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## PUT ME IN, COACH: THE ETHICS OF WITNESS PREPARATION

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### A. The Problem

Depositions are a critical part of discovery, and lawyers can and should go to great lengths to help witnesses understand the process and protect their client's interests. Lawyers are required to zealously advocate for their clients' cause,[1] and depositions are no exception. Witnesses need to be prepared to face hours of often difficult, confusing or "bad" questions. They need to understand what the case is about, the questions and documents they are likely to face, what the impact of their testimony might be, and the traps they might fall into if their answers are not accurate, thoughtful, and precise. It is the lawyer's job to do whatever he or she can, consistent with their ethical obligations, to make sure that every step of the deposition process is serving their client's goals and interests in the litigation. But identifying bright-line rules for what a lawyer can and cannot do to prepare a witness for deposition has been an ongoing challenge. To be sure, the line between helping a witness give accurate testimony and improperly influencing that testimony has never been easy to draw.

Last July, these issues were put into focus again: a federal judge in Iowa awarded sanctions *sua sponte* for deposition objections he believed were designed to coach the witnesses and obstruct the questioning.[2] The court had been asked to resolve objections in deposition designations before trial, and was "shocked by what [he] read."[3] The court was apparently so troubled that it ordered the attorney who defended the depositions to "write and produce a training video in which Counsel, or another partner in Counsel's firm, appears and explains the holding and rationale of [the court's] opinion, and provides specific steps lawyers must take to comply with its rationale in future depositions in any federal and state court."[4] Once this video was finished, filed under seal, and approved by the court, counsel was ordered to send an e-mail about it to "each lawyer at Counsel's firm — including its branch offices worldwide — who engages in federal or state litigation or who works in any practice group in which at least two of the lawyers have filed an appearance in any state or federal case in the United States."[5]

What was counsel's offense? The court identified a few categories of conduct it believed were sanctionable, but focused on the times when "Counsel repeatedly objected and interjected in ways that coached the witness to give a particular answer or to unnecessarily quibble with the examiner."[6] Within this category, the court cited examples such as the one below, in which the court believed counsel made an objection "for no apparent reason, other than, perhaps, to coach the witness to give a desired answer":[7]

> Q. Would it be fair to say that in your career, work with human milk fortifier has been a significant part of your job?
> COUNSEL: Object to the form of the question. "Significant," it's vague and ambiguous. You can answer it.
> A. Yeah, I can't really say it's been a significant part. It's been a part of my job, but "significant" is rather difficult because I have a wide range of things that I do there.

The court also took issue with the fact that counsel would often object only to the form of the question, and that "[i]mmediately after most of these 'form' objections, the witness gave the seemingly Pavlovian response, 'Rephrase.'" The court described these exchanges as "feel[ing] like a tag-team match, with Counsel and witness delivering the one-two punch of 'objection'– 'rephrase.'"[8] For example:

> Q. I'm wondering if you could perhaps in a . . . little bit less technical language explain to me what they're talking about in that portion of the exhibit.
> COUNSEL: Object to the form of the question.
> A. So rephrase.
> Q. Could you tell me what they're saying here?
> COUNSEL: Same objection.
> A. Rephrase it again.

The court also objected to counsel "frequently conclud[ing] objections by telling the witness, 'You can answer if you know' or something similar," noting that "[p]redictably, after receiving this instruction, witnesses would often claim to be unable to answer the question."[9] For instance:

> Q. If it's high enough to kill bacteria, why does [defendant] prior to that go through a process of pasteurization?
> COUNSEL: If you know, and you're not a production person so don't feel like you have to guess.
> A. I don't know.

Finally, the court took issue with counsel making statements on the record the court believed were "suggesting, in one way or another, how the witness should answer a question."[10] This included, for example, the two exchanges below:

> Q. Is that accurate or is there something that they, you know, just chose not to put?
> COUNSEL: If you know. She didn't write this.
> A. Yes, I didn't write this.
> Q. My question is, was that a test—do you know if that test was performed in Casa Grande or Columbus?
> A. I don't.
> COUNSEL: Yes, you do. Read it.
> A. Yes, the micro—the batch records show finished micro testing were acceptable for the batch in question.

By describing testimony as "Pavlovian," or a "tag-team match," the court implicitly questioned not only what happened during the depositions, but also how the witnesses were prepared. The court largely took issue with "object to the form of the question," or objections "that questions were 'vague,' called for 'speculation,' were 'ambiguous,' or were 'hypothetical'" on the basis that "after hearing these objections, the witness would usually ask for clarification, or even refuse to answer the question."[11] This decision highlights the uncertainties regarding what the ethical boundaries are in preparing a witness for their deposition.[12] If the lawyer prepared the witness to respond this way to objections, or to counsel's other statements on the record, is that necessarily unethical?[13] What do the ethical rules actually require when a lawyer works with a witness to prepare for their deposition testimony?

### B. The Rules of The Road

Establishing when a lawyer's obligation to zealously advocate for their clients ends and their other ethical obligations begin is never an easy task.[14] Witness preparation is one variation of this problem. As other commentators have noted, the case law and ethics rules do not offer much concrete guidance on witness preparation other than to avoid advising a client to commit perjury.[15] For example:

**The ABA Model Rules of Professional Conduct.** The ABA Model Rules of Professional Conduct provide that a lawyer should not "counsel or assist a witness to testify falsely," "offer evidence that the lawyer knows to be false," "counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent," or "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."[16] The commentary to the Rules then notes, for example, that "[f]air competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like."[17] But it does little, if anything, to explain what "improperly influencing the witness" might look like.

**The Restatement.** The Restatement goes a little further, stating generally that "[a] lawyer may interview a witness for the purpose of preparing the witness to testify," and then noting in the comments that this preparation may include "discussing the witness's recollection and probable testimony; revealing to the witness other testimony or evidence that will be presented and asking the witness to reconsider the witness's recollection or recounting of events in that light; discussing the applicability of law to the events in issue; reviewing the factual context into which the witness's observations or opinions will fit; reviewing documents or other physical evidence that may be introduced; and discussing probable lines of hostile cross-examination that the witness should be prepared to meet."[18] The comments also note that the lawyer "may suggest choice of words that might be employed to make the witness's meaning clear," but "may not assist the witness to testify falsely as to a material fact."[19]

**The D.C. Ethics Opinion.** The D.C. bar has also issued an ethics opinion addressing, among other things, the ethical limitations on "suggesting the actual language in which a witness' testimony is to be presented," "suggesting that a witness' testimony include information that was not initially furnished to the lawyer," and "preparing a witness for the presentation of testimony . . . by practice questioning or otherwise."[20] The opinion summarizes the advice on all three questions as "simply, that a lawyer may not prepare, or assist in preparing, testimony that he or she knows, or ought to know, is false or misleading. So long as this prohibition is not transgressed, a lawyer may properly suggest language as well as the substance of testimony, and may — indeed, should — do whatever is feasible to prepare his or her witnesses for examination."[21] Again, that may be true, but it is not much of a roadmap.

**The Case Law.** Unfortunately the case law addressing deposition preparation does not offer much specific guidance either. Some decisions speak in similar generalities. The Supreme Court has warned, for example, that a lawyer preparing a witness "must respect the important ethical distinction between discussing testimony and seeking to improperly influence it."[22] A frequently cited New York opinion from the turn of the century notes that the lawyer's duty is "to extract the facts from the witness, not pour them into him."[23] Some more recent cases offer advice that is slightly more definitive. For

example, a Maryland court has explained that a lawyer preparing a witness is permitted to "review statements, depositions, or prior testimony that a witness has given," and "test or refresh the recollection of the witness by reference to other facts of which the attorney has become aware during pretrial preparation," but should "exercise great care to avoid suggesting to the witness what his or her testimony should be."[24] Another court has noted that a lawyer can "explain the applicable law in any given situation," and "go over . . . the attorney's questions and the witness' answers so that the witness will be ready[.]"[25] And another has explained, in an antitrust case, that the lawyer may "refresh the recollection of the witness as to the facts, familiarize him with the relevant documents, and cause him to understand fully the company's views and attitudes concerning the litigation."[26] A lawyer preparing a witness could find some general guideposts in these cases. But even these cases acknowledge, for example, that "the line that exists between perfectly acceptable witness preparation on the one hand, and impermissible influencing of the witness on the other hand, may sometimes be fine and difficult to discern."[27] As a result, as with many other aspects of civil litigation, lawyers are largely called upon to police their own conduct.

If there is any "safe harbor" to be found in these rules and opinions, it lies with the witness, not the "coach." For example, the D.C. opinion describes the "the governing consideration for ethical purposes" as "whether the substance of the testimony is something the witness can truthfully and properly testify to."[28] Likewise, one court addressing a claim that lawyers had improperly influenced a sworn affidavit found that the lawyers could be "persistent and aggressive in presenting their theory of the case" to the witness as long as they "made sure that [she] signed the affidavit only if she agreed with its contents."[29] The basic principle is that if the witness is comfortable that the answer is accurate — and the lawyer can be sure of this — then the process that led the witness to refine the answer is likely in bounds. That point seems simple enough, but it may be more difficult to assess in practice. For example, as in the Iowa case, if a witness appears to be falling into a "tag-team match, with Counsel and witness delivering the one-two punch of 'objection'—'rephrase,'"[30] it may be that the witness has been stripped of his ability to independently and truthfully assess whether he actually understood the question.

Thankfully there are several things lawyers can do to make sure that witnesses are comfortable with their preparation sessions and that lawyers are zealously advocating for their clients. This includes:

- repeating early and often the importance of telling the truth;
- explaining that the witness cannot "hurt" the company by truthfully stating what the facts are, and that the lawyers can tailor the company's claims or defenses to whatever facts emerge from the depositions;
- making clear why the lawyer is giving a particular tip, practicing questions and answers, or focusing on word choice with the witness — not to put words in the witness' mouth, but to help them understand why, for example, it is important to be precise at a deposition, or not to speculate;
- explaining to the witness using the record — which may include documents, prior testimony, pleadings or any other materials the lawyer chooses — why the witness can be confident that their answers are accurate and helpful, which will also assist the witness in understanding the context in which his or her testimony may be understood; and
- assisting the witness, using the record, in recalling events and circumstances more accurately.

Again, there is nothing wrong with a lawyer working extensively with a witness on their deposition testimony. The lawyer's responsibility to be a zealous advocate for their client demands it. What these opinions recognize is that working with witnesses also requires the lawyer to make clear why the work is being done, what the preparation process is meant to accomplish, what the lawyer's motivations are, and what the witness' obligations are.

### C. Applying The Rules To Antitrust Practice

Discovery in civil antitrust cases is notoriously complex, and preparing witnesses for deposition or trial in antitrust cases often brings these issues to the forefront. Consider, for example, a hypothetical monopolization claim brought by a new entrant into the market for a particular electronic component (say, "Component A"). The plaintiff has tried to enter the market many times, but alleges that the defendant has cut off competition by entering into long-term, exclusive supply contracts with two of the largest buyers of Component A in the United States. The case has proceeded to discovery, and key fact witnesses from both parties are scheduled to be deposed. Each of the scenarios below could arise in preparing these witnesses for deposition.

**Scenario #1: Word Choice.** One issue that will be critical for both sides is how much of the market (however that is defined) is actually foreclosed by the contracts at issue. Assume that both parties have taken some discovery and believe that because Component A is very specialized, there are not many potential buyers. But during his preparation, one of the plaintiff's executives volunteers that there are several foreign buyers of Component B, and that Component B can be "swapped in" for Component A. That loose phrasing could be a problem for the plaintiff's position on how much of the market is being foreclosed. If Component A and Component B are really interchangeable, it would seem that the market is much broader than the plaintiff's lawyers originally thought. But it turns out, after some further questioning, that there are actually many, costly modifications that would have to be made to

Component B if it is going to be used as a replacement for Component A, and even then it would not provide the same functionality. The witness' imprecise phrasing is giving a misleading impression of how interchangeable the products really are.

As noted in the opinions above, the risk is that suggesting different wording could sway the witness to testify to something he does not believe is accurate.[31] But applying the principles above, this risk could be mitigated by, for example, having the witness explain what they mean, using the witness' own words, and making sure the witness is comfortable that what they are saying is true. It can also be avoided by explaining that the goal in discussing word choice is simply to prevent his testimony from being misconstrued or misunderstood. A lawyer can also make sure the witness is comfortable with the word choice by showing the witness documents, prior testimony, or other materials that bolster the choice and illustrate why it is more accurate.

**Scenario #2: Translations.** A similar issue could arise if the witness speaks a different language than the lawyer. This is increasingly common as antitrust cases expand to address practices overseas. Suppose a lawyer is preparing a third-party witness from one of the foreign buyers of Component B who speaks very little English. The witness is using a phrase to describe a product that is fairly accurate in her native language, but can be misleading when it is given its most common English translation. For instance, using the example above, a certain phrase could be commonly translated to "interchangeable" in English. But that may not be what the speaker intended because the word has a more nuanced meaning in her native language. Certain terms in other languages can also have culture-specific meanings that are intended to convey, for example, respect when addressing colleagues in a business context. These expressions of respect might suggest a closer relationship or "friendship" between the author and recipient (for instance, an employee of a competitor) when translated into English than actually exists. This is another variation of the "word choice" problem, and the risks and potential approaches are similar to the scenario above.

**Scenario #3: Explaining Antitrust Law/Theories of the Case.** The examples above were situations in which the lawyer reacted to what the witnesses said during mock cross-examination. But suppose the defendant's lawyer explains to the witness at the beginning of the preparation session what the law requires the company to prove to support its defenses, or what the company's legal theories are, before asking what the witness knows. For example, the lawyer could explain that the plaintiff will have to prove what the relevant geographic market is, and that the plaintiff has taken the position that the geographic market is limited to the United States. In contrast, the defendant has taken the position that the market is much broader — worldwide. As some of the cases and commentary acknowledge, the potential risk is that, by going too far, the lawyer could encourage the witness to give answers about the market that he knows are not accurate simply because it would be helpful to the company's legal theories.[32]

But this can be addressed by, for example, emphasizing the need to tell the truth, getting an understanding first of what the witness knows or believes, and then highlighting when the witnesses' understanding is consistent with the legal theories. For instance, the rules would permit the lawyer to illustrate for the witness that her answer is consistent with helpful testimony from her colleagues. Or that the answer is consistent with the plaintiff's own public statements and/or any other documents, which characterize the market as global.

**Scenario #4: The Feigned Absence of Recollection.** The hypothetical monopolization case above concerns contracts that are in place today, but the plaintiff and defendant often have a longer history of prior dealings, and antitrust cases often address agreements or business practices that started years before depositions take place. Suppose the defendant's lawyer explains at the beginning of the preparation session that the deposition is not a memory test, and that "I don't remember" is a perfectly acceptable answer. The potential risk, depending on how this is explained, is that the witness decides to feign an absence of recollection to avoid certain questions. For example, in the case above, whether the witness ever had any discussions about the effect the agreements might have on the plaintiff may be relevant. If the witness misinterprets the instruction, he may believe that he should claim not to remember discussions like these because it could hurt the company's position in the case.

This is another scenario in which making clear why the advice is being given is important. This risk of a misunderstanding can be avoided by again emphasizing the need to tell the truth, and that the witness can offer what they do remember if it is responsive to the question. It can also be mitigated by exploring in detail during mock cross-examination what the witnesses remember or do not remember and why. If a particular meeting is important, the lawyer could consider showing the witness documents to refresh their recollection, or asking detailed questions designed to explore in detail what the witness *does* remember.

**Scenario #5: The Meaning of Objections.** Finally, consider a situation similar to what the lawyer may have faced in the Iowa case. One of the plaintiff's lawyers is preparing a witness who has never been deposed before and, in doing so, explains what her objections mean, and instructs the witness to listen to the objections, remember what they mean, and consider the potential problems with the question.[33] There is nothing inherently wrong with this, provided that the witness is instructed to make her own assessment of whether, for example, she would have to speculate to answer a question, or whether a question is really vague to her.[34]

The risk is that, as in the Iowa case, the witness takes this to mean that she should robotically respond that a question is vague or speculative whenever an objection is made, regardless of whether she thinks it is or not. In that case, the lawyer can emphasize that the witness should still answer truthfully, consider each question on their own, and answer it if they do understand the question despite the objection, or would not have to speculate to answer it. But if the witness is empowered to make their own assessment of the question, there is nothing preventing the lawyer from making (even frequent) non-

suggestive, good faith objections that have a basis in law. Nor, unless the jurisdiction prohibits it,[35] is there anything inherently wrong with objecting that a question "calls for speculation," is "vague," or has been "asked and answered." The opinions that have criticized "coaching through objections" have done so where the witness mechanically provides a "coached" answer in response to the objections.[36] Short of that scenario, objections are a necessary part of the process, and they can and should be asserted when permitted.

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As often happens when the law is not very specific, it can be tempting for lawyers to fall back on what they commonly see done to assess whether a particular statement, practice or question during prep crosses the line. But norms can vary by region and practice group. The rules and opinions put the onus on the lawyer to work closely with the witness to make sure, whatever advice the lawyer gives, the witness is comfortable that their testimony is accurate and understands what their obligations are in answering questions. This can make the question of whether the witness understands the advice as important as whether the advice itself is permitted by the rules. Within that framework, the rules and commentary support the lawyer's right — and duty — to thoroughly prepare witnesses for deposition, and zealously advocate for their client's cause in doing so.

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[1] *See, e.g.*, *In re Gorshtein*, 285 B.R. 118, 125-26 (Bankr. S.D.N.Y. 2002) ("The judicial process is best served under the adversary system by advocacy on behalf of each side which is zealous within the bounds of law and ethics. The prospect of sanctions must not be allowed to chill the presentation of forceful argument on the law or facts"); *Dorsett v. Am. Isuzu Motors, Inc.*, 805 F. Supp. 1212, 1219 (E.D. Pa. 1992) ("All attorneys have an ethical duty to zealously advocate their client's cause," and courts do "not expect advocacy to be devoid of passion"); *Downstream Envtl. L.L.C. v. Gulf Coast Waste Disposal Auth.*, 2006 WL 3246348, at *2 (S.D. Tex. 2006) ("Judges temper [the] need to enforce ethical standards with the concern of not stymying zealous advocacy"); *see also People v. Mitchell*, 454 Mich. 145, 170 (1997) ("In the real world, defending criminal cases is not for the faint of heart. Lawyers must fulfill ethical obligations to the court, zealously advocate the client's best interests . . . and protect themselves against grievances and claims of malpractice").

[2] *See Sec. Nat'l Bank of Sioux City, Iowa v. Abbott Labs.*, 299 F.R.D. 595, 600 (N.D. Iowa 2014).

[3] *Id.* at 597.

[4] *Id.* at 610.

[5] *Id*.

[6] *Id.* at 600. The other categories of sanctioned conduct at the deposition were that "Counsel interposed an astounding number of 'form' objections, many of which stated no recognized basis for objection," and that "Counsel excessively interrupted the depositions that Counsel defended, frustrating and delaying the fair examination of witnesses." *Id.*

[7] *Id.*

[8] *Id.* at 605.

[9] *Id.* at 606.

[10] *Id.* at 608.

[11] *Id.*

[12] The court's order is currently on appeal to the Eighth Circuit. *See Sec. Nat'l Bank of Sioux City v. Jones Day et al.*, 14-cv-3006 (8th Cir.) Several non-parties have submitted amicus briefs in the case, including the American Board of Trial Advocates, American Association for Justice, and Iowa Association for Justice. *Id.*

[13] By highlighting this opinion, the authors do not mean to suggest that the court reached the right conclusion on the facts of this case. To the contrary, the opinion appears to stand as somewhat of an outlier, and the court's criticism of counsel seems misplaced in many respects. We reference the opinion simply as a vehicle to generate discussion and to highlight some areas of potential concern and focus. If anything, the court's views more properly reflect displeasure with the witness's statements, rather than counsel's, but the court takes it out on counsel in what appears to be an unprecedented and colorful way.

[14] *See, e.g.*, *Am. Int'l Adjustment Co. v. Galvin*, 86 F.3d 1455, 1467 (7th Cir. 1996) ("[T]he line between zealous advocacy, which the ethics of the legal profession require, and overzealous advocacy, which those ethics forbid, is hazy").

[15] *See, e.g.*, Liisa Renée Salmi, *Don't Walk The Line: Ethical Considerations In Preparing Witnesses for Depositions and Trial*, 18 REV. LITIG. 135 (1999); Richard C. Wydick, *The Ethics of Witness Coaching*, 17 CARDOZO L. REV. 1 (1995); Joseph D. Piorkowski, Jr., *Professional Conduct and the Preparation of Witnesses for Trial*: *Defining The Acceptable Limitations of Coaching*, 1 GEO. J. LEGAL ETHICS 389 (1987); Richard Alcorn, *Aren't You Really Telling Me…? Ethics & Preparing Witness Testimony*, ARIZONA LAWYER (Mar. 2008); Roberta K. Flowers, *Witness Preparation: Regulating The Profession's "Dirty Little Secret,"* 38 HASTINGS CONST. L.Q. 1007 (2011); Fred C. Zacharias & Shaun Martin, *Coaching Witnesses*, 87 KY. L.J. 1001 (1999).

[16] *See* Model Rules of Professional Conduct 3.4(b), 3.3(a)(3), 1.2(d) & 8.4(c), respectively. The disciplinary rules of the prior ABA Model Code of Professional Responsibility had similar provisions. *See* MPR DR 7-102 ("In his representation of a client, a lawyer shall not . . . (4) Knowingly use perjured testimony or false evidence . . . (6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false [or] (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent").

[17] Model Rule of Professional Conduct 3.4(b) cmt 1.

[18] R3d of Law Governing Lawyers § 116 cmt. b.

[19] *Id.*

[20] D.C. Bar Ethics Opinion No. 79 — Limitations on a Lawyer's Participation in the Preparation of a Witness' Testimony (1979).

[21] *Id.*

[22] *Geders v. United States*, 425 U.S. 80, 91 n.3 (1976).

[23] *In re Eldridge*, 82 N.Y. 161, 171 (1880).

[24] *State v. Earp*, 319 Md. 156, 170-72 (1990).

[25] *State v. McCormick*, 298 N.C. 788, 791 (1979), *superseded by rule on other grounds*.
[26] *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.,* 502 F. Supp. 1092, 1097 (C.D. Cal. 1980), *rev'd on other grounds*, 658 F.2d 1355 (9th Cir. 1981).
[27] *Earp*, 319 Md. at 171.
[28] D.C. Bar Ethics Opinion, *supra,* n. 20, at 3.
[29] *Resolution Trust Corp. v. Bright*, 6 F.3d 336, 342 (5th Cir. 1993).
[30] *Sec. Nat'l Bank of Sioux City,* 299 F.R.D. at 605.
[31] *See, e.g.,* D.C. Bar Ethics Opinion 79, *supra* n. 20, at 3 ("[T]he fact that the particular words in which testimony . . . is cast originated with a lawyer rather than the witness whose testimony it is has no significance so long as the substance of that testimony is not, so far as the lawyer knows or ought to know, false or misleading"); R.3d cmt. b, *supra* n. 18 (a lawyer "may suggest choice of words that might be employed to make the witness's meaning clear," but "may not assist the witness to testify falsely as to a material fact"); *Ibarra v. Baker*, 338 F. App'x 457, 465-66 (5th Cir. 2009) ("An attorney enjoys extensive leeway in preparing a witness to testify truthfully, but the attorney crosses a line when she influences the witness to alter testimony in a false or misleading way").
[32] *See, e.g.,* R.3d cmt. b, *supra* n. 18 (it is permissible for preparation to involve "discussing the applicability of law to the events in issue"); McCormick, 298 N.C. at 791 (the lawyer can "explain the applicable law in any given situation"); *State v. Hunt,* 221 N.C. App. 489, 503 (2012) (defense counsel could "prepare his witness for trial and [] explain the applicable law as '[s]uch preparation is the mark of a good trial lawyer and is to be commended because it promotes more efficient administration of justice and saves the Court time'") (citing *McCormick*); *In re Coordinated Pretrial Proceedings,* 502 F. Supp. at 1097 (it is permissible for a lawyer to "cause [the witness] to understand fully the company's views and attitudes concerning the litigation").
[33] The issue of whether objections made during a deposition are improperly suggestive has been addressed at the federal level under Rule 30, which provides that objections "must be stated concisely in a nonargumentative and nonsuggestive manner." Fed. R. Civ. P. 30(c)(2); *accord Hall v. Clifton Precision,* 150 F.R.D. 525, 530 (E.D. Pa. 1993) ("It should go without saying that lawyers are strictly prohibited from making any comments, either on or off the record, which might suggest or limit a witness's answer to an unobjectionable question"); *Specht v. Google, Inc.*, 268 F.R.D. 596, 598 (N.D. Ill. 2010) ("Objections that are argumentative or that suggest an answer to a witness are called 'speaking objections' and are improper under Rule 30(c)(2).").
[34] *See supra* n. 31; *McDonough v. Keniston*, 188 F.R.D. 22, 24 (D.N.H. 1998) ("The effectiveness of [witness] coaching is clearly demonstrated when the [witness] subsequently adopts his lawyer's coaching and complains of the broadness of the question[.]"); *Cordova v. United States*, 2006 WL 4109659, at *3 (D.N.M. July 30, 2006) (awarding sanctions where "it became impossible to know if [a witness's] answers emanated from her own line of reasoning or whether she adopted [the] lawyer's reasoning from listening to his objections").
[35] Certain jurisdictions require form objections to be stated simply as "objections to the form of the question," and prohibit lawyers from further stating on the record what the particular defect with the question might be. *See, e.g.*, *Druck Corp. v. Macro Fund (U.S.) Ltd.*, 2005 WL 1949519, at *4 (S.D.N.Y. 2005) ("Any 'objection as to form' must say only those four words, unless the questioner asks the objector to state a reason"); *Turner v. Glock, Inc.*, 2004 WL 5511620, at *1 (E.D. Tex. 2004) ("All other objections to questions during an oral deposition must be limited to 'Objection, leading' and 'Objection, form.'").
[36] *See, e.g., McDonough*, 188 F.R.D. at 24; *Cordova*, 2006 WL 4109659, at *3.

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