

# Dealing With Deposition Bullies

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# What We Will Cover

- Goals when defending depositions
- Dealing with difficult counsel
- Making a record



# Goals of Defense

1

Support  
your witness

2

Create a  
clear record

3

Define  
yourself and  
your case

# Goals on Offense

1

Maximize favorable deposition testimony

2

Provide snapshot of trial

3

Discourage more shenanigans

4

Maintain your focus

# As Always, Preparation

Prepare your witness

Defense counsel has a **limited role** at the deposition

Anticipate conflicts that will arise from your examination of a difficult witness

Difficult deponents require enhanced preparation

Research governing law/norms/procedure re: objections and conferences

# Supporting the Witness



Objections



Monitor physical and  
emotional condition



Three f's- focus, fatigue,  
frustration



Take breaks (not while  
question pending) -  
check local rules

# Protect Record - Clarify

## Stipulations

- Understand “the usual stipulations”
- Don't agree to anything you don't understand

## Objections (within rules)

## Asked and Answered

Documents- review proposed exhibits, note discrepancies with originals

# When Should I Object?



Strategic judgment made in a second



Less is more



What goes around, comes around



Will an objection help case or witness?

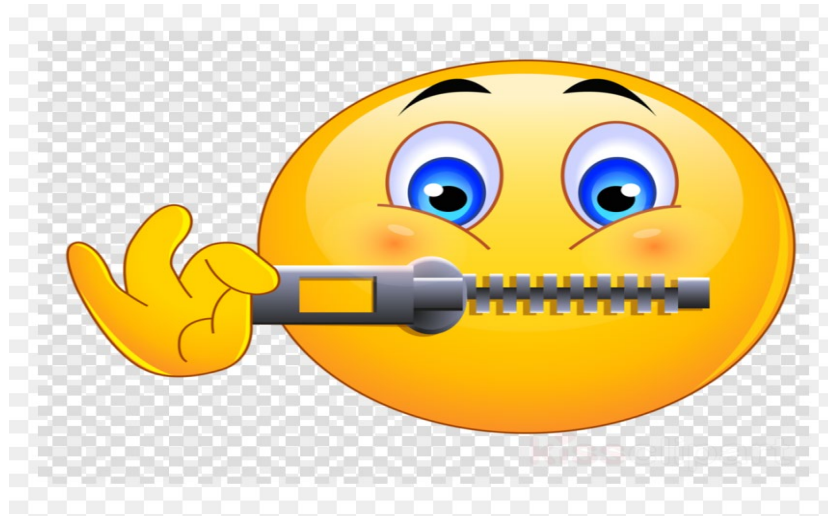
Curb abuse?  
Insure accurate record?  
Help adversary by cleaning up record?



Be consistent



# THE INSTRUCTION NOT TO ANSWER



**I wouldn't, if I were you!  
(unless I had to)**

# The Ultimate Deposition Weapon

*“ I instruct the witness not to answer”*

Only to assert claim of privilege, work product or to enforce existing court order

Must identify applicable privilege and state facts which show why applicable

Abuse is subject to sanction



Does it  
Sometimes  
Feel like  
War?

# Difficult Counsel



Argumentative, Insulting or derogatory remarks



Irrelevant, invasive or repetitive questions



Speaking objections:

Sometimes age-related (trying to intimidate the inexperienced) or

Sometimes sound like clarifications but are really coaching.



Unauthorized consultations with witness



Inappropriate directions to witness not to answer

# How to Respond



## Rule 1- Do Not Engage

- *Do not argue with opposing counsel or retaliate with bluster-* just make factual statements and move on
- Get an answer



# Hostile Lawyer Tips (1)

- **Plan in advance**
  - Ask other lawyers about opposing counsel's reputation and conduct
  - Anticipate the lawyer with a bad reputation will be difficult – have a plan
- Know the rules and cases that deal with obstreperous deposition behavior- bring them with you.
- Consider a video deposition (often cleans up someone's behavior)



# Hostile Lawyer Tips (2)

- ▶ Leave your ego at the door
  - ▶ Don't take the hostile lawyer's behavior personally- he treats everyone the same way
  - ▶ Your goal is learn, confirm, and test- not confront the OL and convince
  - ▶ Don't get mad, get even
  - ▶ Be confident





# The Last Resort

- ***Call the judge/seek protective order/sanctions***
  - Judges do not like dealing with discovery disputes
  - Be factual. Your feelings/impressions are not enough.
  - Learn court's view in advance





## Final Perspective

CIVILITY IS NOT A SIGN OF WEAKNESS...—JOHN F. KENNEDY  
(INAUGURAL ADDRESS, JANUARY 20, 1961)



Questions?