

NEWS

Information & Insights from **RICK JOHNSON Private Investigators**
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Bearing False Witness

Every attorney knows the problem and its seemingly endless variations.

Potential witnesses forget, misstate, fudge, twist, and lie... even when they don't intend to, but especially when they intend to.

And the problem isn't confined to adverse witnesses.

The Friendly Deceiver

People forget. And when it turns out to be something important, they may tend to guess, even to the point of sounding convinced of their own misinformation.

People embellish. A trial, civil or criminal, is a significant event, maybe the event of a lifetime. Tweaking isn't confined to resumes and cocktail parties.

People can be embarrassed. Being present where they shouldn't have been, doing something they shouldn't have been doing, perhaps even just having to recognize their vulnerability... these are just a few of the reasons that people will tell "their own version of the truth."

People want to look good. They may well try to obscure a critical detail in a statement that turns out

Still, when the president of a major software company can translate a job as an air force air traffic controller into piloting an F4 Phantom jet, as was reported by The Wall Street Journal, position and reputation is no substitute for verification.

And, at deposition, it's already much to late.

Putting The Truth To The Test

The nature and extent of information available before trial, particularly before a deposition, is critical to the search for evidence that can support or challenge a potential witness.

Yet far too much reliance often is placed on the deposition, rather than on preparation for the deposition.

Before The Deposition

A potential witness clearly may not have been the only potential witness. Others may have a different story to tell... providing they are identified, located, and questioned.

An accident report or police incident report needs to be backed up by an interview with the

After The Deposition

Any new information obtained during the deposition and any adjustments in statements should be further investigated.

Again, the point is to overlook no opportunity to strengthen your own position while weakening the position of the opposition.

The best trial work takes place before trial. It should be considered to be the first best chance to prevail.

A client deserves no less.



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- **Police misconduct and related investigations for Central City, Breckenridge, Fowler, and Fort Lupton. And Risk Assessment investigations for Denver.**
- **The only private investigative agency in Colorado to be hired by the Denver Election**

to be a critical error at trial.

The Adverse Deceiver

It's not news that an adverse witness can be a committed obstructionist. **But the most dangerous type of obstructionist is the adverse witness who appears cooperative.**

In criminal cases, Police officers may have "extended" the truth in order to justify a search of a car without a warrant. Observing "furtive" conduct is virtually a cliché. Although under serious scrutiny, profiling still is a standard tool.

In civil matters, the obvious problem is with outright lies, but perhaps more insidious, is **information that can't be verified or that is partially true.**

A typical example of the first is a resume with no dates, no contact information, or other supporting information.

A typical example of the second is an individual's statement of being present at a particular time and place, but who is convincingly deceptive about the events or circumstances of interest at that time and place.

The Expert Deceiver

Expert witnesses are not immune from the syndrome, although they can be much more sophisticated than the average witness.

At the same time, **the credentials they present usually are so extensive that a comprehensive testing of those credentials appears quite daunting.**

investigator. An effort needs to be made to find follow-up reports and to interview follow-up investigators.

Any claim made by a witness, friendly or otherwise, must be scrutinized for accuracy and sufficiency.

Every potential weakness in every circumstance and in every statement must be exposed.

Anything taken at face value is a potential and serious mistake. It pays to challenge friend and foe alike. The only assumption to be made is that the other side is doing precisely that.

The Deposition

A good deposition might best be described as a mini trial, with the witness as the defendant.

Armed with the information found during the pre-deposition investigation, the questioner is in the position of the prosecutor or at least a civil attorney on cross-examination.

The style of the presentation may be friendly, even soft, but the witness must be tested.

Style aside, questioners must be alert to pick up and probe any inconsistency, no matter how small.

It's more effective and useful to demolish a witness's credibility at a deposition than it is at trial. The result even may be a settlement offer that otherwise wouldn't have been possible.

Commission to investigate allegations of campaign fraud and kickbacks.

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