



# **Scoring a Run: Making Sure You Can Get All Around the Bases and Back Home with your Deposition Testimony**

# Presented By:

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## Scoring a Run: Making Sure You Can Get All Around the Bases and Back Home with your Deposition Testimony

- Deposition purpose
- Helpful suggestions prior to the deposition
- Testimony advances the defense theory



Advance the  
case, not your  
personal  
opinions

## Claims Are "False"

Monday Morning Videos - Insurance Bad Faith

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# When we began... witness preparation

- Witness only needed to survive deposition
- “Yes”, “No” or “I don’t know”
- Do not guess
- Say they didn’t understand
- Answer the question without volunteering information
- Additional information would be done at trial or affidavit



DON'T EVADE



# Times Change...Witness Preparation

- Old method no longer useful for many reasons, including technology
- Juries are bombarded with information and want answers
- Juries won't wait three days to decide witness's credibility
- Video shows long pauses and stalling tactics
- Video plays sound-bites plaintiff wants the jury to hear

# AVOID THE REPTILE QUESTIONS



**Corporate Procedure?**  
Monday Morning Video





# Times Change...Witness Preparation

- Witness needs to be prepared and deliver his or her story
- Witness needs to be prepared to respond to value-loaded questions

Give the  
context and  
the reason



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# The Reptile Theory

- Effective method of asking questions
- Now referred to as “the reptile theory”
- Book written by David Ball and Don Keenan
- Permits the attorney to access that part of our brain that is still reptilian in nature and feels the need to protect from danger
- Defendant is portrayed to the jury as the danger
- Reptilian-thinking jury punishes the defendant to keep safe

Think about the reason for the question and use it to further your case



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# The Reptile Theory

- Ask value-loaded question that is difficult for the witness to answer
- Answering “yes”, “no” or “I don’t know” hurts the witness and the defense
- Example: “Do you agree that truck drivers are not allowed to needlessly endanger the public?”
- Paula Deen Example: “Have you ever used the N-word yourself?”
- Kenneth Lay Example: “Have you contacted witnesses to get your story straight?”





KEEP CALM  
AND  
REMAIN  
FOCUSED

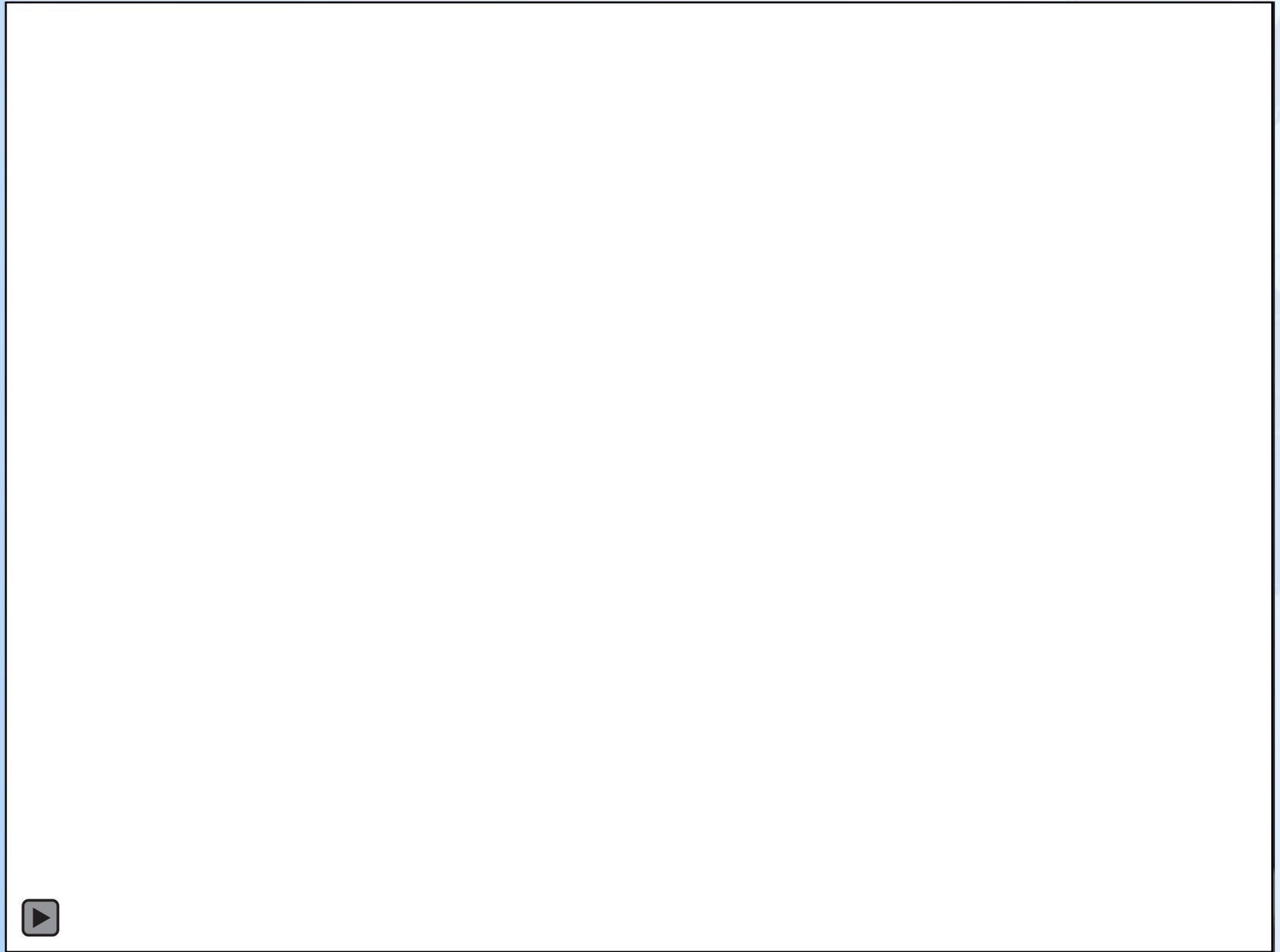


# Permitted activities when preparing witnesses to testify at deposition

- *Explaining the Witness's Role in the Case*
  - The witness needs to understand the entire case and his/her role
- *Live with the Documents*
  - The witness needs to be familiar with all the documents
  - The witness needs to have read the important documents multiple times
- *Rehearse with the Witness*
  - The witness needs to practice



IT IS THERE



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# Witness Preparation

- Set aside a day or two
- Deposition is no longer just a fact gathering tool
- Deposition is primary trial weapon

# The Well Prepared Witness





# Conclusion

- The purpose of a deposition is to memorialize testimony... and inform decisions as to the future course of the litigation
- Helpful suggestions of lawyers should be used to “value load” deposition answers to advance the defense theory of the case
- Direct the defense case from the beginning of depositions instead of waiting until trial

# Questions???

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