

[This Week's Feature](#)
[Pathway to Partnership](#)
[And The Defense Wins](#)
[DRI News](#)

[DRI Cares](#)
[LegalPoint](#)
[On-Demand](#)
[Upcoming Seminars](#)

[Upcoming Webinars](#)
[State Membership Chair/](#)
[State Representative](#)
[Spotlight](#)

[New Member Spotlight](#)
[Quote of the Week](#)

This Week's Feature



Why We Need a Radical New Way to Prepare Our Clients to Testify

By Michael Gross

Question: Why do we need a radical new way to prepare our clients to testify?

Answer: The plaintiffs' bar has radically changed the way that they approach using deposition testimony.

1. Most depositions are now videotaped.
2. Most cases never go to trial, so they are settled based on the deposition testimony.
3. Plaintiffs' attorneys now have a clever strategic approach to their deposition questions. They rely on the defense to give short, one-word answers such as "yes" and "no."
4. Plaintiffs' attorneys now control the deposition and get responses that they need by design.

Article continues on page 4.

This Week's Feature

Why We Need a Radical New Way to Prepare Our Clients to Testify

By Michael Gross



Question: Why do we need a radical new way to prepare our clients to testify?

Answer: The plaintiffs' bar has radically changed the way that they approach using deposition testimony.

1. Most depositions are now videotaped.
2. Most cases never go to trial, so they are settled based on the deposition testimony.
3. Plaintiffs' attorneys now have a clever strategic approach to their deposition questions. They rely on the defense to give short, one-word answers such as "yes" and "no."
4. Plaintiffs' attorneys now control the deposition and get responses that they need by design.

The result is defendants become an asset to a plaintiff's case and a liability to the defense.

So here is a short historical story to explain why the defense needs a new way to prepare for deposition testimony.

Once Upon a Time

Once upon a time, the only thing required to survive a deposition was to do no harm and say as little as possible. Attorneys simply had to sit down with their clients, tell them to answer with a simple "yes" or "no," and not to say anything that could be damaging to the case. Cases were won at trial and depositions were only a small part of a client's defense.

Technology however, has changed it all. Sound bites from videotaped depositions are now being used during opening statement at trial to make a key witness look incompetent with a simple yes or no answer. The yes or no response is exploited as result of Don C. Keenan and David Ball, who authored a book for plaintiffs' attorneys, *Reptile: The 2009 Manual of the Plaintiff's Revolution*. Plaintiffs' attorneys now follow a scripted guide to trap defense witnesses into giving short answers on topics such as "safety." The primary focus of the reptile is to get an agreement from the defendant that safety is the highest priority and that rules must be followed to insure safety. Anything less than safe products or safe actions is unacceptable

and should be punished. Because most witnesses will agree to these questions with a simple "yes," it is critical that the defense bar change the way that witnesses think about questions.

How Can the Defendant Become a Testifying Asset and Not a Liability?

The reptile method is a game changer; juries have responded to it with mega verdicts. It is no longer acceptable in the modern deposition world to rely on the age-old advice to keep answers as short as possible, answering "yes," "no," "I don't know," or "I don't recall." Instead, testifiers must be prepared to answer questions directly and provide full and complete answers. Clients must learn how to think about a question and how to speak the complete truth that puts the question in perspective.

How Do You Prepare Clients?

The first step in the process is to make sure that clients are never told what to say, but rather, that they learn how to express their own truth in their answers. The objective should be transparency and authenticity, with a disciplined process to listen carefully and carefully provide an answer that fully responds to the question. The second step is to approach deposition preparation as a teaching process and not a scripted memorization lesson. Clients should, in the end, be thoughtful, accurate, and independent thinkers so that they can respond in their own complete way. The client's full and unadulterated truth is the only way to master the modern deposition.

Conclusion

The reptile is an effective method to establish liability and increase verdicts. The old way that attorneys have prepared clients to testify has only fueled the success of the reptile. We must now develop and implement new ways to prepare clients to testify. The most effective process results in complete and authentic answers that convey the full truth of each witness.

[Michael Gross](#) is the founder and managing director of CogentEdge, LLC, a national leader in strategic witness preparation, which is regularly retained by leading national defense attorneys, the largest insurance carriers, and prominent law firms. He has litigated high-profile defense and plaintiff cases for 34 years. As a principal in Dines and

Gross PC, Mr. Gross litigated major insurance defense cases for companies such as Safeco and Liberty Mutual and at the same time litigated large exposure cases on behalf of severely injured or deceased plaintiffs. He is a member of the DRI Litigation Skills Committee.