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Texas Paralegal Journal

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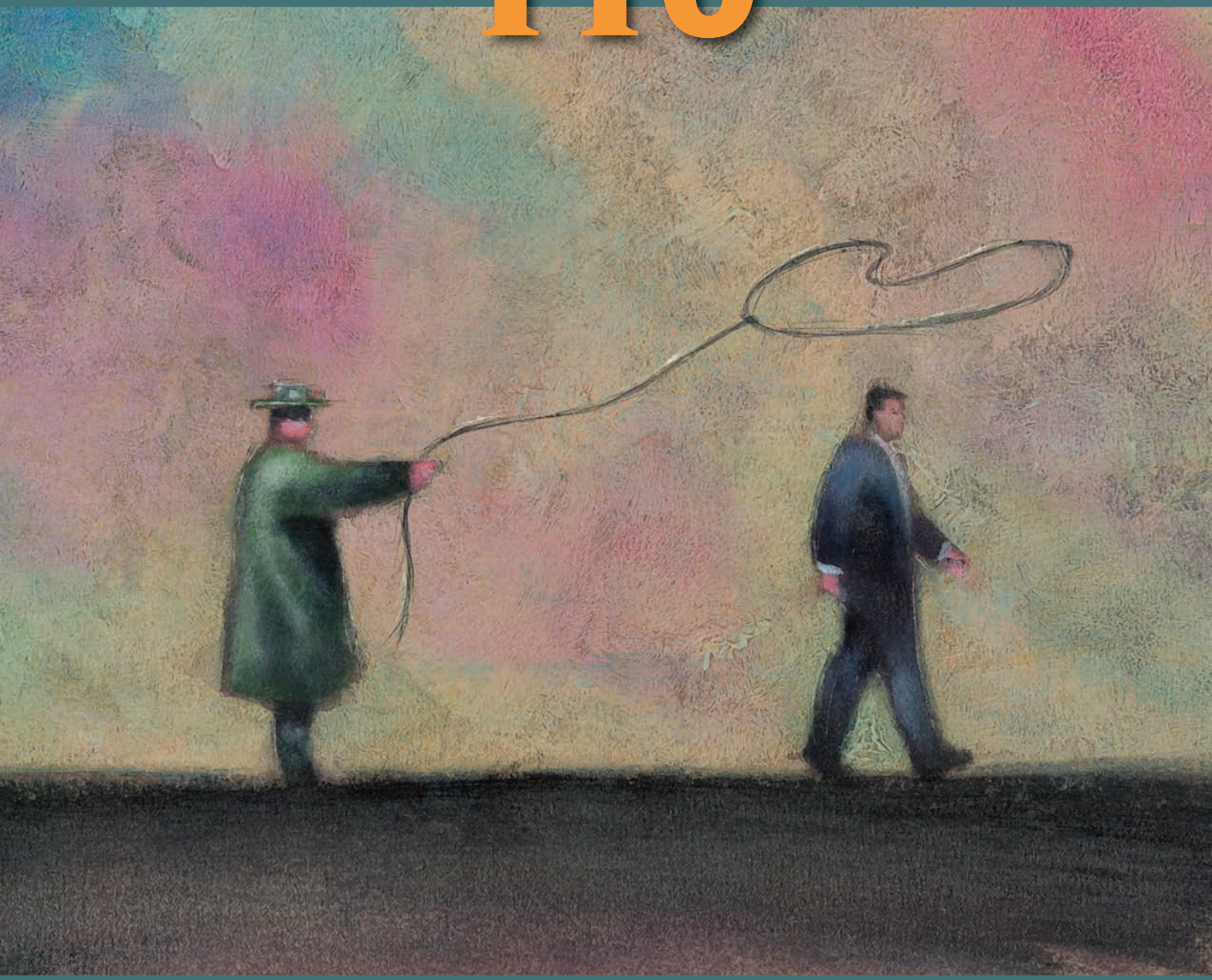

Defensive Theories and Cross Examination of the Plaintiff

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PRESIDENT'S *Message*

Clara Luna Buckland, C.P.

Welcome to 2015 and the endless possibilities that are yours so long as you step up, act, and believe in yourself! A new year represents a fresh start. Make a commitment to yourself to start anew and deal with the changes that you know you need to make and work on them one day at a time. Remember the movie "What About Bob?" Dear obnoxious Bob surpassed his own expectations and those of his poor, unsuspecting doctor, by taking "baby steps" and letting go of his self-inflicted obstacles.

As you read this I will have been President for eight months, and do you know that it feels as if it has been only five minutes . . . underwater that is! HA! Just kidding! Actually, this experience has been awesome and has served me well. It has taught me a great deal about among other things, decision making that goes way beyond affecting me, but an entire organization and each one of you. I have to express that I am truly enjoying this experience and working with my fun loving, but hard working Board of Directors, and Ms. Norma Hackler of course! Norma is a constant professional and our true and dedicated champion. I encourage you to step up and serve this wonderful organization--be assured the experience will forever change you.

I recall a close friend of mine who went through something very trying in her life, and started to express feelings of defeat. That really surprised me because it went against her character. As I sat and listened, I literally saw a spark in her eyes as she declared to herself, "Dust your shoulders, donkey," and her demeanor instantly lifted. I found it an odd expression so I asked her about it. She proceeded to tell me the story of the donkey that fell into an old well and could not get out. The farmer tried unsuccessfully to get the donkey out by rope and decided, instead, to give up and bury the donkey in the well. The story goes that the farmer began filling the hole with dirt and as the donkey came to the realization that the dirt on his shoulders and back would eventually bury him, he became saddened. Then a thought came to him, to shake it off and step up. He could do nothing and die, or shake the dirt off himself each time it hit him and step up until he was able to step out of the dirt filled well. This is a simple parable, but there is nothing simple about its truth. Every decision we make offers an opportunity to grow. We can decide to do nothing and sometimes that may be the right course of action, but more often than not, if we take stock, shake it off, and step up, we overcome even the most difficult trials in life. So when faced with a problem, will you shake it off and step up, or be buried?

The above folktale holds true in all aspects of life to include our work as paralegals. When faced with a challenge and feelings of anxiousness begin to come upon you, take charge and make a choice; one that will allow you to celebrate the wisdom within to guide you to deeper awareness. Do not dwell on the difficulty of the task at hand, but embrace the journey, the twists and turns, the ups and downs, and stand firm in faith that you can do it. And please do not be afraid to ask for help. Likewise, if someone comes to you for help, be that individual's guide, be the light that leads the path to growth for both of you. Let the gratitude that comes from the experience of assisting someone set you free from the heaviness that those individuals who refuse to share their knowledge must surely experience. Studies show that the most successful people in their respective areas of expertise have one marked trait in common: they are the most generous when it comes to sharing their knowledge. I invite you to join me in sharing your knowledge and empowering others. When you apply your talents and abilities for the benefit of others, you are paving the way to pay it forward. We live by example; I hope each of you will be a shining example for others. Finally, whenever you see others doing something impressive, praise them! As humans we shine when we are praised, we beam with pride when we are recognized for our talents, for a job well done. Praise encourages us and empowers us to higher understanding--that no matter how difficult the course, we can do it.

"I find the great in this world is not so much where we stand, as in what direction we are moving: To reach the port of heaven, we must sail sometimes with the wind and sometimes against it,-but we must sail, and not drift, nor lie at anchor."—Oliver Wendell Holmes

Happy sailing and successes in 2015 and beyond—avoid drifting, but no matter what, don't set anchor, but forge ahead!

WINTER 2015 VOL. 20 NO. 3

Texas Paralegal Journal

TPJ

Focus on. . .

Defensive Theories and Cross Examination of the Plaintiff
There is no substitute for preparation and practice. 7

Hot Cites

Staying on Track with Your Retirement Investments 20

Retirement Investments, p. 20

Columns

President's Message 1

Editor's Note 3

Ethics of Working with Clients When Attorney Is Not Present 22

Et Al.

Online CLE 23

Pro Bono Tracking Tool 23

In Memoriam—Dale W. Hardin 24

Notice of 2015 District Director Election 24

TAPS 2014: The Beat Goes On! 25

EDITOR'S *Note*

By Heidi Beginski, Board Certified Paralegal, Personal Injury Trial Law, Texas Board of Legal Specialization

In the Chinese zodiac, 2015 is the year of the sheep, which may be one of the zodiac animals that people like most. People born under the sign of the sheep are said to be tender, polite, filial, clever, and kind-hearted. They purportedly have special sensitivity to art and beauty, faith in a certain religion, and a special fondness for quiet living. Likewise, they are characterized as being wise, gentle and compassionate and able to cope with business cautiously and circumspectly.

In nature, sheep are best known for their strong flocking (herding) and following instinct; they will run from what frightens them and band together in large groups for protection. When one sheep moves, the rest will follow, even if it is not a good idea.

In order to transcend astrological traditions and zoology to ensure your clients are not led to slaughter like the proverbial sheep, be sure to read Jeff Ray's article "Defensive Theories and Cross Examination of the Plaintiff" beginning on page 7. Mr. Ray made a luncheon presentation of this topic at the State Bar of Texas' Prosecuting and Defending Truck and Auto Collision Cases seminar that premiered in November 2014. The article covers important topics, including preparing your client and corporate representative for deposition and trial testimony.

Then be sure to turn to this issue's *Scruples* column (on page 22) by Ellen Lockwood, ACP, RP, in which she covers the ethics of working with clients when an attorney is not present. If this scenario has never happened to you as a paralegal, you either were not paying attention, or it's your first week on the job.

Whether or not you attended TAPS in 2014, you will want to turn to the recap of the event in this issue (beginning on page 25) to relive the memories or find out what you missed! Reading the article, I am awed by the magnitude of the TAPS committee's accomplishment. TAPS is an awesome educational opportunity, and so much more!

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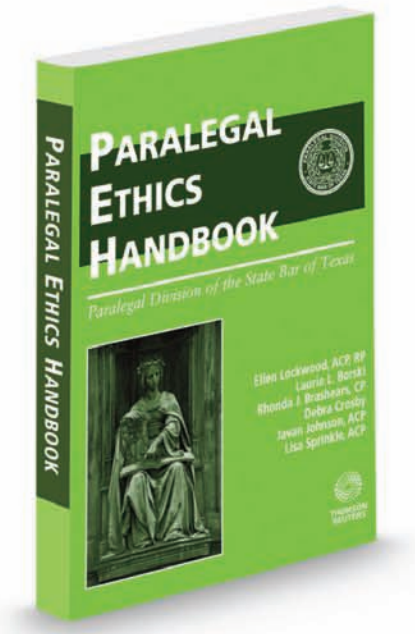

PARALEGAL ETHICS HANDBOOK

Paralegal Division of the State Bar of Texas

By: Ellen Lockwood, ACP, RP
Laurie L. Borski
Rhonda J. Brashears, CP
Debra Crosby
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Focus on . . .

Defensive Theories and Cross Examination of the Plaintiff

By Jeff Ray
Acknowledgment: Noemi V. Lopez

Many lawyers spend a considerable amount of their trial preparation thinking about voir dire, or outlining a powerful opening statement, or crafting a killer closing argument, often to the exclusion of adequate preparation for direct and cross examinations. Of course, there are those who by skill or experience or dumb luck can effectively examine witnesses off the cuff. For the rest of us, however, there is no substitute for preparation and practice.

The good news is that much has been written about effective examinations and resources abound to help us hone our skills in this vastly important area of trial practice, and this paper is simply a modest attempt to gather and distill some of the fundamentals of good direct and cross examinations.

Since effective cross examination begins with the ability to take a good deposition, this paper is devoted to both deposition and cross examination techniques.

Caveat: This paper dwells primarily on cross-examination, as that aspect of trial work often involves developing skills that are not necessarily part of everyday communication. This is not meant to detract from the importance of good direct examination; however, good direct examination is generally more akin to an engaging, informative conversation, something most trial lawyers have mastered long before stepping foot in a courtroom.

I. DEFENSIVE THEORIES

A. Prepare and Know Your Motor Carrier/Corporate Representative Well

Do not assume that your corporate representative will be familiar with the deposition process. Although it is reasonable to conclude that your corporate representative may be business savvy, do not make the mistake of thinking that your representative is equally savvy in the world of litigation. Presume nothing, prepare for everything.

Even an experienced deponent will likely be nervous. Try to alleviate as much of the stress surrounding the event by discussing details including the timing, location, and travel. Meet your representative well before the deposition to prepare for the deposition process. On the day of the deposition, arrive at the location of the deposition together. You do not want your representative to arrive before you.

Although you will want to try to provide as much reassurance as possible to the

representative, it is also imperative that you take time to fully explain the importance of the deposition process, that his or her testimony will be given under oath and can be used against the company in a court of law.

It is important for your deponent to fully understand that although he will be the one appearing for the deposition he or she will be testifying as the corporate entity. Unlike typical depositions which only inquire into the deponent's personal knowledge, the corporate deponent must also be prepared to testify regarding any relevant information available to the corporation.

While phrases such as "I don't know" or "I don't remember" might be favored among many deponents, use of such phrases by a corporate representative will only lead to further discovery and possible sanctions. If the representative is unable to answer relevant questions, further inquiry must be made or a new deponent must be supplied. Therefore, it is critical to determine your representative's ability to testify on all relevant matters before deposition, and to make sure your representative is provided all relevant information held by the corporation which may be relevant to the issues designated in the notice.

Discuss potential privilege issues and under what circumstances you will object to questions. Instruct your witness that even when you object to a question, it is likely the witness will have to answer, regardless of the objection. Educate your witness about the attorney-client and work product privileges, however, and prepare the witness that if you instruct him or her not to answer a question on the grounds of privilege, the instruction should be honored.

B. Prepare and Know Your Driver Well

Good direct examination is the result of good witness preparation. Spend time with your witnesses well before they give a deposition or take the stand so they know the areas you expect to cover with them. Let them in on your case theme so that they understand the overarching message to the jury. Have them read their depositions and remind them of how devastating it will be if they get impeached on an inconsistency between their deposition and their trial testimony. If there are inconsistencies, discuss in advance how best to address them from the stand. Take your witnesses to the actual courtroom sometime before trial and familiarize them with the witness stand. Have them sit in the jury box for perspective. Run through a mock direct and have a colleague do a mock cross examination. Consider videotaping the witness for later review and constructive critique.

Go over all the evidence and your theories in the case. Go to the scene, drive through the scene in the truck, work on time and distance with your driver, review logs, safety records, manuals and all regulations relating to the case.

Once at trial, the case theme you introduced in voir dire and opening statement begins to take shape through direct testimony. Like any good script, your direct examination should have a beginning, a middle, and an end, preferably a climax that sticks in the minds of the jurors and blunts adverse effects of the coming cross examination. With parties, the beginning of their testimony tells the story of who they once were or how things once were, prior to the incident that brings them in to court. The middle is the story of what happened. The ending is the story of how life is now, because of the incident. Think of your witnesses' testimony as following the acts of a play, with each act building on the last and culminating in a compelling, interesting final scene that sticks in the minds of the jurors and motivates them to action.

Enliven your witnesses' testimony with the use of props. If you've got something tangible the witness can use to demonstrate a principle, use it. If you have photographs, blow them up and have the witness explain what they show. This is where practicing beforehand is essential, particularly if the witness intends to use a prop in some manner. Make sure it works!

Be creative in thinking up demonstrative aides. Get the witness off the stand and in front of the jury, if possible. Dry-erase boards or exhibit boards or ELMO presenters give the witness the ability to move around and explain his or her testimony. This movement – so long as it is coordinated and not distracting – can bring a new dimension to the testimony. Remind the witness beforehand that they are educating the jury and thus they must include the jury in giving their testimony.

By the same token, there are some witnesses who for various reasons should not be burdened with props because to do so might detract from their testimony. This is a case-specific judgment call by the attorney, which is another reason why advance preparation is so important.

C. Key Points To Preparing Your Cases and Witnesses for Testimony

- Develop your themes.
- Meet with company representatives and your driver.
- Meet with witnesses.
- Meet with law enforcement.
- Gather all documents, logs, safety manuals, records, personnel and training files.
- Know the complete backgrounds of your witnesses.
- Reconstruct the scene and consult with experts early.
- Collect all records from all law enforcement, emergency and medical service providers.

D. Preserve Evidence

The most effective way to preserve evidence is to be on the scene as soon as possible. The failure to preserve and gather evidence can result in a multitude

of problems. The type of evidence that will need to be gathered and preserved include, in part, the following:

- the vehicles and their contents.
- Evidence of damage to area surrounding accident.
- Evidence of debris.
- Evidence of skid marks.
- Black Box recordings.
- GPS technology recordings.
- Driver's logs and driver personnel files.
- Traffic camera recordings.
- Cell phone and text messaging logs.
- Vehicle maintenance records.
- Toxicology reports.
- Weather Condition reports.
- Investigative reports and Witness statements.
- Department of Transportation maps and/or drawings related to scene of the accident.
- EMS, Fire Department, DPS, County, City or Constable Records.
- Hospital and all medical providers' records.

E. Use of Experts

Consulting experts should be hired as early as possible. Hire an expert that is knowledgeable and experienced in accident scene reconstruction.

There are several steps that should be completed even before the deposition of a plaintiff is taken. First, get the consulting expert to the scene of the accident as quickly as possible to inspect the site and vehicles. While at the accident scene, the expert should photograph and/or video and document any information concerning the vehicles, drivers, passengers, and weather and road conditions. Speed calculations should also be made.

The expert should interview key witnesses and any third-party investigators as well as review their testimony, statements or reports.

As an attorney you must have a thorough understanding of all of the dynamics of the accident and a competent consulting expert will help build that foundation of knowledge.

II. CROSS EXAMINATION OF THE PLAINTIFF

One of my favorite trial lawyer maxims is "*Close for show; cross for dough.*" In other words, while closing arguments are often the most enjoyable and flamboyant part of trial, cross examinations are where you score your big points with the jury. This should come as no surprise because in a good cross, you achieve two goals: you get favorable testimony in front of the jury from an adverse witness and you often discredit that witness in the process, thereby casting doubt on the other side's story.

A. Rules Governing Scope And Manner of Cross Examination

Texas Rule of Evidence 611 governs the scope and manner of cross examination. Under Rule 611(b), "[a] witness may be cross-examined on any matter relevant to any issue in the case, including credibility." Tex. R. Evid. 611(b). "Texas follows a policy of wide-open cross examination." *Torres v. Danny's Service Co., Ltd.,* 266 S.W.3d 485, 487 (Tex. App. - Eastland 2008, pet. denied).

NOTE: In federal court, Federal Rule of Evidence 611 controls the scope and limitations of cross-examination. Specifically, Rule 611 of the Federal Rules of Evidence provides that "[c]ross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witnesses. Fed. R. Evid. 611(b).

B. General Considerations

1. Jury Expectations

Consider what the typical juror today expects from trial: They want what they've become accustomed to seeing in legal dramas on television and at the movies. That is, they expect trials to be fast-paced, interesting, entertaining, suspenseful, and brief. They will not jettison these preconceived ideas about how trial should unfold, and the trial lawyer should take steps to craft his or her presentation of the evidence in a way that taps into these expectations. With direct or cross examinations, that may mean paring down the material you wish to cover, getting creative with demonstrative aides, building suspense, and perhaps most importantly, knowing when to stop.

2. Courtroom Dynamics

Think of examinations as an intimate conversation among you, your witness and twelve friends. You must engage the jury in the conversation, which has as much to do with your body language and positioning in the courtroom as it does with the questions you ask. Jurors will pay more attention to what is being said if they are drawn into the conversation through periodic direct eye contact with the lawyer and the witness, and physical gestures and verbal statements of inclusion.

Eye contact can of course be uncomfortable for some. Pay attention to the jurors whose body language suggests they don't mind eye contact and return to them periodically. On the other hand, tone down your eye contact with jurors who seem uncomfortable or disinterested.

Physical gestures include turning towards the jury when you ask an important question or sweeping one arm across the jury box as you invite the witness to tell "us" something. Inclusive verbal statements are those which draw the jurors into the conversation between the lawyer and the witness. Examples include:

- "Would you please tell the ladies and gentlemen of the jury..."
- "*We'd* like to know..."
- "Please explain to *us*..."
- "*Some of us* might be wondering about..."

Position yourself in such a way that you can easily direct the conversation towards the jurors. If the judge requires you to sit at counsel table or use a podium during examination, try to minimize the effect of these barriers. Move tables. Move the podium. Control the courtroom. If you're chained to a table, approach the witness with demonstrative aides and other evidence in order to get into the zone between the witness and the jurors.

3. Be Yourself

Jurors and judges dislike fakes. Everyone has individual characteristics and personality traits, including a particular method of speaking, mannerisms and personal patterns of thought. Don't try to mimic the actions or the mannerisms of someone else if it doesn't come naturally. Regardless of personality, however, lawyers who are sincere and confident win. As with any aspect of trial, when examining witnesses, stride to the podium and exude confidence even if there is a chance that the high school drop-out defendant on the stand is going to make you look like an idiot. Take command of the courtroom. Let the jury know that you are prepared and that you care about the case. This is the most important rule because if you do not care, the jurors will not care.

4. Practice the Art of Listening

Perhaps the most common error made by trial lawyers is the failure to listen to the witness's answer. The lawyer may be so absorbed in making notes, conferring with co-counsel, or thinking about the next question that he or she completely misses something very significant. In interviewing jurors post-trial, I'm amazed at how many things they pick up on during examinations that go unnoticed – and thus unexplained – by the lawyers. The most obvious dangers to this are that they may arrive at their own explanations during deliberations or they may infer reasons as to why the lawyer did not pursue the issue. Either way, bad things can happen.

The lawyer must remain attentive and flexible during the questioning, particularly during cross-examination. Organizing your examinations topically, perhaps with the benefit of a checklist of points to make, allows you to cover the necessary material while being flexible enough to go down any paths the witness may choose to take.

C. Preparing for Cross Examination

1. Planning & Implementation

Most trial lawyers have at one time or another studied Professor Irving Younger's "Ten Rules of Cross-Examination," and those rules are certainly timeless and bear repeating. They are:

- Be brief.
- Use plain words.
- Use only leading questions.
- Be prepared.
- Listen.
- Do not quarrel.
- Avoid repetition.
- Do not allow the witness to explain.
- Limit questioning.
- Save for summation.

Larry Pozner and Roger Dodd[1] have distilled Younger's rules even further and recommend following the "Three Rules of Cross-Examination:"

- Ask leading questions only.
- One new fact per question.
- Break cross-examination into a series of logical progressions to each specific goal.

2. Witness Control

Try enough cases, and you'll run across all variations of cross-examinees, from the soft noodle to the granite block. Sticking to the "rules" helps you respond to whatever the witness tries to throw at you. Some common varieties of these witnesses include:

a. The Artful Dodger

This witness cleverly tries to avoid getting trapped by giving indirect answers or longwinded narratives designed to obscure their answer amidst a cloud of testimony. Bring him to heel by short, direct questions and re-direct him when he strays. When the witness dances around your question, stop him and politely say, "Perhaps you did not understand my question, and I apologize if I was not clear; let me ask you again..." When the witness drones on and on without ever answering your question, one way to break this behavior is to wait until he finishes and then ask, "Do you recall my question?" Either he will not remember the question, and thus look like a fool, or he will remember it, in which case you can then ask, "Now will you please answer the question?"
As the witness continues to dodge your clear questions (which are easily understood by the jury), his credibility plummets. Remind the jurors in closing argument that they are to weigh the *credible* evidence, and Mr. Artful Dodger's testimony was anything but credible.

b. The Clever Questioner

This witness like to show how clever he is by tossing questions back to the examiner. Unless his queries are legitimate (for example, to clarify your question), take charge over him by politely pointing out that the Rules of Evidence do not permit you to testify, but if they did, you'd be happy to explain why he was negligent (or broke the contract, or cheated your client, or rigged the Breathilizer, or whatever). Then repeat your question. By you remaining calm and polite, the jury gets angry at the witness for wasting their time.

c. The Preening Expert
Far too often you'll do more damage to your case the longer you try to wrestle with an expert witness, particularly in highly technical or specialized fields. The general rule of brevity is particularly true with experts: Outline the points you want to make, that you know you can make (either from the witness's own testimony or by making them look unbelievable in the face of, for example, authoritative treatises), make them, and stop.

3. Questioning Tips
a. Use the Witness's Terms
The following example concerns the defendant in a criminal case who has been promised immunity from prosecution in exchange for testimony.

Q. Then you made a deal with the prosecutor, didn't you?
A. I don't know if you would call it a deal.
Q. Well, what would like to call it—an arrangement?

The cross-examiner won this interchange instantly. It rests on a simple principle that can be applied whenever a witness argues with your choice of words: Do not insist on a particular word. Offer the witness a neutral term instead, or let the witness define the word. That way you are not arguing with the witness, but the witness may be viewed by the jury as arguing with you.

b. Don't Answer Questions
Do not get into a trap of having to answer the witness's questions. Consider the following exchange:

Q. When you saw the tire coming at you, you did not stop, did you?
A. Well, counselor, what was I supposed to do? The truck was on my right, the car was on my left, and then this huge truck tire came bouncing down the road, right in my path.

Do not answer this question. The next one will be even worse. Unfortunately, the typical response by the lawyer to questions from the witness is almost as bad as answering the question, because it sounds overbearing and seems to take unfair advantage of the witness:

Q. I'm afraid you don't understand the procedure. I'm the lawyer and you're the witness. I ask the questions and you give the answers. Got it?

This is offensive and alienates the jury. Instead, try this:

Q. I'm sorry, but the rules of evidence don't permit me to answer your question. If they did, I'd be happy to explain exactly what you should have done under the circumstances.

This stops the witness without being rude. And the real advantage is that you have the rest of the trial to think of an answer which you can give during final argument, when the witness cannot respond.

c. Force the Witness to Answer
Another way to deal with an argumentative witness is to explain that their answer really means either yes or no.

Q. So you really didn't see my client before the collision, did you?
A. As I already told you, I was looking straight ahead, and a car was in front of me. The car swerved sharply to the right, and I saw the car to my immediate right start to swerve into my lane.
Q. So that means no, doesn't it?
A. I suppose so.

Another method is to highlight the witness's refusal to answer by politely stating: "Sir, I must have the answer to this question for the benefit of the jury (sweeping your arms across the jury box; see III. B No. 2, above). If you continue to talk around my question, I am going to be forced to ask the judge to instruct you to answer." Then repeat your question.

d. Make Your Point and Stop
After you have made the desired point, stop. Don't ask the question aimed at driving the final nail into the coffin by asking the witness to draw the inference you seek to have the jury draw. Instead, wait until closing argument and remind the jury of the testimony. This suggests to the jurors that you credit their intelligence. Also, we are more likely to understand, appreciate and retain conclusions which we arrive at through inductive or deductive reasoning rather than those which are simply told to us. In this way, your favorable jurors are better prepared to argue your points when necessary to convince other jurors during deliberations.

e. Don't Cross-Examine Needlessly
Some lawyers assume that cross-examination is required or expected. If the witness has not hurt your case, or if cross-examination is likely to do more harm than good, you may gain more than you lose by saying self-assuredly, but very respectfully: "No questions, Your Honor." You thus convey a message to the jury that no damage has been done and you do not want to waste their time.

f. Don't Get Distracted
Effective cross-examination requires discipline. If you are following a particular line of questioning, stick to it and do not get distracted

by testimony that invites further inquiry into other matters until you have completed your initial objective. This helps avoid confusion in the minds of the jury, and you can always circle back to these other issues. In fact, this gives you another opportunity to draw the jury back into the examination and refocus them with comments such as, "Ms. Jones, a few minutes ago you told *us* that..." or "I want to draw your attention back to a statement you made *under oath to this jury* a few moments ago."

D. Impeachment of the Witness

The Texas Rules of Evidence set forth a fertile ground for impeachment. Under Texas Rule of Evidence 607, any party, including the party calling the witness can attack the credibility of a witness. TEX. R. EVID. 607; *Texas Dept. of Transp. v. Pate,* 170 S.W.3d 840, 850 (Tex. App. - Texarkana 2005, pet. denied).

1. Impeachment by Reputation for Truthfulness.

Pursuant to Texas Rule of Evidence 608(a), the credibility of a witness can be attacked by opinion or reputation evidence, but the evidence must be limited to the witness's character for truthfulness. TEX. R. EVID. 608(a)(1).

2. Impeachment by Earlier Prior Inconsistent Statement.

Texas Rule of Evidence 613 permits the examination of a witness for purposes of impeachment about a prior inconsistent statement. TEX. R. EVID. 613(a). The philosophy of impeachment by prior inconsistent statements is to establish that a witness is capable of making errors and that a witness's testimony is unreliable. *Cirilo v. Cook Paint & Varnish Co.,* 476 S.W.2d 742, 748-49 (Tex.Civ.App. - Houston [1st Dist.] 1972, writ ref'd n.r.e.).

3. Impeachment by Bias or Interest.

A witness may also be impeached by proof of bias or interest. TEX. R. EVID. 613(b). In general, bias refers to a witness's feelings of hostility, prejudice, or favor towards a litigant, while interest is connected to the witness's personal stake in the outcome of the litigation. Steven Goode et. al., *Texas Practice Series: Guide to the Texas Rules of Evidence* 6 613.6 (3d ed.).

E. Sympathetic Plaintiff Cross Examination

Typically, the defense faces the challenge of diffusing blame, anger, and emotion from plaintiffs. Thorough investigation and discovery is the key to managing anger and sympathy plaintiffs counsel will fuel. Complete civil and criminal background checks are essential. Review city, county, state and federal records on each plaintiff and family members. Divorce, child custody, local arrest records, restraining orders and other records may reveal problems in the plaintiffs relationship with family or others.

Professional investigators can be helpful in obtaining information for your case; however, such investigations must be handled professionally, carefully and with reasonable concern and sympathy demonstrated to the plaintiffs. Pre and post accident checking account activity, credit card accounts and spending habits may demonstrate plaintiffs activities and pursuits. Obviously, employment information, previous jobs, terminations, or other reasons for separation from employment should be fully investigated.

Retain consultant damage experts such as rehabilitation, life care and nursing experts to review records, conduct a home study and evaluate care and treatment the plaintiff has received.

Defense attorneys should not be heavy handed in the cross examination of sympathetic plaintiffs. Always be respectful, kind and professional in your examination. Be prepared for tears and respect the emotions of the plaintiff and their family members at all times. Look for solid impeachment evidence and do not be tempted to focus on minor inconsistencies or discrepancies that score no points for you. Focus on positive aspects of the plaintiff's relationships with family members and friends post accidents, such as continuing to attend family functions, sporting events, vacations and enjoying other activities. Give very careful consideration to medications taken by the plaintiff, reduction of medications, counseling, follow up with health professionals and other indicators that demonstrate that the plaintiff is progressing and coping with injuries better than what is being portrayed by the lawyers.

Finally, use your time wisely in examining sympathetic plaintiffs. Subjecting a plaintiff to unnecessary examination will only lead to further alienation by the jury and larger damage awards.

F. Do Your Homework

1. Know your jury charge.
2. Define Key Areas.
3. Review Pleadings, Case Law, & Defenses.
4. Review Discovery, Documents, Statements, Witness Lists.
5. Interview & Access Other Witnesses.
6. Know the Testimony Given in the Case.
7. Review All Investigation Sources - Internal & External.
8. Use of Private Investigator.
9. Use the Internet.
10. Prepare Times Line & Chronologies.
11. Confer & Strategize with Your Clients.
12. Prepare Exhibits for Witnesses.
13. Create Physical Notebooks.
14. Prepare, Prepare, Prepare.
15. Prior Depositions/Reports or Affidavits.
16. Books, Articles, Research, CV.

17. Internet - Personal & Professional searches.
18. Interview Former colleagues & co-workers.
19. Know Your Witness - Internet Research.
20. Facebook, MySpace, Youtube, Blogs, Twitter.
21. Criminal & Civil Backgrounds.
22. Civic Background & Organizations.
23. Go to the Scene - Reconstruct Events.
24. Review All Documents, Investigations, & Statements.
25. Interview All Essential Witnesses.
26. Know the Testimony.
27. Time Lines, Chronologies, Memory Games.
28. There is NO substitute for Preparation & Practice.

III. DEPOSITION RULES

A. The Rules for Corporate Representatives

It is axiomatic that a corporation can only act through its human agents or employees. *See Nat'l Med. Enters., Inc. v. Godbey*, 924 S.W.2d 123, 124 (Tex.1996). An agent or employee selected to "speak for" a corporation through deposition carries a heavy burden. A corporation can be sanctioned for failing to present a representative who is able to testify concerning matters reasonably available to the corporation. As counsel for the corporation, is it critical that you help the selected agent or employee through the deposition process.

While a corporate deposition may be difficult to navigate, it also provides many opportunities not usually available in discovery. Under both the Federal and State rules when a party has a general understanding of the information he or she wishes to seek from a corporate entity, but is not aware of the identity of a person with that knowledge, Rule 30(b)(6) of the Federal Rules of Civil Procedure and Rule 199.2(b) of the Texas Rules of Civil Procedure provide a mechanism for taking the deposition of a person with knowledge of the information known by the organization. These rules allow a corporate defendant the opportunity to select the deponent which will speak on behalf of the organization. Although the Federal Rules also allow for identification of a specific deponent, this allowance creates a double edge sword for the party seeking discovery since the named party may not have knowledge regarding the matters designated.

B. Texas Rules

Under the Texas Rules a deposition notice may direct a corporation or entity to identify a person with knowledge of a certain subject. TEX.R.CIV.P.199.2(b)(1). The notice must describe with reasonable particularity the matters on which examination is requested. When the deposition notice names a corporation or other entity as the deponent, the responding party has the opportunity to the corporate defendant to select the deponent it wishes to address the topics listed.

In Texas State Court, the benefit of being able to hand pick a deponent is counter balanced with significant duties in responding to a deposition request. Once the deposition has been noticed and the subject matter to be inquired into is described with reasonable particularity, the producing party must: (1) designate a witness capable of answering questions on the designated subject(s); (2) designate more than one witness, if necessary, in order to provide meaningful responses to the areas of inquiry that are specified with reasonable particularity; (3) prepare the witness(es) to testify not only on matters known to the corporation but also matters reasonably available to it; and (4) designate additional witness(es) when it becomes apparent that the designated witness is unable to respond to certain relevant areas of inquiry known to or reasonably available to the corporation. TEX.R.CIV.P.176.6(b) & 199.2(b)(1). When a corporation fails in its duty to present adequately prepared designees to testify on its behalf, it may be subject to a range of sanctions under TEX. R. CIV. P. 215.

C. The Federal Rules

In contrast to the State rules, the Federal rules allow a party noticing a deposition to either name the organization or to designate a specific representative of the organization. Both options come with unique benefits and detriments that must be considered closely by the party seeking discovery. The best choice will be determined by the specific facts and needs presented within a particular case.

1. Depositions pursuant to FED. R. CIV. P. 30(B)(1)

The Federal rules allow, a discovering party to secure the testimony of a corporation by noticing its deposition through an officer, director, or managing agent under the general notice provisions of FED. R. CIV. P. 30(b)(1). The notice may be directed to the witness by name, by description, or in his official capacity as a representative of the corporation. *See, e.g., Sugarhill Records Ltd. v. Motown Record Corp.*, 105 F.R.D. 166 (S.D.N.Y. 1985). By specifying the officer, director or managing agent sought for deposition, the noticing party avoids the risk that the corporation will present its testimony through a hand-picked representative most advantageous to its position. However, the deposition may also be a waste of time if the witness lacks personal knowledge of the matters at issue.

There is no duty on the part of the corporation to prepare a Rule 30(b)(1) witness to testify on its behalf by educating him or refreshing his recollection, even if he is an officer, director, or managing agent whose testimony constitutes that of the corporation itself. The witness

may testify simply to what he recalls, responding "I don't recall" or "I don't know" as appropriate. (Of course, counsel will still want to prepare the witness to deal with the deposition process, advising him to listen to the question, review exhibits carefully, ask for clarification, and so on.)

2. Depositions pursuant Fed. R. Civ. P. 30(B)(6)

Under Rule 30(b)(6), the discovering party itemizes "with reasonable particularity" in the deposition notice the "matters for examination", and the corporation selects one or more persons to testify on its behalf with respect to "information known or reasonably available" to it regarding the specified matters. The discovering party has no control over the corporation's designations and cannot require that the corporation designate the person most knowledgeable on the matters for examination. Rule 30(b)(6) more closely resembles the State Rule and is designed to avoid the possibility that each officer, director or managing agent disclaims personal knowledge of the facts which should be known to the organization. *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 432-33 (5th Cir. 2006). It may also benefit a corporation by avoiding a series of repetitive but unproductive depositions of its high ranking personnel.

Much like the State Court rules, a Rule 30(b)(6) witness must be able to testify about information known or reasonably available to the organization. "The duty to present and prepare a Rule 30(b)(6) designee goes beyond matters personally known to that designee or to matters in which that designee was personally involved. The deponent must prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources." *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir.2006). Additionally, the designated witness must be prepared to testify about facts which are within the organization's knowledge as well the subjective beliefs and opinions of the organization. *Paul Revere Life Inc. Co. v. Jafari*, 206 F.R.D. 126, 127 (D.Md. 2002). In explaining the duties of a corporation responding to a Rule 30(b)(6) deposition notice, the Fifth Circuit has held that:

> [w]hen a corporation or association designates a person to testify on its behalf, the corporation appears vicariously through that agent. If that agent is not knowledgeable about relevant facts, and the principal has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all.
>
> *Resolution Trust Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir.1993).

When the 30(b)(6) representative claims ignorance of a subject during the deposition, courts have precluded the corporation from later introducing evidence on that subject. *See Super Future Equities, Inc. v. Wells Fargo Bank Minn., N.A.*, 2007 WL 4410370, at *8 (N.D.Tex. Dec.14, 2007) ("Federal courts have interpreted [Rule 30(b)(6)] as prohibiting a 30(b)(6) representative from disclaiming the corporation's knowledge of a subject at the deposition and later introducing evidence on that subject."); *Ierardi v. Lorillard, Inc.*, 1991 WL 158911, at *3 (E.D.Pa. Aug.13, 1991) ("Under Rule 30(b)(6), [the organization] has an obligation to prepare its designee to be able to give binding answers on behalf of [the organization]. If the designee testifies that [the organization] does not know the answer to [deposing attorney]'s questions, [the organization] will not be allowed to effectively change its answer by introducing evidence during trial. The very purpose of discovery is to avoid trial by ambush."); *see also United States v. Taylor*, 166 F.R.D. 356, 362 (M.D.N.C.1996) (holding that the deponent must "review all matters known or reasonably available to it in preparation for the Rule 30(b)(6) deposition ... to prevent the 'sandbagging' of an opponent by conducting a half-hearted inquiry before the deposition but a thorough and vigorous one before the trial."). Therefore it is prudent that a corporate witness review all corporate documentation related to the deposition notice. *Prokoshch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 639 (D.Minn 2000).

D. The Rules for Apex Deponents

On often occasion, the opposing party will attempt to choose your corporate deponent for you by specifically noticing a high-level corporate officer. Both the Texas and Federal Rules of Civil Procedure provide corporate officers some protection when it can be shown that their testimony would not be helpful. This protection is well known as the "apex" doctrine.

1. The State Rules

According to the apex deposition doctrine, when a party seeks to depose a high level corporate official, a corporation may seek to shield the official from the deposition by filing a motion for protection supported by the official's affidavit denying knowledge of any relevant facts. *In re Burlington Northern and Santa Fe Ry. Co.*, 99 S.W. 3d 323 (Tex. App-Fort Worth 2003); *In re BP Products North American, Inc.* 244 S.W. 3d 840 (Tex. 2008). A trial court determines such a motion by first deciding whether "the party seeking the deposition has 'arguably shown that the official has any unique or superior personal knowledge of discoverable information.' *Crown Cent. Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex.1995).

> "If the party seeking the deposition cannot show that the official has any unique or superior personal knowledge of discoverable

> information, the trial court should" not allow the deposition to go forward without a showing, after a good faith effort to obtain the discovery through less intrusive means, "(1) that there is a reasonable indication that the official's deposition is calculated to lead to the discovery of admissible evidence, and (2) that the less intrusive methods of discovery are unsatisfactory, insufficient or inadequate."
>
> *Crown Cent. Petroleum,* 904 S.W.2d at 128.

In determining the sufficiency of the affidavit, the Courts appear to give considerable weight to the affiant's assertions. For example, *In re Burlington Northern and Santa Fe Ry. Co.*, the court held that an affidavit of railroad company president and chief executive officer (CEO), stating that he had "no unique or superior knowledge or information regarding any aspect" of case, properly initiated the guideline proceedings for obtaining the deposition of an apex-level executive, and thus the burden shifted to the party seeking the deposition to show that executive had unique or superior personal knowledge of discoverable information, even though the affidavit did not specifically state that executive did not have "any knowledge of relevant facts," as stated in case establishing apex deposition guidelines. 99 S.W. 3d at 326. Furthermore, the court held that testimony that a corporate executive possesses knowledge of company policies does not, by itself, satisfy the first test of the apex deposition guidelines because it does not show that the executive has unique or superior knowledge of discoverable information. *Id.* Therefore, the battle of the apex deposition is usually drawn and shown the availability of a less intrusive means of discovery.

The "apex" doctrine is not without exception however. In *Simon v. Bridewell*, the Texas Supreme Court provided clarification as to the limits of the "apex" doctrine:

> A corporate officer is not exempt from deposition by the "apex" doctrine merely because he is a corporate official. Rather, the doctrine may be invoked only when the deponent has been noticed for deposition because of his corporate position. For example, if the president of a Fortune 500 corporation personally witnesses a fatal car accident, he cannot avoid a deposition sought in connection with a resulting wrongful death action because of his "apex" status.[2]

2. The Federal Rules

Motions to quash corporate depositions in Federal Courts are governed by Federal Rule of Civil Procedure 26(c) which authorizes the court, for good cause shown, to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. *See* FED. R. CIV. P. 26(c). A party seeking a protective order to prevent a deposition must show good cause and the specific need for protection. *Williams ex rel. Williams v. Greenlee*, 210 F.R.D. 577, 579 (N.D.Tex.2002) (citations omitted); *United States v. Garrett*, 571 F.2d 1323, 1326 n. 3 (5th Cir.1978) (the burden is upon the movant to prove the necessity of a protective order, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements). The court must balance the competing interests of allowing discovery and protecting the parties and deponents from undue burdens. *Williams ex rel. Williams,* at 579. In deciding whether to grant a motion for a protective order, the court has significant discretion. *Harris v. Amoco Prod. Co.*, 768 F.2d 669, 684 (5th Cir.1985). Federal courts have, permitted the depositions of high level executives when conduct and knowledge at the highest corporate levels of the defendant are relevant in the case. *In re Bridgestone/Firestone, Inc., Tires Products Liability Litig.*, 205 F.R.D. 535, 536 (S.D.Ind.2002) (*citing Six West Retail Acquisition v. Sony Theatre Mgmt.*, 203 F.R.D. 98 (S.D.N.Y.2001); *Travelers Rental Co. v. Ford Motor Co.*, 116 F.R.D. 140 (D.Mass.1987)).

Therefore, under Rule 26, if relevancy is established, then the burden then shifts to the objecting party to establish good cause and a specific need for a protective order. In analyzing the objecting party's arguments, Courts recognize that deposing executives is often inconvenient. However, the lack of convenience does not necessarily result in the requirement that other lower ranking employees be deposed first as in State Court.

Although the Federal analysis is not as rigid as the "apex doctrine" enunciated by the Texas Supreme Court, similar results are reached under the Federal Rules of Civil Procedure, and applicable federal case law. In *Salter v. Upjohn Co.*, 593 F.2d 649 (5th Cir.1979) and *Baine v. General Motors*, 141 F.R.D. 332 (M.D.Ala.1991), the Fifth Circuit Court of Appeals upheld the district court's requirement that a plaintiff first depose other witnesses before being able to depose the defendant's company president. *Id.* at 651. In *Baine,* the court concluded that deposing a vice president of the defendant company would be "oppressive, inconvenient, and burdensome inasmuch as it has not been established that the information necessary cannot be had from [other witness]" and the corporate deposition had not yet been taken, which could satisfy some of the plaintiffs' needs. *Baine,* 141 F.R.D. at 335; *See also Mulvey v. Chrysler Corp.*, 106 F.R.D. 364, 366 (D.R.I.1985) (ordering that interrogatories should be propounded instead of deposing Lee Iacocca, Chrysler's chairman at the time, without prejudice to plaintiffs' ability to depose him later if still warranted).

E. The Rules for Non-Corporate Witnesses

There is little difference between the State and Federal Rules for the noticing of a deposition. The primary focus in both venues will be on preparing your witness. A well-conducted deposition "freezes" or locks in a witness's testimony. That is both the opportunity presented by taking a careful deposition and the peril of permitting your own witness to testify without adequate preparation.

1. The State Rules

A party may compel a witness to attend an oral or written deposition by serving the witness with a subpoena under the Rule. *See* Tex. R. Civ. P. 199.3, Tex. R. Civ. P. 200.2, Tex. R. Civ. P. 176. If the witness from whom an oral or written deposition is sought is a party or is retained by, employed by, or otherwise subject to the control of a party, service of the deposition notice upon the party's attorney has the same effect as a subpoena served on the witness. Tex. R. Civ. P. 199.3, Tex. R. Civ. P. 200.2.

A party may compel discovery from a nonparty, that is, a person who is not a party or subject to a party's control, only by obtaining a court order for entry on property, a deposition before suit or a physical or mental examination, or by serving a subpoena compelling an oral deposition, a deposition on written questions, a request for production of documents or tangible things served with a notice of deposition on oral examination or written questions, or a request for production of documents and tangible things. Tex. R. Civ. P. 205.1.

2. The Federal Rules

Rule 30(b)(1) requires a party desiring to take the deposition of any person upon oral examination to give reasonable notice in writing to every other party to the action. No approval of the court is required unless the deposition is to be taken prior to the Rule 26(f) conference, and even in that instance leave is not required if the notice contains the special statements set out in Rule 30(b)(2)(A)(iii). If a party is to be examined, the notice under this rule is sufficient to require the party's attendance; if the deponent is not a party, he or she must be subpoenaed. The manner in which the notice is served is covered by Rule 5.

The form of the notice is quite simple. It must state the time and place for the taking of the deposition.30(b)(1) It must also state the name and address of the person to be examined, if this is known, and, if it is not known, it must provide a general description sufficient to identify him or the particular class or group to which the witness belongs. 30(b)(1). If a subpoena duces tecum is to be served on the witness, a designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice. 30(b)(2).

F. Rules for Preparing Witnesses

A deposition usually involves a substantial cast of characters. Make sure that your representative knows the roll that each person plays. This will help your representative understand the actions of the individuals involved. Do not forget to discuss the role of the court reporter and videographer. Your representative is less likely to be rattled by requests to slow down, speak clearly or provide intelligible answers if he or she understands how his or her testimony is being recorded.

The mention of a videographer can provide additional incentive to dress and groom appropriately. The deponent must be informed that when he is testifying, he must sit up straight and not slumped, since this tends to appear cocky and arrogant or disinterested. The witness must be advised to avoid any distracting thumb twirling, finger tapping, knuckle cracking and other stress related signs.

It is important that the deponent understands your own role in the process. They may consider your seeming lack of involvement in the deposition as lack of interest or concern. Therefore, it is wise to explain to the deponent that your role is merely to prevent the other side from acting improperly and that you will likely ask few, if any questions.

Reassure the deponent that if you note any mistakes during the deposition, you will attempt to correct them by cross-examination towards the end of deposition. However, such correction will require a team effort. Therefore, the deponent should be advised to stop and listen closely should you begin a line of questioning.

The deponent should also be cautioned that the examining attorney, while appearing charming and disarming at first is not a neutral party. Make sure the deponent knows that the examining attorney is searching for information to use against the client. The deponent should also be made aware that the examining attorney will gladly result to tricks and traps to illicit information favorable to his side. Prepare the deponent for the inevitable fact that the examining counsel will go to great lengths to discredit his or her testimony.

It is critical that your deponent understand that a deposition is not a conversation. Advise your deponent against the tendency to volunteer any information not specifically requested. The deponent should also be instructed that he or she is entitled to see any document that is the subject of examination. Explain the significance of the testimony. It is important that they understand that their testimony at a deposition may be used against him in a court of law for impeachment if they try to change their testimony at a later date.

Make sure that the witness understands the serious nature of the proceedings. A deposition is not a time to make jokes, even if prompted by understandable nervousness. No witness can be funny or

charming enough to disarm a seasoned examiner.

Advise your deponent to be alert to even slight variations in the questioning. Instruct your deponent to be cautious of questions in which the examining attorney tries to put words into his mouth. It is important that the deponent understands the question before he answers it. The deponent must be made aware that he can request that the questioning attorney repeat his question if he is not sure of the question or did not hear the question completely. The deponent should also be alerted to compound questioning or questions that assume facts. The deponent should know to ask the questioning attorney to restate or rephrase the question if necessary.

Prepare the witnesses on the facts and issues in controversy so that it will be fresh in their minds. Even the areas that may be uncomfortable to the witness need to be addressed.

An important part of preparing for a deposition is lessening the witness's natural anxiety about being deposed. Anxiety may distract the witness and prevent successful preparation. Accordingly, it is important for you to alleviate as much of the witness's nervousness as possible.

Sometimes witnesses are simply nervous about making mistakes. It may be helpful to note that there are procedures for correcting mistakes and that no deposition is conducted mistake free. Assuring the witness that you will protect them from confusing or unfair questions may help you make strides in alleviating the witness's anxiety. Whatever specific concerns the witness has, it is important to assure the witness that you will be at their side to help them out of difficult spots during the deposition. Letting the witness feel isolated and unprepared going into the deposition probably will not help your case.

G. Rules for the Attorneys

Being prepared is essential in a deposition proceeding. You must have a command on the facts and issues involved in the case. The usual plan is background, chronological review, and testing of facts and theories. You may also want to examine the allegations of the complaint, petition, or answer, and the elements of the claims or defense.

It is important to create an outline of the proposed examination areas, and not the actual questions themselves unless phrasing is important. The outline is important because it helps you keep your place. Furthermore, a chronology for reference and cross reference sources for other witnesses' statements is essential.

It is important to practice questioning the deponent so that he is familiar with the process. This will also give you an idea on his ability to follow instructions. Additionally, this practice will allow the witness a chance not only to become comfortable answering anticipated questions but also to cultivate focused responses.

During this practice you must use care not to suggest answers to questions but only to help craft responses based on facts previously stated by the witness. This practice time may also offer the witness an opportunity to experience cross-examination that otherwise might come as quite a surprise to the witness if it occurs for the first time during a deposition. Some attorneys prefer to videotape this practice in an effort to let the witness see any remediable presentation flaws prior to the deposition.

Rule 3.04 of the Texas Disciplinary Rules of Professional Conduct provides:

> A lawyer "shall not unlawfully obstruct another party's access to evidence" or "counsel or assist a witness to testify falsely."

The Preamble to the Rules sets forth a lawyer's responsibilities and states:

> "In all professional functions, a lawyer should zealously pursue clients' interests within the bounds of the law."

However, these rules do not prevent counsel from being an advocate for their client. In the case of *Resolution Trust Corp. v. Bright*, 6 F. 3d 336 (C.A. 5 Tex. 1993), the defendants sought protective order and sanctions against the RTC for the manner in which its counsel interviewed a former savings and loan association employee. The District Court found that the attorneys had attempted to persuade the witness to sign an affidavit containing a statement she had not made, and disbarred the attorneys from practicing before the district judge and disqualified the attorneys law firm from further representing RTC. An appeal was taken and the Court of Appeals held that the attorneys did not attempt to induce the witness to testify falsely under oath merely because the attorneys were persistent and aggressive in presenting their theory of the case to the witness:

> It is one thing to ask a witness to swear to facts which are knowingly false. It is another thing, in an arms-length interview with a witness, for an attorney to attempt to persuade her, even aggressively, that her initial version of a certain fact situation is not complete or accurate. Disciplinary Rules 3.04(b) and 4.01(a) concern the former circumstance, not the latter. The district court never found that appellants asked Erhart to make statements which they knew to be false. Indeed, the district court pretermitted any consideration of the truth of the draft affidavits. Appellees nevertheless argue that because appellant attorneys

attempted to persuade Erhart to adopt certain statements which she had not expressly made and which she refused to adopt, the attorneys thereby were either making or urging the making of "false" statements in violation of DRs 3.04(b) and 4.01(a). We disagree. The district court characterized the attorneys' behavior as "manufacturing" evidence, but there is no indication that the attorneys did not have a factual basis for the additional statements included in the draft affidavit. *See Koller v. Richardson-Merrell*, 737 F.2d 1038, 1058-59 (D.C.Cir.1984), vacated on other grounds 472 U.S. 424, 105 S.Ct. 2757, 86 L.Ed.2d 340 (1985). On the contrary, appellants have attempted to demonstrate in a detailed chart that the contested portions of the affidavit were based either on their notes of interviews with Erhart or on evidence from other sources (e.g., internal bank memorandum).
*****
While the attorneys were persistent and aggressive in presenting their theory of the case to Erhart, they nevertheless made sure that Erhart signed the affidavit only if she agreed with its contents. The attorneys never attempted to hide from Erhart the fact that some statements were included in draft affidavits that had not been discussed with her previously. Instead, they brought the statements to her attention and warned her to read them carefully. Additionally, Lovato and Graber never claimed to be neutral parties. Erhart knew that these attorneys were advocates for a particular position, and she was also in communication with attorneys who were advocating the contrary position. Were Erhart giving testimony at a deposition or at trial, the attorneys for either side would not be required to accept her initial testimony at face value but would be able to confront her with other information to challenge her testimony or attempt to persuade her to change it.

Clearly, there is a line between being an aggressive advocate and disbarment. It is wise to know these Rules and there limits particularly well.

Obnoxious, disruptive, or otherwise obstructive opposing counsel can frustrate the taking of a successful deposition, especially for less-experienced attorneys. In dealing with difficult opposing counsel, it is important to remember that your goal is to obtain information from the witness - not to win a debate match. As such, it is important not to let yourself get drawn into your opponent's game but to stay focused on your discovery objectives.

Attorneys use various techniques to counter hyperaggressive opposing counsel. Probably the most important thing you can do before going into a deposition is to refamiliarize yourself with the Rules of Civil Procedure governing deposition practice. The rules are effective tools in countering an obstructionist opponent's behavior.

If hyperaggressive tactics persist (particularly where they involve improper coaching of a witness in the guise of lengthy objections), do not be afraid to suspend the deposition and seek court intervention either immediately via phone or more formally pursuant to a motion for protective order or for sanctions.

H. Objections

Objections to questions during an oral deposition are limited to "Objection, leading" and "Objection, form." *See* Tex. R. Civ. P. 199.5(e). The "form" objection is related to the form of the question posed to the deponent. The form of a question should be consistent with the rules of evidence at trial. Generally, "Objection, form" will be made to preserve the following objections: "(1) assumes facts in dispute or not in evidence; (2) is argumentative; (3) misquotes a deponent; (4) is leading; (5) calls for speculation; (6) is ambiguous or unintelligible; (7) is compound; (8) is too general; (9) calls for a narrative answer; and (10) has been asked and answered." *St. Luke's Episcopal Hosp. v. Garcia*, 928 S.W.2d 307, 309 (Tex. App. – Houston [14th Dist.] 1996, no writ) (citations omitted).

If the question is improper, it must be objected to during a deposition, or the objection is waived. The reason for this rule is that counsel must give opposing counsel an opportunity to correct a problem as to the form of a question during the course of a deposition, because it cannot be corrected later. If opposing counsel makes repeated objections in a deposition on the basis of "form" without being more specific about the objection, it makes sense to ask counsel to clarify the basis for the objection. If opposing counsel refuses to do so, it will be much harder for that attorney to convince a judge that you were put on notice and had an opportunity to rectify a problem.

Hearsay, relevance, and calling for opinions are not form objections to a question. These types of objection need not be made for these evidentiary disputes. Failure to make these objections do not result in waiver. *See* Tex. R. Civ. P. 199.5(e). Moreover, it is appropriate to ask for an opinion and how the deponent arrived at that opinion. The deponent's answers may lead to discoverable evidence. Whether the person is qualified to give that opinion is question for the court to determine at a later date.

An attorney may instruct a witness not to answer a question during an oral deposition under the following circumstances: (1) only if necessary to preserve a privilege; (2) comply with a court order or the rules of discovery; (3) protect a witness from an abusive question or one for which any answer would be misleading; or (4) secure a ruling. *See* Tex. R. Civ. P. 199.5(f).

Objections to testimony during the oral deposition are limited to "Objection, nonresponsive."

I. Recent Cases

Recently, the Texas Supreme Court issued its opinion in the case of *In re Coy Reece*, 341 S.W.3d 360 (Tex. 2011), a case where the Court considered whether perjury occurring outside of a court's presence is punishable as contempt. In that case, Reece committed perjury during his deposition and admitted to doing so at his subsequent contempt hearing. The trial court found Reece in contempt and sentenced him to sixty days of confinement.

On appeal to the Supreme Court, Reece argued that perjury is not punishable as contempt unless it obstructs the court's operations and that his perjury did not do so.

Previously, no Texas court had held that perjury had to actually obstruct or impede the court's operations. However, that was a requirement for constructive contempt – contempt occurring outside the court's presence. Moreover, federal courts have long required proof of obstruction before perjury may be punished as contempt. Thus, the Supreme Court concluded that Reece's deposition perjury was not contempt unless it obstructed the trial court in the performance of its duties.

Examples of obstruction include failure to appear, to be sworn, or to answer deposition questions after being directed to do so by a trial court.

IV. CONCLUSION

Mastering good direct and cross-examination skills takes effort and, above all, experience. The legendary trial lawyers who seem to do it effortlessly have all at one time or another been humiliated by a witness in front of a jury or have had their trains of thought derail. It happens. Watch and read the masters, practice what works, get in the courtroom as often as possible, learn from your mistakes, and enjoy your successes.

[1] *Cross-Examination: Science and Techniques, 2nd Ed.*, by Larry Pozner and Roger Dodd (Matthew Bender, 2004)
[2] *Simon v. Bridewell*, 950, S.W.2d 439, 442 (Tex. App.–Waco 1997, no writ)

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Staying on Track with Your Retirement Investments

Craig Hackler
Branch Manager / Financial Advisor
Raymond James Financial Services, Inc., Member FINRA/SIPC

Investing for your retirement isn't about getting rich quick. More often, it's about having a game plan that you can live with over a long time. You wouldn't expect to be able to play the piano without learning the basics and practicing. Investing for your retirement over the long term also takes a little knowledge and discipline. Though there can be no guarantee that any investment strategy will be successful and all investing involves risk, including the possible loss of principal, there are ways to help yourself build your retirement nest egg.

Compounding is your best friend

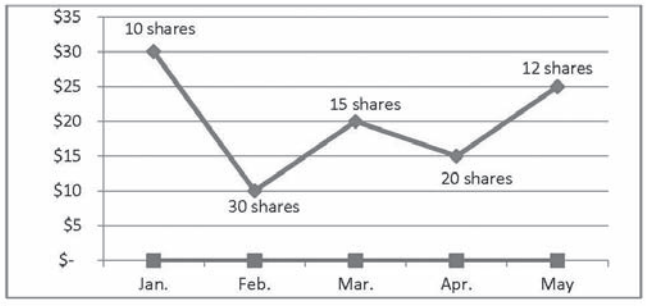
It's the "rolling snowball" effect. Put simply, compounding pays you earnings on your reinvested earnings. Here's how it works: Let's say you invest $100, and that money earns a 7% annual return. At the end of a year, the $7 you earned is added to your $100; that would give you $107 in your account. If you earn 7% again the next year, you're earning 7% of $107 rather than $100, as you did in the first year. That adds $7.49 to your account instead of $7. In the third year with a 7% return, you'd earn $8 and have a total of $122. Like a snowball rolling downhill, the value of compounding grows the longer you leave your money in the account. In effect, compounding can do some of the work of building a nest egg for you.

The longer you leave your money at work for you, the more exciting the numbers get. For example, imagine an investment of $10,000 at an annual rate of return of 8%. In 20 years, assuming no withdrawals, your $10,000 investment would grow to $46,610. In 25 years, it would grow to $68,485, a 47% gain over the 20-year figure. After 30 years, your account would total $100,627. (Of course, these are hypothetical examples that do not reflect the performance of any specific investment and assume that no taxes are paid or withdrawals are made during that time.)

If your workplace savings plan contributions are made pretax, as most people's are, compounding really becomes a powerful force. Not having to pay taxes from year to year on either your contributions or the compounded earnings helps your savings grow even faster (though you'll owe taxes on that money when you start withdrawing from your account). The value of compounded tax-deferred dollars is the main reason you may want to fully fund all tax-advantaged retirement accounts and plans available to you, and start as early as you can. Money invested over time offers tremendous potential for compounding to help produce a significant return. With time on your side, you don't necessarily have to aim for investment "home runs" in order to be successful.

Diversify your investments

Asset allocation is the process of deciding how to spread your dollars over several categories of investments, usually referred



Try to resist the impulse to change your investment strategy with every news headline or investing tip from a relative or coworker. Timing the market correctly is very difficult; even professionals find it a challenge.

to as asset classes. A basic asset allocation would likely include at least stocks, bonds, and cash or cash alternatives such as a money market fund. The term "asset classes" also may refer to subcategories, such as particular types of stocks or bonds.

Asset allocation is important for two reasons. First, the mix of asset classes you own is a large factor--some say the biggest factor by far—in determining your overall investment portfolio performance. How you divide your money between stocks, bonds, and cash can be more important than your choice of specific investments. Second, by dividing your portfolio among asset classes that don't respond to market forces in the same way at the same time, you can help minimize the effects of market volatility while maximizing your chances of long-term return. Ideally, if your investments in one class are performing poorly, assets in another class may be doing better and may help stabilize your portfolio.

Remember that during any given period of market or economic turmoil, some asset categories and some individual investments historically have been less volatile than others. You can manage your risk to some extent by diversifying your holdings among various classes of assets, as well as different types of assets within each class. Taking steps that can help manage the amount of volatility you experience can help you stay with your game plan over the long term.

Take advantage of dollar cost averaging

One of the benefits of participating in your workplace savings plan is that you're automatically using an investment strategy called dollar cost averaging. With dollar cost averaging, you acquire shares of an investment by investing a fixed dollar amount at regularly scheduled intervals over time. When the price is high, your investment buys less; when prices are low, the same dollar investment will buy more shares. A regular, fixed-dollar investment should result in a lower average price per share than you would get buying a fixed number of shares at each investment interval.

The accompanying graph illustrates how share price fluctuations can yield a lower average cost per share through dollar cost averaging. In this hypothetical example, ABC Company's stock price is $30 a share in January, $10 a share in February, $20 a share in March, $15 a share in April, and $25 a share in May. If you invest $300 a month for 5 months, the number of shares you would buy each month would range from 10 shares when the price is at $30, to 30 shares when the price is $10. The average market price is $20 a share ($30+$10+$20+$15+$25 = $100 divided by 5 = $20). However, because your $300 bought more shares at the lower prices, the average purchase price is $17.24 ($300 x 5 months = $1,500 invested divided by 87 shares purchased = $17.24).

In addition to potentially lowering the average cost per share, investing the same amount regularly automates your decision-making, and can help take emotion out of investment decisions.

Stick to your strategy

Try to resist the impulse to change your investment strategy with every news headline or investing tip from a relative or coworker. Timing the market correctly is very difficult; even professionals find it a challenge. Most people fare better by having an investment game plan that can weather good times and bad, and then sticking to it.

That doesn't mean you should simply forget about your investments altogether. At least once a year, you should review your portfolio to see if your choices are still appropriate. Even if your circumstances haven't changed, market movements can affect how your money is divided among various types of investments. For example, if one type of asset has been very successful, it may now represent too large a share of your holdings. To rebalance your portfolio, you could sell some of an asset that's now larger than you intended and buy more of a type that is lower than desired. Or you could keep your existing allocation but shift future investments into an asset class you want to increase. But if you don't review your holdings periodically, you won't know whether a change is needed.

Content prepared by Forefield, Inc.

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Scruples

Ethics of Working with Clients When Attorney Is Not Present

Ellen Lockwood, ACP, RP

I was contacted recently by a police officer who wanted to submit a complaint about a paralegal. The paralegal's alleged actions that evening provide an example of how easily paralegals may cross the ethical line, often without intending to do so, and sometimes without realizing they have done so.

The police officer stated he and other officers were conducting an investigation into a burglary and family violence matter one evening when a woman arrived. The woman identified herself as a paralegal and gave the name of the attorney for whom she works.

According to the officer, the paralegal then stated that although her supervising attorney did not represent the suspect with whom the officers were speaking, but did represent the sister of the suspect in an unrelated matter. The officer reported that the paralegal continued to interrupt the investigation by yelling at the suspect that she didn't have to answer any of the police investigator's questions.

In the situation described above, there are several ethical pitfalls and errors. First, if a client were to contact her attorney's paralegal and ask for assistance for her sister, the paralegal should try to reach the attorney and ask for instructions on how to proceed. However, if the attorney doesn't represent the sister and the attorney is not available to instruct the paralegal on how to proceed, then the paralegal should use her best judgment when considering whether to even go to the location. If the paralegal thinks the situation may be related to the attorney's client's situation, or if the paralegal believes there is a high likelihood the attorney will take on the sister as a client, then it might be helpful if the paralegal could witness the situation. If the paralegal does go to the location, the most the paralegal could do would be to observe and make notes.

While at the location, the paralegal could not give any advice regarding a legal matter, even speaking as a friend. Others will give a paralegal's advice more weight more weight than the advice of someone who doesn't work in the legal field. The only advice or information a paralegal may pass along is that of the attorney, and then only if the paralegal is in contact with the attorney at the time of the incident.

The paralegal should also take care not to give the appearance that the paralegal represents the client. Even if the attorney represents the client, the paralegal should not do anything that would give someone the impression the paralegal's presence is in a representative capacity. It should be made clear that any statements made or questions asked by the paralegal are coming from the attorney.

If a paralegal does something unethical, there is the option to file an ethics complaint against the paralegal. If the paralegal is a member of the Paralegal Division, an ethics complaint may be submitted to the current chair of the Professional Ethics Committee. Regardless whether the paralegal is a member of the Division, if the paralegal's actions might be considered the unauthorized practice of law (UPL), a complaint may be filed with the UPL Committee of the Supreme Court of Texas utilizing their online form. And since attorneys are responsible for supervising their support staff, including paralegals, an additional option is to file a grievance against the attorney using the Bar's online form.

In every situation, it is incumbent upon the paralegal to avoid UPL and giving even the appearance of any ethical violation, including the impression that the paralegal is there in any representative capacity.

Ellen Lockwood, ACP, RP, is the Chair of the Professional Ethics Committee of the Paralegal Division and a past president of the Division. She is a frequent speaker on paralegal ethics and intellectual property and the lead author of the Division's Paralegal Ethics Handbook *published by West Legalworks. You may follow her at www.twitter.com/paralegalethics. She may be contacted at ethics@txpd.org.*

ET al.

Online CLE

The Paralegal Division announces new online CLE taped during 2014–2015! **Active and Associate Members** of the Paralegal Division must obtain at least 6 hours of CLE (2 can be self-study) between June 1, 2014 and May 31, 2015 to renew their 2015–2016 membership in the Paralegal Division. The Paralegal Division has added **NEW** Online CLE topics to its online CLE catalog. The Online CLE topics can be viewed on a computer **OR** can be purchased as audio *CEToGo* for iPods, iPhones, or other listening devices. Please see the new topics listed below [**each topic is one hour and will be 1 hour of CLE credit**]:

Impact of the Affordable Care Act on Texas (ACA)
(Approved for TBLS Credit: Civil Trial Law, Family Law and Personal Injury Trial Law)
Kathy Poppitt, Attorney, Austin, TX

Family Violence: Criminal & Civil Aspects
(Approved for TBLS Credit: Family Law and Criminal Law)
Samuel E. Bassett, Attorney and Judge John B. McMaster, Austin, TX

Social Media—What to Get and How to Use It
(Approved for TBLS Credit: Civil Trial Law, Personal Injury Law, Family Law, Criminal Law)
Randy Howry, Attorney, Austin, TX

What's New in the TRCP and How Does it Affect You?
(Approved for TBLS Credit: Civil Trial Law, Family Law, Administrative and Estate Planning & Probate Law)
Jeffrey D. Janota, Attorney, Austin, TX

Transactional Drafting—Early Concepts
(Approved for CLE Credit: Corporate Law)
Howard D. Nirken, Attorney, Austin, TX

Chapter 11 Bankruptcy: Your Role and Everyone Else's
(Approved for TBLS Credit: Bankruptcy Law)
Peter C. Ruggero, Attorney, Austin, TX

Insurance Law Basics: Understanding Policies and the Coverages Provided
(Approved for TBLS Credit: Civil Trial Law, Personal Injury Law)
Suzette E. Selden, Attorney, Austin, TX

New Developments in Intellectual Property Law
(Approved for CLE Credit: Intellectual Property Law)
Bill Wiese, Attorney, Austin, TX

Messing with Metadata
(Approved for TBLS Credit: Civil Trial Law, Personal Injury Law, Criminal Law and Family Law)
Reid Wittliff, Attorney, Austin, TX

Technology in the Courtroom—Tools of the Trade
(TBLS Approved: Civil Trial Law, Criminal Law, Family Law and Personal Injury Trial Law)
Todd Nickle, Attorney, Austin, TX

Can You Hear Me, Can You Hear Me, Now?
(TBLS approved: All areas of Law)
Presented by: Javan Johnson, TBLS-BCP, Longview, TX
Board Certified Paralegal – Civil Trial Law
Prepared by: Sheryl Draker, Attorney, Austin, TX

Effective Use of a Psychological Expert (Panel Discussion)
(TBLS Approved: Criminal Law and Family Law)
Dan Dworin, Attorney, Amy Gehm, Attorney & Dr. Stephen Thorne, Psychologist, Austin, TX

Discovery—Request, Objections and How to Use it to Your Client's Benefit!
(TBLS approved: All areas of Law)
Jonathan Friday, Attorney, Austin, TX

Creating Effective Records Requests
(TBLS approved: Civil Trial Law and Personal Injury Law)
Ronald T. Luke, J.D., Ph.D. and Kacy Turner, MS, CRC, CVE, CLCP, Austin, TX

Prosecutorial Immunity
(TBLS Approved: Civil Trial Law and Criminal Law)
Jonathan Wharton, Attorney, Longview, TX

Preparing Your Client for Civil Litigation
(TBLS Approved: Civil Trial Law, Family Law and Personal Injury Trial Law)
Lucia M. Ceaser, Attorney, McAllen, TX

Online CLE can be found at www.txpd.org under the CLE/Event tab or choose the "CLE Online" button at bottom on website.

Pro Bono Tracking Tool

As a Member of the Paralegal Division (PD), you can now track your pro bono hours as well as your CLE hours in your individual member record on the PD website. This repository can be a very helpful tool in managing both your pro bono and continuing legal education (CLE) hours. We will also be able to use this tool to tabulate and report on the pro bono efforts of our members to the State Bar of Texas. You can enter your hours by going to www.txpd.org, choose the **Members Only-tab**, choose **Directory**, and choose either **View My Pro Bono Records** or **View My CLE Records**, and **sign-in**. To enter the hours for either Pro Bono or CLE, click on "***Add a Pro Bono (or CLE) Item to Your History.***"

ET al.

In Memoriam—Dale W. Hardin

By: Michele Boerder

Dale W. Hardin passed away on September 4, 2014 at the age of 91. A licensed attorney, Dale was instrumental in establishing the Masters Degree for the Lawyer's Assistant Program at Texas State University, and served on the State Bar of Texas Paralegal Committee for many years. He worked on the Joint Task Force of the Paralegal Division and the Paralegal Committee that developed the TBLS paralegal specialty exams. Dale also participated in and led the group of Texas paralegal educators that comprised Texas Forum with the Division and Committee.

Dale's wife, Sandy Keaton Hardin was the State Bar liaison to the Paralegal Division and to the Paralegal Committee, and spent many hours with the Division Board in its early formative years.

What many did not know about Dale Hardin was that he had served in the Marines during World War II in the Pacific, after the war received his law degree and was an FBI special agent. In 1967 he was appointed by LBJ to serve as a Commissioner on the Interstate Commerce Commission and was reappointed to the ICC by President Nixon and President Ford. President Nixon also appointed him as a member of the Administrative Conference of the United States.

Dale was both an attorney and an educator that championed and made significant contributions to the paralegal profession from its inception. Dale was admired by many and he will be greatly missed.

PARALEGAL DIVISION
NOTICE OF 2015—DISTRICT DIRECTOR ELECTION

The Paralegal Division's DIRECTOR ELECTION for District Directors in odd-numbered districts (Districts 1, 3, 5, 7, 11, and 15) will take place **March 24 through April 8, 2015**. **Note:** District 1 will include Place 1 and Place 2; therefore election for two Directors will be held for District 1.

• Beginning on **February 2, 2015** each Elections Subcommittee Chair shall prepare and forward, upon request, the following materials to potential candidates for director in their respective district at any time during the nominating period:

a. A copy of the List of Registered Voters for their district;
b. A sample nominating petition; and
c. A copy of Rule VI of the Standing Rules entitled "Guidelines for Campaigns for Candidates as Director."

• Each potential candidate must satisfy the following requirements:

a. Eligibility Requirements. The candidate must satisfy the eligibility requirements of Article III, Section 3 and Article IX, Section 1 A and Section 4 of the Bylaws and Rule V B, Section 5c of the Standing Rules.
b. Declaration of Intent. The candidate must make a declaration of intent to run as a candidate for the office of director through an original nominating petition declaring such intent that is filed with the Elections Subcommittee Chair in the candidate's district pursuant to Rule V B, Section 5 of the Standing Rules.
c. Nominating Petition. The original nominating petition must be signed by the appropriate number of registered voters and must be submitted to the Elections Subcommittee Chair in such district, on or before **February 20, 2015**.

If you are interested in running for District Director, or need further information regarding the election process, contact the Elections Committee Sub-Chair in your District, or the Elections Chair, Shandi Howard, at Elections@txpd.org.

2014–2015 District Election Committee Sub-Chairs in Odd-Numbered Districts:
District 1: Ruth Conley, ACP – ruthconley@andrewskurth.com
District 3: Patricia L. Howay – pat.howay@justinbrands.com
District 5: Heidi Helstrom, CP – assistant5@tessmerlawfirm.com
District 7: Mary Mitchell – mary.mitchell@uwlaw.com
District 11: Darla Fisher – dfisher@lcalawfirm.com
District 15: Velma Torres – vtorres@ktattorneys.com

NOTICE OF VOTING—March 24–April 8, 2015
All Active members of the Paralegal Division in good standing as of March 24, 2015 are eligible to vote. **All voting must be completed on or before 11:59 p.m., April 8, 2015.**

All voting will be online and no ballots will be mailed to members.

Please take a few minutes to logon to the PD's website and cast your vote for your District's Director. The process is fast, easy, anonymous, and secure.

-Between **March 24th and April 8, 2015** go to www.txpd.org
-In the Member-Only section, click on "Vote"
-Follow the instructions to login and vote

TAPS 2014: The Beat Goes On!

More than 260 paralegals attended the Texas Advanced Paralegal Seminar (TAPS) 2014 held in Austin, TX on October 1–3. This three-day CLE event for advanced level paralegals provided attendees an opportunity to obtain up to 14 hours of CLE from 72 presenters on a broad range of topics. A few of those topics are summarized below.

On Thursday, October 2, Karl Hays gave an excellent presentation on titled "***Appellate Practice: A Paralegal Perspective***". He pointed out that preparing for an appeal case begins at the initial pleading. Mr. Hays spoke of the importance of preserving issues and the record through the rules of civil procedure, various pre-trial motions, discovery objections, voir dire and case law. He stressed that if it is not preserved at the trial level, then it is waived at the appellate level.

Grand Prize Winners—Robin Swattes, Penny Keller, Patricia Simecek and Susan Davis.

J. David Rowe's presentation, ***Legal Holds and Data Preservation,*** spoke to the importance of data preservation in litigation cases. He spoke in detail of the recent Supreme Court decision of *Brookshire Bros v. Aldridge* which clarifies the law on spoliation. This case effectively establishes spoliation procedures, sets out standards and creates guidelines for imposing sanctions.

Randy Leavitt was an excellent speaker, and his topic of ***Unforeseen Consequences of Criminal Convictions*** was very informative. He spoke not only to unexperienced paralegals but the seasoned criminal paralegals as well. Mr. Leavitt gave some excellent pointers on how we can make sure that our clients are protected even after their conviction or plea bargain. He stressed how important it is to know your client and their plans for the future.

Josh Murray presented ***The Devil is in the Details: Preparing your Client and Attorney for Successful Mediation.*** Mr. Murray brought his paralegal with him and so the audience could experience the interaction and team work that goes into making mediation successful. As a mediator himself, he had great tips on how to best prepare your attorney and client to get the hoped-for result in mediation.

Scholarship Winners—Olga Burkett and Christianna Yarbrough.

Charlyne Ragsdale, TAPS Committee, Denise Schumann(TBLS) and Gary McNeil (TBLS).

Sam Bassett and Judge John McMaster presented ***The Rough and Tumble World of Assault/Family Violence.*** This was a great topic that included really helpful information. The attendees enjoyed having the judicial perspective and the information of an attorney that is in the trenches. Mr. Bassett it a wonderful public speaker

TBLS Paralegals enjoying TAPS, Maria Sandford, Martha Jones, Sue Webber, and Kristina Kennedy.

and uses real life examples to make the points he wanted us to take from the presentation.

Keith Maples and Spring Liberty—***Restricted Stock and Stock Options—What Are They and What do you Do with Them***? Incredibly advanced presentation and spot on with information that we needed! This is a presentation that was worth the entire cost of the seminar!

The seminar was structured to provide five different sessions each hour without an overlap of specialty areas. Attendees were given the opportunity to either learn about their area of specialization or to explore new areas with which they had no experience. The speakers, primarily from the Austin legal community, included attorneys and judges, but also other professionals and experienced paralegals.

On Wednesday evening, attendees and vendors gathered for the "With a Little Help from your Friends" welcome social sponsored by **Esquire Deposition Solutions**. The Social gave everyone a chance to acquaint or re-acquaint themselves. Co-Chairs, Susan Wilen and Jennifer Barnes, created a game for the

Susan Wilen and Jennifer Barnes, TAPS Social Co-Chairs

attendees "who best knows the TAPS sponsors." Afterwards, buses shuttled those who wished to explore the City to Austin's Warehouse District, 2nd Street District, and 6th Street.

On Thursday, the vendor hall opened at 7 a.m. and attendees enjoyed a continental breakfast as they strolled through the exhibit area. In order to participate in the grand prize drawing during lunch on Friday, each attendee had to visit all the vendors and receive acknowledgement on their vendor card before the exhibit hall closed. A box lunch was provided to both attendees and vendors during the lunch hour, allowing additional opportunities for information sharing before the afternoon CLE sessions.

Misti Janes, TAPS Chair, Thomas Watkins, Keynote Speaker and Charlyne Ragsdale, Speaker Co-Chair.

On Thursday evening, "The Beat Goes On" social was sponsored by the **Center for Advanced Legal Studies, Hollerbach & Associates, Innovative Solutions, Kim Tindall & Associates, Texas Board of Legal Specialization (TBLS), and US Legal Support**. Prior to the evening dinner, a photo booth was sponsored by the Texas Board of Legal Specialization in celebration of its 20th Year Anniversary. Attendees dressed in 1960s costume celebrating the *The Beat Goes On* era and had a great time taking photos (you may have seen a few on the PD Facebook page). The main event that evening was a grand performance by the Bar & Grill Singers who provided lots of laughter to the audience. The Bar & Grill Singers hail from Austin and are practicing attorneys. They have

Molly Galvez (TBLS).

entertained lawyers and non-lawyers since 1991 and spoof themselves and their profession with clever lyrics set to a variety of musical styles. They needle everything and everyone around the law, including clients, billing practices, legal ethics, bored jurors, and—gulp—federal judges. Following the main event entertainment and a sit down dinner, the attendees were treated to a "candy" bar, again sponsored by TBLS. The evening was a truly a great "hit."

Friday morning started bright and early with attendees enjoying a nourishing breakfast prior to a Leadership Summit, "Finding Your Rhythm—Making the Most of Your Abilities and Your Career" co-chaired by Paralegal Division President-Elect, Erica Anderson, and Paralegal Division Past-President, Debra Crosby at 8:30 am. The program was created as an attendee participation round table. The Paralegal Division leaders led discussion on subjects regarding "Self, The Job, The Profession and the Bottom Line."

After the conclusion of the morning education sessions, the attendee luncheon, *Dance with the One that Brung You*, featured keynote speaker Thomas Watkins, an Austin attorney. What an incredible insight into the paralegal profession! The audience loved Mr. Watkins and was uplifted by his thoughts on where paralegals have come from and where paralegals are going! It was a true inspiration to see an attorney that shared his success with

Frank Hinnant (Innovative Legal Solutions) visiting with Lou Ann Hayes.

Group at Thursday Social.

his paralegal and so openly applauds our contributions! Mr. Watkins was very entertaining and was very well received by the audience.

During the luncheon, Misti Janes, Chair of the TAPS Planning Committee introduced the recipients of the TAPS 2014 scholarship: Olga Burket (El Paso) and Christianna Yarbrough (Fort Worth). Each year, the Paralegal Division presents two educational scholarships to attend TAPS. In order to qualify and be considered for a scholarship, the applicants must be a member of the Paralegal Division, submit a written essay, and provide personal reference letters. Below are words directly from one of the scholarship winners: *"Thank you so much for the scholarship to TAPS. I cannot say enough about this amazing event. The TAPS Committee should be truly proud of all their hard work. My best memories will be the friendships that I made with colleagues from all over the state, the vendor booths, the outstanding presentations during the classroom sessions and the fantastic dinner and entertainment provided by the Bar & Grill Singers (bought two of their CDs). My first TAPS solidified my feeling that being a paralegal is the right career path for me and that being a member of the Paralegal Division is helping me reach my goals. [I am] Looking forward to welcoming everyone to my hometown of Fort Worth for TAPS 2015. See you all soon. Cowboy hats are welcome but not required. Sincerely,* Christianna Yarbrough"

Lastly, the event was capped with drawings for the lucky winners of the grand prize, a $500.00 check for four winners: Patricia Simecek (Temple), Susan Davis (Fort Worth), Penny Keller (Austin), and Robin Swattes (Houston). These prizes

TAPS The Legal Connection Booth.

Charlyne Ragsdale and Misti Janes.

were underwritten by **Rivers McNamara PLLC, Law Office of David A. Sheppard, Saunders Norval Pargaman & Atkins, and Husch Blackwell LLP.**

This event was chaired by Past President Misti Janes and the planning committee included Clara Buckland, Susan Wilen, Rhonda Brashears, Patti Giuliano, Kristina Kennedy, Charlyne Ragsdale, Jennifer Barnes, Star Moore, Stephanie Sterling and Ginger Smith along with Public Members, Frank Hinnant, Patty Ochoa, and Carl Seyer.

TAPS 2014 was a great opportunity to see old friends and make new ones, all the while improving our skill sets and broadening our understanding of the law and our jobs. One of the first-time attendees expressed her take on TAPS: *"I wanted to thank you and all those who helped organize the TAPS Conference. I know a lot of hard work, time and effort went into the Conference. It was my first time to attend TAPS and I was thoroughly impressed, enjoyed the conference, and came back to work with a new list of "to-do's" to improve on things. Also enjoyed the social events, exhibit hall booths, and talking with other paralegals. Became friends with several paralegals I met there, and am looking forward to next year. Wonda Logan"*

Please mark September 30–October 2, 2015 on your calendar now, and plan to join us in Fort Worth for TAPS 2015!! On behalf of the Paralegal Division, thank you to all of the TAPS 2014 sponsors. This event could not have been accomplished without the generous contributions made by legal vendors across the State of Texas. And a special thank you to the sponsors of TAPS 2014!

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ANNUAL MEETING
PARALEGAL DIVISION
State Bar of Texas

SAVE THE DATE!!

Friday, June 19, 2015
11:30 am – 1:30 pm
San Antonio, TX

Featuring as Keynote Speaker
Jonathan Ryan, Executive Director
RAICES (raices.org)

A total of 3 Hours of CLE will be offered in conjunction with the PD Annual Meeting; 2 hours of CLE will be presented prior to Annual Meeting. Details coming soon with online registration beginning May 1, 2015 by credit card, check, or money order @
www.txpd.org

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