a deposition. What information are you trying to procure? What admissions are you trying to secure? What themes do you want to develop? Depositions are more than asking questions and soliciting answers. They are about advancing your overall case goals toward achieving a win. Learning to develop goals for depositions ensures that the questions one asks best serve the case and the client.

EXPLANATION

This exercise teaches how to brainstorm and develop deposition goals.

EXERCISE

Choose two or three types of cases your firm or practice group handles. Ask the participants to brainstorm deposition goals for those cases. Lead a discussion about possible deposition goals and how to achieve them in depositions. Have the participants write out their deposition goals, organize them in importance and discuss how those goals will drive what to ask at deposition.

LESSONS LEARNED

Participants learn how to define deposition objectives, which drive what to ask the deponent and how to ask her those questions.

A FEW QUESTIONS TO DISCUSS

What are common deposition goals?

What are deposition goals which are not obvious or readily apparent?

How do goals direct your questioning in deposition?

How do you determine the order of importance of your goals?

How do goals change during the course of a case?

What is the relationship between your case goals and your case theme?

How do goals focus your questioning?

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Outline Preparation

Most lawyers prepare deposition outlines. Some create more detailed outlines than others. They help ask the right questions in the right order and use the right exhibits in the right order. Understanding the role of deposition outlines and how to prepare them ensures a more productive, effective deposition.

EXPLANATION

Participants learn how to prepare an effective and useful deposition outline.

EXERCISE

Choose two or three types of cases your firm or practice group handles. Ask participants what topics they want to include in deposition outlines for these cases, what exhibits to include and what order to organize the topics and exhibits. Ask them how much detail they want to include in their outlines and why. (A mistake some lawyers make is to write out every question).

Share one of your outlines and explain how you prepared it. Discuss the amount of detail you used in your outline, why you chose to rely on given exhibits and how you used the outline and exhibits during the deposition.

LESSONS LEARNED

Participants learn how to sit down and draft an outline, and how to rely on exhibits when questioning witnesses.

A FEW QUESTIONS TO DISCUSS

What's the purpose of an outline?

How do you decide what topics to include in your outline and their order?

How much detail should you include in your outline?

It's often said you should not write every question you plan on asking in your outline. Should you include some specific questions (as opposed to simply listing topics and sub topics to cover)? Which ones? Why?

How should you reference exhibits in your outline?

How do you deal with surprises at deposition not addressed in or anticipated by your outline?

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Flow of Questions

Every deposition has its flow, in terms of how each topic transitions into the next and how each question transitions into the next. Learning how to order topics and questions will help you secure the answers you're seeking.

EXPLANATION

Participants learn how to organize deposition topics and questions and how to segue from one to the next.

EXERCISE

Choose a common type of deponent from your matters. Brainstorm the topics to ask and discuss what order to arrange those topics and why. Cull out several topics and discuss what questions to ask under those topics, what order to ask those questions, why those questions should be asked and why they should be asked in a given order.

LESSONS LEARNED

Participants learn the importance of not just asking the right questions, but asking them in the right order.

A FEW QUESTIONS TO DISCUSS

Why is it important to arrange your topics a certain way?

Why is it important to arrange your questions under each topic a certain way?

What is the typical order of topics in depositions?

How can you change the typical order? What affect does that have on the deponent? On opposing counsel?

When should you ask the "money" questions that secure favorable admissions? How do you lay the foundation for those questions?

How do you use the flow in your favor? How can you use the flow to trick, trap or corner a deponent?

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What to Ask

A deposition is part interview, part reconnaissance, part interrogation. The more depositions you take, the more attuned you will become about what to ask. Every deposition calls for its own questions to ask. Developing a process to determine what questions to ask is a skill every litigator should develop.

EXPLANATION

Participants learn how to develop a process to determine what questions to ask a given deponent.

EXERCISE

Choose several cases the firm has handled and several individuals deposed in each of those cases. For each, lead a discussion about what questions should be asked of each deponent and why. Then explain what questions were actually asked of the witness and why. Share the deposition transcripts with the participants. Discuss your process of deciding what questions to ask a given witness.

LESSONS LEARNED

The most obvious skill to develop to take effective deposition is developing a process to ask the right questions. This exercise helps participants think through what to ask and why.

A FEW QUESTIONS TO DISCUSS

What's the purpose of a given deposition?

What do you hope to accomplish?

What facts do you want to discover?

What admissions do you want to secure?

How can you use the deponent to support your case theory? Your trial theme>

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How to Ask Questions

There are three crucial skills when taking any deposition. We've covered the first two – what questions to ask and what order to ask them. The third skill is how to ask your questions. What tone should you use? What cadence? How should you behave? What should be your approach? Your attitude? How fast should you ask them? How loud should you ask them? What rapport are you trying to develop? Remember, you're trying to get the witness to tell you what you want, what helps your case and what bolsters your theme. How you ask questions goes a long way in determining whether you secure the answers you want.

EXPLANATION

The participants will learn to identify the "type" of witness they're deposing and how best to question them.

EXERCISE

Identify different types of deponents – young versus old, educated versus uneducated, biased versus unbiased, family or friend versus independent witness, truthful versus lying, expert versus lay, interested in outcome versus uninterested, etc, and develop a style of questioning for each witness. Run through as many types of witnesses you can think of and discuss with the participants the best way to question them.

LESSONS LEARNED

This exercise teaches participants to categorize deponents into types of witness and how best to interact with different categories and types of witnesses.

A FEW QUESTIONS TO DISCUSS

What types of witnesses and categories of witnesses come to mind?

How do you question a reticent witness? A quarrelsome witness? A lying witness? A biased witness? A witness who is hiding something?

How do you go about defining the type of witness with which you're dealing?

How do you size up a witness?

What due diligence do you conduct to determine the type of witness with which you are dealing?

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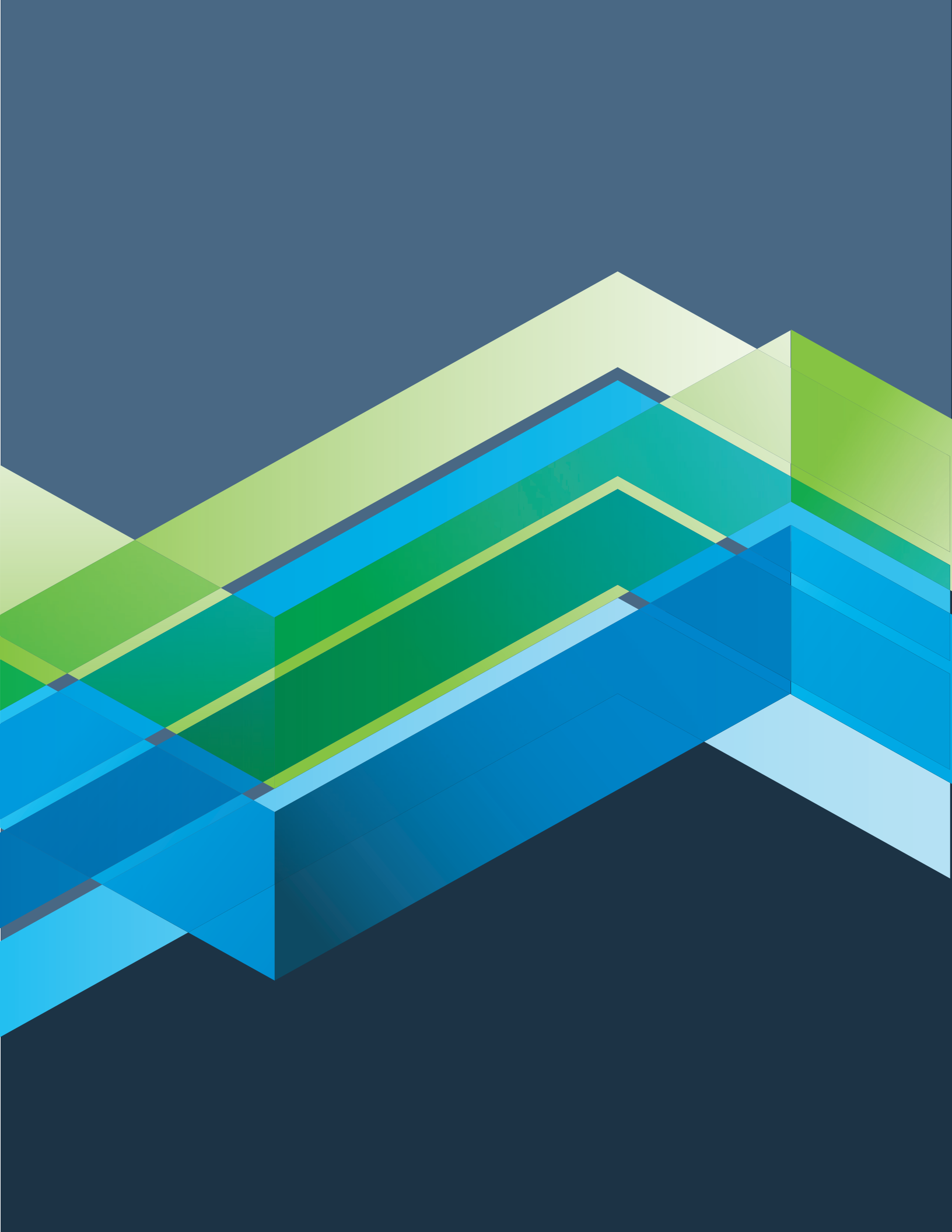
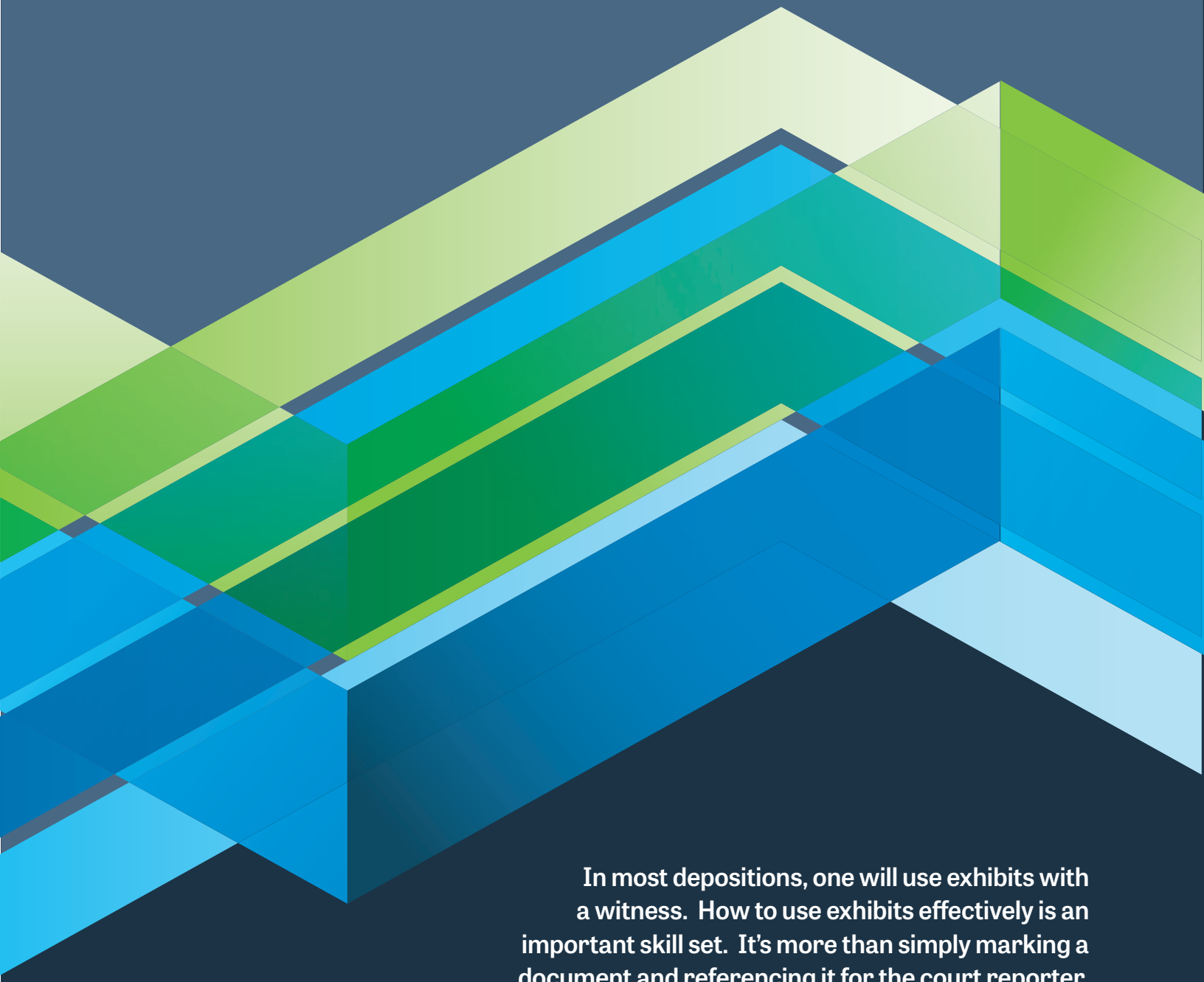


Using Exhibits



In most depositions, one will use exhibits with a witness. How to use exhibits effectively is an important skill set. It's more than simply marking a document and referencing it for the court reporter. This section will cover the common types of exhibits used during the deposition and how to effectively use them with a witness.

Using Photos

Often, you'll need to show a witness a photo and have her identify it and describe it. The photo needs to be properly identified for the record, and the photo and what it depicts properly described for the record. Some photos are simple. Some have more content and are more complex. Becoming comfortable with using photos in depositions is an important skill to develop.

EXPLANATION

Participants learn how to use photos with a deponent.

EXERCISE

Take several photos you have used in past depositions or simply print stock photos you find online. Have the participant identify and mark the photo for the record and ask you questions about the photo. The participant must accurately describe the photo and its contents for the record and clear up any confusion about the photo's content and secure whatever information or understanding you have about the photo.

LESSONS LEARNED

It's said a picture is worth a thousand words. Often, photos of an accident scene, a vehicle, a product, or a condition play important roles in cases, depositions and trials. Knowing how to use photos to support your case is a skill that takes practice.

A FEW QUESTIONS TO DISCUSS

Why are photos important for a case?

How can you use a photo effectively in deposition?

What if a photo hurts your case? How should you use it?

How can you use photos to support your theme?

How can you use photos to tell your story?

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Using Diagrams

Sometimes you'll use a diagram in a deposition – a diagram of an accident scene affixed to a police report, a diagram of a floor plan, a diagram of a product – to question a witness. As with photos, you need to know how to identify the diagram and its contents and how to use it with a witness.

EXPLANATION

Participants learn how to use a diagram with a witness.

EXERCISE

Secure diagrams you have referenced in depositions or print several you find online. Have the participant identify and mark the diagram for the record and ask you questions about the diagram. The participant must accurately describe the diagram and its contents for the record and clear up any confusion about the diagram's content and secure whatever information or understanding you have about the diagram. Diagrams are often done to scale, so make sure participants ask questions about the scale, what is included and excluded in the diagram and any other features that help explain what the diagram depicts.

LESSONS LEARNED

Diagrams are useful in that they include useful information and exclude useless information often found in photos. They draw your attention to the issue at hand and keep the deponent focused on what matters. They can play a significant role in supporting and winning your case.

A FEW QUESTIONS TO DISCUSS

How are diagrams different from photos?

How can you use diagrams effectively?

What are the most important aspects of a diagram?

How can you use a diagram to support your theme?

How can you use a diagram to tell your story?

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Using E-mails

We all use e-mails and more and more, they're becoming ubiquitous in cases. In many cases, especially in employment and commercial matters, e-mails play an important role. They contain an admission, a fact or provide notice that is central to the matter. Learning how to use them in depositions is an important skill to develop.

EXPLANATION

Participants learn how to use e-mails in a deposition.

EXERCISE

Copy several e-mails used as exhibits in your depositions, and have participants question you about them. You want participants to make them part of the record, properly identify them (sender, recipient, those copied, date, re: line, etc.), put them in context and learn about other e-mails in the chain or other relevant e-mails that preceded it or followed it. Have participants pin you down on what the e-mail says, means and its context. It's hard to argue with something written down, in black and white. Show participants how they can secure information and admissions with e-mails.

LESSONS LEARNED

E-mails can be critical in pinning down a witness with his own words or by showing he was a recipient of an e-mail (and thus placing him on notice of the e-mails contents). The purpose of this exercise is becoming familiar with how to use e-mails effectively to get witnesses to say what you want.

A FEW QUESTIONS TO DISCUSS

How can an e-mail bolster your case? Undermine it?

What does a given e-mail say? What doesn't it say?

How do you use e-mails to communicate? How do you think juries view e-mails?

In terms of evidence, how much weight do you give to the content of an e-mail? How much weight do you think a jury attributes to it?

What are some effective ways to use an e-mail in a deposition? What are ineffective ways?

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Using Correspondence

E-mails have largely replaced formal correspondence, but letters between and among parties and witnesses remain, and their use in depositions remain important. As with e-mails, one must learn how to refer to the letter for the record and use it to question a witness, who may have been the sender, recipient or subject of the letter.

EXPLANATION

Participants will learn how to use correspondence in depositions.

EXERCISE

Gather letters used as exhibits in your depositions. If you have none, ask around and secure letters used as exhibits by others at your firm in their depositions. Explain the context of the letters to the participants and then have them question you about it. Participants need to properly identify and mark the letter for the record and discuss its contents with you. To the extent possible, the participant should try to secure relevant information and admissions through using the letter.

LESSONS LEARNED

This exercise teaches you how to analyze a letter and make the most of it when deposing a witness about it. There is what the letter says, what it doesn't, who wrote it, who read it, who it's about and its import and impact.

A FEW QUESTIONS TO DISCUSS

Who wrote the letter? Why? What does it say? What doesn't it say?

Is the letter purely a CYA letter? Why? What aspects of it signify this?

Are there other drafts of the letter? How are they different?

How do you get a witness to focus on the words, phrases or sentences of a letter you want to focus on?

How do you separate out the helpful parts of a letter from the unhelpful parts?

How do you use a letter to support your theme?

How do you use a letter to tell your story?

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Using Contracts

Cases involving contracts will revolve around the language in those contracts – who drafted them, revisions to them, what they mean, how they're interpreted, how they are applied, how the parties have interpreted them, etc. Learning to use contracts in depositions is a two step process. The first step is becoming acquainted with the different types of contracts, the different parts of a contract, the definitions in contracts and the meaning of common clauses in contracts. After understanding the basics of contracts, one needs to learn how to question a witness about a contract. When teaching others to use contracts, teach them how to read and understand a contract and then teach them how to question others about it.

EXPLANATION

Participants will learn how to interpret a contract and then question a witness about it.

EXERCISE

Identify and copy a contract used in a deposition. Explain to the participants its contents, its role in the case and how it was used in the deposition. Then have the participants question you about its contents, trying to having you make admissions about the contract, its content and its interpretations that support the case. Learning how to use a contract effectively takes time and practice. This exercise is worth repeating with different contracts used in different matters.

LESSONS LEARNED

This exercise teaches participants how to use a contract to question a deponent. Participants will learn how to lay a foundation with a witness about their knowledge of and exposure to a contract, their role in drafting or applying it, their understanding of key terms and the basis of that understanding, and how to use the language of a contract to pin a witness down and have him make favorable admissions about it, its language and its application.

A FEW QUESTIONS TO DISCUSS

What is the importance of the definition section of a contract? What are common definitions?

What are common clauses found in most contracts? What is their significance?

How do you lay the foundation to ask a deponent about a contract?

How do you get a witness to focus on a specific clause in a contract?

How do you question a witness that argues with you over what a contract says or means?

How do you use e-mails and correspondence to bolster your interpretation of a contract with a witness?

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Using Medical Records

Medical records are common in personal injury cases. You'll use them when questioning treating physicians, experts, the plaintiff and lay witnesses. To use them properly, you need to have a physician's complete file, an understanding of relevant medical terms and concepts, and how a given record plays into your overall case theme and theory. Any instruction about the use of medical records in depositions requires a discussion about what medical records typically contain, what to look for in medical records and how to question different categories of witnesses about them.

EXPLANATION

Participants learn to interpret and use medical records in depositions.

EXERCISE

Procure medical records used in a deposition. Provide the participants a background of the case and the records you're sharing with them. Teach them the relevant medical terms, issues and how the records play a role in the case. Then act as different types of witnesses in the case (medical provider who created the records, an expert relying upon them, the plaintiff who was examined by the physician) as the participants question you about the records.

LESSONS LEARNED

This exercise teaches participants how to read, interpret and use medical records when questioning deponents. Provide participants links to online medical dictionaries and medical publications that explain terms and concepts to them in lay terms. Explain the different parts of a medical file, the purpose of each and how to use each in deposition. These efforts will show participants how to get the most out of medical records, even ones that hurt them.

A FEW QUESTIONS TO DISCUSS

What are the relevant medical records in your case?

Why are they significant?

What records help your case? What records hurt your case? Why?

How can you use "bad" records in your favor?

How do you break down complex or difficult medical terms and concepts into simple terms and concepts so a jury can understand them?

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Using Studies

An epidemiological study or a peer review article may be relevant to a case. They often are in drug and medical device and medical malpractice matters. Learning how to read, interpret and use them may prove crucial in a case.

EXPLANATION

Participants learn how to read, interpret and use studies and articles to question deponents.

EXERCISE

Find a study or peer review article used in a deposition. Explain to the participants the contents of the study or article. Explain the concept of peer review, what goes into preparing and publishing a study or article, common biases in studies and articles, and how to use them to question a witness (which is typically an expert or treating physician). Have participants read the study or article and have them question you as if you are an expert or medical provider. Participants are encouraged to secure favorable facts and admissions through their questioning.

LESSONS LEARNED

One of the toughest depositions is that of an expert, and one of the toughest documents to use with which to examine a witness is a study or article. Some large firms have attorneys who are specialists whose primary task is to depose experts and use reports and studies to do so. This exercise should be used to provide participants an overview of the use of studies and articles and the basics of how to use them. Understanding the role of studies and articles and their role in a case helps lawyers better conduct case investigations and discovery.

A FEW QUESTIONS TO DISCUSS

What are the component parts of a study or peer review article?

What are basic statistical concepts necessary to understand and interpret studies?

How can you use a study or peer review article to support your case, theme or story?

How can you distinguish an unfavorable study or article?

How do you walk a witness through a study or article?

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Using Videos

It doesn't happen often, but sometimes you'll question a deponent about a video – a surveillance video, a surgical video, etc. – and a number of logistics are involved. Where do you play the video? How do you play the video? How do you capture the witness answering questions about the video? How do you maintain an element of surprise about the questions you're asking about the video? This exercise focuses on the logistics of using a video in a deposition.

EXPLANATION

Participants learn to use videos to examine deponents.

EXERCISE

Find a video used in a deposition or simply download a video online that you could use for this exercise. Explain the logistics of using a video: (1) equipment needed to play the video; (2) positioning of witness so both the witness and video can be seen simultaneously; (3) the logistics of recording the deposition to have the video reflect the witness, the video she is watching, and her interacting and responding to the video; (4) and how to question a witness about a video so it is clear on the record (stopping video, magnifying video, marking video, etc.). After you explain the how to of using a video in a deposition, have participants question you about the video, in which they secure facts and admissions in a manner that is effectively captured and recorded on video and visually memorable.

LESSONS LEARNED

This exercise teaches the technical aspects of using a video in a deposition, questioning a witness about it, and doing it in such a way to capture the interchange in an effective manner during a video deposition. Effectively using a video during deposition, especially if you plan on freeze framing the video, increasing the size of screen shots, marking screen shots, etc., takes practice to gain familiarity and ease of use with the technology.

A FEW QUESTIONS TO DISCUSS

How do you frame the deponent and video she is watching to make it most effective on the video deposition recording the proceedings?

How do you lay the foundation for the video?

How do you address a witness who is purposely misconstruing what is on the video?

How do you lead a witness through a video to ensure it is interesting, entertaining for the jury and gets your point across?

What Technology is the best to use and why?

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Having a Witness Mark Exhibits

The time may come where you need a witness to mark a photo or diagram. Knowing how to walk a witness through marking an exhibit and making a record, while addressing any objections raised by opposing counsel, is important in cases where exact locations or distances is relevant.

EXPLANATION

Participants learn how to walk a deponent through identifying and marking an exhibit.

EXERCISE

Locate a photo or diagram of an intersection or floor plan and use it to teach participants how to have a witness mark an exhibit. Have the participants lay the foundation for the photo or diagram and instruct you how and where to mark it. For example, on a floor plan, have them pretend you are a plaintiff in a slip and fall case and have them ask you to mark where the hazard was and where you allegedly fell and then discuss how they can address objections by Plaintiff's counsel to having their client mark the exhibit.

LESSONS LEARNED

This exercise teaches the mechanics of having a witness mark an exhibit. It sounds simple enough, but sometimes a mark that is just slightly off from where it should be can negatively affect your case. Committing a witness to the exact location on a diagram and having her mark that area can serve you well at mediation, summary judgment or trial.

A FEW QUESTIONS TO DISCUSS

Why do you want a witness to mark a photo or diagram? What's the end game?

What happens to your case if the witness marks a document where you want her to? What happens if she marks a document where you don't want her to?

How do you deal with an attorney objecting to having their client mark an exhibit? Is there any caselaw in your jurisdiction addressing this issue?

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Having a Witness Draw

Sometimes simply having a witness mark an exhibit isn't enough. You want her to draw something for you. This can be tricky. How complex is the drawing you're asking the witness to draw? How comfortable is a witness with drawing what you asked her to draw? What objections is opposing counsel interjecting to having her client draw something on the record? How do you talk a witness through drawing something and then reference what she is doing on the record? It's not often you'll ask a witness to draw something (if ever), but practicing the process will make it easier when you do.

EXPLANATION

Participants will learn how to instruct a witness to draw something in a deposition.

EXERCISE

Decide on an object or item or scene you want drawn, and have participants ask you the necessary questions and direct you in an appropriate manner to have you draw the requested object, item or scene.

LESSONS LEARNED

It's rare you'll ask a witness to draw during a deposition, but it does happen, and knowing how to lay the foundation for such a drawing and then talk a witness through the process takes practice.

A FEW QUESTIONS TO DISCUSS

Why do you want a witness to draw?

What are you hoping the final drawing will look like?

How do you plan to use the drawing in the case?

How can a drawing help your case? How can it hurt it?

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Using Technology

Technology is becoming more pervasive in depositions and at trial. Learning what technology is available and how best to use it can give an attorney a distinct advantage before a judge and jury.

EXPLANATION

Participants learn available technology to use at a deposition and how best to use it.

EXERCISE

Ask participants to research the available technology for use at depositions. What platforms, software and apps are available? What hardware is available? What do they do? How do they work? What is their cost? Unlike the other exercises, this is an open discussion about what technology is available, how it can be used in depositions and whether it should be used in depositions.

LESSONS LEARNED

More and more, technology is bleeding into depositions. Judges and juries have become accustomed to new technology and those who know how to use it to better represent their clients are at an advantage. Having an open discussion about technology and how best to use it improves a firm's use of technology, not only in depositions, but at hearings and at trials.

A FEW QUESTIONS TO DISCUSS

What is the latest and most popular law tech?

How is technology being used in depositions? At trial?

How can you use technology to secure the facts and admissions you want?

How can you go overboard with technology? When is it better to forego technology in a deposition?

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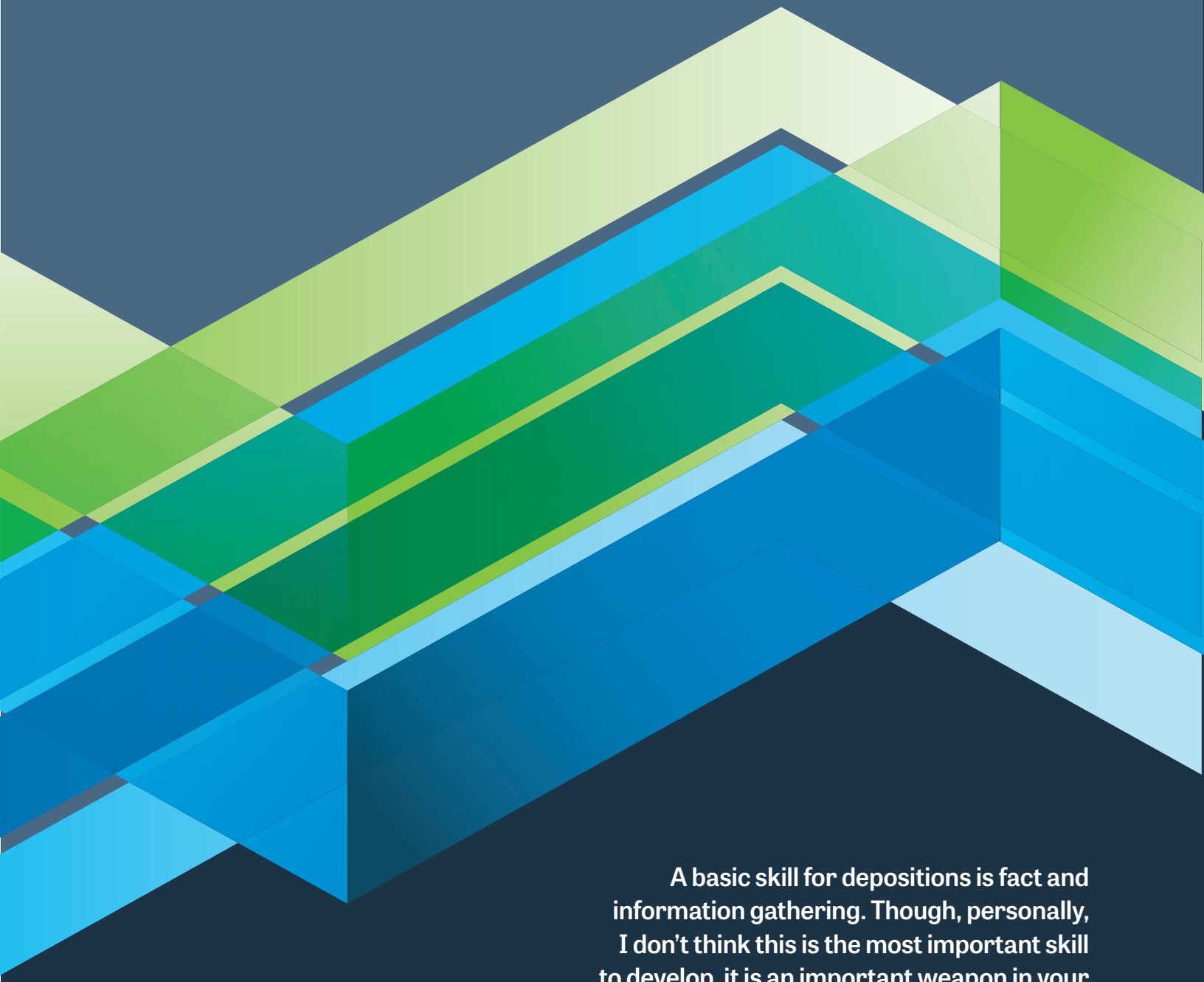
Gathering Information



A basic skill for depositions is fact and information gathering. Though, personally, I don't think this is the most important skill to develop, it is an important weapon in your arsenal because gathering all the relevant information a witness has is vital for any case.

Soliciting Information

One of the purposes of the deposition is to learn what a deponent knows about your case. Learning to follow up with a deponent, explore topics, press a witness and seek details ensures you leave a deposition knowing what a witness knows and avoid being surprised by her at trial.

EXPLANATION

Participants learn how to extract as much information as possible from a deponent.

EXERCISE

Think about a witness you deposed who had crucial information but was hesitant to share it in deposition. Play the role of the witness and have participants question you. Push them to keep asking questions, to keep exploring, to keep pushing you to provide more and more information.

LESSONS LEARNED

This exercise teaches participants to keep asking questions, exploring the full range of knowledge, understanding and memory of witnesses. Learning to listen to a deponent, what they say (and what they don't), studying their body language, and pushing them to reveal everything they know.

A FEW QUESTIONS TO DISCUSS

How do you get a deponent to reveal what they know?

What questions can you ask to explore the full range of knowledge of a deponent?

How do you fully explore a topic with a deponent? What follow up questions should you ask? How should you ask them?

What television interviewers are effective to get guests to share their stories? How do they do it?

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Lay Foundation

When questioning a deponent, you may have to lay the foundation for a witness's knowledge or expertise, or lay the foundation for a subject you're asking about. Sometimes it's ok to jump right into a topic. More often, though, you need to lay a predicate before addressing the topic.

EXPLANATION

Participants learn to lay the foundation when questioning a deponent

EXERCISE

Identify a witness you deposed for whom you had to lay the foundation. Perhaps it was an expert for whom you laid the foundation for his expertise and his opinions. Explain the role of the witness and what foundation should be laid for the witness. Play the role of the witness and have participants question you and lay a foundation for your testimony.

LESSONS LEARNED

This exercise teaches participants how to lay a foundation for a deponent to bolster a witness's expertise, recollection, observations, etc. Laying the proper foundation helps increase the impact and power of a deponent's testimony and there is an art to doing it, and doing it effectively.

A FEW QUESTIONS TO DISCUSS

Why is it important to lay a foundation?

What types of questions should you ask to lay a foundation?

When is it appropriate to lay a foundation?

How can you use a properly laid foundation in a motion for summary judgment or at trial?

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Delving Deep

When examining a topic or issue with a witness, getting to the bottom of that topic or issue takes time, patience, effort and many, many questions. Covering the water front, delving deep, and exhausting all the questions that can be asked requires you to know your case, the documents, the facts and the witnesses and pressing and pushing and exploring an issue or topic with a witness.

EXPLANATION

Participants learn how to exhaust questioning of a deponent regarding a given issue or topic.

EXERCISE

Select a witness you deposed who had a lot of information and knowledge to share and put you through your paces to extract that information and knowledge. Share your experience with the participants, play the role of that witness and have them conduct a thorough examination of you. Whenever a participant runs out of questions, provide suggestions of other lines of questioning to pursue.

LESSONS LEARNED

This exercise teaches how to fully explore a topic or issue. Running an issue to ground takes time, effort and creativity. There are different ways and approaches to get a witness to reveal everything they know. By conducting this exercise in a small group, the participants can observe how others try to delve deep with a witness.

A FEW QUESTIONS TO DISCUSS

How do you thoroughly explore a topic or issue with a deponent?

How do you deal with an evasive deponent?

What are different ways to secure all the information a witness has?

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Turning Over Every Stone

Part of our job is investigating a claim and turn every stone, evaluate every avenue and consider every angle. It takes imagination to think through all the angles and perspectives and explore them with a witness.

EXPLANATION

Participants learn how to think through and explore with a deponent all the possible issues and topics they may have information about.

EXERCISE

Think about a deposition that tested your imagination and creativity when exploring topics and issues with a witness. Jot down for yourself the various facts and issues that surprised you during that deposition. Play the role of that deponent and have participants question you. Encourage them to think outside the box and explore novel lines of questioning and suggest some if theirs miss the mark.

LESSONS LEARNED

Avoiding surprises during the case and trial can be accomplished by exploring the full breadth of a deponent's knowledge and understanding. It takes practice to plumb the depths of a deponent's memory, understanding and bias. This exercise provides some insight into this process.

A FEW QUESTIONS TO DISCUSS

What are ways to explore a deponent's recollection?

What types of questions get to the heart of what a witness knows?

How far should you push a witness to get what you want?

How do you build a relationship with a deponent to secure the information you want?

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Freeze Frame

There's a technique I use in personal injury cases. Whether it's an auto, premises, medical malpractice or other personal injury matter, I take the crucial incident in the case – the crash, the slip and fall or alleged malpractice – and I freeze frame every moment from beginning to end, create a visual of that scene in my mind, and ask the witness about every aspect of every moment. This allows me to secure all the information the witness has about the incident and pin down the witness about what she knows. There's no escaping my questioning because I pin the witness down on what they saw, heard, felt, smelled and touched – all their senses. I recreate the scene, frame by frame, using the deponent's own words.

EXPLANATION

Participants learn how to capture every bit of information a witness has about an accident, scene or moment.

EXERCISE

Think about a personal injury matter you defended, focus on the incident, and then have participants question you about it, having them freeze frame every moment and ask everything they can about that scene.

LESSONS LEARNED

Learning every last detail about an incident from a witness is crucial for liability issues, for expert opinions and for presenting your case to the jury. Extracting every last drop of marrow of testimony a witness can offer is a skill that can help you position your case for a win.

A FEW QUESTIONS TO DISCUSS

How can you explore an incident through all five senses?

How do you lay the foundation for every moment of the incident?

How do you develop a cadence with the witness to answer your questions on your terms?

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Recreating a Scene

Sometimes you need a witness to recreate a scene. Who was involved? Where was everyone? What was everyone doing? What was the lighting? What were the distractions? What were the relevant distances? Speeds? This information is relevant and necessary for experts and for your case presentation. Teaching your team to look at scenes critically will help them ask better and more thorough questions of witnesses.

EXPLANATION

Participants will learn how to recreate a scene when questioning a deponent.

EXERCISE

Think about a scene from one of your cases. Generally describe it to the participants and have them question you about it. Provide them cues and prompts on how to narrow in on issues and focus on various aspects of the scene.

LESSONS LEARNED

This exercise teaches participants to focus on often overlooked details to recreate a scene with a deponent's words.

A FEW QUESTIONS TO DISCUSS

Why is recreating a scene important?

What are aspects of a scene that an expert would want to know?

What are aspects of a scene a jury would want to know?

What are aspects of a scene necessary to prove your case?

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Other Sources of Information

It is important to not only learn what a witness knows about a case but secure the names of other witnesses who may have information about the case and learn of any documents that may be relevant to the case. When we take depositions, we most explore all the other sources of information available to consider pursuing through other depositions, witness interviews, subpoenas for records, etc.

EXPLANATION

Participants learn to explore all the witnesses and documents a deponent may be aware of and which are relevant to the case.

EXERCISE

Think about a witness you deposed who was aware of other relevant witnesses and aware of relevant documents. Provide participants an overview of the case and witness and have them question you, soliciting information about relevant witnesses and documents.

LESSONS LEARNED

This exercise teaches one to pursue all avenues of information. A given deponent may not know much or be of much help, but may direct one to other valuable sources of information.

A FEW QUESTIONS TO DISCUSS

Who are the possible witnesses in your case?

What are the relevant documents in your case?

Who knows what in your case?

What can you do to track down relevant witnesses and documents?

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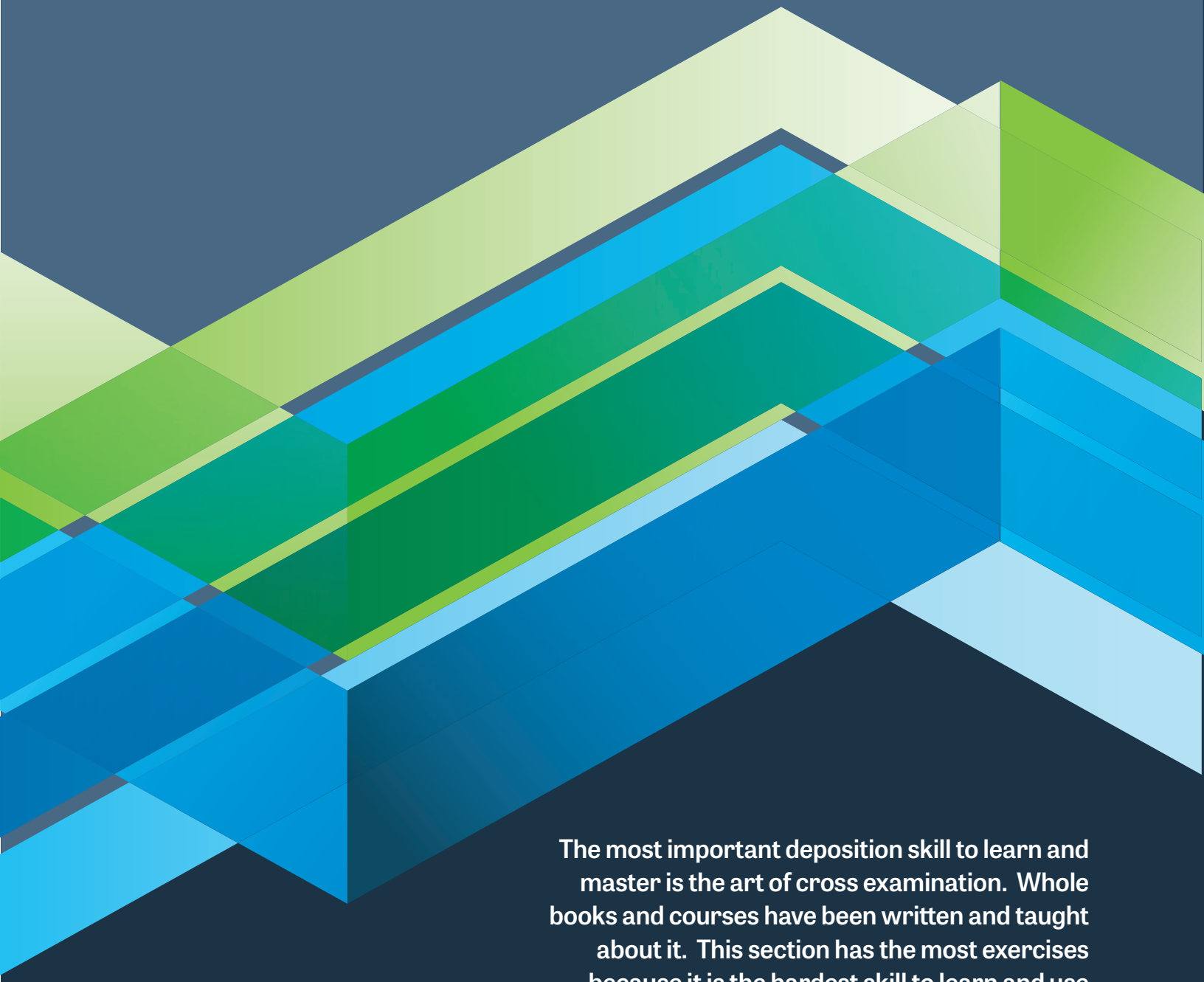
Cross Examination



The most important deposition skill to learn and master is the art of cross examination. Whole books and courses have been written and taught about it. This section has the most exercises because it is the hardest skill to learn and use effectively. Even after all these years, and hundreds of depositions, I still learn tricks to get others to say what I want.

Asking Leading Questions

The first rule of cross examination is to ask leading questions. Testify for the witness. This exercise addresses that.

EXPLANATION

Participants learn how to ask leading questions.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain what a leading question is (and isn't) and have the participants question you (as you role play the witness) using only leading questions.

LESSONS LEARNED

Asking leading questions is foundational to a powerful cross examination. It takes effort to turn every open ended question into a leading question, but with practice, it can be done, and done effectively.

A FEW QUESTIONS TO DISCUSS

Why is it important to ask leading questions?

How does one ask leading questions?

What do you achieve by asking leading questions?

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Asking Yes and No Questions

As a cross examiner, you're testifying and the witness is agreeing with you. Ideally, you're getting the witness to say "yes" repeatedly. When appropriate, you're getting the witness to say no. This exercise addresses that.

EXPLANATION

Participants learn to ask "yes" and "no" questions.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain how to turn questions into "yes" and "no" questions and have the participants question you (as you role play the witness) using only "yes" and "no" questions.

LESSONS LEARNED

This exercises forces one to reduce every question into a "yes" or "no" question. One starts with one's objectives with a witness and thinks through all the "yes" and "no" questions to get there.

A FEW QUESTIONS TO DISCUSS

Why is it important to ask "yes" and "no" questions?

How does one ask "yes" and "no" questions?

What do you achieve by asking "yes" and "no" questions?

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Asking One Fact Per Question

The less information you ask a witness, the more basic your questions, the more likely you'll secure a favorable response. Learning how to ask one fact per question and only one fact, extends a favorable a cross examination and prevents a witness from taking issue with your questions and providing unfavorable responses. This exercise addresses how to ask one fact per question.

EXPLANATION

Participants learn to ask one fact per question.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain how to ask only one fact per question and have the participants question you (as you role play the witness) by asking one fact per question. Show them how to break each question into small, more discrete questions.

LESSONS LEARNED

Asking one fact per question forces one to turn every question into an atom sized question. If a question is a molecule sized question, it's too big. It can be broken down even further. Single fact questions are difficult to evade.

A FEW QUESTIONS TO DISCUSS

Why is it important to ask one fact per question?

How does one ask one fact per question?

What do you achieve by asking one fact per question?

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Asking Basic Questions

We lawyers can use complex words, phrases and questions. It is important to keep them basic so the twines and jury can understand them. This exercise addresses how to ask basic questions.

EXPLANATION

Participants learn to ask basic, simple, easy to understand questions.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain what basic questions are (and aren't) and have the participants question you (as you role play the witness) using only basic questions.

LESSONS LEARNED

We lawyers deal with complex issues every day. Turning the complex into the simple and turning the simple into simple questions is an art. Simple questions prompt simple answers.

A FEW QUESTIONS TO DISCUSS

Why is it important to ask basic questions?

How does one ask basic questions?

What do you achieve by asking basic questions?

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Asking Short Questions

Asking short questions creates a quick cadence and back and forth between the interrogator and witness. The fewer words in a question the better. This exercise addresses how to ask short questions.

EXPLANATION

Participants learn to ask short questions.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Discuss the power of short questions and how to take long questions and reduce them to shorter questions. Have participants compete with making questions shorter and shorter. Have the participants question you (as you role play the witness) using only short questions.

LESSONS LEARNED

Long questions can be confusing, difficult to follow and invite long answers. Try to limit your questions to 10 words or less. Then try questions with five words. You may even have questions that have a single word, and you ask them by using the inflexion in your voice. Short questions and short answers create drama and energy in your favor.

A FEW QUESTIONS TO DISCUSS

Why is it important to ask short questions?

How does one ask short questions?

What do you achieve by asking short questions?

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Using Common Words

We lawyers have large vocabularies. We have to leave our big words at the door when questioning a witness. This exercise addresses how to use common words.

EXPLANATION

Participants learn to use common, basic terms and words when questioning a witness.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Discuss a list of words to avoid while questioning witnesses. Discuss words often used (but shouldn't because they're too long or complex) and discuss appropriate alternative words. Have the participants question you (as you role play the witness) using only common words in the questions.

LESSONS LEARNED

Big words can be saved for law review articles and scholarly pieces. For juries, let's stick to common, every day words.

A FEW QUESTIONS TO DISCUSS

Why is it important to use common words when questioning a witness?

What is a common word and what isn't?

What do you achieve by using common words?

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Avoiding Question Tags

Many questioners end leading questions with the word "correct" or another tag. It's distracting and reduces the impact of the questioning. This exercise addresses how to stop using tags at the end of questions.

EXPLANATION

Participants learn to stop using "tags" at the end of questions, such as "correct."

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Take a bowl and a handful of coins, have the participants question you (as you role play the witness), and throw a coin in the bowl each time they use a tag. The repeated clang will reverberate in their minds long after the exercise and cue them to stop using tags.

LESSONS LEARNED

Tags can be annoying, distracting and hurt your cross. Some attorneys feel they need them to get the answer they want, but by changing the inflexion in your questions and the tone of your voice, you can drop them altogether.

A FEW QUESTIONS TO DISCUSS

Why is it important to avoid using question tags?

How does one develop the habit of not using question tags?

What do you achieve by avoiding question tags?

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Stringing Questions

Effective questioners not only ask effective questions, they ask a string of effective questions where each leads into the next and builds to a crescendo. This exercise addresses how to string questions together.

EXPLANATION

Participants learn to string together a series of questions to create a rhythm with the witness.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Provide examples of stringing questions together and discuss different ways of doing so. Have the participants question you (as you role play the witness) by stringing one question after another.

LESSONS LEARNED

This exercise teaches how to tell a story through your questions, where each builds from the last and leads into the next. You're creating tension, resolving it in your favor and then moving onto the next point.

A FEW QUESTIONS TO DISCUSS

Why is it important to string questions together?

How does one do that?

What do you achieve by doing so?

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Expressing Your Theme

Your case theme holds your case together. Learning how to weave your theme into your questioning to have witnesses bolster your theme is an important skill to develop. This exercise addresses how to express your theme through cross examination.

EXPLANATION

Participants learn to weave their theme into their questions.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain the importance of theme in a case and in a deposition and how to weave one's theme through deposition questions. Have the participants question you (as you role play the witness) in such a manner as to use a case theme in and through the questions.

LESSONS LEARNED

This exercise teaches how to use your questions as a vehicle to highlight your theme and get the witness to agree with it and support it.

A FEW QUESTIONS TO DISCUSS

Why is it important to weave your case theme through your questions?

How do you weave your case theme through your questions?

What do you achieve by weaving your case theme through your questions?

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Securing Sound Bites

We live in a society of sound bites. Sound bites matter. They resonate. They can win (or lose) a case. Getting a witness to reiterate your sound bites is a way to get them to bolster your case, support your theme and help you win. This exercise addresses how to secure sounds bites from witnesses.

EXPLANATION

Participants learn to secure sound bites.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Discuss common sound bites often used in the news, in movies, media, songs and television. Have the participants question you (as you role play the witness) in such a manner as to attempt to secure favorable sound bites.

LESSONS LEARNED

Media, movies, television and music all talk in sound bites. The hook. The catch phrase. The cliché. Reducing your case to sound bites and getting witnesses to regurgitate them is a powerful way to have the jury see your case on your terms.

A FEW QUESTIONS TO DISCUSS

Why is it important to secure sound bites?

How do you secure sound bites?

What do you achieve by using sounds bites?

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Securing Admissions

One of the most important objectives in a deposition is to secure admissions to win at summary judgment, mediation and trial. Getting a witness to agree with you on critical, central questions can result in a resounding win. This exercise addresses how to secure admissions.

EXPLANATION

Participants learn to secure favorable admissions.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain the importance of admissions, how to secure them and how to use them. Have the participants question you (as you role play the witness) in a manner to try to secure admissions.

LESSONS LEARNED

If you can secure admissions in a deposition, you are well ahead of most who fail to do so. Getting a witness to admit to a fact or issue crucial to your case can result in a win – a summary judgment win, a win at mediation or a win at trial.

A FEW QUESTIONS TO DISCUSS

Why is it important to secure admissions?

How do you secure admissions?

What do you achieve by using admissions?

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Avoiding Explanation Questions

On Cross examination, you're testifying, not the witness. You're the ventriloquist and the witness is the dummy. We learn to avoid asking questions where the witness takes over and switches roles with us. This exercise addresses how to avoid asking questions that allow the witness to explain and take over control.

EXPLANATION

Participants learn to ask questions that prevent a witness from explaining their answers.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain the difference between questions that demand an answer and those that invite an explanation. Go through examples of each and how to turn open ended questions into leading questions. Have the participants question you (as you role play the witness) avoiding any question that seeks or invites an explanation.

LESSONS LEARNED

If the witness is explaining on cross, you're losing. Keeping a witness caged takes practice and just one bad question can derail your cross. Avoiding any and all questions seeking an explanation is key to a successful cross examination.

A FEW QUESTIONS TO DISCUSS

Why is it important to avoid questions that invite explanations?

How do you ask questions that avoid explanations?

What do you achieve by asking questions that avoid explanations?

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Causing Witness to Lose Credibility

Jurors relate to witnesses primarily on two levels – likeability and credibility. Does the jury like a witness and do they trust the witness. If you can make a witness come across as a liar or trying to hide something, you've gone a long way to discrediting him. This exercise addresses how to cause a witness to lose credibility.

EXPLANATION

Participants learn to undermine a witness's credibility.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Discuss the various ways to attack or undermine a witness's credibility. Describe ways you've attacked a witness's credibility. Have the participants question you (as you role play the witness) and attempt to undermine or negatively affect your credibility.

LESSONS LEARNED

Undermining a witness's credibility can sideline a witness and make them impotent in the eyes of the jury. Even if the jury doesn't agree with your questions, if their disagreement strains credulity, you may not have secured the answers you wanted but you may have caused more damage to the witness than you realize.

A FEW QUESTIONS TO DISCUSS

Why is it important to undermine a witness's credibility?

How do you undermine a witness's credibility?

What do you achieve by undermining a witness's credibility?

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Exhaust Each Topic

Sometimes we don't explore a topic thoroughly in deposition or we don't secure all the admissions we can because we don't exhaust each topic with a witness. This exercise addresses how to exhaust each topic with a witness.

EXPLANATION

Participants learn how to exhaust a topic with a witness before moving onto the next topic.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Have the participants question you (as you role play the witness) and have them take turns until they've exhausted all the questions that can be asked about a given topic.

LESSONS LEARNED

This exercise teaches to squeeze the marrow out of every topic to score as many points as possible with a jury.

A FEW QUESTIONS TO DISCUSS

Why is it important to exhaust a topic?

How do you exhaust a topic?

What do you achieve by exhausting a topic?

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Exhaust Witness's Knowledge

Similar to exhausting each topic, exhausting a witness's knowledge is important to learn everything a witness knows about the case. This exercise addresses how to exhaust a witness's knowledge.

EXPLANATION

Participants learn to secure all the information a witness has about a topic.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Have the participants question you (as you role play the witness) and have them take turns until they've exhausted your knowledge on a topic or issue.

LESSONS LEARNED

Exploring the depths of a witness's knowledge is crucial to ensure you secure all relevant information and avoid surprise later. It takes persistence and a touch of creativity to cover the waterfront.

A FEW QUESTIONS TO DISCUSS

Why is it important to exhaust a witness's knowledge about a topic?

How do you exhaust a witness's knowledge about a topic?

What do you achieve by exhausting a witness's knowledge about a topic?

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Showing What the Witness Doesn't Know

A way to undermine or limit the impact of a witness is by showing what the witness doesn't know. Perhaps he didn't see or hear something. Perhaps he is not aware of a statement, document or fact that changes the complexion of the case. Revealing a witness's ignorance can undermine his testimony. This exercise addresses how to show what a witness doesn't know.

EXPLANATION

Participants learn to expose what a witness doesn't know and how that affects their testimony and credibility.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain the importance of showing a witness's lack of knowledge, observation, understanding, etc., as a way to undermine their testimony. Have the participants question you (as you role play the witness) and have them elicit answers demonstrating what you don't know.

LESSONS LEARNED

Showing what a witness doesn't know can undermine what they claim to know. That eyewitness who hurts your case may not have seen what he claims to have seen or may not know what he claims to know. Sometimes you can chip away just enough to undermine what a witness claims to know or have seen or have heard.

A FEW QUESTIONS TO DISCUSS

Why is it important to show and establish what a witness doesn't know?

How do you establish what a witness doesn't know?

What do you achieve by establishing what a witness doesn't know?

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Funneling

An effective cross examination technique is going from general to specific, from broad to narrow, from large to small. This exercise addresses how to use funneling as a cross examination technique.

EXPLANATION

Participants learn how to start with broad topics and funnel into narrow ones.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain what is funneling and how to do it. Have the participants question you (as you role play the witness) and have them use the funneling technique.

LESSONS LEARNED

A funnel is a great visual for effective questioning – going from broad to narrow. Along the way, you close escape hatches and doors for the witness to lock them into positions favorable to your case. Funneling guides the witness to the end of a long narrow hallway with no exit. It provides a pathway to an inescapable result that benefits the questioner.

A FEW QUESTIONS TO DISCUSS

Why is it important to engage in funneling?

How do you funnel questions?

What do you achieve by using a funneling approach?

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Showing Bias

Establishing a witness's bias goes a long way to undermine his credibility. This exercise addresses how to show a witness's bias.

EXPLANATION

Participants learn how to show a witness's bias.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Explain the importance of showing bias and all the ways a given witness may be biased. Explain how you've exposed bias in questioning of witnesses in deposition. Have the participants question you (as you role play the witness) and have them expose your biases as a witness.

LESSONS LEARNED

Most every witness has some form of bias. Drawing out that bias and showing it to the jury goes a long way to inoculate and damage testimony.

A FEW QUESTIONS TO DISCUSS

Why is it important to show a witness's bias?

How do you show a witness's bias?

What do you achieve by showing a witness's bias?

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Commit and Confront Witness

Knowing how to impeach a witness with their own words can be devastating and can deliver a death blow to credibility. This exercise addresses how to commit and confront a witness with their own words.

EXPLANATION

Participants learn how to commit a witness to a statement and then confront them with their own words.

EXERCISE

Identify a witness you cross-examined in deposition and describe the case and the role of the witness in the case to the participants. Provide them with that witness's deposition testimony. Play the role of that witness, say one or more things that contradict the deposition testimony, and have participants impeach you with the deposition.

LESSONS LEARNED

Impeaching a witness is the most dramatic moment of a cross examination. Learning when to do it and how to do it can create a memorable moment that can define a case. Effective impeachment takes planning and practice.

A FEW QUESTIONS TO DISCUSS

Why is it important to commit a witness to a statement and confront them with a contrary statement?

How do you commit a witness to a statement and confront them with a contrary statement?

What do you achieve committing a witness to a statement and confront them with a contrary statement?

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What Am I Wearing?

This exercise teaches how to ask leading questions, limiting each question to a single fact.

EXPLANATION

Participants learn to ask leading, short, serial questions.

EXERCISE

Stand in front of the participants and have them ask you leading questions about what you're wearing. Each participant takes a turn asking a question followed by the next participant asking another question. Each question should be leading, address only one fact and lead from the last question and into the next potential question. Correct the participants each time they don't follow these rules. The exercise would go like this:

- You're wearing a dress shirt
- It's white
- It has a collar
- Button down
- It has long sleeves
- With cufflinks with an emblem on them from your alma mater
- And it has a pocket on the right side

Encourage the participants to ask as many questions as they can conceive for each article of clothing, stretching out the cross examination, while asking only leading questions and avoiding ending leading questions with tags such as "correct." Have them work on their inflexion to turn statements into questions and encourage them to use as few words as possible for each question. Now, is an attorney ever going to ask a witness what they're wearing during cross examination? No. But the exercise allows you to witness and correct other lawyers applying the rules of cross examination.

LESSONS LEARNED

This exercise teaches how to ask short questions, and ask them in a series.

A FEW QUESTIONS TO DISCUSS

Why are short questions effective?

Why is it effective to have one question follow the next and so on?

Why is cadence important?

Why is rhythm important?

Why is repetition important?

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Who Am I?

It is important to get a witness into a rhythm and have them repeatedly answer "yes" to your cross examination questions.

EXPLANATION

Teaches participants how to solicit the answer "yes" from deponents.

EXERCISE

Have the participants read your firm bio and ask you questions about you. The goal is to ask only leading questions, one fact per question, secure "yes" answers, have each question lead from the last into the next and have the questions be short. Instead of having each participant ask only one question per turn, have each cover one topic during their turn, such as your education, training, experience, publications of leadership. Each participant will draw out their topic as much as possible while applying as many of the other cross exam rules. You'll step in as needed and provide friendly critiques on specific questions and offer "better" questions to ask.

LESSONS LEARNED

Developing a cadence with a witness where you train them to say "yes" repeatedly is an effective cross examination technique that takes practice.

A FEW QUESTIONS TO DISCUSS

Why is having a witness agree with you important?

How can you train a witness to agree with you?

What's the best way to phrase questions to get a witness to agree with you?

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What's for Dinner

It's easy to get a witness to say "yes" if you already know the answer to a question. It takes practice to get a witness to say "yes" when you don't already know the answer to the question. Exploring facts with a witness and then pinning him down is necessary to secure favorable admissions.

EXPLANATION

Participants learn to get "yes" answers even when they don't know the answer to a given question.

EXERCISE

Have participants ask you questions about what you ate last night. They don't know what you ate, so they'll have to do their best to use leading questions to secure answers they don't already know. In trial, we're taught not to ask questions you don't already know the answers to. In deposition, different rules apply. You're exploring what the witness knows and what she will say while trying to put words in her mouth.

LESSONS LEARNED

This exercise teaches how to lead a witness even if you're not sure what they may say. It requires a good ear and a bit of imagination.

A FEW QUESTIONS TO DISCUSS

How do you explore a topic with a witness in a favorable way?

How do you make the most of a bad answer?

How do you push a witness on an issue or fact?

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The Jerk Witness

Sometimes, you'll have an adverse witness who makes things difficult. We don't always get to pick our witnesses and we have to play the hand we're dealt. It takes practice and patience to extract the information and admissions from a "jerk" witness.

EXPLANATION

Participants learn to cross examine difficult witnesses.

EXERCISE

In this exercise, the roles are reversed. Have your participants take turns being witnesses and ask them about topics they know well. It could be history, sports, music – whatever topic they enjoy and know a lot about. Give them one instruction - do their best not to answer your questions. They should only answer your questions when they have no choice but to capitulate to them. This exercise serves two purposes. First, it shows them how you deal with an obstructive witness and pin him or her down. Second, it provides them the perspective of the witness and how many different ways there are not to respond to a question with "yes." When I think through cross examination questions, I play devil's advocate and think about every way the witness can avoid giving the answer I want. By having a participant play the role of recalcitrant witness, he or she learns to test their future cross exam questions.

LESSONS LEARNED

We all deal with difficult witnesses. This exercise shows what it's like.

A FEW QUESTIONS TO DISCUSS

What are the different types of difficult witnesses?

What is the best approach to dealing with each type of difficult witness?

What should be your demeanor when dealing with a difficult witness?

How hard should you push a difficult witness and how should you push them?

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One Question too Many

It's tempting. You're in a groove. You're getting one favorable answer after the next, and then you ask the one question too many. You try to get a witness to repeat the same answer for added dramatic effect and she changes her answer, you go from several fact questions to an opinion question and invite a soliloquy, or you ask an ultimate question with which no witness would ever agree. Like Icarus flying too close to the sun, you tempted fate and fate won. Learn not to ask the one question too many.

EXPLANATION

Participants learn not to ask the one question too many.

EXERCISE

Review with the participants examples of one question too many and how to avoid that mistake and then have them role play by asking questions that take them right up to the edge of asking too many questions without crossing that line. Great trial lawyers flirt with that line but don't cross it.

LESSONS LEARNED

There's a dance we play when interrogating a witness when deciding whether the answer we secured was good enough. Learning when good is good enough is a skill that takes time to develop and master.

A FEW QUESTIONS TO DISCUSS

What is a "question too many?"

If you do ask a "question too many," how can you recover?

How do you know when an answer is good enough?

How do you not retread ploughed ground?

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Cross Examination at Trial

There's a difference between cross examining a witness in deposition and cross examining him at trial. At trial you have an audience – the jury – and they're looking at you – your behavior, your body language – and listening to you – your cadence, your tone, your inflections. Practice your voice and body language in front of an audience to get their feedback on your style.

EXPLANATION

Participants learn to control their voice and body language when cross examining a witness.

EXERCISE

At trial, your body language conveys to the jury you're in charge and you're testifying, not the witness. From where you stand, to how you use your body to the tone of your voice, you're sending a clear message – it's about me, not the witness – listen to me, not the witness. Work with the participants on their body language. Set up a podium or table in your conference room and teach them where to stand, how to stand, what to do with their hands, what facial expressions to use and what inflexions and tones of voice to rely upon. How you ask your questions is as important as what you ask.

LESSONS LEARNED

Owning the room – the courtroom – is a skill that takes practice, voice and breath and body control, and a sprinkle of theatrics. It's learning to become comfortable with a witness in front of an audience.

A FEW QUESTIONS TO DISCUSS

How do actors act in movies and television when cross examining a witness?

What do you think of when you hear the phrase "own the room?"

What are your strengths as a public speaker?

What are your weaknesses as a public speaker?

How can you work on your weaknesses?

How can you deal with stage fright?

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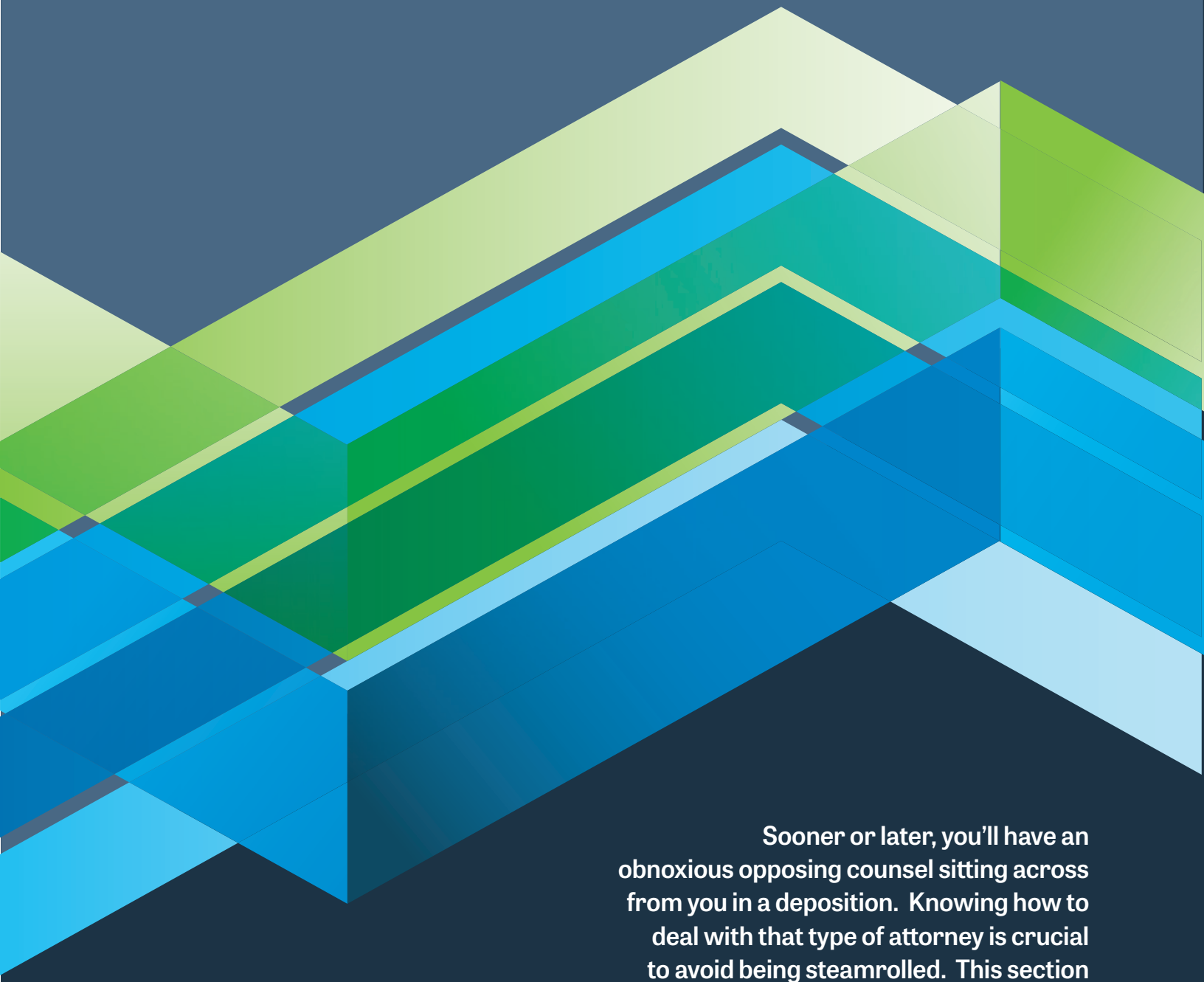
Obstreperous Opposing Counsel



Sooner or later, you'll have an obnoxious opposing counsel sitting across from you in a deposition. Knowing how to deal with that type of attorney is crucial to avoid being steamrolled. This section provides a series of exercises on how to deal with obstreperous opposing counsel

Handling Speaking Objections

In most jurisdictions, one is limited to objecting to the form of the question. Speaking objections are considered witness coaching and are prohibited. Even so, many attorneys use speaking objections. Knowing how to confront this behavior and shut it down is necessary to prevent an attorney from putting words into a deponent's mouth.

EXPLANATION

Participants learns how to deal with speaking objections.

EXERCISE

Explain to participants the various ways you deal with speaking objections. For example, you may tell opposing counsel to stop, you may cite a case or local rule on the record prohibiting speaking objections and create a record, you may threaten to get the judge on the phone, you may threaten to terminate the deposition, etc. Discuss all the options available and which ones make the most sense to use, when to use them and how to use them. Then play the role of the attorney posing objections and have participants challenge you on your use of speaking objections.

LESSONS LEARNED

This exercise teaches participants various approaches when confronting an attorney making speaking objections. The appropriate response is driven by one's jurisdiction and the local rules applicable to speaking objections.

A FEW QUESTIONS TO DISCUSS

What is considered a speaking objection?

Why are speaking objections inappropriate?

What are the various ways to shut down speaking objections?

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Handling Interruptions

Another weapon in the arsenal of the unscrupulous opposing counsel is to interrupt your questions, give speeches or make statements to coach their witness. Be prepared to deal with these scenarios when they arise.

EXPLANATION

Participants learn how to deal with an attorney interrupting their questioning.

EXERCISE

Explain the various ways an attorney can interrupt a deposition and then provide various approaches on how best to deal with it. Role play and interrupt participants' deposition questioning and encourage them to try different approaches to deal with it.

LESSONS LEARNED

This exercise teaches participants how to deal with attorneys trying to coach deponents. If an attorney sees a deposition going south, they may go beyond deposition decorum and say and do things to help a witness recover. Knowing what to do in response can ensure one preserves favorable testimony and prevents a witness from being coached.

A FEW QUESTIONS TO DISCUSS

How should one address an attorney who interrupts or coaches?

How do you shut down such behavior?

What tone and approach are most effective when dealing with such behavior?

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Handling Manipulation

Sometimes an attorney will try to manipulate you, a witness or the court reporter. They try anything at their disposal to stop their witness from saying something damaging. Be prepared to respond appropriately.

EXPLANATION

Participants learn how to deal with manipulative opposing counsel in depositions.

EXERCISE

Have a discussion about the various ways an attorney can try to manipulate a witness or a deposition and address how best to address this type of behavior.

LESSONS LEARNED

Some attorneys can be clever and creative in how they manipulate the deposition process. Learn to recognize inappropriate behavior and how best to address it.

A FEW QUESTIONS TO DISCUSS

What behavior in a deposition is manipulative?

What are some creative or interesting ways attorneys try to manipulate a deposition?

What are different responses to manipulative behavior?

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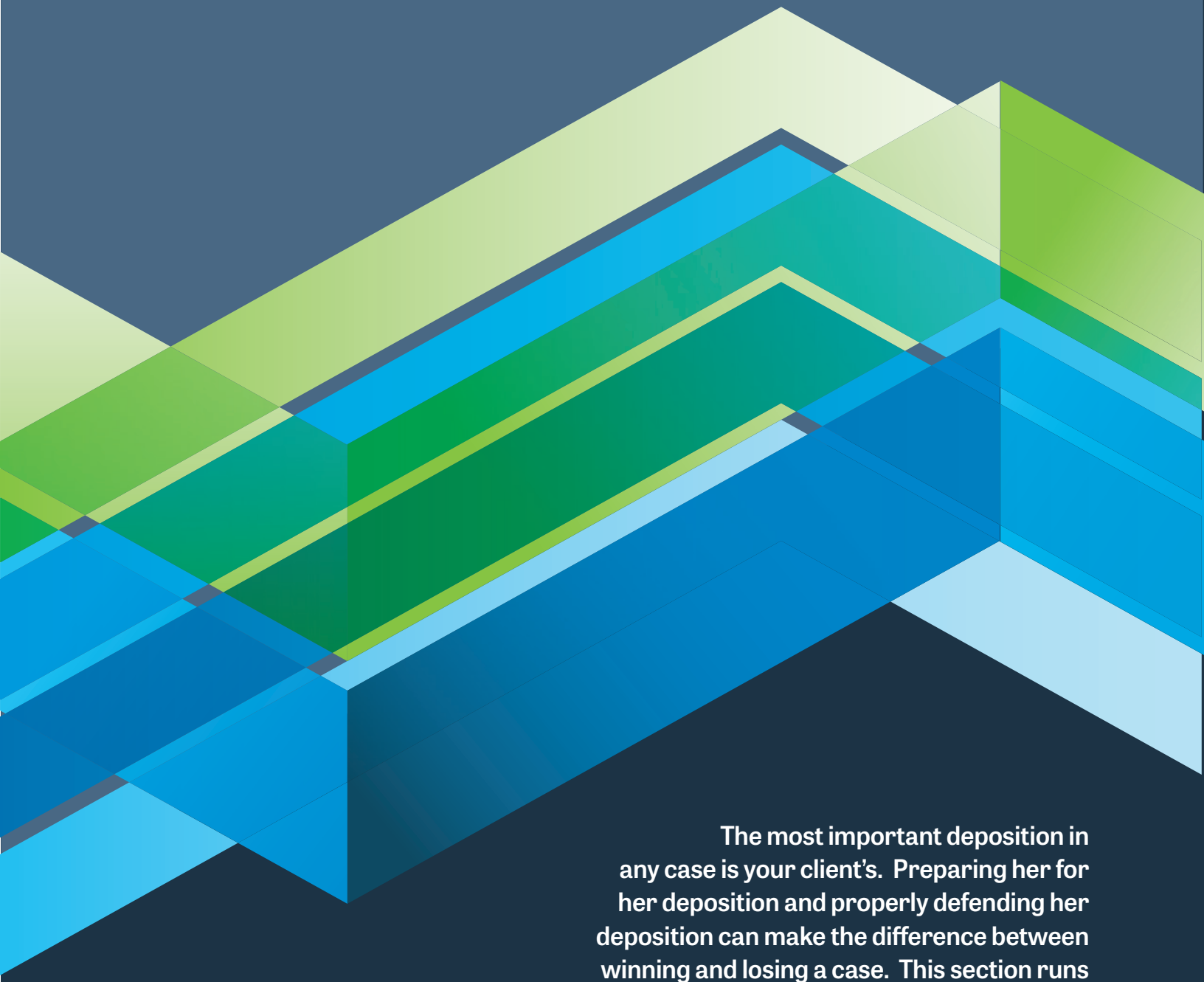
Defending Depositions



The most important deposition in any case is your client's. Preparing her for her deposition and properly defending her deposition can make the difference between winning and losing a case. This section runs through a series of exercises to improve one's deposition prep skills.

Preparing a Client for Deposition

Preparing a client for deposition is a critical skill to ensure your client provides the best testimony possible. Different attorneys have different approaches to preparing clients for deposition. Exposing your attorneys to various approaches helps them consider which is the best approach for a given client in a given case.

EXPLANATION

Participants learn how to prepare a client for deposition.

EXERCISE

Lead a discussion about client preparation. Explain how you prepare a client for deposition, and your different approaches to different cases and different clients. Encourage participants to ask questions about concerns, issues and thoughts they have about preparing clients for depositions.

LESSONS LEARNED

The big takeaway is that the client's deposition is crucial and that you must spend as much time and energy as necessary to ensure the client performs optimally at deposition. That means deposition preparations may extend over several days to ensure the client knows what to expect, what questions she'll be asked and how best to answer them.

A FEW QUESTIONS TO DISCUSS

Why is the client's Deposition the most important deposition in the case?

What are different approaches to preparing a client for deposition?

How do you handle a client who doesn't want to spend the time preparing?

How do you handle a client who isn't being cooperative during deposition prep?

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Preparing Deposition Materials for the Client

Typically, one prepares a binder or sends an e-mail with attachments to the client with all the documents she needs to prepare for her deposition. Deciding what to send the client is both an art and a science. You want to send the client everything she needs but you don't want to bury her in paper and overwhelm her. This exercise addresses what to send to the client for her deposition.

EXPLANATION

Participants learn what documents to select and gather to provide the client for her deposition.

EXERCISE

Think through a document intensive case wherein you provided your client lots of documents in preparing her for her deposition. Describe the case to the participants and ask them what documents they believe should be provided to the client and why. Discuss with the participants the types of documents you can provide a client and why you should (or should not) provide those documents to the client. Also discuss how to organize and present documents to a client.

LESSONS LEARNED

This exercise teaches participants to think about what documents exist in a case, which of those to provide to the client and how best to present those documents to the client.

A FEW QUESTIONS TO DISCUSS

What are the relevant documents in a given case?

What documents should you provide the client to prepare for her deposition?

What documents shouldn't you provide her?

How should you organize and present documents to the client?

Should you create charts, lists or chronologies for the client?

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The Client Speech

Each of us lawyers has a speech we give our clients to prepare them for depositions. Each of our speeches is different, but they typically encompass an explanation of depositions, what to expect at deposition, the role of the opposing counsel, one's role, the rules of the road, the types of questions to expect and what deposition preparation will entail. It's important to develop one's speech and have it ready. It's a speech that gets tweaked depending on the case and the client.

EXPLANATION

Participants learn what to include in their deposition preparation "speech" to the client.

EXERCISE

Tell the participants what you include in your speech to the client. Also share what you know others share in their speeches. Explain the purpose of the various aspects of your speech. Have each participant provide one part of the speech so they become accustomed to delivering the speech.

LESSONS LEARNED

This exercise teaches participants what to include in their deposition preparation speech to the client and how best to deliver it. The speech allows you to walk the client through what to expect and starts indoctrinating her about her role at deposition.

A FEW QUESTIONS TO DISCUSS

Why is it important to give the client the speech?

How can one indoctrinate the client to better understand her role and her importance in the case?

What are the different aspects of the speech?

How do you modify the speech according to the case or the client?

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The Rules

We all share with our clients what the rules of deposition are. Tell the truth. Answer only the question asked. Wait two full seconds before answering a question. Interrogate the interrogator. Etc. Some attorneys have a handful of rules. Some have many more. It's important to think through what your rules are and how to share them with the client.

EXPLANATION

Participants learn the deposition rules to share with clients and how to share them.

EXERCISE

Write down all the deposition rules you share with clients. Ask others at your firms for their rules. Share the rules with the participants, discuss how to share and explain them to clients and have participants run through the rules with you.

LESSONS LEARNED

This exercise teaches participants what the rules of the road are for depositions and how to explain them to clients. Participants learn not only, for example, to tell clients to only answer the question asked, but to run through examples with clients so they understand the rule and apply it.

A FEW QUESTIONS TO DISCUSS

What are the typical rules of the road?

Why are these considered to be the rules of the road?

How do you explain these rules to the client?

How do you teach these rules to the client?

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Mock Deposition

The best way to prepare a client for deposition is to subject her to a mock deposition, wherein you ask her the tough questions, have her answer them and then help her work on her answers, both substantively and stylistically. After a client is deposed you want her to say that your mock deposition was much tougher and prepared her for the real thing.

EXPLANATION

Participants learn how to conduct a mock deposition.

EXERCISE

Explain how you conduct a mock deposition and conduct one wherein you question the participants and show them how to question a client in a mock deposition setting. After you show them how it is done, have them conduct mock questioning of you.

LESSONS LEARNED

This exercise teaches how to question a client so as to recreate the experience of being deposed to prepare her for the real thing.

A FEW QUESTIONS TO DISCUSS

Why is conducting a mock deposition an important part of deposition prep?

How should you conduct a mock deposition?

What types of questions should you ask?

How should you ask them?

How tough should you be with the client during the mock cross?

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Appropriate Objections

When defending a deposition, an attorney is limited in how to object to questions. Typically, one is limited to object to the form of the question, unless a privilege is being treaded upon. Lawyers must learn what deposition objections are appropriate.

EXPLANATION

Participants learn which objections they can make in a deposition.

EXERCISE

Discuss with participants what objections they can make in a deposition and when. When objecting on the basis of privilege, explain to participants when it is appropriate to make such an objection and how to raise the objection. Run through various questions which should prompt objections and discuss what objections should be made and why.

LESSONS LEARNED

This exercise teaches when to make objections and how to make objections. Each jurisdiction has its own rules as to when and how to object to a given deposition question.

A FEW QUESTIONS TO DISCUSS

What are the various objections one can pose in a deposition?

When should they be posed?

How should they be posed?

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Handling an Overbearing Questioner

Sometimes an attorney, when questioning a deponent, will be overbearing. It is important to have a plan and approach to deal with such a contingency.

EXPLANATION

Participants learn how to deal with overbearing counsel in depositions.

EXERCISE

Share your experiences about dealing with overbearing counsel and lead a discussion on what an attorney can do when dealing with an overbearing questioner.

LESSONS LEARNED

This exercise teaches participants their options when dealing with an overbearing questioner.

A FEW QUESTIONS TO DISCUSS

When does an attorney cross the line with their questions?

Where is the line between thorough questioning and overbearing questioning?

How can you get an attorney to behave during a deposition?

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Handling a Bully

Sometimes opposing counsel is simply a bully. They bully the deponent. They bully you. They bully the court reporter. Knowing how to deal with bullies is an unfortunate but necessary skill set.

EXPLANATION

Participants learn how to deal with a bully in deposition.

EXERCISE

Share stories of bullies you've encountered in deposition and explain how you handled them. Then play the role of a bully and have participants interact with you and try to deal with you and your behavior.

LESSONS LEARNED

This exercise teaches participants how to address a bully in deposition and provides them different approaches on how best to do so.

A FEW QUESTIONS TO DISCUSS

How do you define a bully?

What are the different ways to deal with a bully?

Should you ever seek court intervention? If so, when?

How do you preserve the record to have it reflect the bullying?

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Terminating Deposition

It's rare, but sometimes an attorney's behavior is so over the top, that one must terminate the deposition. But where is the line and how do you lay a record to justify terminating a deposition? This exercise addresses these issues.

EXPLANATION

Participants learn when and how to terminate a deposition.

EXERCISE

Think of a time you terminated a deposition. If you never have terminated a deposition, ask others at your firm for examples. Discuss these with the participants. Have them research when it is appropriate to do so. There may be cases, rules, standards or examples that will shed light on this.

LESSONS LEARNED

It's rare to terminate a deposition. You'll have to justify it to the court and may face sanctions if you were wrong for doing so. Having a discussion about when and when not to do it is helpful in case the issue ever arises during a deposition.

A FEW QUESTIONS TO DISCUSS

What behavior calls for termination?

What behavior is on the cusp of termination?

What should you do if you're not sure to terminate a deposition?

How do you lay the foundation to show you were correct for terminating a deposition?

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Concluding Thoughts

Effective deposition skills can be taught and learned. Every firm should make the effort to formalize their deposition skills training to improve quality control, work product and results. It's easy to do and can improve your firm's win/loss column and bottom line.

Use the exercises in this book, feel free to adapt them to your practice and think through what other exercises you can create to teach your lawyers to take the absolute best depositions they can. Good luck!

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