

# WITNESS DEPOSITION PREPARATION

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# Answering Questions is a Skill

Teaching is helping a learner to understand and experience a process



# Teaching A Skill

- Explanation
- Demonstration
- Practice



# Explanation

- 10 % of your prep time
- What does your witness already know?
- Resist the urge to correct misconceptions
- Listen

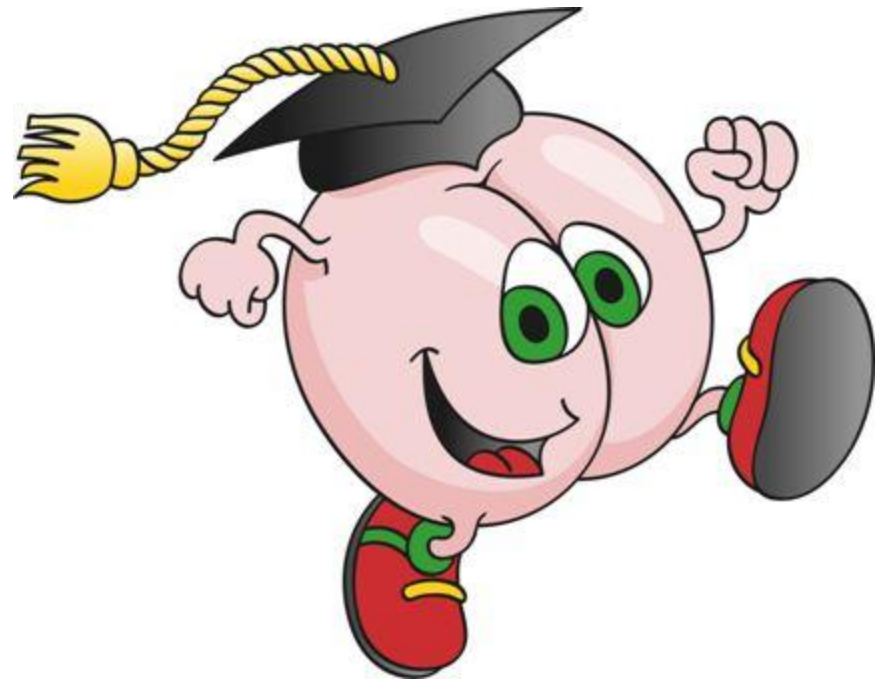


# Questions

- Have you ever testified at a deposition?
- What do you think the purpose of a deposition is ?
- What do you think is going to happen?
- What do you want to know about a deposition?
- Are you nervous?
- What are you nervous about?

# 5ive types of witnesses

- Simple
- Systematic
- Slick
- Scared
- Seriously Injured



# Demonstration

- 25 % of your prep time
- Play video clips
- Read excerpts from a transcript
- Compare and contrast good and bad examples

# Good Example?



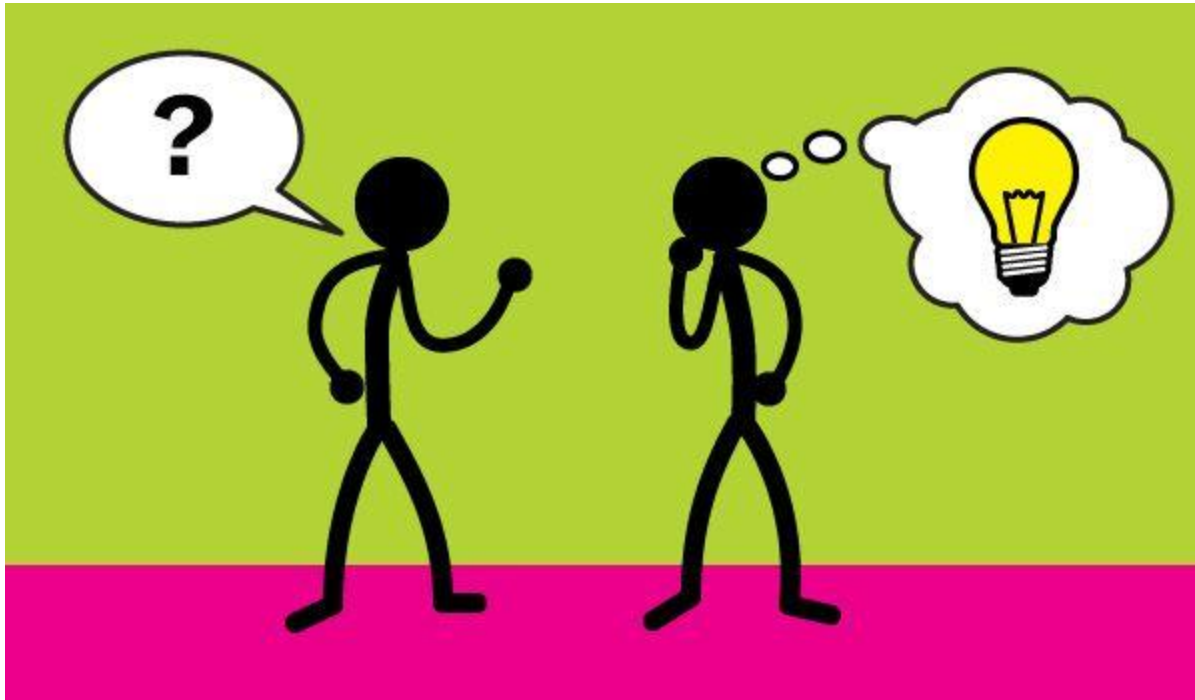


# Better Example?



# Questions

- Have you ideas about depositions changed?
- How have they changed?
- What did you think the witnesses did right?
- What did the witnesses do wrong?
- What question do you hope the lawyer will Not ask you?



# Practice

- 65% of prep time
- Video tape your mock deposition
- Don't show the witness the video if you like what they are doing
- Don't video tape clients with serious brain injuries

# Mock Depositions

- Big Facts – Landmines – Truths



# What side are you on?



# Answering Questions



# LISTEN

- Blocking impulse thoughts
- Breathe
- Repeat



# THINK

## Test the question

- What is the question asking?
- Do I understand the question?
- Do I know all of the information that is required to answer the question?

(list all you medications-list all your doctors)

# DO

- Take your time
- Silence is power
- One word - One sentence
- Chronic verbal diarrhea
- Emotion is normal

# Common Pitfalls

## Witness Fears

- Bad Memory
- Looking stupid
- Being called a liar
- Crying



# Fear Fix



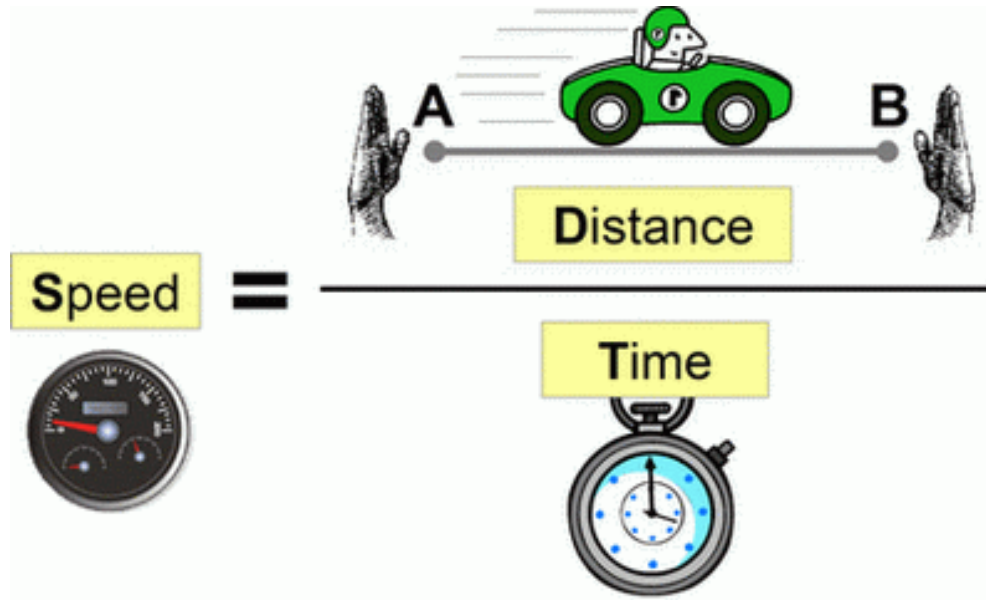
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# The Truth and Nothing....

- Where do questions come from?
- What are defence lawyers looking for?



# Guessing



# Volunteering



# Doctors and Documents

- Do you remember seeing your doctor on September 25, 2007?
- Does your doctor write down everything you say?
- Does your doctor let you look at what they are writing down before you leave?
- Do you have a reasons to question what your medical records say?



# Surveillance

- Red Flags
- Your personal interests and hobbies are not usually contained in your medical records.
- “Never say Never”
- Social Networking

# Special Considerations

- Literacy

- Interpreters

*Certified in medical terms*

*Provide documents in advance*

*List words that can not be  
accurately translated*

- Mistakes on the record
- Debriefing (shoulda woulda coulda)

# The Real Truth

- The footprint of your trial is set when the deposition is done.

# Shameless Plug #1

Authors Phillip Miller and Paul Sceptur, contributors and course advisers for the American Association for Justice (formerly the Association of Trial Lawyers of America [ATLA]) Advanced Depositions College, bring you a comprehensive book on depositions.

In *Advanced Depositions Strategy and Practice*, Miller and Sceptur reveal proven tactics for eliciting the information you need to support your case theory and craft a cohesive, convincing trial theme.

In addition to strategy, this book provides a wealth of specific examples from real case depositions. You will learn how to:

- Nail down case-critical facts
- Decide on questioning approaches
- Use juror attitudes and beliefs to your advantage
- Obtain all useful information from each deponent
- Maintain control of each witness's testimony
- Handle evasive, hostile, uncooperative, opposing, and expert witnesses

*Advanced Depositions Strategy and Practice* is the essential resource you need for strengthening your deposition skills.



Phillip Miller spent the first twenty years of his practice refining his approach to and understanding of depositions, persuasion, communication, and juror learning. He has become one of the nation's most sought after consultants and speakers on deposition and case strategy, and he has helped hundreds of attorneys win their cases in depositions.



Paul Sceptur, a nationally recognized expert on deposition skills, has taught thousands of lawyers about using advanced depositions tactics to take depositions that make a difference. He is also a highly sought after trial strategist in the United States and Canada, where he has helped numerous lawyers and their clients with deposition, case, and trial strategies.

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Advanced Depositions

Phillip H. Miller & Paul J. Sceptur



## ADVANCED DEPOSITIONS STRATEGY & PRACTICE

PHILLIP H. MILLER AND PAUL J. SCPTUR

# Shameless Plug #2

## BACK COVER

Exceptional depositions result from a focused effort to elicit testimony that accomplishes specific goals critical to your case outcome. This DVD covers and gives concrete examples of the techniques required for anyone who wants to take exceptional depositions.

Both of us have spent a good part of the last thirty four years as trial lawyers, taking depositions in auto cases, motorcycle cases, trucking cases, medical malpractice cases, nursing home cases, products liability cases, construction zone cases, child abuse cases, contract, and civil rights cases. The success of depositions in those cases depended in large part on the strategies and techniques we talk about in this DVD. Despite decades of experience, our education in deposition techniques accelerated when we began teaching deposition technique and strategy for the National College of Advocacy. As both the originators and program advisors for the NCA Deposition and Advanced Depositions Colleges, we have continually taught, evolved, and used the techniques shared here. Along the way we have taught with and learned from many lawyers from all over the country. These great teachers and thinkers have unavoidably affected our view of deposition strategy, so you will see references to the principles they have written about, taught, and popularized through out this DVD. Along the way we have taught hundreds, if not thousands, of lawyers, and they have often become our teachers and exceeded us in their insights and skills. We are in their debt.

The strategies and techniques discussed in this DVD can make a difference. Good luck.



**PHILLIP MILLER** is a trial lawyer and trial consultant based in Nashville, Tennessee. His firm has been recognized by Martindale-Hubbell as one of the "Pre-eminent firms in the United States", and he has been certified and recertified as a civil trial specialist 4 times by the National Board of Trial Advocacy and he is also certified as a pre-trial specialist. Phillip is a Past President of the Tennessee Association for Justice, a member and former board member of the American Association of Trial Consultants, and a former Co-Chair for the National College of Advocacy. Phillip is a Diplomat of the NCA and he was one of the first lawyers to complete the Advanced Studies in Trial Advocacy curriculum offered by the NCA.

Phillip says, "What makes me different (like my friend Paul Sceptur) is my extensive experience incorporating what is known about trial techniques and juror learning into active trial and case strategy and planning on (almost) every kind of case imaginable."

Mr. Miller has been hired by dozens of firms nationwide to help them prepare and re-frame their biggest, most significant cases and conduct focus groups for them to test their strengths and weaknesses.



**PAUL J. SCEPTUR** has been a civil trial lawyer representing plaintiffs exclusively since his graduation from Marquette University Law School in 1978. He is a trustee and co-chair of the National College of Advocacy Board of Trustees. He has served as an Adjunct Professor of Law at Marquette University Law School, where he has taught litigation and trial skills. He has been named one of the Best Lawyers in America continuously since 2002 and is one of Wisconsin's top 50 "Super Lawyers" in the area of personal injury. He is a Diplomat of the NCA and he was one of the first lawyers to complete the Advanced Studies in Trial Advocacy curriculum offered by the NCA.

Like Phillip, Paul is a member of the American Society of Trial Consultants and has a broad practice both as a trial lawyer and as a trial consultant, using strategic case planning and focus groups extensively, both in his cases and in assisting other lawyers in preparing the discovery and trial of their cases across the country and in Canada. Cases he has worked on in the US and Canada exceed \$100,000,000 in recovery. Learn more about Paul at [www.plaintiffslaw.com](http://www.plaintiffslaw.com) and [www.paulsceptur.com](http://www.paulsceptur.com).

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ADVANCED DEPOSITION STRATEGY AND PRACTICE

PHILLIP MILLER AND PAUL J. SCEPTUR



## FRONT COVER

### ADVANCED DEPOSITION STRATEGY AND PRACTICE

PHILLIP MILLER AND PAUL J. SCEPTUR

"No one in America understands and teaches techniques for depositions that devastate defenses better than Miller and Sceptur.....no one."

— Jim Lee, Attorney

"Phillip Miller and Paul Sceptur -- among the most skilled of advocacy teachers -- cover the full range of essentials to your becoming a deposition master. They show you what needs to be done and why, and -- with striking clarity and directness -- exactly how to do it. This DVD is a strong addition to our advocacy resources." — David Ball, Trial Consultant and Author

"In this age of more mediations and fewer trials, the importance of powerful depositions increases exponentially as it is often the only sworn testimony in the case. In Deposition Techniques, Phillip Miller and Paul Sceptur combine their extraordinary knowledge to produce an invaluable discovery regimen which trial lawyers should incorporate into their pre trial discovery planning in every case."

— Howard Nations, The Nations Law Firm, A National Litigation Firm

- I. Case Strategy and Planning for Depositions
- II. Advanced Deposition Techniques
- III. Establishing Standards and Rules
- IV. Dealing with the Evasive and Difficult Witness
- V. Deposing the Defense Medical Examiner

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