



TEAM 2024 Witness Training Basics

TERRI PARKER AND SCOTT SERGENT
MISSOURI DEPARTMENT OF TRANSPORTATION

MARCH 2024

Key Points

Carefully consider words

- The way you say something can be very important

Facts only

- No opinion or editorializing
- No speculation

Be professional

Litigation Basics

Discovery – Documents and Depositions – today's focus

Trial / Arbitration Testimony

Direct Examination

Cross Examination

Objections



What is a deposition?

- Occurs during the **discovery phase** of a lawsuit
 - Lawyers are seeking to discover facts
 - Some facts strengthen case
 - Some facts weaken case
- Lawyers trying to talk to witnesses to **collect information** for their case
- Purposes of a deposition:
 - Discover what you **know**
 - Good and bad facts
 - **Evaluate** you as a witness

What is a direct examination ?

- The questioning of a witness by the party that has called that witness to give evidence, in order to support the case that is being presented.

-

Please tell us your name.

Where do you work ? What kind of work do you do ? Tell us about your education and experience.

Let's talk about this case. What was your assignment ?

What is cross-examination ?

The formal interrogation of a witness called by the other party in a court of law to challenge testimony already given. Sometimes characterized as “vigorous, aggressive or detailed.”

Question format will be different. Rather than open ended i.e. “please tell us about” the questions will be **leading** to elicit a specific response.

“Isn’t it true that your fingerprints were on the gun?”

“You have written three different op-ed opinions on the topic of toll roads ? ”

What to expect if you are deposed

- Placed **under oath** (sworn in to tell the truth)
- Asked **questions** by the plaintiff's lawyer
- A court reporter will record:
 - The questions
 - Any objections
 - Answers
- Reporter will create a written transcript of the deposition
 - Sterile
 - Read without context
- A videographer will also be there to record the deposition
 - Sound byte

REMEMBER:

- Your words **and** actions are being recorded
- Important to think carefully before you **speak** and **react**



Nonverbal Cues aka Body Language

More persuasive than verbal communication

- Video depositions capture both – good, bad and ugly

Be aware of your nonverbal cues

- Posture
- Eye contact & movement
- Facial expressions – scowl, smirk
- Tells – crossed arms, spinning, posture
- Attentive and interested

Negative nonverbal cues will be used against us and YOU

Be Careful!

Everything
you say will
be used
against you

Do **not** volunteer any information

- ✓ Answer the question asked and **only** the question asked
- ✓ Resist the urge to fill in details you feel are missing from the questions and answers

Goal: short answers are best

- ✓ Yes/No/I don't know
- ✓ Exceptions





Warning: Opposing Counsel Is **Not** Your Friend

SHADY LAWYER TACTICS

Plaintiff's lawyer will try to get you to say and agree that...

Example 1:

- All roads must be **safe**
- **Unsafe** roads cause injuries and death
- For a road to be **safe**, it **must have** an adequate clear zone/sight lines
- Without an adequate clear zone/sight lines, **a roadway cannot be safe**

Example 2:

- Crashes the indicator of roadway/intersection safety
- High numbers of crashes equals **unsafe** roadways

Since MoDOT failed to keep road safe, MoDOT should be held responsible

Examples of the Reptilian Tactic

Combating “The Reptile”

Exception to general rule - Do *not* answer with yes only

- Provide complete answers restating the question
- If the lawyer insists on a yes/no answer
 - Well, it depends, I do not think I can answer that with a yes/no answer.
 - Would you like to know why?

Carefully **consider** the seemingly simple safety rule

- Most rules are not as simple as the plaintiff’s lawyer wants to make them
- Most rules contain numerous exceptions
- Some rules depend on the facts and circumstances of a particular event
- Most of the time, “**it depends**” is more accurate than “**yes**”

The “Nice Guy” Routine

Lawyer will be (overly) friendly to:

- Get on your good side
- Hope you will let your guard down
- Provide more in your deposition answers

The other lawyer is **not** your friend

- Just trying to sneak information out of you!
- CCO lawyer is your only friend
 - Tom Cruise in A Few Good Men??
 - Will do everything we can to **protect** you and Commission

Recognize tactic & be **courteous and respectful**

- Helpful and professional
- Public servant

The "ethics" Question

If your honesty or ethics are challenged, you need to address this.

Mr Smith, you have worked for MoDOT for 15 years. You and your family depend on your paycheck to put food on the table. Do you honestly expect this jury to believe that you will give an unbiased answer to the question ?

Take your time answering
No pressure to answer
immediately

Never guess or
speculate
Avoid hypothetical
questions

Answer directly as
possible – do not be
[evasive or difficult](#)

Tips

Either (any) lawyer may object

You will likely be required to answer the question despite the objection

BUT:

- Stop talking
- Continue answering only after directed to do so by CCO
- Listen carefully to the conversation between lawyers
- Argument may provide **hints** about danger words/issues

Objections

If the lawyers cuts you off before you have had the opportunity to completely answer:

Consider: I was not done with my answer, and I would like to finish before moving on to the next question.”

If lawyer asks another question mid-answer:

Consider: I'll answer that question, but I'd like to finish my answer to the last question before we move on.

Witness permitted to finish answers

I don't know

I don't know, I don't remember and I'm not sure

- Acceptable, if true
 - If you don't know, you don't know
 - If you're not sure = you don't know
- Guessing is bad so "I don't know" is a better answer

BUT be careful – overusing these answers can cause credibility problems

- *IF* used repeatedly
- *IF* used in response to a question you should be able to answer
 - How long have you been employed here?
 - What's the address of your office?
 - Does MoDOT have a policy that governs this activity?

Q. So, when you got your check less than a week ago do you know what your hourly rate was?

A. No.

Q. Okay. When you report in at 7:00 in the morning on this project the one out here on the 63 Highway bypass what's the first thing you would do?

A. I don't know.

Q. Would there a meet -- would there be a meeting, kind of, a safety meeting or tailgate meeting or some sort of a meeting in the early morning to discuss what was going to take place that day?

A. I don't know.

Q. You can't tell us what you would do when you got to work?

A. I don't know.

Q. Well, would you -- would you meet at any particular location at the beginning of the day?

A. I don't know.

Q. Would you drive over by yourself or would some coworkers ride over with you?

MS. WITTEN: Objection. Vague. Do we have a timeframe we're talking about?

Q. (By Mr. Henry) Yeah, I'm talking about April of 2013.

A. I don't know.

Q. You don't know if you carpooled with other workers or whether you drove over by yourself?

A. I don't know.

Q. Say, in April of 2013 did you ever drive your personal vehicle, your car or your truck, over here to the West Plains project?

A. I don't know.

Q. This project was 3.258 miles in length. Did you know that?

I don't
know –
there is a
limit

Consider:

Is this helpful?

If you were a juror, what would your impression be of this witness?

If you were a juror, would this testimony help or hurt MoDOT?

What impression does this leave of witness/MoDOT?

Do **NOT** be evasive

Q. Okay. Did you know that this project extended or began out around 160, the 160 Highway intersection, and ran out to just past ZZ Highway out past Dairy Queen south of town?

A. I don't know.

Q. We're talking about a project now that you worked just a little over a year ago and you don't know?

A. I don't know.

Q. How would you know where to go when you got to work at 7:00 in the morning?

A. I don't know.

Q. Would you just wander around until you found somebody?

MS. WITTEN: Objection. Argumentative.

A. I don't know.

Q (By Mr. Henry) Did you ever meet at Ramseur Road early in the morning?

A. I don't know.

Q. Did you ever meet at the veterinary clinic, the red veterinary clinic, Doc Ulmanis clinic out at the intersection of 17 and Highway 63?

A. I don't know.

Q. Did you ever meet at the Dairy Queen out near the south end of this project?

A. I don't know.

Q. Can you tell me any place that you met up with your coworkers and with the job superintendent on this project in April of 2013?

A. I don't know.

Q. Mr. Jackson, you're not on any medication or anything that would affect your memory today, are you?

A. I don't know.

MS. WITTEN: Let's take a quick break.

Breaks are
okay

You **may** ask for breaks if you need them for whatever reason

- Water, Restroom, Fresh Air, Stretch

You **may** ask to privately confer with CCO if you have questions during a deposition

BUT: will probably be required to answer pending question

Danger Words & Phrases



The condition is/was dangerous

Road, sidewalk, parking lot, intersection, etc.



Improvements make/would have made the road safe

Standard = *reasonably safe*

Very difficult (i.e. impossible) to make any property absolutely safe when humans involved

Absolutes...are *absolutely* tricky

Absolutes pain with broad strokes

- MoDOT *always* follows the Roadside Design Guide
- MoDOT *never* deviates from the typical applications shown in the EPG for work zone traffic control
- Roadside hardware should *never* be on a non-breakaway post
- A traffic signal should *always* be installed whenever a traffic study shows that a signal is warranted

Roadway and Roadside Design Are Rarely Absolute

- EPG and RDG are guides - not standards
- Permit deviation from guidance
- Absolute statements make it difficult to explain legitimate deviations

Documentation: facts - not opinion or conclusion



Facts:

- Five fatal crashes at this intersection within last three years
- Four right angle-crashes from left turning traffic within last five years
- No history of rear end crashes before signal was installed
- The sight distance for a westbound driver is 346 feet to the south and 48 feet to the north

Opinion:

- The number of fatal crashes at this intersection means the intersection is dangerous
- The new signal is causing the rear end crashes
- The sight distance is a problem
- I wouldn't take my family on that road

Wrap Up / Questions

Terri Parker, Assistant Chief Counsel, Missouri Highway and Transportation Commission

Scott Sergent, Assistant Chief Counsel, Missouri Highway and Transportation Commission