

Preface

The first time I sat in on a deposition, I was a lowly law clerk. I had followed around a senior associate, Jay (Jerry) Calvert, as he prepped the witness for the deposition, and I joined him in the conference room as he took the deposition. I can no longer remember whether the person being deposed was a witness for our client or a fact witness unconnected to either side, and I can't remember what the case was about. However, I do remember a horrible moment when the witness answered a question by pointing at me and saying, "She told me to say that."

I was horrified. I'm quite sure the only thing I had said to the guy was hello. Without a moment's hesitation, I said, "I did not!"

Needless to say, all of this was on the record, with the court reporter dutifully taking it all down. Jerry turned to me and said, "You're not testifying here." In other words, I was not to say another word.

This, my first introduction to the world of depositions, was fraught with so many issues that we lawyers all have to deal with, issues such as whether or not to engage in a dialogue with the witness, whether or not

to allow nonparticipants in the room, whether or not to react to bald-faced lies, whether or not to go off the record. Underlying those issues are the basics of how to prepare a witness for a deposition. Have you said anything during preparation that the witness can construe as an inducement to lie? Did the witness manifest a desire to undercut your client during the preparation?

Other writers have written hundreds of books and thousands of articles about depositions. What I am offering here is not a compendium. Instead, I'm offering a guide: I am going to raise the key issues you should be aware of when deciding to take a deposition, when you are preparing your questions, and when you are preparing your witness.

I very much loved taking depositions, and sometimes I loved defending them. Anyone who finds people fascinating will feel the same, I think. When else do you have the ability—even the right—to delve into people's lives?