ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl REPORT

LOS ANGELES

SUMMER 2025

CROSS-EXAMINATION REVISITED

Jay Spillane

Cross-examination of witnesses is one of the fundamental guarantees of a fair trial. (*Ogden Entertainment Services v. Workers' Comp. Appeals Bd.* (2014) 233 Cal.App.4th 970, 982–983 (*Ogden Entertainment*).) Here, I discuss fundamental rules of cross-examination, suggest certain techniques based on my experience, and reexamine the maxim that one should only ask a question to which the answer is already known.

Cross Examination Basics

"'Cross-examination' is the examination of a witness by a party other than the direct examiner upon a matter that is within the scope of the direct examination of the witness." (Evid. Code,

Continued on Page 8

— INSIDE —

EMBRACING AI: IMPLICATIONS TO LEGAL SERVICES & CLIENT VALUE

Shahrokh Sheik

Sofya Harutyunyan

Client-centric lawyers are committed to delivering value to clients. Emerging legal technology including artificial intelligence (AI) and large language models (LLMs) are revolutionizing industries across the board, and the legal industry is no exception. They will challenge traditional business (and billing) models and consumer expectations both internally and externally. They will also enable lawyers to enhance the quality and efficiency of their operations and thus the overall value to clients.

This article is a broad discussion on the current impact of AI and other legal tech we currently see being used for legal services, the value proposition for clients, and possible future implications.

Will AI replace lawyers?

No one can predict the future, and many prognosticate a future full of opportunity or concern. Rather than speculate about entire professions, the current utilization of AI and other legal tech already demonstrates tremendous impact and value as well as future implications.

Indeed, AI is already automating slices of lawyers' traditional tasks—summarizing discovery, suggesting contract language, and answering first-pass research questions.[1] On the

Continued on Page 11

2025 PRESIDENT'S MESSAGE

Kahn Scolnick

I'm thrilled to deliver the President's Message for this edition of the ABTL Report. I started attending ABTL events nearly two decades ago as a junior associate, and I was blown away by the collegiality and the high-quality programming. Those two core features of the ABTL have kept me coming back ever since! Our organization—and the Los Angeles Chapter in particular, with its roughly 2,500 members—is thriving. We have consistent, outstanding turnout and engagement at our dinner programs, lunch programs, judicial reception, YLD events, and annual seminar. That's due, in large part, to our shared belief and commitment to the professional, ethical, and civil practice of law.

Of course, the past few months have brought challenges that none of us could have anticipated. Dozens of our members lost their homes in the Altadena and Palisades fires, and many more of us have been affected in a variety of other ways. It's been inspiring to see our legal (and broader) community rise to the challenge to help those affected—opening up our homes and wallets, doing pro bono work, checking in on our neighbors, etc. And our profession is also facing other, more existential threats. The independence of the judiciary and the ability to represent clients without fear of reprisal are two pillars of our democracy. Paraphrasing from Chief Justice Guerrero's recent remarks in her "State of the Judiciary" address: We must ensure that all members of the public have equal access to the legal system, we must safeguard individual rights, and we must promote the fair and timely administration of justice. I am confident that ABTL will continue to uphold those fundamental goals.

Ok, back to business. Since our last ABTL Report, we had a fascinating dinner program in February on the landmark *Grants Pass* decision from the last Supreme Court term, which addressed homelessness and the Eighth Amendment's limitations on public camping ordinances. Our March lunch program focused on civility, a topic near and dear to ABTL. Our April dinner program was a lively discussion about the record-breaking jury verdict in the *Guardant v. Natera* false advertising trial. The YLD had a brown-bag lunch with Judge Holly Thomas in April, and our members-only judicial reception will take place on June 26. We're now busy lining up some exciting events for this fall and early 2026—so stay tuned! In short, as the other chapters recently put it at our joint board retreat, the Los Angeles chapter is a "powerhouse." (By the way, a lot of the credit for that goes to our immediate past President, Michael Mallow, whose dedication to ABTL has been unparalleled.)

Thank you for your support and commitment to our organization. I'm honored to be your ABTL President and I look forward to seeing all of you soon.

ASSOCIATION OF BUSINESS TRIAL LAWYERS
abtl REPORT

8502 E. Chapman Avenue, Suite 443
Orange, California 92869
(323) 988-3428
Email: abtl@abtl.org • www.abtl.org

STAYING JUDGMENTS PENDING APPEAL: A PRACTICAL OVERVIEW

Laura Lim

The jury returns an adverse verdict requiring your client to pay damages. The court then enters judgment. Your client wants to appeal. How do you prevent the other side from enforcing the judgment in the meantime?

This article outlines steps to stay enforcement of a money judgment pending appeal in California, including what to do before obtaining an appeal bond, how to procure the bond, and what other mechanisms are available for staying enforcement.[1]

Step One: Ask The Trial Court For A Temporary Stay Of Enforcement

An appeal doesn't automatically stay enforcement of money judgments.[2] (Code Civ. Proc., § 917.1, subd. (a).) For those judgments—and certain other orders—the only way to stay enforcement is generally by posting an appeal bond. (*Ibid.*)

However, the trial court has statutory power to grant a *temporary* stay whether or not your client ultimately files an appeal—i.e., discretionary authority to stay enforcement of a money judgment for up to "10 days beyond the last date on which a notice of appeal could be filed." (Code Civ. Proc., § 918, subd. (b).) A temporary stay prevents the judgment's execution while you and your client (1) evaluate whether to pursue an appeal, (2) file any postjudgment motions before filing a notice of appeal, and (3) assess your client's options for obtaining an appeal bond.

You should apply for a temporary stay of enforcement as soon as the court enters judgment, or even beforehand if you know the judgment is coming. Because courts have broad discretion in granting or denying a temporary stay, your application should explain why such a stay is necessary and why granting the stay won't prejudice the other side.

[1] The terms "bond" and "undertaking" are used interchangeably in the context of filing an appeal. (See Code Civ. Proc., § 995.210.) This article will use the term "bond."

[2] There is an exception: An appeal automatically stays judgments solely for costs and/or attorney fees, even though such judgments are money judgments. (Code Civ. Proc., §§ 917.1, subd. (d), 1021.)

Step Two: Ask Opposing Counsel To Waive The Appeal Bond And Stipulate Not To Execute

Before expending the effort and resources to procure an appeal bond, it may be worth asking opposing counsel whether their client would be willing to waive the bond requirement and stipulate not to execute the judgment pending the appeal, or at least until the court decides any postjudgment motions. After all, reasonable costs associated with bonding the judgment are recoverable if your client prevails on appeal. (Cal. Rules of Court, rule 8.278(d)(1).) Even if the other side refuses to waive the appeal bond, seeking a waiver in the first place would bolster your client's request to recover costs associated with obtaining the bond if you prevail on appeal, because the other side's refusal to voluntarily defer enforcement proves that any bond expenses were reasonably necessary.

Of course, a plaintiff will be more willing to waive the bond requirement if it's clear that your client has the means to pay the judgment if you lose the appeal—e.g., if your client's insurance company will be paying the judgment.

Step Three: Advise Your Client Regarding The Available Options And Procure The Bond Or Other Mechanism For Staying Enforcement

Absent an agreement not to enforce, your client will need to post a bond or take similar steps to stay enforcement pending appeal. Here are the different types of appellate bonds and other ways to stay enforcement to review with your client:

Admitted surety bonds. The most common appeal bonds are issued by admitted surety insurers—i.e., corporations or insurers with a certificate to transact surety insurance in California. (Code Civ. Proc., § 995.120.) An admitted surety bond must be one and one-half times the amount of the judgment. (*Id*., § 917.1, subd. (b).) Only one admitted surety insurer is required to execute an appeal bond. (*Id*., § 995.310.)

Courts must automatically accept an admitted surety insurer as surety on a bond if the following requirements are met:

- The bond is executed in the name of the surety insurer under penalty of perjury, or the fact of execution of the bond is duly acknowledged before a notary public.

Continued on Page 4

Staying Judgments Pending Appeal...continued from Page 3

- The surety insurer has on file with the clerk of the county where the court is located some record showing that the person signing the security instrument is authorized to do so, or a copy of the surety's power of attorney is attached to the bond filed with the court.

(Code Civ. Proc., § 995.630, subds. (a), (b).)

Admitted surety insurers charge an annual premium for the bond and require the appellant to post full collateral for the bond, usually in liquid form (i.e., cashier's check or wire transfer) or through a bank's letter of credit.

You should also put your client in touch with a trusted bond broker who can issue the admitted surety bond, if your client doesn't already have one.

Personal surety bonds. Any third person can act as a personal surety for the appeal bond, provided that the person:

- Is a California resident and owns or rents real property in the state;
- Is not a court officer or California state bar member; and
- Is worth the amount of the bond in real and/or personal property situated in California, over and above all debts and liabilities and exclusive of property exempt from enforcement of a money judgment.

(Code Civ. Proc., § 995.510.)

Personal surety bonds must be twice the amount of the judgment. (Code Civ. Proc., § 995.710, subd. (b).) And, if your client chooses to post a personal surety bond, the bond must be executed by two or more personal sureties, or a combination of personal sureties and admitted surety insurers. (*Id.*, § 995.310.)

Deposit in lieu of bond. Instead of posting a bond, your client could deposit cash or certain securities directly with the trial court. (Code Civ. Proc., § 995.710.) This option avoids the cost of going through an admitted surety insurer. The amount deposited must be at least equal to the amount required of a bond from an admitted surety insurer—i.e., one and a half times the amount of the judgment. (*Id.*, § 995.710, subd. (b).) The deposit can be by cash or cashier's check, or other specified securities such as federal or state bonds or notes, certificates of deposit made payable to the court, and savings accounts assigned to the court. (*Id.*, § 995.710, subd. (a).)

Negotiated arrangements. It also may be possible to negotiate an arrangement with the other side by, for example, offering to deposit an amount equal to the amount required of a bond from an admitted surety insurer into escrow.

Step Four: Draft And File The Bond

If your client chooses to secure a bond, there are certain requirements to ensure the bond's validity:

- The bond must be in writing. While the law does not require any particular form for the bond, Code of Civil Procedure section 995.330 provides suggested language.
- The bond surety or sureties must sign the bond under oath. (Code Civ. Proc., § 995.320, subd. (a).) If there is more than one surety, the bond must state that the sureties are jointly and severally liable. (Ibid.)
- The bond must state the address at which the principal and sureties may be served. (Code Civ. Proc., § 995.320, subd. (a).)

The bond must be served on opposing counsel and filed in the trial court along with a proof of service. (Code Civ. Proc., § 995.370.)

While there is no time limit for filing the bond, you should file it as soon as possible because the plaintiff may be free to execute on the judgment (unless the court grants a temporary stay under Code of Civil Procedure section 918).

The bond becomes effective automatically upon filing. (See Code Civ. Proc., §§ 995.410 ["A bond becomes effective without approval unless the statute providing for the bond requires that the bond be approved by the court or officer"], 917.1 [no approval requirement for an appeal bond].)

Practice Tips

In sum, the steps to stay enforcement of a money judgment pending appeal include the following:

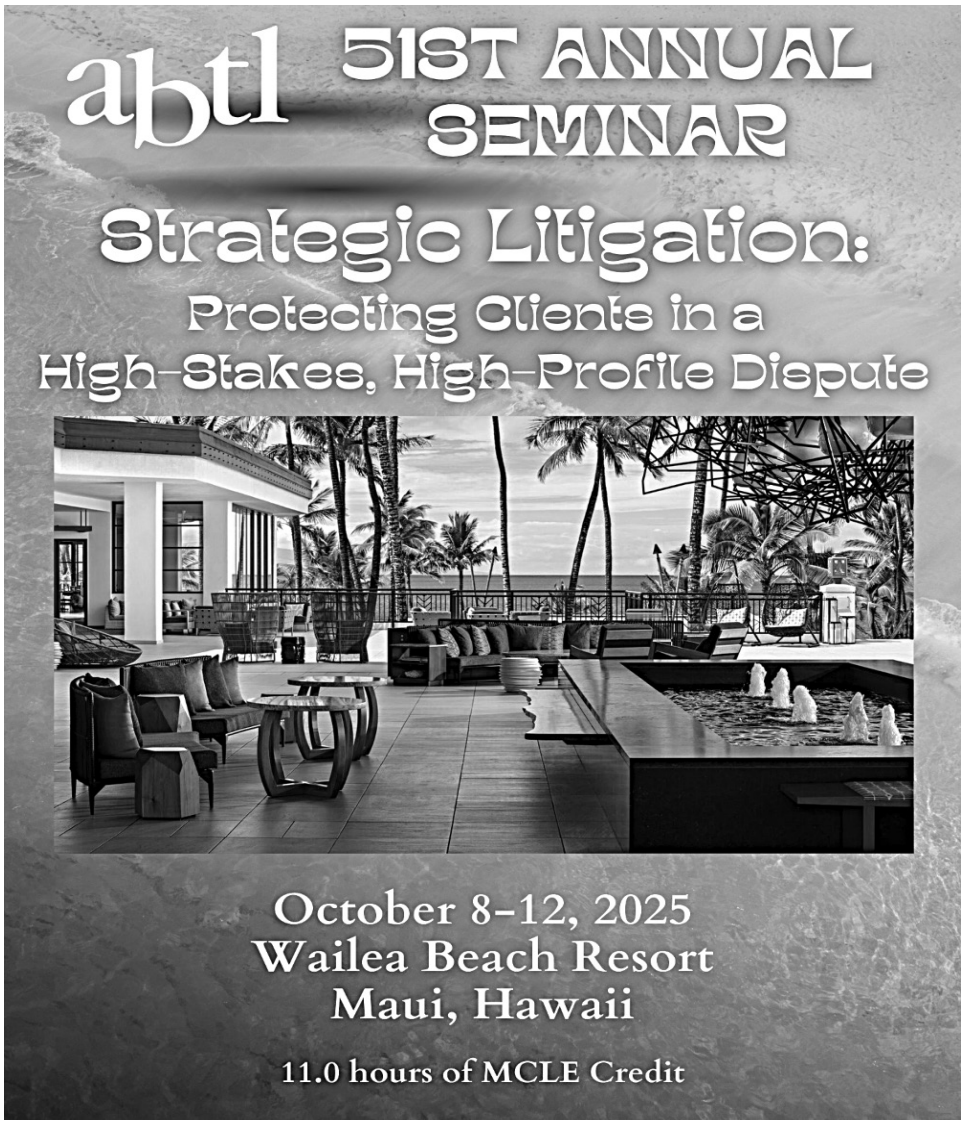
- The bond must be in writing. While the law does not require any particular form for the bond, Code of Civil Procedure section 995.330 provides suggested language.

Continued on Page 5

Staying Judgments Pending Appeal...continued from Page 4

- The bond must be in writing. While the law does not require any particular form for the bond, Code of Civil Procedure section 995.330 provides suggested language.
- **Apply for a temporary stay of enforcement.** You should do this as soon as the court enters judgment. The application should address why a temporary stay is necessary and why it won't prejudice the other side.
- **Confer with opposing counsel.** Consider asking whether the other side would be willing to waive the bond requirement and stipulate not to execute the judgment pending the appeal, or at least until the court decides any postjudgment motions.
- **Review the different types of appellate bonds and other ways to stay enforcement with your client.** Without an agreement not to enforce the judgment, your client will need to post a bond or stay enforcement another way. Appeal bonds include admitted surety bonds and personal surety bonds. Other options include a deposit directly with the court, or a deposit into escrow if the other side agrees to that arrangement.
- **Draft and file the bond.** Code of Civil Procedure section 995.320 sets forth the requirements for the bond's contents. Code of Civil Procedure section 995.330 provides suggested language. You should file the bond as soon as possible to prevent the plaintiff from executing on the judgment (absent a temporary stay of enforcement).

Laura Lim is an associate at Greines, Martin, Stein and Richland LLP.



CALIFORNIA SUPREME COURT LIMITS THE AVAILABILITY OF THE ONE-YEAR STATUTE OF LIMITATIONS FOR CLAIMS BY NONCLIENTS AGAINST ATTORNEYS

AnnaMarie A. Van Hoesen

Effiong Dampha

Recently, the California Supreme Court, in *Escamilla v. Vannucci*, 17 Cal. 5th 571, 576 (2025), held that the one-year statute of limitations under section 340.6 of the California Code of Civil Procedure for certain actions against attorneys "does not apply to claims against attorneys brought by parties who were never their clients or the intended beneficiaries of their clients." The unanimous opinion overturned the weight of authority holding that section 340.6's one-year statute of limitations applies to malicious prosecution cases brought by nonclients against attorneys. The Court instead favored the sole published case to the contrary, citing the lack of Supreme Court precedent, the statute's ambiguity, its legislative history and purpose, and public policy concerns as the basis for its ruling.

The Court's holding in *Escamilla* means that the one-year statute of limitations applies only to malicious prosecution claims against an attorney brought by a plaintiff who is within the attorney-client relationship. Beyond malicious prosecution claims, attorney defendants will now need to make a threshold showing that the plaintiff was a client or an intended beneficiary to take advantage of section 340.6.

The One-Year Statute of Limitations Under Section 340.6

On its face, section 340.6 broadly proscribes a one-year statute of limitations for lawsuits by a "plaintiff" against "an attorney" for claims arising out of the attorney's performance of professional services. The statute states in relevant part:

> An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.

Cal. Civ. Proc. Code § 340.6(a). As the Court noted in *Escamilla*, lower courts had generally concluded based on this statutory language that "claims against an attorney brought by anyone must be initiated within one year, so long as the claim concerns an attorney's professional conduct." 17 Cal. 5th at 579.

The Facts of the Case and Procedural Posture

In the underlying case, the clients of attorney Vannucci sued Escamilla, a certified fugitive recovery agent, for improperly searching the clients' home. Escamilla countersued Vannucci's clients for abuse of process. A jury found for Escamilla on all of plaintiffs' claims and awarded Escamilla $20,000 in damages on the cross-complaint.

Almost two years after judgment was entered, Escamilla sued Vannucci for malicious prosecution. Vannucci moved to strike the complaint under California's anti-SLAPP statute, arguing in part that Escamilla's claims were barred by section 340.6's one-year statute of limitations. Conversely, Escamilla argued that his malicious prosecution claim was governed by the two-year statute of limitations for tort claims under section 335.1 of the California Code of Civil Procedure.

Relying on the weight of appellate authority and the apparent language of the statute, both the trial court and appellate court concluded that section 340.6 governed and barred Escamilla's claims.

The Supreme Court Opinion

The California Supreme Court overruled the lower courts, holding that section 340.6 does not extend to claims brought by plaintiffs outside the attorney-client relationship:

Continued on Page 7

California Supreme Court Limits the Availability of the One-Year Statute of Limitations for Claims by Nonclients Against Attorneys
...continued from Page 6

> As we interpret the statute, the one-year limitations period of section 340.6 applies only to claims by an attorney's clients, or their intended beneficiaries, and only when the merits of the claim necessarily depend on proof the attorney violated a professional obligation.

Escamilla, 17 Cal. 5th at 587. The Court supported its holding on several grounds:

Lack of Supreme Court Precedent. The Court first explained that its decision in *Lee v. Hanley*, 61 Cal. 4th 1225 (2015)—often cited to support the extension of section 340.6 to malicious prosecution claims—was not directly on point. The Court noted that *Lee* "did not address whether section 340.6 applied to claims brought by nonclients" and none of the examples in the *Lee* opinion suggested that section 340.6 might extend to claims brought by nonclients. *Escamilla*, 17 Cal. 5th at 586–87.

Statutory Ambiguity. The Court then posited that section 340.6 was "ambiguous as to whether [it] applies to claims brought against attorneys by third parties." *Id*. at 581. The Court began by cautioning that, although section 340.6 refers to claims brought against an attorney by a "plaintiff" generally rather than a "client," the "significance of this phrasing should not be overread." *Id*. Citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, 6 Cal. 3d 176, 179 (1971), and *Budd v. Nixen*, 6 Cal. 3d 195, 198 (1971), the Court reasoned that section 340.6 stems from earlier cases using the term "client." The Court also pointed to the tolling provision under subdivision (a)(2) of the statute, which uses the term "plaintiff" even though the term can only reasonably refer to a "client." Finally, the Court pointed to the most recent amendments to section 340.6, where the Legislature used the term "client."

Legislative History and Purpose. The Court next concluded that the legislative history and purpose of the statute support limiting its application to the attorney-client context. The Court explained that the Legislature enacted the statute in order to "'reduce the costs of legal malpractice insurance,'" given uncertainty as to which limitations applied to potential malpractice claims depending on how the plaintiff styled his complaint. *Id*. at 583 (citation omitted). The Court also explained that legislative history materials and reports consistently referred to the statute as "'a statute of limitations for legal malpractice claims.'" *Id*. at 584 (citation omitted). And the Court observed that when the statute was enacted, malicious prosecution claims already had a one-year statute of limitations and thus those claims were not considered as falling under the new statute.

Public Policy Concerns. Finally, the Court held that public policy supports limiting the application of section 340.6 on two grounds. First, the limitation "avoids the potential unfairness that would arise from applying different statutes of limitations to claims for the same alleged misconduct depending upon whether the suit is brought against an attorney or client." *Id*. at 587. And second, the Court explained, it avoids different tolling when an adverse judgment is on appeal, because the limitations period is tolled pending an appeal for malicious prosecution but not for legal malpractice claims.

Implications of *Escamilla*

The Court's opinion likely has implications beyond malicious prosecution cases. The Escamilla holding requires that attorney defendants also make a threshold showing of an attorney-client relationship to take advantage of section 340.6's one-year statute of limitations. This requirement is not limited to the malicious prosecution context; it also applies to several other common claims brought by nonclients against attorneys, including negligent misrepresentation, aiding and abetting, breach of fiduciary duty, tort of another, and UCL claims.

AnnaMarie Van Hoesen is a partner at Jenner & Block LLP.
Effiong Dampha is an associate at Jenner & Block LLP.

Cross-Examination Revisited...continued from Page 1

§ 761.) In cross-examination one can ask "leading question[s]," (id., § 767), "a question that suggests to the witness the answer that the examining party desires" (*id*., § 764).

Customarily, cross-examination occurs after the opposing party calls a "friendly" witness (a party, a sympathetic third-party or expert retained by that party) and concludes their direct examination questions, ones that don't suggest the desired answer. ("What happened then?," or "What did you say in the meeting?")

"Within the scope" means that the cross-examination should concern the subjects raised in the direct examination, not entirely new ones. However, the judge should not rigidly apply this standard. Any question tending to overcome, qualify or explain the direct testimony should be permitted. (*Smith v. Brown-Forman Distillers Corp.* (1987) 196 Cal.App.3d 503, 521.) The cross-examining attorney should not be strictly limited to questioning the dates, times or actions covered in the direct. (*People v. Farley* (2009) 46 Cal.4th 1053, 1109.) When only a portion of an act or statement is elicited on direct examination, the adverse party may inquire into the remainder of that act or statement under the "rule of completeness." (See Evid. Code, § 356.) Cross-examination may also probe credibility (*Ogden Entertainment*, supra, 233 Cal.App.4th at p. 983), reliability, or bias (*People v. Brady* (2010) 50 Cal.4th 547, 560).

The parties can agree to "waive scope" – in other words, all parties ask all questions of the witness at one time, then s/he is excused from the trial. This may be to accommodate third party witnesses or those who traveled to testify, so that they don't need to appear in one party's case and then potentially appear again in the other side's case.

A party can call a "hostile" or "adverse" witness in their own case, then examine that witness in the first instance in cross-examination style with leading questions. (Evid. Code, §§ 767, 776.) For example, a plaintiff may need to call a defense witness to establish an element of their case before resting. After the "776" examination, the friendly attorney would ask direct examination style questions, and so on. Since an "adverse" witness is often a party, the 776 examination would likely stay within the scope; then that witness would appear again at trial in their party's own case.

Standard Practice

The common cross-examination advice is to only ask questions to which you already know the answer. (See Fairbank, et al., Cal. Practice Guide: Civil Trials & Evidence (The Rutter Group 2024) ¶¶ 10:167, 10:187.) This is because if you ask an open-ended question at trial, you may give the witness an opportunity to repeat their side of the story.

The source of this advance knowledge of the answer comes from pretrial deposition testimony, writings involving the witness or prior witness statements.

If you have a useful admission in the deposition, pose the question at trial just as asked in the deposition. If the witness waffles, go through the impeachment preamble ("Do you remember giving a deposition prior to trial?," "You told the truth in that deposition?," etc.) then read, or play, the question and answer. Just let the impeachment hang in the air for a moment, then move on. Don't ask follow-up questions, like "Do you remember saying that?" That could elicit a "Yes, but . . ." deviation.

These days so many of our words are memorialized in electronic communications—emails, text, electronic messages. Hopefully you will have discovered those electronic statements and established authenticity through pretrial admissions (consider using form requests for admission for genuineness of documents), or a joint exhibit list including stipulations and objections to admission. Even if you don't have a deposition question on an electronic communication, you will have the words the witness wrote or received in front of the jury. Display the communication, establish the time and persons involved, then ask the witness to confirm the document says X. If s/he demurs, read the statement aloud and ask whether you read the statement correctly. If s/he tries to bring up something absent from the document, ask them to tell the jury where the document says that. If the witness won't admit that the document says what everyone can see on the screen or tries to bring in something the document does not say, the jury could disregard that witness's credibility.

Motions to Strike

"A witness must give responsive answers to questions, and answers that are not responsive shall be stricken on motion of any party." (Evid. Code, § 766.)

Continued on Page 9

Cross-Examination Revisited...continued from Page 8

It's one thing to ask an open-ended question, the response to which you do not have nailed down allowing the witness to damage your case. It's another thing to ask a question, they answer to which you do have nailed down, and have the witness prevaricate, either by not answering the question at all, or by admitting the answer and adding a "yes but" addendum that doesn't respond to the question.

The available and proper remedy is to move to strike the entire answer as non-responsive, or to identify the portion of the answer that is non-responsive. If the judge agrees, s/he will grant the motion and instruct the jury to ignore the answer, or which part to ignore.

If a witness deflects in answering my question, I don't necessarily move to strike immediately. Sometimes I try a nice follow up first: "I would be grateful if you would address my question," then repeat the question. The not-so-nice follow up is to ask if my questions are making the witness nervous, then repeat the question. If the witness sticks to the deviation, then I move to strike. This can be a powerful tool, for if the judge grants the motion and instructs the jury to disregard the answer, this give an official imprimatur to the suggestion that the witness is being evasive. If the judge grants my first motion and the witness continues in this vein, I may start moving to strike after the first evasive answer.

Going Off Script

Some of my best courtroom moments have come when I had a strong sense of a witness, and made an in-court judgment call to go "off script" though I did not have the answers nailed down in advance.

The Truth Teller

I appeared just prior to trial for an intervenor, the mother in an emotional elder financial abuse case where the elderly father sued the daughter and estate law firm over a revised trust that gave the family properties exclusively to the daughter and disinherited the son. Mom was aligned with the daughter. I was suspicious that the father's counsel on direct did not elicit testimony claiming he had been pressured or abused into signing the document, and the deposition I inherited did not have the answers. Dad was a Navy man and answered questions crisply and without evasion. So, on my examination I went out on a limb. He confirmed that when he visited the law firm to sign the revised trust, he was not taken into a separate room, he was not coerced, he had full documents rather than signature pages, and he was not prevented from reading them. He conceded the revised trust said on page one that the son was disinherited, and all the properties went to the daughter. He was so direct and honest, and I was on a roll, so I went with a gut feeling: "If the amended trust did not express your wishes, why did you sign it? The answer: "I guess I should have read it more carefully." That was the first line in my closing argument. The jury found for the daughter 11-1.

The Hothead

I was plaintiff's counsel in an investment fraud case where no discovery had been taken. My clients had been induced to invest in an agricultural enterprise where nothing was produced. They told me the defendant/promoter was a hothead. The investment circular was a rosy promotion piece, written by someone who promoted movies, promising risk-free returns with no cautionary language that the investment was risky. As I cross-examined the promoter about this fluff piece, my questions got louder, and I began jabbing my index finger in his direction. His face turned a deep red and his answers became more agitated. Finally, he burst out, "Okay, so we cheated a little." That was the first line in my closing brief. The judge returned a judgment for securities fraud for every penny we requested.

The Folder

I had a witness at trial who acted very nervous. He had tried to dodge a couple of my questions, but I impeached him by reading choice excerpts from his deposition. When I asked another question, I unconsciously put my hand on the deposition transcript. I saw the witness look at my hand on the transcript, grimace and then agree with my question. It occurred to me that he felt chastened by the prior impeachments and might readily fold his hand if I bluffed. I asked a few aggressive questions for which I had no impeachment but touched the deposition transcript each time. The witness apparently thought my questions were fully backed by the transcript and conceded my points. The jury returned a verdict in favor of my client for copyright infringement and fraud.

Continued on Page 10

Cross-Examination Revisited...continued from Page 9

The Waffler

I defended a vascular surgeon who supported the founding partner in a vascular surgery practice against accusations by two junior partners that the founder had subjected patients to unneeded surgeries. In May, the two junior partners went to my client with concerns about a handful of the founder's surgeries. My client went to the founder, who explained the treatment. My client reported to the junior partners that the chart could have been better documented, but the founder's reasons seemed valid. In the succeeding months the partners negotiated an amended partnership agreement, including new covenants that the surgeons would follow certain practice guidelines. The amended agreement was signed in late August, then a few days later the two junior partners had dinner with two prospective new partners about engaging in a thoroughgoing investigation of the founder's surgeries and hiring whistleblower counsel. In the ensuing litigation, the surgery guidelines that had been negotiated into the amended partnership agreement were the centerpiece of the cross-examination of the founder.

One of our trial themes was that the junior partners had negotiated a new partnership agreement while concealing their plan to accuse the founder of self-gain.

The first junior partner to take the stand was prepared and confident. He claimed that he had been fully satisfied by the May explanation from my client, had negotiated the new partnership agreement in complete good faith and attended the four-way dinner days later only over fresh concerns about the founder's surgeries. This seemed implausible, but he was rock solid, and I had no admission to the contrary, so I did not touch the subject with that witness.

The most junior partner, by contrast, clearly had buyer's remorse about the whole course of action. He was hesitant, emotional and ineffective on direct. Even though I had no admission from this doctor either, I decided to press on cross. His answers were hesitant and all over the map. Finally, while looking straight at the jury, I asked him whether he really expected jurors to believe that he and the other junior partner had been fully satisfied by the May explanation before acquiring fresh doubts about the founding partner, thereby justifying a massive investigation of his surgeries only days after signing the amended partnership agreement. He stammered, indicating to the jury that they should not believe his tale. The jury sided with my client 12-0.

Cross-examination is a difficult art. Done well, it can expose fatal flaws in the other side's case and drive the verdict. While sticking strictly to questions to which the answer is known is the safest tack, if you get a strong gut feeling at trial that something off-script might work, give it a try. The worst that can happen is the other side repeats their story, but maybe your gut instinct was right, and you will have a trial moment to remember.

Jay Spillane is the founding shareholder of Spillane Trial Group PLC.

Embracing AI...continued from Page 1

transactional side, *OneSaaS*, for instance, used AI to analyze more than a thousand SaaS contracts, discovered that 95 percent were functionally identical, and then released a free, community-drafted, "standard [agreement] for cloud services" that allows business teams to handle a first draft without outside counsel.[2] On the litigation side, Thomson Reuters' "CoCounsel Core" can digest a gigabyte-scale document set, surface key clauses, generate chronologies, and prepare deposition outlines in minutes, collapsing work that once justified entire associate teams into a supervised, same-day task.[3]

These adoptions are not confined to boutique firms. Allen Overy's (now A&O Shearman) rollout of Harvey-powered workflows put generative AI on the desktops of 3,500 lawyers across 43 offices,[4] demonstrating that even AmLaw top-ten firms are willing to outsource routine drafting and analysis to machines so long as humans remain on the hook for final judgment.

Consumers see the same possibilities: services like DoNotPay have already generated demand letters and small-claims filings for pro-se litigants—so aggressively, in fact, that the FTC intervened this year to stop the company's "robot lawyer" marketing claims,[5] proof that the access-to-justice upside is real, even as regulators police the line between helpful automation and unauthorized practice.

Nonetheless, AI cannot replace the core of lawyering: strategic judgment, ethical accountability, and the human skill of persuasion. Strategic judgment is more than pattern-matching past cases to present facts. It requires spotting latent conflicts among statutes, reading unwritten courtroom dynamics, and weighing business, reputational, and human costs that clients themselves have not fully articulated. That is why even the most AI-forward law firms still route every machine draft through a partner who knows the judge, the industry, and the likely ripple effects five quarters out. As the ABA's Formal Opinion 512 reminds us, the duty of competence demands lawyers exercise "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation," a standard that presumes a human actor who can synthesize law, fact, and risk in real time.[6]

Persuasion, too, depends distinctly on human capacities: empathy, storytelling, and the ability to pivot when a witness hesitates, or a juror frowns. Negotiation scholars note that AI may narrow information gaps, but in high stakes bargaining, it still stumbles over emotional cues, moral intuitions, and the creative trades that turn zero-sum positions into mutual gains.[7] Jurors, judges, and counterparties respond to credibility, nuance, and the ineffable chemistry of live advocacy, which are qualities machines can model but not genuinely embody. The lawyer's irreplaceable value lies in wielding tools with judgment, integrity, and persuasive force—capacities rooted in human experience, not code.

How AI Enhances Service Quality and Value

Despite its inability to completely replace lawyers, AI is becoming an indispensable tool for speed and scale. The integration of AI and other legal tech not only boosts efficiency but also elevates the quality of legal services we provide. By automating aspects of our practice, attorneys can dedicate more time to strategic planning and personalized client interactions, ensuring that we in fact do increase the value to clients. Simply stated, by automating historically manual time-consuming tasks

---

[1] See, e.g., Bloomberg Law, *AI for Legal Professionals* <https://pro.bloomberglaw.com/insights/technology/ai-in-legal-practice-explained/#the-future-of-legal-ai>.

[2] Artificial Lawyer, *Law Insider Launches oneSaaS, New Standard for Cloud Agreements* (Feb. 10, 2025) <https://www.artificiallawyer.com/2025/02/10/law-insider-launches-onesaas-new-standard-for-cloud-agreements/>.

[3] Thompson Reuters, *How GenAI Can Enhance Your Legal Work Without Compromising Ethics* (Apr. 17, 2024) <https://legal.thomsonreuters.com/blog/how-genai-can-enhance-your-legal-work-without-compromising-ethics/>.

[4] Ambrogi, *As Allen & Overy Deploys GPT-based Legal App Harvey Firmwide, Founders Say Other Firms Will Soon Follow* (Feb. 17, 2023) <https://www.lawnext.com/2023/02/as-allen-overy-deploys-gpt-based-legal-app-harvey-firmwide-founders-say-other-firms-will-soon-follow.html>.

[5] Press Release, *FTC Finalizes Order with DoNotPay That Prohibits Deceptive 'AI Lawyer' Claims, Imposes Monetary Relief, and Requires Notice to Past Subscribers, Fed. Trade Com*. (Feb. 11, 2025) <https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-finalizes-order-donotpay-prohibits-deceptive-ai-lawyer-claims-imposes-monetary-relief-requires>.

[6] See ABA Formal Ethics Opns., formal opn. No. 512 (2024) pp. 2–5 <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf>.

[7] See Mirra, *What AI Can and Can't Do for Negotiation*, Aligned. (Mar. 20, 2025) <https://www.alignednegotiation.com/insights/what-ai-can-and-cant-do-for-negotiation#:~:text=Many%20negotiations%20rely%20on%20personal,that%20extend%20beyond%20mere%20numbers>.

[8] Attorneys are cautioned not to rely on AI as the final answer to issues and tasks, but rather as simply another tool or resource. This is because AI responses to prompts can often be wrong, especially with more complex queries. Thus, prompt training and quality controls are critical to maximize the value of AI for clients, while mitigating potential misuse and errors.

Continued on Page 12

Embracing AI...continued from Page 11

using AI tools, attorneys are able to do more, better and faster.[8]

The reality is that adoption of AI tools is accelerating at a clip the legal sector has never seen. A Secretariat-ACEDS global survey released in March 2025 found that 80 percent of legal professionals now rate themselves as "knowledgeable" about AI and 74 percent expect to be active users within a year.[9] NetDocuments reports a 315 percent jump in AI use by law firm staff from 2023 to 2024, with 79 percent of firms weaving AI into daily workflows.[10] Law360 notes that AI tools are penetrating firms "five times faster than the cloud," showing that what once took a decade now happens in a couple of budget cycles.[11]

The legal landscape is constantly evolving, and staying ahead requires a proactive approach to technology adoption. By integrating AI and other legal tech into our practice, we can improve operational efficiency and access greater resources without additional overhead, directly leading to more value to clients. This integration brings opportunity. Thomson Reuters calculates that AI can free four lawyer-billable-hours a week, worth roughly $100,000 in additional annual billable capacity per U.S. lawyer.[12] A recent case study from an Am Law 100 firm shows how generative tools are collapsing hours of clerical effort into minutes of supervised review: by unleashing *Everlaw's* GenAI assistant on 126,000 documents in a government investigation, the team cut review time by 50–67 percent and needed only one-quarter of the personnel normally assigned to a matter of that size.[13]

AI's rapid expansion is not just a story of shiny new tech; it is an operating-model shift that lifts the administrative fog from legal practice. The firms that have already adopted the use of AI in their practices are already converting clerk-work into thinking-time, freeing lawyers to draft the winning brief, craft the creative deal structure, and build the client relationships that machines still can't replicate.

AI's Increase to Access to Justice

One of the greatest benefits to be conferred by AI will be the overall societal gain of increasing access to justice, i.e., making legal services more accessible and affordable to a greater population of people. For instance, scholars note that AI-powered tools, if made interoperable with court systems, could narrow the access-to-justice gap and reduce routine matters that reach attorneys in the first place.[14] The Legal Services Corporation reports that low-income households receive inadequate or no professional help for 92 percent of their serious civil-legal problems, a gap that technology is now beginning to narrow.[15] AI-enabled self-help apps are doing for everyday legal tasks what TurboTax did for tax returns. In Utah, *Rasa* uses natural-language triage to help people clear criminal record blemishes; *HelloPrenup* shepherds couples through do-it-yourself prenuptial agreements; and *LegalZoom* remains shorthand for low-cost wills, LLC formations, and trademarks.[16] Even courts are joining in: British Columbia's Civil Resolution Tribunal resolves small-claims and condominium disputes entirely online, without lawyers, for filing fees that start at seventy-five dollars.[17] The result is a layer of good enough justice for matters that would otherwise go unaddressed. A Stanford study, for example, found that a first-generation chatbot overturned 160,000 parking tickets in London and New York, demonstrating how machine-scale advocacy can democratize relief.[18]

Nonetheless, even if a startup founder can spin up *OneSaaS* and crank out a standard cloud-services contract in ten minutes, the deal is only half-done. The template still has to be stress-

[9] Secretariat, *AI Adoption Surges in the Legal Industry: Key Findings from the 2025 Secretariat and ACEDS Global Artificial Intelligence Report* (Mar. 26, 2025) <https://secretariat-intl.com/insights/ai-adoption-surges-in-the-legal-industry/>.

[10] Netdocuments, *AI-Driven Legal Tech Trends for 2025* (Jan. 7, 2025) <https://www.netdocuments.com/blog/ai-driven-legal-tech-trends-for-2025/>.

[11] Ellie Sherman, *Lawyers Are Adopting Gen AI Five Times Faster Than the Cloud*, Law360 (Sept. 10, 2024) https://www.law.com/legaltechnews/2024/09/10/lawyers-are-adopting-gen-ai-five-times-faster-than-the-cloud/?utm_source=twitter&utm_medium=social&utm_content=dlvrit&utm_campaign=automated_post (capitalization standardized).

[12] Thompson Reuters, *How AI Is Transforming the Legal Profession* (2025) (Jan. 16, 2025) <https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/> .blog/how-genai-can-enhance-your-legal-work-without-compromising-ethics/>.

[13] Pasternak, *Am Law 100 Firm Slashed Doc Review Time by Two-Thirds with GenAI*, Everlaw (Apr. 17, 2025) <https://www.everlaw.com/blog/case-studies/am-law-100-firm-slashed-doc-review-time-by-two-thirds-with-genai/>.

[14] See Simshaw, *Interoperable AI for Access to Justice* (2025) 133 Yale L.J. Forum 795, 799–800 <https://www.yalelawjournal.org/forum/interoperable-legal-ai-for-access-to-justice>.

[15] *Id*. at p. 799.

[16] *Id*. at pp. 799–800.

[17] Civil Resolution Tribunal, *Solution Explorer* <https://civilresolutionbc.ca/solution-explorer/>; Civil Resolution Tribunal, Fees <https://civilresolutionbc.ca/resources/fees/>.

[18] Simshaw, *supra* note 17, at p. 799.

Continued on Page 14

YOUNG LAWYERS DIVISION UPDATE

Dylan Noceda

Matthew Kaiser

Andrew Figueras

During the first quarter of 2025, the YLD has focused on planning exciting and informative programming for the remainder of the calendar year, as well as planning opportunities for younger lawyers to interact with the judiciary, network with fellow (young) lawyers, and deepen connections with the broader legal community. In addition to the standard programming, YLD plans to organize a community-impact project to join YLD members together in service to the broader Los Angeles community. As always, we will also strive to continue planning brown bag lunches with members of the judiciary. Be sure to keep an eye on the ABTL Report and your email inboxes for updates about upcoming YLD events. And, if you are interested in helping plan YLD events, please reach out to YLD co-chairs Dylan Noceda and Matthew Kaiser, or YLD Vice Chair Andrew Figueras, about getting involved.

Dylan Noceda *is an associate at Franklin Soto Leeds LLP.*

Matthew Kaiser *is counsel at O'Melveny & Myers LLP.*

Andrew Figueras *is an associate at Yoka Smith, LLP.*

Embracing AI...continued from Page 12

tested against the company's risk profile, negotiated into a commercial context, and shepherded through closing without tripping securities or export-control land mines. That is where the lawyer's enduring value lies, and why AI turns attorneys from information gatekeepers into risk-and-strategy partners. The net effect is a bar that must justify its value through insight and strategy, not information gatekeeping. Clients will still seek counsel for nuanced advocacy, but they will expect faster turnaround and proof that their lawyers can curate AI output safely.[19]

Ultimately, while AI is expanding the front door to the legal system, the hallway still leads to rooms where human judgment rules. By embracing a hybrid model that lets machines handle the rote work while lawyers handle the human side, firms can serve a broader audience without sacrificing the depth of legal expertise that high-stakes matters demand.

Staying Afloat and Ahead

Lawyers who thrive in the AI era will pair technical fluency with timeless professional duties. The first rule of thriving in an AI era is that technological competence is no longer a bonus skill; it is an ethical baseline. The ABA's Formal Opinion 512 makes that explicit, folding AI awareness into Model Rule 1.1's duty of competence and warning that lawyers must understand the benefits of every tool they deploy, from data-handling practices to the likelihood of hallucinated text.[20]

Forward-thinking law firms are responding by weaving AI literacy into everyday tedious tasks, making prompt-engineering as routine as Bluebook citations. NetDocuments' 2025 Legal Tech Trends echoes this shift: 75 percent of legal employers expect to change their talent strategies within two years to adapt to demands with AI.[21] Law 360's 2025 AI Survey found that roughly two-thirds of Big Law attorneys have already completed firm-run GenAI training, versus 40 percent at midsize shops—a gap that tracks client perception of value.[22]

The roadmap to resilience is clear: embed AI literacy in the ethics framework, erect governance that keeps humans firmly on the hook, invest in continuous training, and redeploy the time dividend toward strategic counsel that clients can see and feel.

Shahrokh Sheik is a partner at Weinberg Gonser LLP.
Sofya Harutyunyan is a law clerk at Weinberg Gonser LLP.

[19] See, e.g., *Mata v. Avianca, Inc.* (S.D.N.Y. 2023) 678 F.Supp.3d 443, 448–449, where the Southern District of New York sanctioned counsel for filing a brief laced with fictitious cases that ChatGPT had invented, underscoring that a lawyer, not a model, must vouch for accuracy and reasoning. See also Ryan et al., *Practical Lessons from the Attorney AI Missteps in Mata v. Avianca, Association of Corporate Counsel* (Aug. 8, 2023) <https://www.acc.com/resource-library/practical-lessons-attorney-ai-missteps-mata-v-avianca>

[20] ABA Formal Ethics Opns., *supra* note 6, at pp. 2–5.

[21] Netdocuments, *supra* note 8.

[22] Martinson, *BigLaw Leaps Ahead in Generated AI Training*, Law360 (Mar. 4, 2025) <https://www.law360.com/pulse/articles/2299565/biglaw-leaps-ahead-in-generative-ai-training>.

The Gold Standard in Private Dispute Resolution

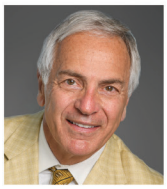
JUDICATE WEST
Alternative Dispute Resolution
Results Beyond Dispute℠

Our Federal Practice Group includes former district court judges, magistrate judges, and seasoned federal litigators with decades of experience. Members of the panel routinely serve as neutrals across a broad spectrum of cases involving federal law.


Hon. Cynthia G. Aaron, Ret.


Hon. Jan M. Adler, Ret.


Hon. Monica Bachner, Ret.

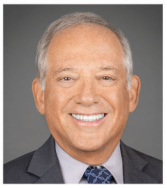

Hon. Larry A. Burns, Ret.


Hon. Robert P. Dahlquist, Ret.


Hon. William V. Gallo, Ret.


Hon. Mitchel R. Goldberg, Ret.


Hon. Geoffrey A. Goodman, Ret.


Daniel Grunfeld, Esq.

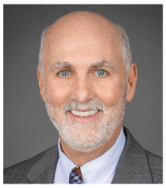

Hon. Andrew J. Guilford, Ret.


Hon. Herbert B. Hoffman, Ret.


Diana B. Kruze, Esq.


Hon. William McCurine, Jr., Ret.


Hon. Margaret M. Morrow, Ret.


Hon. Kendall J. Newman, Ret.


Edwin A. Oster, Esq.


Hon. Yvette M. Palazuelos, Ret.


Hon. Leo S. Papas, Ret.


Alan S. Petlak, Esq.


Jill R. Sperber, Esq.


Hon. Nita L. Stormes, Ret.


Hon. John Leo Wagner, Ret.


Michael D. Young, Esq.

Judicate West Proudly Welcomes

Hon. Lon F. Hurwitz, Ret.

- 17 years in Family Law Division (6 years as Supervising Judge) presiding over thousands of domestic violence and complex family law cases
- Served three years in Complex Civil and one year in the Unlimited Civil departments
- 25 years of experience as a civil litigator and serving as a mediator

Learn More About Our Federal Practice Group

JudicateWest.com
(213) 223-1113

Downtown Los Angeles | San Diego | Century City | Oakland | Sacramento | Santa Ana

ASSOCIATION OF BUSINESS TRIAL LAWYERS
abtl REPORT
8502 E. CHAPMAN AVENUE
SUITE 443
ORANGE, CA 92869

CONTRIBUTORS TO THIS ISSUE:

Effiong Dampha is an associate at Jenner & Block LLP.
Andrew Figueras is an associate at Yoka Smith, LLP.
Sofya Harutyunyan is a law clerk at Weinberg Gonser LLP.
Matthew Kaiser is counsel at O'Melveny & Myers LLP.
Laura Lim is an associate at Greines, Martin, Stein and Richland LLP.
Dylan Noceda is an associate at Franklin Soto Leeds LLP.
Kahn Scolnick is a partner at Gibson, Dunn & Crutcher LLP.
Shahrokh Sheik is a partner at Weinberg Gonser LLP.
Jay Spillane is the founding shareholder of Spillane Trial Group PLC.
AnnaMarie Van Hoesen is a partner at Jenner & Block LLP.