Welcome! The Webinar will begin promptly at 1 pm EST. Please read and follow the below instructions:

1. If you have not already done so, please join the conference call.

2. Mute your phone line. If you do not have a mute button or are on a cell phone, press *1 to mute your phone.

3. If you are on a conference phone, please move all cellular or wireless devices away from the conference phone to avoid audio interference.

4. If you have questions during the presentation, you may utilize the Q&A function at the top of your screen. You may type questions here and it will be sent to the presenters for response.

5. If your question is not answered during the presentation, our presenters will answer questions at the end of the webinar, or via email following the webinar.

6. Visit the “Handouts” section in the upper-right-hand corner of the screen if you would like to download a copy of this PowerPoint presentation and referenced documents.
38th Annual Trial Academy
July 31 – August 6, 2010
Stanford University
Stanford, California USA
For more information, visit www.iadclaw.org

The International Association of Defense Counsel Trial Academy is a proven program for developing defense trial advocacy skills. This seven-day, intensive program blends faculty instruction and demonstration with individual student participation. Since 1973, more than 3,200 students have attended the Trial Academy and have come away with greater confidence, more defined litigation skills, and friendships that will serve them professionally and socially.

DEFENSE FOCUSED
Unlike many other trial practice programs, the IADC Trial Academy offers training provided by a faculty of the best corporate defense lawyers. They focus on defense techniques and tactics and teach participants how to THINK like defense lawyers.

AUTHENTIC EXPERIENCES
The IADC Trial Academy realistically simulates the elements and environment surrounding a trial. Real physicians and accountants act as expert witnesses and professional actors as lay witnesses and parties to the hypothetical cases during student exercises. Faculty expert witnesses have frequent and recent experience on jury trials for clients from a variety of backgrounds and industries. A true cross-section of members of the surrounding community serve as the jurors for faculty demonstration of voir dire.

INDIVIDUALIZED INSTRUCTION
The Trial Academy is a week of both observing the best trial attorneys in faculty demonstrations and practicing with that new knowledge. Unlike some other trial practice programs, attendees are videotaped while practicing every major aspect of a trial, not just one or two exercises. The faculty members provide one-on-one guidance and constructive criticism that result in immediate and vast improvement in performance throughout the week.

PERFORM
DEVELOP
EXCEL
Depositions 101
Part 1 – Deposing the Plaintiff
Wednesday, November 11, 2009

Stay Tuned for Part 2 –
Deposing the Treating Physician –

Watch your inbox for more information!
Presenters

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PLEASE MAKE SURE YOUR PHONE LINE IS MUTED!

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Depositions 101 Series
Part 1 – Deposing the Plaintiff
Strategy and Tactics

• Timing
  – Accumulate evidence
  – Freeze testimony
  – Preserve testimony

• Time to accumulate documents or investigate?
Strategy and Tactics

• Deposition Goals
  – Learn the facts
  – Nail down what you already know
  – Find out what information the plaintiff was shown and told
  – Get and explain documents
  – Find out who knows the facts
  – Locate missing witnesses
Strategy and Tactics

• Deposition Goals (continued)
  – Establish damages and the bases for them
  – Find impeachment material
  – Evaluate the plaintiff
  – Get admissions from plaintiff
  – Test defense theories
  – Exhaust plaintiff’s knowledge
  – Evaluate the other lawyers in the case
Strategy and Tactics

• Show the other lawyers that you are prepared to try the case
• Show the other lawyers that their tricks do not work on you
Preparation Tips

• Define the Key Areas for Examination
• Review Key Pleadings and Applicable Law
• Review Prior Discovery and All Factual Information at Your Disposal
• Prepare a Chronology of Key Fact Events, a Cast of Characters, and Witness Files
Preparation Tips

• Discuss the Upcoming Deposition With Your Client and Cooperative Witnesses
• Visit Site
• Define Your Objectives
• Prepare Exhibits for the Deposition
• Create a Deposition Outline
WHAT TYPES OF QUESTIONS TO ASK?

The Type of Question You Ask Will be Driven by What Your Goal is at that Particular Point in the Deposition
DISCOVERY GOAL

• Use Direct/Open-ended types of Questions
OBTAIN ADMISSIONS/THEORY TEST

- Use Cross Examination Techniques and Leading Questions
EVALUATION GOALS

- Combo Platter/Mix and Match
- Direct and Cross Techniques
DIRECT/OPEN-ENDED QUESTIONS

• USE THE FUNNEL TECHNIQUE
Taking A Deposition
THE FUNNEL TECHNIQUE

OPEN ENDED Q's
Who, What, Where, Why, When,
How, Describe, Explain

What do you mean?
Give details

FOLLOW UP
What else?
Is that everything?
Always? Never?

EXHAUST

Did you, was there?
Have You, is it?

FILL IN GAPS

What about ________?

As I understand it______
Is that right?
Nothing more?

RECAP

MAKE STATEMENTS
LEADING QUESTIONS

Agree with me that______
Do not dispute______
It's true that__________
You admit__________

THEORY TEST

USE THE FUNNEL TO GET:
INFORMATION:
ADMISSIONS
AMMO
DIRT
• 5 W and 1 H Questions

Who
What
When
Where
Why
How
• Describe for us……..

• Tell us about…….

• Explain what you mean when you say “X”…….
CROSS EXAM TECHNIQUES

• 1 FACT/DATA POINT PER QUESTION

• Avoid Adverbs/Adjectives That Can Be “Quibble” Words
  “a lot”
  “significant”
  “fast”/”slow”
  “extremely burdensome”
• Elicit a “Yes” or a “No”

• YOU Testify in Your Question -- Not the Witness

Q: You did not read the warning label on the Lawn Mower before you began using it, did you?

vs.

Q: Did you read the warning label on the Lawn Mower before you began using it?
EXHAUSTION/“BOXING IN”

• “Besides X, Y, and Z, is there anything else you can tell us about…………?!”
• “Is there anything that you can think of that might help you refresh your memory about ...............?!”
• “Have you now told us everything you can remember about................?!”
• “If you think of or remember anything else about………….between now and the end of the deposition will you be sure to tell me about it today?”

• “If you think or remember anything else about…………….after the deposition will you be sure to tell your lawyer about that so that he can tell me?”
EXAMPLE OF EXHAUSTION---CONVERSATIONS

1. How many conversations took place?
2. When did the conversation(s) take place?
3. Where did the conversation(s) take place?
CONVERSATIONS

4. How long did the conversation(s) last?
5. Who was present for each conversation?
6. Where are those people today?
7. What was said during each conversation?
8. What else was said during each conversation?
9. Was the conversation recorded?
10. Were there notes made of the conversation?
CONVERSATIONS

11. Were notes or a memorandum prepared about the conversation?
12. Was any action taken (or not taken) as a result of the conversation?
13. What else can you tell me about the conversation?
14. Have you now told me everything about the conversation?
EVALUATION GOALS

• Direct Questions Can Elicit Evaluative Information About:
  - How articulate is the Witness?
  - How responsive or evasive is the Witness?
  - How will the jury respond to the Witness?
  - How believable is the Witness?
  - What kind of eye contact, body language, etc. does the Witness have?
Cross Examination Questions Can Help You Evaluate The Witness

Does the Witness fight with you or readily agree with you?

Does Plaintiff’s Counsel object to interrupt your flow of questions or coach the witness?

What cross examination techniques work well with the witness?
THE ONE QUESTION YOU SHOULD CONSIDER ASKING A PLAINTIFF

Mr./Ms. Plaintiff, how has your life been affected/impacted by the accident (and the injuries you received in the accident)?
USING EXHIBITS

• Lay the Foundation for an Exhibit if Necessary for Trial

• Refer to the Exhibit by Number (not “this document”, “it”, “the photo”)

• If the witness draws or marks on the Exhibit, make sure that you identify what the markings are, where they are and what they are intended to show.
LISTENING AND FOLLOW UP

• Listen Carefully to the Answer the Witness Gives
• Follow Up on the Answer (A New Funnel)
• Use Active Listening Skills To Elicit Additional Information
Questions for Presenters?

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Thank You For Participating!


Watch your inbox for more information!