CHAPTER 5

Problem Witnesses and Problem Attorneys

The prospect of a problem witness or a problem opposing attorney often creates the greatest anxiety for new attorneys in taking and defending depositions. While new attorneys may feel relatively confident that they can ask questions from their outlines and recognize objectionable questions of a witness, they often are most concerned about what they should do if the witness is especially difficult or the other attorney preys on their inexperience. The following discussion describes several different types of problem witnesses and problem attorneys. This discussion illustrates the difficulties that these witnesses and attorneys pose, and then explains various ways to address these problems.

A. Problem Witnesses

Following is a discussion of seven different common problem witnesses: the Forgetful Witness, the Evasive Witness, the Belligerent Witness, the

Rambling Witness, the Vulnerable or Impaired Witness, the Lying Witness, and the Wacko Witness.

1. The Forgetful Witness

The forgetful witness is either honestly forgetful or deliberately forgetful as a tactic to avoid providing useful responses to your questions. Some witnesses have selective lack of recollection – their memories fade only regarding matters that might harm their cases.

Example:

Q: *Did you attend a meeting last summer with your company's marketing director to discuss the adequacy of your company's product warnings?*

A: *I don't remember.*

Q: *Did you ever attend a meeting to discuss your company's warnings?*

A: *Not that I recall.*

Q: *Did you hear of any such meeting at your company?*

A: *I don't recall.*

Q: *Did you ever communicate any recommendations to your company about its product warnings?*

A: *I can't remember if I ever did that.*

In dealing with such a forgetful witness, you first should decide whether the witness's memory loss helps your case. You may actually prefer that the witness not remember. If so, cement the witness's inability to remember through your questioning so you can neutralize the witness later at trial, and put on the stand witnesses who do recall. The witness's inability to recall also may render the witness effectively unavailable for trial, allowing you to admit certain otherwise inadmissible hearsay, such as statements against interest.

If, on the other hand, you want to further question a forgetful witness, try one or more of the following questioning techniques.

- *Ask the witness why he or she cannot remember.* The witness may offer a very legitimate explanation for the inability to remember; for example, the incident occurred a very long time ago, the witness had no reason at the time to appreciate the later significance of the incident, or the witness was traumatized or suffered from an illness or disability at the time that affected the witness's memory. Other forgetful witnesses may not be able to offer a plausible explanation for their lost memory, which may cause you to suspect that the witness's memory loss is contrived.

- *Find out if the witness ever knew of or remembered the incident.* You may discover that the witness never remembered or knew of the incident. If the witness admits recalling the incident at an earlier time, ask if the witness discussed or likely discussed the incident with someone else at that time.

- *Ask the witness whether documents may exist that would contain information about the incident.* Forgetful witnesses can sometimes direct you to other witnesses or documents that contain the information you are seeking.

- *Ask what the witness's regular routine or practice was and if the witness has any reason to believe the witness acted differently at the time in question.* While forgetful witnesses may claim an inability to remember a specific incident, they may admit to a regular routine or practice and further admit that they cannot think of any reason they or others would have deviated from that practice or routine in regard to the incident in question. This may get you the next best thing to an outright recollection by the witness.

- *Ask the deponent if the deponent can refute the recollection of another witness.* If you know another witness who distinctly recalls the incident, you may get the deponent to admit that the deponent's inability to remember also prevents the deponent from refuting the recollection of other witnesses. When pressed on this point, some deponents find that their memories suddenly return.

- *Try to refresh the witness's recollection with documents, other testimony, or additional facts.* You sometimes successfully can refresh a witness's memory with documents or other testimony. A witness who has no recollection of an incident may quickly recall details when shown a document that the witness authored or received. You also should ask such witnesses if they know of anything else that would refresh their recollection.

- *Try to get an approximation using bracketing techniques.* While a witness may initially express no recollection regarding some event, such as the date of a meeting, further questioning using bracketing techniques (*e.g.*, "Was it more than a year ago?" "Was it less than two years ago?") sometimes can elicit an approximation that may be just as good as a precise recollection for your purposes.

- *Avoid starting your questions with phrases like "do you remember" or "do you recall."* These phrases subtly invite witnesses to respond that they do not remember or recall. Simply ask the question directly (e.g., "Who else was at the meeting?").

- *Request that the witness inform you if the witness's memory improves.* Some attorneys like to instruct forgetful witnesses that they *must* inform the attorneys if their memories improve before trial. Actually, the supplementation obligation under the Federal Rules of Civil Procedure does not apply to ordinary (non-expert) testimony.[88] Consequently, it is more appropriate to *request* that the witness inform you if the witness's memory improves before trial.[89]

One commentator suggested the following line of questions to challenge a deliberately forgetful witness's lack of recollection in a deposition:

---

[88] *See* FED. R. CIV. P. 26(e).

[89] If the matter is especially important, you may consider using interrogatories to follow through. A party does have an obligation to supplement interrogatory responses "if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." FED. R. CIV. P. 26(e)(1)(A).

Example:

Q: You were able to explain the company's accounting procedures in 1963, true?

Q: Then why can't you remember anything about a crucial meeting six months ago?

Q: Were you suffering from an illness at the time?

Q: Was there something about the meeting you don't want to remember?

Q: Was the meeting so distasteful for you that you put it out of your mind?

Q: Do you have trouble with amnesia in your business affairs?[90]

The last of these questions would be fun to ask. The answer would not matter. We discourage using sarcasm, however. The court may not find it amusing, and the witness likely will become even more difficult.

Every once in a while, you encounter a witness with the opposite problem – the witness's memory seems unreasonably detailed. Consider the following deposition anecdote reported to the *American Bar Association Journal*:

> The witness was describing in detail the auto accident he observed through his rearview mirror. The examining attorney asked in an incredulous tone: "You spend a great deal of time looking through your rearview mirror, don't you?" "Yes sir," the witness replied without missing a beat. "I drive a 1971 Ford Pinto."[91]

When this happens to you, probe into how it is that the witness has such a detailed memory of the incident. You may find a very plausible explanation, as in the above anecdote, or a very incredible explanation that may suggest to you that the witness is fabricating.[92]

---

[90] Christopher T. Lutz, *Fudging and Forgetting*, 19 LITIG., Spring 1993, at 10, 15.

[91] *War Stories*, A.B.A. J., Sept. 1996, at 14.

[92] A couple lawyers recounted rather interesting examples of the Forgetful Witness from their past depositions. One witness responded to a question with: "I don't know if I can't remember that right now." Another witness, after two minutes of murmuring with his attorney following a

2. The Evasive Witness

The evasive witness, also known by some as the "weasel," is almost incapable of giving a straightforward and unqualified answer to a deposition question.[93]

Example:

Q: *Did you meet Clarice Starling last night?*
A: *I may have.*
Q: *Was she still alive when you left her?*
A: *I don't specifically recall.*
Q: *Did you and Agent Starling have a disagreement?*
A: *I don't understand what you mean.*
Q: *Didn't you and Agent Starling fight over what you were going to have for dinner?*
A: *Not really.*
Q: *Where do you think Clarice Starling is right now?*
A: *Where do you think she is?*

Deposing an evasive witness can be exhausting because you often have to ask several follow-up questions for every evasive response you get. The key to dealing with this kind of witness is not to let the witness get away with an evasive response. Do not let the witness evade your questions by claiming his or her answer depends on what "is" is. Be tenacious. In follow-up to the evasive responses in the above example, consider asking questions like the following.

Example:

Q *Why do you think you may have been with her? Is there any reason to believe you were not with her?*

---

question responded: "On the advice of counsel, I don't remember." A.B.A. J. Weekly Newsletter (Sept. 1, 2010).

[93] *See, e.g.*, David R. Sonnenberg, *Eliminating Deposition Weasels*, BARRISTER, Winter 1991-92, at 41.

Q: What do you generally recall about her condition when you last saw her?

Q: What part of my question, or what words in my question, do you not understand?

Q: What do you mean, "Not really?" Did you have a fight or not?

Q: It doesn't matter where I think she is. I want to know where you think she is.

Another tactic to use with an evasive witness is to repeat your question verbatim after the evasive response. This sends a not-so-subtle signal to the witness that you know the witness is being evasive and that you do not plan to let the witness get away with it.

One commentator recommends that you deal with an evasive witness by taking the blame for your question (even if it was as clear as day), and then re-asking the question using slightly different words.[94] This can be a bit less confrontational than repeating the question verbatim with no explanation. If done correctly, this tactic can also very strongly signal your displeasure with the witness's evasiveness.

Finally, when you get a clearly evasive response, you might try something along these lines:

Example:

Q: Did you see my client's car before the impact?

A: Well, it all happened so fast and I knew that I had the green light because I was staring at the light the whole time until your client's car smashed into my door and shoved me across the front seat breaking my right arm.

Q: I believe the answer to my question is "yes" or "no." Did you see my client's car before the impact?

---

[94] James W. McElhaney, *Evasive Witnesses*, 20 LITIG., Spring 1994, at 47, 48.

This response also signals to the witness that you know full well that he or she did not answer your question and that you are not going to let the witness get away with it.

3. The Belligerent Witness

Sometimes you encounter a witness who does not like being deposed and does not like you. The belligerent witness is rude and intimidating; the deposition is, to put it lightly, extremely unpleasant.

Example:

Q: *Did you approve your company's purchase of the engines from my client?*

A: *You've got to be kidding! Why would I as CEO have time to do something like that? Have you ever run a company? Obviously not, which explains why you became a lawyer and a pretty pathetic one at that.*

Q: *Who would have approved this purchase?*

A: *This is the third time you've asked me this. It is no wonder you charge by the hour. If you wouldn't keep asking me the same thing over and over, I could get back to my business and you could get back to chasing ambulances and filing frivolous lawsuits.*

Q: *I just want to find out the truth.*

A: *Listen you ingrate, you can't handle the truth!*

Q: *[repeat initial question]*

There are several key points to keep in mind when you depose a difficult witness. First and foremost, keep your cool. Do not let the witness's rude demeanor and insulting comments get to you. Resist the temptation to fire back an insult or to argue with the witness. In most instances, this is a recipe for disaster.

Second, you might try to appeal to a value this kind of witness can appreciate. Some belligerent witnesses will respond to a crude appeal to some sense of fairness.

Example: *You were the one who brought this lawsuit. I am entitled to find out your story just as your attorney is entitled to find out my client's story in his deposition next week. I expect my client to answer your attorney's questions and I expect you to answer mine. [Repeat initial question.]*

Other belligerent witnesses sometimes can be persuaded to cooperate by appealing to their self-interest – namely, their wallets and their time. You might tell the witness that the witness's lack of cooperation is costing the witness more money by prolonging the deposition and that if the witness does not want to tell his or her story, there is no way your client will be able to consider a settlement offer. Additionally, let the witness know that you are willing to complete the deposition no matter how long it takes. Hostile witnesses sometimes will clean up their acts just to get their depositions completed.

Example: *I was expecting that I would finish this deposition in about three hours. In light of your refusal to cooperate, it is now apparent that this will take the rest of the day, at least. I am taking a five-minute break to go back to my office and cancel my other appointments for the day. You may want to call your office and do the same.*[95]

Third, if the boorish behavior continues, take a break and talk to opposing counsel. Chances are opposing counsel may agree with you that the witness is behaving very badly, even if counsel will not say so directly. You may be able to convince opposing counsel to talk to the witness and get the witness to behave.

[95] Prior to the 2000 Amendments to Rule 30, which imposed a presumptive seven hour time limit on each deposition, an examining attorney could threaten to continue the deposition of a hostile witness for multiple days. In fact, you can still probably threaten this since the Advisory Committee Notes state that if a deponent delays the examination, the court may authorize extra time. The hostile witness has to think long and hard about whether you will ask for and get this extra time.

The witness is likely to be more inclined to curtail the witness's abusive behavior at the private request of the witness's own attorney than at your direction.[96]

Fourth, consider videotaping the deposition. Some of the most belligerent witnesses quickly clean up their acts when they are being videotaped.

Finally, if none of the above measures succeed, ask the court for assistance. Before you do, however, make sure you have a good record of the witness's inappropriate conduct, especially if the offensive conduct was largely nonverbal.

4. The Rambling Witness

At some point, you will encounter the rambling witness. The witness's rambling may be a product of nervousness or it may be a deliberate ploy to muddy the record. It also may be because the witness is a genuine motor-mouth. The rambling witness may be good and bad. Such a witness is likely to spew forth a fountain of information, some of which may help your case. On the other hand, it usually is very difficult to get the kind of succinct answer from such a witness that you can use for later impeachment or that you may need to support a dispositive motion.

Example: *Q:* *Mr. Claven, did you deliver the mail to the residents on your mail route on the afternoon of December 1st of last year?*

A: *I remember that Ma's birthday was on December 2nd and that I had to get her a gift. Since Carla and Diane didn't have any good ideas, Norm and I went out shopping on the 1st before I was supposed to do my mail route. We looked all over and couldn't*

[96] Attorneys representing such hostile witnesses can be sanctioned for failing to curtail their client's behavior. A federal court severely criticized and sanctioned an attorney for failing to intervene and stop his client's abusive behavior in a deposition in which his client used the f-word no fewer than 73 times. The court concluded that by sitting idly by, and even chuckling at his client's hostile behavior, the attorney endorsed and ratified the misconduct which was the functional equivalent of advising the behavior under Rule 37(a)(5)(A). GMAC Bank v. HTFC Corp., 248 F.R.D. 182 (E.D. Pa. 2008).

> *find anything, so we went to have a cold one at "Cheers." Sammy suggested that I get her a big box of candy from the candy shop at the end of my route. Did you know that in certain African tribes, sons gave their mothers glazed insects as a token of their affection? Well, I would have remembered the candy if Norm hadn't challenged me to a game of pool against a couple of lovely ladies. After a dozen games and a dozen beers, the ladies wanted me to escort them home. Most women can't resist my U.S. Postal Service uniform. Um, now what was your question again?*

Following are several tips for dealing with a rambling witness if you are the examining attorney.

- *Let the witness get out the rambling narrative, and then go back and ask a number of narrow, leading, follow-up questions.* Rather than try to force the rambling witness to follow your pre-planned outline, you may want to ask some very open-ended questions to get the witness to ramble for awhile (e.g., "What happened next?"). After you get out the lengthy narrative, go back and ask a series of more closed-ended, cross-examination style questions that call for a simple "yes" or "no" response to pin down some specific points from the narrative.

- *Politely interrupt the witness's long narrative response.* Sometimes you need to interrupt the witness's long narrative response to ask a specific question or to prevent the witness from heading off on some long irrelevant tangent. Just be careful how you do this because you may not want to stifle the witness, who may volunteer helpful information while rambling. If you politely interrupt and then invite the witness to continue his or her answer, the witness is unlikely to be offended. One device is to simply hold up your hand. Another device is to confront the witness with a document that reins in the testimony.

- *Employ frequent summaries of the witness's testimony and get the witness to agree to your summaries.* Another technique for dealing with the rambling witness is to let the witness ramble for a time, assimilate the information that you receive, and then ask the witness to concur with several summary questions you craft.

- *Object to the witness's rambling answers as non-responsive.* At some point, you may need to object that the witness's rambling narrative is not responsive to your question and move to strike the testimony. Your failure to make this objection at the deposition may result in a waiver of the objection.

The rambling witness is usually more of a problem for the defending attorney than the examining attorney. The defending attorney often is a nervous wreck by the end of a rambling witness's deposition because the attorney never knows what the witness will say next.[97]

In defending the deposition of a rambling witness, you should remind the witness at breaks not to volunteer unrequested information (assuming that the courts in your jurisdiction do not prohibit conversations with the witness during such breaks). The best way to deal with this type of witness is by preparing well, so that the witness understands that rambling is a bad strategy that may hurt the witness's case. This preparation should include actual practice and critique.

5. The Impaired or Vulnerable Witness

You may on occasion depose a witness who is vulnerable or suffering from an illness or disability that adversely affects the witness's ability to testify but does not completely preclude the witness from testifying. A witness suffering from a nervous disorder, for example, may not be able to testify longer than about

[97] One of the authors took the deposition of a witness who could not answer a question in less than four pages of testimony. At one point, the witness unexpectedly veered off on an unrelated point and proceeded to discuss her initial conversation with her counsel, including her counsel's comments about various problems with her case. Her counsel, bored with her endless rambling, was looking at some papers and failed to notice the testimonial detour. Once he realized what his client was talking about, he nearly fell out of his chair trying to cut her off. Needless to say, the rambling witness can cause fits for the defending attorney.

two hours at a time. You should schedule such a deposition for two hour increments over several consecutive days.

If you encounter an impaired deponent, you want to make sure that the testimony you receive is reliable and not tainted by the witness's condition. You will likely want to take more frequent and longer breaks than usual and make it clear to the witness on the record that you are willing to break as needed. You also should get the witness and the witness's attorney on the record to agree to tell you if the witness is unable to continue answering your questions truthfully and accurately. While such an instruction will not necessarily win the day if the witness later claims that he or she was unable to make such a determination during the deposition, the witness's and counsel's failure to stop the questioning is at least some indication that the witness was, in fact, able to continue and that the witness's deposition testimony is reliable.

You also may need to depose a witness who is very ill and who is homebound or admitted to a hospital. In this situation, you may want to consider taking the deposition in the presence of a physician who not only can stop the questioning and attend to the witness if necessary, but who also can later verify that the witness was lucid and coherent during the examination.[98]

6. The Lying Witness

Sometimes you encounter a witness who lies, either in general or regarding selective key points. The tactical call you must make when this happens is whether you let the witness know that you are aware the witness is lying by impeaching the witness in the deposition, or whether you cement the lie and wait to impeach the witness at trial. If the witness is unlikely to provide much useful information, it may be best to save exposure of the lie for trial, where you then can discredit the witness in front of the jury or judge.

---

[98] During the deposition of an elderly woman who was the plaintiff in a product liability lawsuit, the woman, who was very ill and had to be deposed in her home, developed a spontaneous and uncontrollable nosebleed. After several minutes of a lot of blood, panic, and chaos, it was clear the deposition could not continue. Now, whenever a lawyer boasts about making a witness cry in a deposition, this lawyer curtly replies: "Big deal. Did you make the witness bleed?"

On the other hand, there may be good reasons to let the witness know in the deposition that you fully realize the witness is lying. One reason to do this is to induce a witness who has useful information to be truthful through the remainder of the deposition. If you confront the witness with an early lie, you may deter additional future lies, as the witness may suspect you will be able to identify them, too. Another reason to discredit the witness during the deposition is to improve your settlement posture. Remember, most cases never make it to trial.

7. The Wacko Witness

Sometimes you end up deposing a witness who is, well, wacko. Here are two real-world examples:

Example: *A brother and sister were fighting over the division of a large family inheritance. The brother got so angry that he refused to look at his sister during his deposition. The situation intensified to the point that the brother had to walk backwards into the deposition room so he would not have to see his sister. The court eventually had to order the brother to face the examining attorney at which point the sister put her face as close as she could to her brother's face just to make him angry.*[99]

* * *

Example: *In a case involving a claim of sexual harassment, the plaintiff returned to the deposition room the second day of her deposition, walked over to her alleged harasser, pulled out a knife, and proceeded to stab him multiple times. The defendants moved to dismiss the plaintiff's suit based on her outrageous behavior. The court denied the motion reasoning, in part, that it could not dismiss the case because the*

[99] *See* Shartel, *supra* note 28, at 15.

plaintiff had not previously been ordered not to stab anyone.[100]

We really do not have any useful advice for how to deal with the wacko witness other than to be sure you put everything on the record and involve the court if things really get nuts. Generally, these witnesses just make for interesting war stories.

B. Problem Attorneys

Problem witnesses are not the only ones who can turn a deposition into an intensely unpleasant experience. Problem attorneys also create unique challenges. The following describes methods for dealing with seven common problem attorney types: the Coach, the Testifier, the Objector, the Intimidator, the Professor, the Repeater, and the Timekeeper.

1. The Coach

The coach is an attorney who skillfully tells the witness how to answer your questions. These attorneys coach witnesses by signals, direct conversations, speaking objections, instructions, and questions. Some of these methods are always improper. The rest can be.

The coach uses nonverbal or verbal signals. Nonverbal signaling to a witness can take many forms – a nod of the head, a hand on the arm, pointing at a document, tapping a pen, coughing. Regardless of its form, all nonverbal signaling is improper and unethical. Sometimes this coaching can be difficult to detect if the attorney and witness are sophisticated enough. If you happen to witness nonverbal signaling, object to the conduct on the record and admonish counsel to cease the improper conduct. Make sure to verbally describe the signaling conduct or else it will not appear on the record.

Example: *Let the record reflect that after I asked my last question, and before the witness answered, counsel*

[100] McKenna v. Ward, 1990 WL 71471, at *1-2 (S.D.N.Y. May 21, 1990).

signaled the witness by pointing to a provision on page two of the document.

Make your objection the first time you observe the improper signaling behavior unless it is on a trivial matter. If the improper signaling continues, consider suspending the deposition and videotaping the rest of it.[101] Videotaping often puts an end to nonverbal coaching because the coach realizes his or her signals are being recorded for a judge to observe. If videotaping fails, go to court and ask for relief.[102]

The coach also may try to verbally signal the witness. This can take several forms. One of these is a direct conversation with the witness. Counsel may insist on a break in the deposition to confer with the witness. As discussed in Chapter 3, courts are split over whether counsel can privately confer with a witness during a break in the deposition. If the courts in your jurisdiction follow the ruling in *Hall v. Clifton Precision*,[103] counsel has no such right and you are entitled to know of any such discussions between counsel and the witness occurring during a break.

Even if the courts in your jurisdiction do not follow *Hall*, you should still try to prevent counsel from conferring with the witness while a question is pending, except in special circumstances, such as a potential privilege assertion. You also can insist on finishing a particular line of questioning before a break. If, however, the witness and opposing counsel get up and leave before you finish your line of questioning, there really is not much you can do about it. If your

---

[101] Riley v. Murdock, 156 F.R.D. 130 (E.D.N.C. 1994).

[102] In a recent case, counsel brought a motion for sanctions against an opposing attorney for allegedly signaling the witness by tapping her foot under the table. The lawyer taking the deposition was questioning the witness remotely by video when the lawyer's paralegal, who was at the deposition to handle the exhibits, heard some noise and looked under the table and saw the opposing attorney tapping the witness's shoe with his shoe. The paralegal snapped a photo under the table with his phone and sent it to the lawyer taking the deposition. Plaintiff's Response to Defendant's Motion for Protective Order Related to Resumption of Connie Dennis's Deposition, Motion for Sanctions, and Motion for Termination of Pro Hac Vice Status of Kenneth Engerrand at 2-3, Halmos v. Ins. Co. of N. Am., No. 08-10084 (S.D. Fla. July 30, 2010). You may consider using a cell phone camera to capture nonverbal signaling in a deposition.

[103] 150 F.R.D. 525, 531-32 (E.D. Pa. 1993).

opposing counsel insists on an inordinate number of breaks, you can stop the deposition and seek relief from the court.

To minimize the risk of damage from coaching during breaks, do not start a critical set of questions close to a logical break time. Instead, take a break right before you begin these questions. It will be more difficult for the opposing counsel to request another break right after you have returned from one. Finally, if the witness confers with his or her attorney while a question is pending, consider asking the deponent why he or she needed to confer with counsel or whether this conference refreshed the witness's recollection.

Counsel also may try to coach a witness through speaking objections, instructions, and questions. A speaking objection is an objection accompanied by a speech from counsel clearly intended to signal the witness (e.g., "Objection, calls for speculation. The witness could not possibly know the answer to this question because he did not attend any meeting in which this topic was discussed, and he did not have any conversations with anyone about this topic. He, therefore, could not know why his employer took this action."). These objections are improper. Rule 30(c)(2) expressly states that objections shall be stated concisely and in a non-argumentative and non-suggestive manner. Numerous courts have condemned such speaking objections.[104] If opposing counsel makes this kind of objection, admonish counsel that the objection is plainly improper. If the conduct persists and is compromising your ability to fairly depose the witness, go to court.

Some attorney coaches use instructions to signal a witness. One common example is a directive that counsel makes to the witness after a question is posed to answer "only if you know." This also is a clearly improper attempt to coach the

---

[104] *See, e.g.*, Quantachrome Corp. v. Micromeritics Instrument Corp.,189 F.R.D. 697, 700 (S.D. Fla.1999); Armstrong v. Hussmann Corp., 163 F.R.D. 299, 302-03 (E.D. Mo. 1995); O'Brien v. Amtrak, 163 F.R.D. 232, 236 (E.D. Pa. 1995) ("Defendants' counsel spoke almost as much, if not more, than the deponents did."); *see also* Howard v. Offshore Liftboats, LLC, Nos. 13-4811, 13-6407, 2015 WL 965976, at *8 (E.D. La. Mar. 4, 2015) (speaking objection is improper regardless of whether the witness is actually influenced; sanctions imposed), magistrate op. aff'd, 2015 WL 3796458 (E.D. La. June 18, 2015); Tower Mfg. Corp. v. Shanghai Elec. Mfg. Corp., 244 F.R.D. 125, 130 (D.R.I. 2007) (imposing attorney's fees and ordering second Rule 30(b)(6) deposition through written questions of defense witness when defense counsel spoke for roughly 32% of the deposition).

witness.[105] If this happens in your deposition, you can object to the coaching. Alternatively, you can remind the witness of your early instructions.

Example:

A: [Attorney: Answer only if you know.]
Q: Do you recall at the start of this deposition that I told you to tell me if you do not know the answer to any of my questions?
A: Yes.
Q: And you agreed?
A: Yes.
Q: Fine, let me again remind you to do this. That way, your counsel won't have to try to coach you any more.

Sometimes more sophisticated coaches will assert an objection based on "lack of foundation" to signal to the witness that the witness does not know the answer to your question. While such an objection is normally legitimate, it can be used improperly as a way of signaling the witness to deny any knowledge of the answer.

Coach attorneys also may respond to your question by stating that they do not understand the question. This also constitutes improper coaching. As the court noted in *Hall*, it is immaterial whether counsel understands the question.[106] If the attorney takes this approach, turn to the witness and ask if the witness understood the question. You also can remind the witness to tell you if he or she does not understand a question and note that this should eliminate the need for counsel to try to coach the witness.

---

[105] *See* Shartel, *supra* note 28, at 12; *see also* Lund v. Matthews, No. 8:13CV144, 2014 WL 517569, at *5 (D. Neb. Feb. 7, 2014) (second deposition allowed where counsel's speaking objections impeded the fair examination of the plaintiff; counsel must refrain from commentary on his objections and may not add "if you know" or "to the best of your knowledge" after an objection); Cincinnati Ins. Co. v. Serrano, No. 11-2075, 2012 WL 28071, at *5 (D. Kan. Jan. 5. 2012) ("Instructions to a witness that they may answer a question 'if they know' or 'if they understand the question' are raw, unmitigated coaching, and are *never* appropriate.") (emphasis in original).

[106] 150 F.R.D. at 530 n.10 (condemning this "favorite objection or interjection" of lawyers).

Alternatively, coach attorneys sometimes will rephrase your question for the witness. The attorney usually does this to substitute a more desirable question. This is improper. If this happens, insist on an answer to your question and have the court reporter read it back. Tell the witness that he or she will have an opportunity to answer opposing counsel's questions after you have completed your examination.

Often the most problematic attorney coach is the one who only coaches the witness on the few really key questions in the deposition and sits back silently the rest of the time. Because this attorney does not persist in the improper conduct, it becomes almost impossible to seek any relief from the court.[107] The damage is already done after the coaching on the key questions. Unfortunately, this highly selective coaching can prevent you from getting the responses you need to support a dispositive motion or later impeachment. It is difficult to prevent this type of selective coaching. One way to prevent this is to consider mixing up the organization and sequence of your questions so that it becomes more difficult for opposing counsel to detect and to coach the witness regarding those key questions.

2. The Testifier

The testifier attorney does not need to coach the witness how to answer a question. Rather, this attorney simply answers the questions for the witness. The testifier may do this by answering the question before the witness has given any response, by supplementing the witness's answer with additional information, or even by contradicting the witness's answer.[108] Sometimes counsel defending a deposition will make a brief remark to clarify an obvious error the witness made (e.g., the witness said "1988" when she clearly meant "1998"). This sort of testimony by counsel is usually not problematic and can even help avoid a confusing record. The testifier attorney is a problem when he or she testifies to

[107] If, however, there are a number of depositions to be taken, and you can show some pattern on the part of opposing counsel, you may consider seeking a protective order regarding coaching conduct prior to taking additional depositions if the coaching, albeit infrequent, materially interferes with your ability to get the information you need.

[108] *See, e.g.*, Quantachrome Corp., 189 F.R.D. at 700 n.3 (there is no "better example of coaching than counsel's telling a witness, 'No, you are incorrect. The correct answer is . . . .'").

change the substance of the witness's testimony or to significantly embellish the testimony.

If you encounter the testifier, you might respond in a couple of ways. First, after the attorney has testified, you can turn to the witness and ask: "Do you agree with the testimony your attorney has just given?" Sometimes this not-so-subtle message to the attorney is enough to stop the improper conduct. If this does not work, you should admonish counsel that you are there to get the witness's testimony, that the attorney's conduct is clearly improper, and that if the attorney persists in testifying for the witness, you will stop the deposition and go to court to get a protective order.

3. The Objector

The objector has never met a question he or she did not find objectionable. While this attorney may use objections to coach the witness, as discussed above, this type of attorney often interposes numerous objections simply to rattle you and to frustrate your examination.

How do you deal with the objector? Numerous courts have held that it is improper to make an excessive number of objections in a deposition.[109] The rules clearly contemplate that counsel should usually only make those objections that would otherwise be waived if not made at the time of the deposition. The Advisory Committee Notes expressly state that counsel even can be sanctioned for making an excessive number of legitimate but unnecessary objections.[110]

---

[109] *See, e.g.*, Van Pilsum v. Iowa State Univ. of Sci. and Tech., 152 F.R.D. 179, 181 (S.D. Iowa 1993) (sanctioning counsel for, *inter alia*, groundless objections that were mere "disputatious grandstanding"); Thomas v. Hoffman-La Roche, Inc., 126 F.R.D. 522, 524-25 (N.D. Miss. 1989) (sanctioning counsel for averaging more than 45 objections each hour); *see also* Todd v. Precision Boilers, Inc. 2008 WL 4722338, *1-*4 (W.D. La. Oct. 24, 2008) (finding defense counsel's constant interruptions to have obstructed the orderly and efficient taking of meaningful depositions, and imposing costs on defense counsel for doing so); *see also* Niles v. Rodman, No. 15-cv-00296, 2016 WL 153123, at *5 (D. Colo. Jan. 13, 2016) (excessive speaking objections warranted appointment of special master to preside over depositions).

[110] *See* 1993 Advisory Committee Notes, FED. R. CIV. P. 30.

If you encounter the objector in one of your depositions, it is best to admonish him or her early in the deposition. That approach may be enough to solve the problem. If not, and if the objections become so frequent and disruptive that they effectively inhibit your ability to conduct your examination, then tell counsel that the excessive objections are improper and that you intend to stop the deposition and to go to court if the conduct persists.

When the objector cannot think of a legitimate ground for an objection, the offending attorney frequently will resort to objections "to the form of the question." If this happens, you are entitled to ask, and the objector is obligated to tell you, what about the form of the question is objectionable.[111] If you challenge the objector the first time he or she makes such a vague objection, you may be able to cut off future objections of this sort.

As a next to last resort, before going to court, you might try offering the following stipulation to the objector:

Example: *Since you apparently find all of my questions to be objectionable, I will stipulate that you objected to every question I will ask in this deposition on every ground available under the rules. That way, you need not continue interrupting my examination.*

While this may not be your first option for dealing with the objector, you might find such a stipulation worthwhile if it will allow you to complete your examination without interference and without a trip to the court.

Finally, the objector sometimes will object and improperly instruct the witness not to answer your question. As discussed in Chapters 3 and 4, there are very limited situations in which it is proper to instruct a witness not to answer a question. If opposing counsel improperly instructs a witness not to answer your question, you may want to argue with counsel about the propriety of the instruction to try to avoid the need for you to go to court. Ask counsel to recite the

---

[111] Mayor v. Theiss, 729 A.2d 965, 976-77 (Md. 1999); *see also* Security Nat'l Bank, 299 F.R.D. at 601-04 (objections as to "form" are improper and "will invite sanctions if lawyers choose to use them in the future"); *but see* Meyer Corp. v. Alfay Designs, Inc., No CV 2010 3647, 2012 WL 3536987, at *4 (E.D.N.Y. Aug. 13, 2012) (admonishing counsel to simple state "objection as to form" unless elaboration is requested by examining counsel).

basis for the instruction and make a record that the witness is refusing to answer based on counsel's instruction. You also may want to ask the witness if he or she could answer your question if allowed. You do not want to go to court, get an order compelling the witness to answer, resume the deposition, re-ask your question, and only then find out the witness could not answer it anyway. Alternatively, you may consider moving on and coming back to the same topic with a very similar question. Counsel might not instruct the witness in response to the reformulated question.

4. The Intimidator

Sometimes you have the displeasure of encountering the intimidator (a/k/a the jerk). As the following accounts demonstrate, this attorney can be the defending attorney or the examining attorney. Here are a couple of real life examples of attorneys playing this role in defending depositions.

Example: *The Delaware Supreme Court imposed sanctions against a Texas attorney for abusive conduct in defending a deposition as illustrated by the following exchange between counsel:*

Attorney A: *He's not going to answer that. Certify it. I'm going to shut it down if you don't go to your next question.*

Attorney B: *No. Joe, Joe - -*

Attorney A: *Don't "Joe" me, a--hole. You can ask some questions, but get off of that. I'm tired of you. You could gag a maggot off a meat wagon.*[112]

* * *

[112] Paramount Commc'ns Inc. v. QVC Network Inc., 637 A.2d 34, 53-54 (Del. 1994).

Example: *This exchange occurred at a Minnesota deposition:*

Attorney A: *If you are going to hand the complaint to him to coach him we are going to see the judge.*

Attorney B: *Just get your foul odious body on the other side.*

Attorney A: *Then don't show the witness anymore –*

Attorney B: *I'm giving the witness the complaint.*

Attorney A: *You're not entitled to coach the witness any further, you're not entitled to --*

Attorney B: *Don't use your [language omitted] tricks on me.*[113]

* * *

Example: *The Florida Supreme Court suspended and sanctioned an attorney who went on a tirade during a deposition ordering that the attorney could not attend depositions alone for two years unless the depositions were videotaped and further ordering that the attorney receive mental health counseling. When the opposing lawyer attempted to stick an exhibit sticker on the attorney's laptop, the attorney*

[113] Attorney B received a public reprimand from the Minnesota Supreme Court. In re Williams, 414 N.W.2d 394, 397 (Minn. 1987). In another deposition in a personal injury case, a Minnesota attorney reported that opposing counsel angrily said: "Your client doesn't have any injuries. I'll show you injuries." The lawyer then removed his shirt to show everyone a scar on his shoulder. Barbara Jones, *How to Deal With Difficult Depositions*, MINN. LAWYER, Aug. 29, 2005, at 1. Other attorneys have been sanctioned for making gender-based insults at a deposition. *See, e.g.*, Principe v. Assay Partners, 586 N.Y.S.2d 182, 184 (App. Div. 1992) (sanctioning attorney for calling opposing counsel a "little lady," "little girl," and "little mouse"). *See also* The Rottlund Co., Inc. v. Pinacle Corp., 222 F.R.D. 362, 380-81 (D. Minn. 2004) (sanctioning attorney and requiring attorney to send written apology to deponent for trying to embarrass the deponent by asking if he liked his job and planned to stay with it when the attorney knew the deponent's job was about to be eliminated).

ran around the table, forcefully leaned over and lambasted the opposing lawyer in a tirade, tore up the evidence sticker and tossed it at the opposing lawyer.[114]

Attorneys can also play the role of intimidators in taking depositions:

Example: *A federal court in Iowa noted this "great moment in legal oratory" from a deposition:*

Attorney A: *Please sit down, do not hover over the witness.*
Attorney B: *Stick it in your ear.*[115]

* * *

Example: *A friend of one of the authors was defending a very contentious deposition. The witness indicated that she wanted to take a break to use the restroom. When she returned, the examining attorney alleged that the witness did not really use the restroom and that she only wanted to break to confer with her attorney. When the witness disputed the examining attorney's allegation and the examining attorney refused to accept her account, the defending attorney noted on the record that she accompanied the witness into the women's restroom, that she occupied the stall next to the witness and that she*

[114] Debra Cassens Weiss, *Lawyer Suspended for Deposition Tirade: Taped Incident Is Instructive. Court Says*, A.B.A. J., Aug. 2, 2010. The out-of-control attorney's own consultant told him to take a Xanax and the court reporter protested that she could not "work like this." Calling the attorney's conduct "an embarrassment to all members of the Florida bar," the Court suggested that members of the bar and law students view the video of this incident in a course on professionalism as a glaring example of how not to conduct oneself in a legal proceeding. *Id.*

[115] Mercer v. Gerry Baby Prods. Co., 160 F.R.D. 576, 577 (S.D. Iowa 1995).

heard the distinct sound of someone using the facilities in the witness's stall.

An intimidator attorney may be a party in a case.

Example: *The plaintiff, an attorney, sued U-Haul claiming he was assaulted by a company manager at a rental office. The following example is one of the plaintiff's many angry outbursts at his deposition:*

"You're so scummy and so slimy, such a perversion of ethics and decency because you're such a scared little man, you're so insecure and so frightened and the only way you can impress your client is by being nasty, mean-spirited and ugly little man, and that's what you are. That's the kind of prostitution you are in."[116]

* * *

Example: *An attorney representing himself, with the assistance of his son, was disciplined for threatening in a deposition to take the questioning attorney's mustache off his face, to give opposing counsel the beating of his life, to slap him across the face, and to break his head.*[117]

Intimidators do not limit their outrageous behavior to verbal insults and tirades.

Example: *An attorney for a disposable lighter manufacturer was sanctioned by a federal court for flicking a lighter in the face of a woman at a deposition. The*

[116] Corsini v. U-Haul Int'l, Inc., 630 N.Y.S.2d 45, 46 (App. Div. 1995).

[117] Office of Disciplinary Counsel v. Levin, 517 N.E.2d 892, 895 (Ohio 1988) (per curiam).

woman brought suit against the company claiming that one of the manufacturer's lighters caused a fire that killed her two children. While the manufacturer's attorney claimed he was just testing the lighter, the judge believed the attorney was really testing the plaintiff.[118]

* * *

Example: *One of the authors once deposed a court reporter who happened to be a plaintiff in a product liability case (and no, she did not transcribe her own deposition). When the author asked the court reporter if she had ever been involved in a prior lawsuit, the reporter responded that she was supposed to be a witness in a civil battery suit that settled. The suit arose out of an incident in which an attorney at a deposition she was reporting got angry with the opposing attorney and stood up and punched the other attorney in the face.*

As these examples demonstrate, intimidators use a variety of tactics. The intimidator may insult you or your client. The intimidator may use subtler tactics to harass and intimidate by, for example, standing over the witness after handing the witness a document. The intimidator may raise his or her voice or point a finger at the witness to try to scare the witness. All of these tactics are designed to intimidate your witness and throw you off your game plan. The intimidator may hope that you will rush your questioning to get through the deposition more quickly.

How do you deal with such offensive behavior? Here are a few recommendations.

- First, and perhaps most important, keep your cool. Do not let this attorney goad you into the very kind of insulting, verbal battle the

[118] Marshall Dennehey, *Judge: Flick of a Bic Was Flip, Even Cruel*, NAT'L L.J., Mar. 25, 1996, at A5, A5.

intimidator relishes. Usually, keeping your cool is itself disarming. Moreover, remember that you might be submitting a copy of the transcript to a judge.

- Make a verbal record of the offensive conduct or tone of voice. Doing so may deter additional similar abuse, and it will help provide you with evidence in the event you need to seek a court order.

- Do not let the attorney rush your examination. Take your time, stick to your game plan, and try not to get flustered.

- Take a break. Let the intimidator calm down. If that does not work, then be more direct. Take another break, telling the intimidator: "I see you have lost your composure. Let's resume the deposition in another fifteen minutes, so you can take time to regain control of yourself and proceed in a civil manner." You are basically giving the other attorney a "timeout." This kind of response can be very effective because the intimidator does not know how to react. By refusing to take the bait and engage this kind of attorney, you often can eliminate or reduce the offensive behavior.

- Videotape the deposition. In fact, if you anticipate this kind of rude behavior, you probably should plan from the start to videotape the deposition.

- Use humor to disarm the intimidator. This is not the reaction the intimidator desires or expects. Following are a couple of examples of this sort of disarming humor reported by a Minnesota lawyer.

Example: *A deposition was being conducted in prison of a man who had killed another man by beating him with a pool cue. As the examining attorney began to grill the convict and tempers flared, the defending attorney stopped the deposition, took the examining attorney to the corner of the room and reminded him: they were in prison; there was no guard present; the*

door was locked; the person he was now making angry had already killed one person over this incident; and he was not going to keep this person from making it two. Civility quickly returned.

* * *

Example: *In another deposition, the examining attorney was getting hotter and hotter under the collar. The other attorney leaned over the table and handed a pot of coffee to the examining lawyer while remarking: "Try the decaf."*

- Go to court. If you have to go to court to curtail the intimidator's conduct and you do not have a videotape of the deposition, you might consider getting an affidavit from the court reporter detailing the opposing lawyer's actions. If the attorney was loud and boisterous, you might try to get the court reporter's audiotape of the deposition to provide to the court.[119]

While dealing with an intimidator can truly try your patience, take solace in knowing that this type of abusive conduct can result in hefty monetary sanctions against the attorney, or even dismissal of the lawsuit in its entirety.[120] In one case, a federal court in Texas sanctioned an attorney for using vulgar language in a deposition. The court fined the attorney $7,000, calculated at the

[119] This audiotape also can come in handy if the opposing counsel or witness accuses you of raising your voice.

[120] *See, e.g.*, Crawford v. JPMorgan Chase Bank, N.A., 242 Cal. App. 4th 1265, 1267, 1271 (2015, as modified on denial of rehearing Jan. 4, 2016) (lawsuit terminated as sanction where attorney representing himself threatened defendants' counsel with pepper spray and a stun gun at a deposition).

rate of $500 to $1000 for each pejorative word or threat.[121] It's costly to be a jerk.[122]

5. The Professor

The professor is a close relative of the intimidator. This attorney likes to critique your deposition skills and to lecture you regarding your glaring inadequacies. The professor will contrast your meager deposition experience ("Is this your first deposition?") with his or her own vast experience ("I was taking depositions when you were just a glint in your father's eye.") and incomparable expertise ("I am about to be inducted in the Depositions Hall of Fame.").

You can react to this type of attorney in different ways. There is a natural tendency to get defensive and try to justify your experience and competence. This typically gets you nowhere and is just the kind of response the professor desires. Another equally problematic response is to let the professor dictate how you conduct the deposition. (Having said this, there are some situations where opposing counsel may make legitimate suggestions to you about how you might handle some matter such as dealing with various documents or asking about a particular fact. Just because the suggestion came from the opposing attorney does not mean it is necessarily flawed or mean-spirited.) The best initial response is to ignore the professor. If, however, the professor persists, try a mixture of humor and sarcasm, something like the following:

Example: *I think I'll just try to stumble through this this time. Perhaps you can give me a critique after the deposition.*

---

[121] Carroll v. Jaques, 926 F. Supp. 1282, 1293 (E.D. Tex. 1996).

[122] In one case, a judge imposed a creative sanction on an attorney who resorted to name-calling and cursing in a deposition ordering the attorney to sit down for a meal with his opponent. The judge said that she hoped that perhaps the adversaries in this case can be reinspired to achieve the Shakespearean vision and aspirational goals of the very rules of professional conduct by which counsel have pledged to abide. Order on Defendant's Motion for Protective Order and Sanctions at 1, Huggins v. Coatsville Area Sch. Dist., No. 07-4917, ECF No. 62, Order (E.D. Pa. Sept. 17, 2009).

This sort of response often will silence the professor and allow you to get on with your deposition without a running critique of your performance.

6. The Repeater (a/k/a Déjà Vu)

The repeater attorney, also known as Déjà Vu, generally asks legitimate questions in a deposition. The problem is the attorney asks the same questions over and over again in an attempt to elicit a "better" answer, to generate some inconsistencies in the witness's testimony, or simply because the attorney is disorganized.[123]

How do you handle this problem attorney? You might object to the repeated question on the ground it was "asked and answered" or, more properly, unreasonably repetitive and, thus, harassing the witness. The difficulty with this approach is that the rules do not authorize you to instruct a witness not to answer a question on the ground that it was already asked and answered,[124] and the attorney will simply carry on. This conduct generally does not rise to the level of ridicule or oppression that would warrant a protective order.

A better way to handle this situation is for the witness to reply that he or she already has been asked the same question several times and already has answered it several times. At that point, there is not much the déjà vu attorney can do. The attorney cannot force the witness to re-answer the question. While the attorney can go to court and ask the court to compel the witness to answer the question, it is unlikely the attorney will do this, especially if the attorney knows that you will point out to the court that the witness already answered the same question one or more times.

---

[123] Counsel generally are entitled to a certain amount of latitude in asking similar questions of a witness. In fact, this technique may be the only way to deal with certain evasive witnesses. The déjà vu attorney is one who essentially repeats the same questions over and over, hoping for a better response. As you might imagine, the line between appropriate probing and inappropriate repetition is not always clear, and where one thinks the line lies might vary depending on whether you are taking or defending the deposition.

[124] *See* FED. R. CIV. P. 30(c)(2).

7. The Timekeeper

The timekeeper is an attorney who constantly is trying to rush your examination by asking how much longer you will be, by noting how long you have taken so far, and by noting various other appointments the attorney and the witness have. This attorney has a solitary agenda – rush your examination and get out of the deposition as quickly as possible. With the seven hour deposition time limit contained in the Federal Rules limiting, the timekeeper will keep a meter running to track the time ("Counsel, we've now been here for five hours, 19 minutes and 38 seconds. Are you almost done?").

If the opposing counsel or witness states that he or she needs to be somewhere else, do not rush your questioning to accommodate their schedules. You can simply tell the attorney and witness that you will stop the deposition and resume it the following day to accommodate their other commitments. If you do not want to break up the deposition, insist on your right to complete the deposition.

C. Judicial Intervention

As discussed above, you may go to court for assistance in dealing with problem witnesses and problem attorneys. This usually should be a last resort. If you consider exercising this option, keep in mind the following.

- *Only go to court regarding important disputes.* Many things can happen in a deposition that do not go exactly your way. Typically, relatively few things, however, are important enough to bring to the attention of the court. If you ask the court to resolve unimportant disputes, you will look petty and lose credibility. You also will undermine your chances of getting the court's assistance when you really need it.

- *Only go to court if you are likely to win.* For the same reason you do not want to go to court over unimportant disputes, you also do not want to go to court if you are likely to lose. You are generally better off not going to court at all than going and losing.

- *Make a sufficient record before you go to court.* As discussed above, it is critical that you make an adequate record of whatever it is you plan to raise with the court. In the case of nonverbal conduct, this means you should describe the conduct on the record, get a videotape or audiotape depicting the conduct, and get affidavits of witnesses to the conduct (including the court reporter). In the case of oral conduct, get the verbatim transcript of the conduct to show to the judge. Do not rely on your characterization of what was said.

- *Try to resolve the problem yourself.* Make sure your efforts are on the record. Judges expect attorneys to try to work things out on their own before coming to court.

- *Know the judge's procedures for handling deposition disputes.* Even before you go into the deposition, you should know how your judge prefers to handle deposition disputes. For example, is your judge willing to receive phone calls during a deposition to provide an immediate ruling? If so, and if you anticipate that there may be problems in an upcoming deposition, you may want to call the judge's law clerk to find out if the judge will be available to receive such calls during your deposition. (Be careful to restrict the content of the call and to refrain from editorializing so as to avoid *ex parte* communication with the court.) Also, take the judge's phone number and the law clerk's name to the deposition.

There are, of course, other kinds of problem witnesses and problem attorneys in depositions not addressed here. For example, one of the authors knows an attorney who has been seen lowering the height of the deponent's chair before a deposition to obtain a height advantage. It is an unfortunate fact of life as a litigator that there always will be witnesses and lawyers who will find new and innovative ways to be difficult.[125] The above discussion is intended to help you

[125] There are various civility codes that contain guidelines for counsel's conduct in depositions. *See, e.g.*, ABA Litig. Sec. Civ. Disc. Standards 16-19 (1999); Minn. Professionalism Aspirations. Standard III.D (2001). While these are generally aspirational civility codes, you might consider citing to them if you get in a dispute before the court over opposing counsel's conduct at a deposition.

recognize some of the more common problem witnesses and attorneys and to give you some tools to deal with them.[126]

[126] One magistrate who was especially fed up with the deposition misconduct of counsel on both sides of a case resorted to public shaming:

> If I was an elementary school teacher instead of a judge I would require both counsel to write the following . . . on a blackboard 500 times:
>
> > I will not make speaking, coaching, suggestive objections . . . . I am an experienced lawyer and know that objections must be concise, nonargumentative and non-suggestive. I understand that the purpose of a deposition is to find out what the witness things, saw, heard or did. I know that lawyers are not supported to coach or change the witness's own words to form a legally convenient record. I know I am prohibited from frustrating or impeding the fair examination of a deponent during the deposition. I know that constant objects and unnecessary remarks are unwarranted and frustrate opposing counsel's right to fair examination. I know that speaking objections such as "if you remember," "if you know," "don't guess," "you've answered the question," and "do you understand the question" are designed to coach the witness and are improper. I also know that counsel's interjection that he or she does not understand the question is not a proper objection, and that if a witness needs clarification of a question, the witness may ask for the clarification.

Mazzeo v. Gibbons, No. 2:08-cv-01387, 2010 WL 3020021, at *2 (D. Nev. July 27, 2010).