

Taking and Defending Depositions, Second Edition

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Depositions

SECOND EDITION

Stuart M. Israel

Reviewed by John R. Runyan

When I entered the practice of law in 1972, there were 12,000 lawyers in Michigan. Civil cases were actually being tried, alternative dispute resolution was in its infancy, and ICLE's most popular course was the Annual Advocacy Institute, held each spring at Hill Auditorium to accommodate the throngs of largely white, male attorneys who gathered from across the country to learn the finer points of trial advocacy.

Times have changed. Today, the State Bar of Michigan has more than 45,000 members and is much more diverse than it was 45 years ago. ADR has become a major focus of every civil lawyer's practice and very few civil cases are actually tried in state or federal courts. The only attorneys whose trial skills have not atrophied are those practicing criminal law, including both those prosecuting crimes and those defending the accused.

Stuart Israel wrote the first edition of his book, *Taking and Defending Depositions*, in 2004. As important as the topic was 14 years ago, it's even more important today. Now, the vast majority of civil cases are settled or decided on motions for summary judgment or summary disposition. The facts upon which these motions are decided do not come from trial testimony from the witness stand but from discovery deposition testimony, which provides the building blocks from which motions for summary judgment/disposition are constructed.

Considered in this light, *Taking and Defending Depositions* may be one of the most, if not the most, important resource civil lawyers have at their disposal. Law schools should make it required reading, at least

for students who do not intend to practice criminal law. It distills into a single volume much of what attorneys practicing civil law today need to know to be successful. Israel shares secrets acquired and wisdom gained over 46 years as a law teacher and practicing attorney. His wry sense of humor is also on full display.

Taking and Defending Depositions contains practical advice with respect to virtually every aspect of the deposition process, from whom to depose and when, to how to prepare for and actually conduct depositions, including depositions of expert witnesses. Equally, if not more important, Israel's book provides advice to the attorney whose client is being deposed. He shares practical wisdom about preparing the deponent for a deposition, including the ethical boundaries on "coaching." Among my favorite parts of Israel's work are the examples he sprinkles throughout the book to illustrate his advice, usually with some humor mixed in. Here's a sample with respect to witness preparation:

Lawyer: Pat, now we'll go over your testimony about your supervisor's remarks. As we've discussed, what he said is very important to support our legal claim that you were fired because of your age. Let's try it.

Q. Pat, did anyone make any remark about your age?

A. Yes, my supervisor, Arnold Springer.

Q. When and where?

A. It was on July 3. I was planning to go to West Virginia over the July 4 holiday, to a family reunion. I was not looking

forward to going. My brother-in-law and I have never gotten along. Anyway, it was on July 3 and that S.O.B. Springer came up to me near the break room. I was thinking about the trip and...

Lawyer: Uh, hold it Pat. There's no reason to testify to irrelevant details. There certainly is no reason to dredge up friction with your brother-in-law. And we don't want you to say Springer is an S.O.B. You've got to stick to the point, to what happened. We together on this? Okay, back to it.

Q. What did he say?

A. He said he didn't know why an old relic like me was still working, that this was a young person's game, and that I ought to be put out to pasture.

Q. Was anyone else present?

A. Yes, two coworkers. There was a fat guy, oh, what's his name. I can't think of it now. And there was Irma Black, the woman with the "Property of Hell's Angels" tattoo.

Lawyer: Hold it, again. The guy, isn't his name Ronnie Martinez?

Witness: Yeah, that's it. I forgot. Ronnie Martinez.

Lawyer: It's not necessary to mention his weight, is it? You referred to him as "the fat guy."

Witness: Well, it's true. He's fat. He's about 5'7" and goes 285. That's fat. I'm telling it like it is. It's the truth. Fat. I'm just telling the truth, the whole truth and nothing but.

Witness: What if I forget Ronnie's name again. My memory's not that great. Getting old.

Lawyer: I'll help if you forget his name. You'll say something like "Another co-worker was there but his name just momentarily escapes me." I'll say "Was it Ronnie Martinez" and you'll say "Yes." By the way, if you testify about getting old or about your memory going, you'll be shooting yourself in the foot. Keep your eye on the ball, okay?

Witness: Okay sorry, I won't say anything like that again.

(pp 89–90)

If the book has a weakness, it's a minor one. Israel's fondness for lists such as his "162 Essential Rules for Deponents" is alone amusing, but when the book contains 15 such lists, the approach loses some of its appeal.¹ Still, *Taking and Defending Depositions* contains invaluable advice unavailable anywhere else, and the fact that much of it appears in list format does not detract from its value. If you're like me, it's a book you'll find yourself returning to over and over again. ■



John R. Runyan is managing director of Sachs Waldman in Detroit. He also chairs the State Bar's Michigan Bar Journal Committee.

ENDNOTE

- (1) Seventeen Deposition Objectives; (2) Eight Ways to Use Depositions at Trial; (3) Twelve Ways to Discover Information Along With, or Instead of, Depositions; (4) Nine Advantages and Five Drawbacks of Depositions; (5) Twelve Deposition Principles, Mechanics, Strategies and Practices; (6) Nine Thoughts About Preparing, Organizing and Managing Discovery; (7) Thirteen Deposition Fundamentals to Discuss with Deponents; (8) Sixty-Three Suggestions for Taking Discovery Depositions; (9) Twenty-Two Suggestions for Preparing to Depose and Deposing Expert Witnesses; (10) Twelve Deposition Objection Types and When to Make Them; (11) Thirty-Two Objections to Correctable (?) Defects; (12) The Only Three (or Four) Reasons to Instruct the Deponent Not to Answer; (13) Six Reasons to Question Your Client at Deposition; (14) Five Reasons for Civility in Defending Depositions; and (15) Sixty-Seven Suggestions for Defending Discovery Depositions.



Meeting Directory

Lawyers and Judges Alcoholics Anonymous and Narcotics Anonymous

The following list of meetings reflects the latest information about lawyers and judges AA and NA meetings. Those meetings marked with "*" are meetings that have been designated for lawyers, judges, and law students only. All other meetings are attended primarily by lawyers, judges, and law students, but also are attended by others seeking recovery. In addition, we have listed "Suggested Meetings," which others in recovery have recommended as being good meetings for those in the legal profession. For questions about any of the meetings listed, please contact the Lawyers and Judges Assistance Program at (800) 996-5522 or jclark@michbar.org.

Alcoholics Anonymous Meetings

***Monday 7:00 PM**
Lawyers and Judges AA Meeting
St. Paul of the Cross
23333 Schoolcraft Rd.
(I-96 south service drive, just east of Telegraph Rd.)
Detroit
(This is both an AA and NA meeting.)

***Tuesday 7:30 PM**
Lawyers and Judges AA Meeting
St. John's Episcopal Church
26998 Woodward Ave.
Royal Oak

***Wednesday 12:00 PM**
First Presbyterian Church
321 W. South St., 3rd Floor, Room 301
Kalamazoo

***Wednesday 6:00 PM**
Kirk in the Hills Presbyterian Church
1340 W. Long Lake Rd.
(1/2 mile west of Telegraph)
Bloomfield Hills

Wednesday 8:00 PM
Sense of Humor AA Meeting
Michigan State University Union
Lake Michigan Room
(S.E. corner of Abbot and Grand River Ave.)
East Lansing

***Thursday 4:00 PM**
Al-Anon of Berrien County
4162 Red Arrow Highway
Stevensville

***Thursday 7:00 PM**
Central Methodist Church
2nd Floor
(Corner of Capitol and Ottawa Streets)
Lansing

***Thursday 7:30 PM**
Maple Grove
6773 W. Maple Rd.
Willingness Group Room 21
West Bloomfield Township

***Friday 12:00 PM**
Detroit Metropolitan Bar Association
645 Griswold
3550 Penobscot Bldg., 13th Floor
Smart Detroit Global Board Room 2
Detroit

Gamblers Anonymous Meetings

For a list of meetings, visit <http://www.gamblersanonymous.org/mtgdirMI.html>. Please note that these meetings are not specifically for lawyers and judges.

Suggested Meetings

Tuesday 7:00 AM
Antioch Lutheran Church
33360 W. 13 Mile
(Corner of 13 Mile and Farmington Rd., use back/north entrance, basement)
Farmington Hills

Tuesday 12:05 PM
Professionals in Recovery
Human Potential Center
22 W. 2nd St.
Monroe

(Closed meeting; restricted to professionals who are addicted to drugs and/or alcohol)

Tuesday 6:00 PM
St. Aloysius Church Office
1232 Washington Blvd.
Detroit

**Thursday 8:00 PM
(also Sunday 8:00 PM)**
Manresa Stag
1390 Quarton Rd.
Bloomfield Hills

Friday 8:00 PM
Rochester Presbyterian Church
1385 S. Adams
(South of Avon Rd.)
Rochester
(Closed meeting; men's group)

For anyone interested in starting an LJAA meeting in northern Michigan, please contact LJAP.

For other AA or NA meetings, see listings in your local phone book or call:
Lawyers and Judges Assistance Program, (800) 996-5522