

“How to Persuasively Present Written Transcripts During Direct Examination”

DON'T LOSE CONTACT WITH JURORS DURING DIRECT EXAMINATION

By Elliott Wilcox

It's not enough to merely read a deposition transcript to the jury -- you need to give them a reason to pay attention to what the witness said. Here are some simple tips to help improve your direct exam of absentee witnesses.

Have you ever had to present a deposition or interview transcript to the jury? How did you do it? Recently, I was asked to help a friend present the transcript of an interview in a murder case he was prosecuting. There were just a few problems with presenting the interview to the jury:

1. The interview was conducted in Spanish, not English, so he couldn't play the original audio recording.
2. Not everything in the interview was relevant to the case, so the jury would only be allowed to hear certain parts.
3. Our rules of evidence place limitations on the admissibility of transcripts in criminal trials, so he couldn't just admit the transcript and ask the jurors to read it.

He resolved those problems by asking the two detectives to re-read their portions of the interview, and asking me to read the defendant's statements. Between the three of us, we tried to take the jurors back to the interview room, so they could hear exactly what was said. Here are five tips I learned to help you present deposition or interview transcripts more effectively:

Ask someone else to help you.

If he had read all three parts of the transcript himself, he would have run the risk of either confusing the jurors or boring them to tears. By asking the three of us to read our individual parts, he eliminated the risk of the jurors confusing who said what, and made it more interesting for the jurors.

Highlight the witness's lines. By taking a highlighter to all of my lines, I could easily see what I was supposed to read next. That's especially important when you're reading from a back-and-forth exchange. Highlighting all of the witness's lines ensures they won't miss any lines and also ensures there won't be any awkward pauses while you wait for your reader to realize he's supposed to be speaking.

6 been -- tried to keep it under control, but I have to
7 tell you, I don't think I've ever been in a deposition
8 where I found an attorney's attire to be inappropriate.
9 And I just think that has to be on the record. I try to
10 come to depositions in appropriate attire. That's not
11 appropriate. That's my only comment.
12 MS. R [REDACTED]: How I dress, really you don't
13 need to put that on the record nor do you need to make
14 comments on that. I can wear whatever I would like to
15 wear. I find it inappropriate that you're even
16 commenting on that to be quite honest.
17 THE WITNESS: I'm glad you think so, but
18 I've just never been in a deposition like this.

Transcripts can be boring... If you don't read them well

Don't risk the chance of your witness reading irrelevant or inadmissible testimony to the jury. Clearly and boldly mark where they should stop.

Clearly mark any stopping points. If you're only reading portions of the transcript, use the highlighter to draw a line across the entire page where they're supposed to stop. When witnesses are involved in a quick back-and-forth exchange, they can get caught up with reading their lines, and miss the small "Stop!" marks written in the margins. Don't risk the chance of your witness reading irrelevant or inadmissible testimony to the jury. Clearly and boldly mark where they should stop.

Tab the appropriate pages. Just like on the radio, you want to prevent the courtroom from filling with "dead air." When your witness is flipping through pages of the transcript, trying to find what portion he's supposed to read next, it breaks the flow of your presentation and gives the jurors' minds an opportunity to wander away. Prevent "dead air" by tabbing the witness's transcript, so he clearly understands which portion to flip to next. Combined with the highlighting, this little bit of extra effort will make it much easier for your witness to smoothly present the transcript.

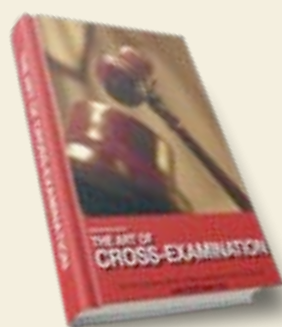
Ask your "reader" to read the transcript beforehand. By reading the transcript in advance, they'll note any grammatical difficulties or pronunciation difficulties they might encounter. You

want to make sure that they can pronounce the words and capture the flow of the language. Think about reading any of Shakespeare's works aloud – you wouldn't want to pick up the text and just "wing it." By reading the document in advance, your reader will discover if there are any words they can't quite wrap their mouth around. They'll be able to fix the problem beforehand, so that your courtroom presentation flows smoothly.

Ideally, if you know a witness won't be available, you'll want to set up a multi-camera recording of his deposition so that the jury can hear exactly what the witness said and see exactly how he said it. However, when those set-ups recording are unfeasible or too expensive, enlist the help of a friend to read the transcript to the jury. Done well, the results can be almost as effective as taking the jurors back to the scene. ■

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