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Catching a witness between the devil and the deep blue sea; it works

I have been married for almost 17 years. My son, Jack, is 15-years-old; Lily will soon be 9. There have been countless times when I wish I could have videotaped the conversations involving my wife or one of the kids.

For the betterment of the marriage, attempting to impeach the Mrs. would be a recipe for disaster. Lily is too young, but Jack is nothing but fodder for a consistent successful adverse examination.

I keep telling myself that the acquisition and use of a GoPro is a must when talking with Jack, but it would inevitably amount to piling on. Even though I am a trial lawyer, I must exercise discretion at times when dealing with the psychotic mind of a teenager.

Like clockwork, the weekend usually ends with a mad rush of cramming in homework, the same homework which he claimed he did not have Friday or Saturday. Late Sunday night appears to be the trigger for remembering the homework due Monday. The prior inconsistent statements by young Jack are truly legendary. Ah, the "troubling" life of a teenager.

Jack's prior inconsistent statements made me think about a recent trial.

A little used but powerful trial tool is the showing of a party opponent's prior testimony while that party is on the witness stand. While the admissions of a party opponent are impactful; the hearing and seeing of the admissions can be devastating to that party's credibility. Yet, showing the admission is not commonplace in many courtrooms.

One common misconception is that video clips or a videotaped deposition cannot be shown if the witness is on the stand. The converse is actually true.

It is not necessary that the person making an admission be unavailable as a witness. See, e.g., *Security Savings & Loan*, 77 Ill.App.3rd 606, 610 (3d Dist. 1979). See also, *Adams v. Family Planning Associates Medical Group*, 315 Ill.App.3rd 533, 551-52 (1st Dist. 2000). ("The deposition testimony of a party may contain admissions which are an exception to the rule excluding hearsay and are admissible under Rule 212(a)(2)").

Illinois Supreme Court Rule 212(a)(2) provides that discovery depositions may be used as an admission made by a party ... in the same manner and to the same extent as any other admission made by that person. In Illinois, courts have wide latitude to construe a party's statements as admissions. See, e.g., *Zaragoza v. Ebenroth*, 331 Ill.App.3rd 139, 142 (3rd Dist. 2002).

The well-settled principles make it crystal clear that counsel for plaintiff may introduce evidence of deposition admissions to the defendant or its agents even when that party is on the witness stand.

Hence, the reason why an opposing party deposition should always be videotaped. The impact a prior inconsistent statement or an admission via videotape while that witness is on the stand, cannot be underestimated. It is compelling, convincing and highly conclusive.

Individuals who learn visually prefer images, photos, videotapes to organize information and communicate with others. Arm these jurors with the necessary tools by showing the party's prior admission or inconsistent statement while that individual is on the witness stand.

As Ricky Ricardo would often tell Lucy, "You got some 'splanin' to do."

Showing the defendant their prior admission while they are on the stand is a fun way to suggest that the witness has said something stupid, hypocritical or otherwise embarrassing.

Now you have the opportunity to shoot an incredulous smile at the witness — the same smile and look I glare at Jack every Sunday night.

BALANCING LIFE AND THE LAW

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