



more *Insight.*

LEGAL ISSUES FOR PROFESSIONAL ENGINEERS

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Dinsmore & Shohl_{LLP}

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GENERAL OVERVIEW

Part One – Complying with Rules and Regulations - 8:30-9:15

Review: Ohio Revised Code and Ohio Administrative Code

- Both Codes govern the Board and all Engineers in Ohio

Disciplinary Actions – Yearly Reports

Key Concepts and Definitions

- Engineering Legal Definitions
- Products Liability
- Job Site Safety
- Roads/Highways

Part Two – Appearing As A Witness – 9:15-10:00

- Overview of Litigation
- Arbitration
- Mediation
- Depositions
- Expert Testimony
- Trial Testimony
- Witness Preparation

PART ONE

Complying with Rules and Regulations on the Practice of Professional Engineering

8:30 – 9:15

Powers and Duties of Ohio State Board of Registration for Professional Engineers and Surveyors:

- All powers are granted via statute, Ohio Revised Code Chapter 4733, and Administrative Code 4733-1-01.
- Both can be found in full on the board's web-site.

Powers and Duties of Ohio State Board of Registration for Professional Engineers and Surveyors:

The state board of registration for professional engineers and surveyors has the authority, under RC Chapter 4733, to make the determination of the types of services which shall be intrinsic to the practice of engineering, and which services shall be intrinsic to the practice of surveying. A county engineer, or a city engineer, or any public official of any political subdivision of this state, who, as part of his responsibility to that jurisdiction, is required to review engineering or surveying plans, designs, or specifications of a public work, costing in excess of \$5,000, for compliance with the applicable codes and regulations, has the authority to reject surveying plans, designs, and specifications which have been certified by other than a registered surveyor, and to reject engineering plans, designs, or specifications which have been certified by other than a professional engineer.

OAG No. 72-108 (1972).

Powers and Duties of Ohio State Board of Registration for Professional Engineers and Surveyors:

- If you practice or offer to practice as an engineer or surveyor, you **MUST** register.

(ORC 4733.02)

State Board:

- Members:
 - 4 P.E. – one must also be a surveyor.
 - 1 P.S.

(ORC 4733.03)

Rules:

- Adopted by Board pursuant to ORC .
- Generally given notice and opportunity to object at hearings.

Qualifications to be an Engineer Pursuant to ORC 4733.11:

- You qualify if you either:
 - Graduate from an accredited engineering curriculum
 - Four years experience
 - Pass the exam

OR

- Graduate from a non-accredited engineering curriculum
- Eight years experience
- Pass the exam

Good Character and Reputation:

- You are not eligible if you are not “of good character and reputation.”

ORC 4733.11(E).

- Criminal records, civil records are reviewed.

Professional Development Records:

- Pursuant to ORC 4733.151, you **MUST** have 15 hours of professional education credits per calendar year.
 - Exempt first year of registration.
 - Can carry over a maximum of 15 hours.
 - Must maintain your log for 3 years – I say keep it for life!

Reciprocals:

- If licensed by other states and meet requirements and pass 2-hour test you may be registered here in Ohio.

(ORC 4733.19)

Disciplinary Action - ORC § 4733.22:

- (A) Pursuant to this section, the state board of registration for professional engineers and surveyors may fine, revoke, suspend, refuse to renew, or limit the registration, or reprimand, place on probation, deny an applicant the opportunity to sit for an examination or to have an examination scored, or impose any combination of these disciplinary measures on any applicant or registrant, or revoke the certificate of authorization of any holder found to be or to have been engaged in any one or more of the following acts or practices:
- (1) Any fraud or deceit in obtaining registration or a certificate of authorization;
 - (2) Any gross negligence, incompetency, or misconduct in the practice of professional engineering or professional surveying as a registered professional engineer or registered professional surveyor;

Disciplinary Action:

- (3) Aiding or abetting any person to practice professional engineering or professional surveying illegally in the state;
- (4) Conviction of or plea of guilty to any felony or crime involving moral turpitude;
- (5) Violation of this chapter or any rule adopted by the board;
- (6) Violation of any condition of limitation placed by the board upon the registration of any professional engineer or professional surveyor;
- (7) Failure to abide by or comply with examination instruction.

Disciplinary Action:

- (B) The board shall cause to have prepared and shall adopt a code of ethics, which it shall make known to every registrant. The board may revise and amend this code of ethics from time to time in accordance with Chapter 119 of the Revised Code.
- (C) Any person may file with the board a complaint alleging fraud, deceit, gross negligence, incompetency, misconduct, or violation of this chapter or any rule adopted by the board pursuant to *section 4733.07 of the Ohio Revised Code*. Complaints shall be in writing.

Disciplinary Action:

- (D) The board may investigate any registrant or holder of a certificate of authorization to determine whether the registrant or certificate holder is or has been engaged in any one or more of the acts or practices listed in division (A) of this section. The board, by subpoena, may compel witnesses to appear and testify in relation to any investigation under this chapter and may require, by subpoena duces tecum, the production and copying of any book, paper, or document pertaining to an investigation. If a person fails to comply with the subpoena or subpoena duces tecum, the board may apply to the Franklin county court of common pleas for an order compelling the person to comply or, for the failure to do so, to be held in contempt of court.

Disciplinary Action:

- (E) If the board determines there is a cause to believe that an applicant, registrant, or a holder of a certificate of authorization is or has been engaged in any act or practice listed in division (A) of this section, the board shall issue a written charge and notify the applicant, registrant, or certificate holder of the right to an adjudication hearing, in accordance with Chapter 119 of the Revised Code. If the accused applicant, registrant, or holder of a certificate of authorization fails or refuses to appear, or does not request a hearing within the time period specified in Chapter 119 of the Revised Code, the board may determine the validity of the charge and issue an adjudication order in accordance with Chapter 119 of the Revised Code.

Disciplinary Action:

- (F) If a majority of the board votes in favor of sustaining the charge, the board shall impose one or any combination of the following disciplinary measures:
- (1) Reprimanding the individual;
 - (2) Imposing a fine on the individual of not more than one thousand dollars for each offense committed by the individual;
 - (3) Refusing to renew, suspending, or revoking the individual's registration, or revoking the holder's certificate of authorization;
 - (4) Refusing to allow an applicant to take an examination;
 - (5) Refusing to score an applicant's examination.

The board, for good cause shown, may reregister any person or reissue a certificate of authorization to any corporation, firm, partnership, association, or limited liability company whose registration or certificate has been revoked or suspended.

Disciplinary Action:

- (G) Any applicant, registrant, or certificate holder aggrieved by any action of the board in fining the registrant or denying, suspending, refusing to renew, or revoking the registrant's registration or a certificate of authorization, or denying an applicant the opportunity to take an examination or to have an examination scored may appeal such action to the proper court under *section 119.12 of the Revised Code*.
- (H) A new certificate of authorization to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the board, upon payment of a fee established by the board at an amount adequate to cover the expense of issuing a duplicate certificate of authorization.

Prohibitions:

- Cannot offer or perform services if you are not registered.

(ORC 4733.22)

Penalty:

- If you violate §4733.22 of the ORC and practice without registration/license, you may be fined \$100-\$500 OR imprisoned for not more than 50 days OR both.

(ORC 4733.99)

Child Support:

- If you neglect to pay, your registration is in jeopardy.

(ORC 4733.27)

Miscellaneous Ohio Administrative Code Provisions:

4733.35.02

- Must act with integrity
- Serve public, client and employer with devotion

4733.35.03

- Shall protect public safety, health and welfare

Miscellaneous:

4733.35.04

- Never act in matters beyond your technical competence.
- Express no opinion unless founded on adequate knowledge, technical competence and upon honest conviction of accuracy and testimony.

4733.35.05

- Avoid conflict of interest

Disciplinary Actions:

- Any violation of the ORC or OAC may subject an engineer to disciplinary action.
- According to 2010 annual newsletter:
 1. Majority of complaints are resolved by warning letters and educational conferences.
 2. 2010 110 Complaints -- >25%
 - 10 disciplinary hearings
 - 50 closed cases
 - 31 – No Violation
 - 11 – Voluntary Compliance
 - 5 – Warning Letters
 - 3 – Completed
 - 85 cases pending

Disciplinary Actions:

3. Can claims settle prior to hearing
4. Of reported discipline – 1/2 or 14 continuing education failures
 - several for criminal convictions
 - several for discipline in other states

Discipline:

- If you receive notice and violation:
 1. Contact counsel
 2. Tell employer
 3. May need to cease practice
 4. See #1.

Informal Meetings:

- Board, the Executive Director and Investigator and their counsel may agree to informally meet with you and your counsel.

Disciplinary Hearings:

- Pursuant to ORC Chapter 119, an administrative hearing is held to decide if violation occurs and appropriate penalty.
- Similar to trial/hearing – under oath.
- Can hire/use experts.
- You have the right to appeal into the court system if unhappy with the result.

Engineering Definition:

Key Concepts & Cases

- ▶ Engineering is defined by statute in ORC §4733.01(D) – Any professional service – i.e. consultation, investigation, evaluation, planning, design, inspection, compliance – deals with utilities, structures, buildings, mechanics, equipment, processes which require a qualified engineer. (ORC §4733.11)
- ▶ Engineering is also defined by common law – practice of functions which education and qualifications are required to protect the health, safety and property of the public. It is not Architecture. Fanning v. College of Steubenville, (1963) 174 Ohio St. 343.

Key Concepts:

- Standard of Care – All engineering functions are viewed under a local standard of care – i.e.,
 - is your work “reasonable in your geographical area”
 - are you “qualified to do the work in your geographical area”

PRODUCTS LIABILITY

Engineering Product Liability: The manufacturer or seller of a product is liable for all injuries caused by an unreasonably defective product. Any person or entity in the chain of distribution can be held liable.

Sette v. Benham, Blair & Affiliates (1991), 70 Ohio App.3d 651, 591 N.E.2d 871: An injured worker sued an engineer for negligence and product liability in connection with alleged malfunction of a hot water system designed by the engineer. The Court acknowledged the threat of product liability to the engineer, but dismissed the case for violating the statute of limitations.

PRODUCTS LIABILITY (Continued)

- Ohio Products Liability Act: ORC § 2307.71-75
- § 2307.71(9): "Manufacturer" means a person engaged in a business to design, formulate, produce, create, make, construct, assemble, or rebuild a product or a component of a product.
- (16) "Unavoidably unsafe" means that, in the state of technical, scientific, and medical knowledge at the time a product in question left the control of its manufacturer, an aspect of that product was incapable of being made safe.
- § 2307.74: A product is defective in design or formulation if, at the time it left the control of its manufacturer, the foreseeable risks associated with its design or formulation... exceeded the benefits associated with that design or formulation.

PRODUCTS LIABILITY (Continued)

- Engineers are liable for injury caused by defective products to the extent they are "seller" in the stream of commerce that place the product in the hands of a consumer.
- As innovators, engineers are at the very beginning of the process that places a product "for sale" in the stream of commerce. Inventors holding patents make the first "sale" in the commercial chain when they transfer their technical know-how. Engineers and inventors are also in a good position to understand the utility of their inventions and the extent to which that utility balances potentially unsafe characteristics.
- If the courts find that engineers are "sellers" of technology embodied in hardware products, engineers may be personally liable for technology "defects" in products that harm users, regardless of whether or not their conduct is negligent.

PRODUCTS LIABILITY (Continued)

State-of-the-art Defense: A defendant may avoid product liability if, in keeping with its superior ability to remain current with evolving scientific and medical knowledge, it fulfilled its duty to use reasonable design and give an adequate warning of any unsafe nature or dangers of its products to the foreseeable user. Steinfurth v. Armstrong World Industries (1986), 27 Ohio Misc.2d 21, 500 N.E.2d 409.

Jobsite Safety:

INSPECT AND KEEP A SAFE JOBSITE

Chemstress Consultant Co., Inc. v. Cincinnati Ins. Co. (1998), 128 Ohio App.3d 396, 715 N.E.2d 208: Allegations that an engineering firm had breached its duty to insure safety of other workers at job site stated a claim that did not come within the professional liability exclusions in the firm's commercial insurance policy, and thus, triggered the insurer's duty to defend in worker's action against firm. The Court also noted that in addition to its duty to perform professional or supervisory services at a construction site, an engineering firm has a general, nondelegable duty of reasonable care toward the safety of other workers.

Highways Safe For Travel:

- Keep highways safe for travel (Duty of the State)
- Lattea v. City of Akron (1982), 9 Ohio App.3d 118, 458 N.E.2d 868: The plaintiffs filed wrongful death actions against the State, the City and the contractor after a bridge project collapsed upon a group of travelers. After judgment was granted against the contractor, the contractor sought indemnity from the state for furnishing inaccurate plans. The contractor argued that state had a nondelegable, statutory duty to see that the highway was safe for travelers, and that the state breached that duty by supplying on plans it should have known were inaccurate. The court agreed that if the state had *constructive* knowledge that the plans were inaccurate, it violated its nondelegable statutory duty to the public to keep its streets open, in repair and free from nuisance.

QUESTIONS AND ANSWERS

- Any questions on Section One not addressed?

PART TWO

Appearing and Preparing As A Fact and Expert Witnesses

9:15 – 10:00

CIVIL LITIGATION LAWSUIT

1. Plaintiff files – Complaint
2. Defendant files – Answer
 - Counterclaims @ Plaintiff
 - Crossclaims @ Co-Defendant
 - Third-Party Claims @ Others
3. Answer has admissions, denials and affirmative defenses
4. Motions to Dismiss

DISCOVERY

1. Interrogatories – written questions answered under oath
2. Document Requests – produce all documents relevant to litigation or that may lead to discovery of relevant information
3. Requests for Admission – fact and law based questions answered under oath
4. Requests for Inspection – property, land, things
5. Deposition – oral testimony under oath

SUMMARY JUDGMENT

1. Based on: undisputed facts
 issues of law
 one conclusion
2. May submit: affidavits
 depositions
 legal arguments
 expert testimony

TRIAL

Plaintiff: burden of proof on all claims
must present all evidence first

Defendant: cross-examines all evidence
burden of proof on all affirmative defenses
call witnesses and put on evidence at close of
Plaintiff's case

Jury Trial: 8 jurors
2 alternates
decide all issues of fact
judge instructs on law

Bench Trial: judge decides entire case

ARBITRATION

- Mini-trial
- 1 or 3 arbitrators
- Contractual provision
- Can be laypersons, engineers, lawyers, judges, etc.
- Cost concern
- Time concern

Mediation

- Neutral party hears both sides of story and tries to informally settle a case
- Cost is low
- Willing parties usually good results will occur

Depositions

What is it?

- ▶ Statement under oath
- ▶ Everything is recorded

How is it used?

- ▶ to assess you as a witness
- ▶ to gather all of your opinions/knowledge
- ▶ as evidence in summary judgment
- ▶ to limit your area of expertise
- ▶ to limit your opinions
- ▶ to blow up your case
- ▶ to strengthen your case

Depositions

- ▶ Fact Witness – testify as to facts within your knowledge on any given project
- ▶ Expert Witness – testify as an expert on facts, standard of care, causation, damages
- ▶ Key Difference – experts, based on testimony, education and experience may offer opinions to help judge/jury decide issues i.e.:
 - ▶ cause/origin of fire
 - ▶ cause of failure of metal
 - ▶ state of art – product liability
 - ▶ whether plans, drawings and specifications were buildable
 - ▶ code compliance.

Preparation

1. You must prepare for your deposition as if the entire case depends on your testimony...it does!
2. Meet early and often with counsel to prepare
3. To be prepared, understand, review and discuss the same things the lawyers will review:
 - ▶ complaint
 - ▶ contract
 - ▶ expert reports
 - ▶ internet
 - ▶ time-line
 - ▶ all of your company's advertising/promotional material
 - ▶ answer & affirmative defense
 - ▶ key documents
 - ▶ literature
 - ▶ all documents sent/received
 - ▶ all of your publications

Preparation

4. Time

- ▶ you must be more prepared than opposing counsel
- ▶ take several days to review and reinforce
- ▶ no distractions
- ▶ expert v. fact witness (more time needed and expected)

5. Set date, time & place – when and where you are most comfortable

- ▶ clear your schedule days before and after
- ▶ A.M. or P.M.
- ▶ early or late in week

Preparation

6. Eat, Drink & Sleep

- ▶ all affect how you will testify
- ▶ do not change any routine
- ▶ a well rested witness is a good witness

Deposition Day

1. On the Record: remember it is all recorded
2. Dress: business casual
3. Discussions off Record: nothing about the case
4. Routines: keep them
5. Breaks: early and often
no more than 1 hour without a break
insist on a lunch break
no more than 7 hours of testimony in a day
6. Video Deposition: if you know video – practice
7. Objections: listen carefully

Deposition Rules

- Rule #1 Be 100% honest
- Rule #2 Yes, No or I do not know
- Rule #3 Answer the question and only the question
- Rule #4 Do not assume anything
- Rule #5 Take your time
- Rule #6 Wait until the question is complete
- Rule #7 It is an interrogation, not a conversation
- Rule #8 Ask to see the document – then READ it
- Rule #9 Do not help opposing counsel
- Rule #10 Never forget rule #1

After the Deposition

1. Get copies of all exhibits
2. Read, correct and sign deposition transcript
3. Keep copies

“Acting” as an Expert

Rule #1 Never Act. Either you are an expert or you are wasting everyone’s time and money.

Juries and judges know actors and fools

Rule #2 Limitations are Good – limit your area of expertise

The Ohio Administrative Code that regulates Professional Engineers requires that any expert opinion be founded:

- upon adequate knowledge of the facts
- with technical competence in the subject matter
- honest conviction of accuracy and propriety of the expert opinion

“Acting” as an Expert

Rule #3 Know what you have done

Publications – remember public statements and certification are limited by the Ohio Administrative Code in a manner similar to expert opinions.

Prior testimony

Prior reports

Draft reports

Rule #4 Read all expert reports

“Acting” as an Expert

Rule #5 *Draft, edit and review your report as if the case depended on it – it does.*

Rule #6 *Review everything opposing counsel reviews*
Pleadings: complaint, answer, discovery responses
Time-line: know it
Key documents: know them
Your report: typically the attorney knows it better than you do – do not let that happen

“Acting” as an Expert

Rule #7 Admit the obvious – do not attempt to deny everything

Rule #8 Do Not Help Opposing Counsel

Rule #9 Meet with the real client and the attorney
Know the case better than they do
Seek input and help early and often
Do not delegate if at all possible – do it yourself

Rule #10 Know your own billing records

Expert Testimony

Daubert

- ▶ Supreme Court case on admissibility of expert testimony
- ▶ The theory or technique must be reliable (i.e. tested), peer reviewable, error rate must be known and there must be some scientific basis (i.e. generally accepted methodology in the scientific community)
- ▶ To help, your opinions must be admissible
- ▶ Must keep in mind when drafting your expert report

Rules of Evidence

In Ohio, to testify as an expert your testimony must:

- ▶ Relate to matters beyond knowledge of common man or dispel a common misconception; and
- ▶ You must possess knowledge, skill, training, education and experience that qualify you; and
- ▶ The theory must be based on scientific or technical information that is reliable, can be tested or verified, and if a test was performed – it must be proper with accurate result.

Expert Testimony Required

Expert testimony is necessary to establish professional negligence of design professionals - whether the designer exercises reasonable care in preparation of his designs depends upon the standard of care which licensed architects/engineers must follow. Simon v. Drake Constr. Co. (1993), 87 Ohio App.3d 23, 621 N.E.2d 837; Vosgerichian v. Mancini Shah & Associates (1996), Nos. 68931, 68943, 1996 WL 86684 (Ohio App. 8 Dist., Cuyahoga County).

- Simon v. Drake: A worker was injured after falling from a fixed ladder inside a city parking garage. The worker sued the project architect alleging negligent design in the fixed ladder. However, the worker failed to present any expert testimony that the architect did not meet the standard of care required of a licensed professional architect in Ohio; thus his claim was dismissed.

Expert Testimony Required

Capital Dredge & Dock Corp. v. City of Avon Lake (1978), No. 2627 & 2728, 1978 WL 215279 (Ohio Ct. App. 9th Dist., Lorain County): Two consulting engineers to the City could have been primarily liable for the negligently-prepared plans and for negligently approving shop drawings for an outfall sewer project in Lake Erie, but the plaintiff did not retain an expert witness to testify as to the standard of care required of an engineer in similar circumstances. Thus, the claim failed.

Expert Cases in Ohio

The Court used four factors to evaluate the reliability of scientific evidence: (1) whether the theory or technique has been tested; (2) whether it has been subjected to peer review; (3) whether there is a known or potential rate of error; and (4) whether the methodology has gained general acceptance. (using *Daubert* as a framework).

Expert Cases in Ohio

The Court expanded the scope of analysis, writing, "a trial court's role in determining whether an expert's testimony is admissible under 702(C) focuses on whether the opinion is based upon scientifically valid principles, not whether the expert's conclusions are correct or whether the testimony satisfies the proponent's burden of proof at trial."

Expert Cases in Ohio

Shreve v. United Electric & Construction Co., Inc. (2002), No. 01CA2626, 2002 WL 1677491 (Ohio Ct. App. 4th Dist., Ross County): An employee sued his employer after the wall of a ditch collapsed on his shoulder. In finding for the employer, the court held that the employee's expert testimony regarding the soil's propensity to slide was not sufficiently reliable to be admissible. The expert stated his testimony was based on the assumption that the soil was clay-based; however, the expert never tested the soil in question, nor did he provide an explanation as to why the clay-based soil carried a propensity to slide.

Expert Cases in Ohio

In sum, the court found that because the expert did not adequately examine the soil or adequately explain and support the theory underlying his opinion, and he did not set forth an objectively verifiable theory to support that opinion, his testimony did not meet the *Daubert* reliability test.

Expert Cases in Ohio

Radford v. Monfort (2004), No. 10-04-08, 2004 WL 1961674 (Ohio Ct. App. 3d Dist., Mercer County): A pedestrian sued a restaurant owner and the owner of a construction company, alleging he was injured when he slipped on a wet sidewalk outside the restaurant.

Expert Cases in Ohio

- Before granting summary judgment in favor of the defendants, the court excluded the pedestrian's expert testimony. The pedestrian's expert was a civil engineer and licensed surveyor hired to determine whether the walkway outside the restaurant was safe.
- He measured the coefficient of friction of the walkway in accordance with the nationally recognized standards; however, he then deviated from those procedures by factoring in the degree of slope on the surface.
- Such a deviation was not set forth in the standards, nor was it supported by any other recognized industry standard. So the court found his testimony was inadmissible because it was not based on a reliable method or industry standard.

Reasonable Degree of Engineering Certainty

Lee v. Barber (2001) No. CA2000-02-014, 2001 Ohio App. LEXIS 2980 (Ohio Ct. App. 12th Dist., Butler County): A property owner sued his neighbor for allegedly causing excess water and sewage runoff to enter his property, causing the foundation of his home to crack. His expert's testimony was excluded because he could only testify "as to what 'possibly' or 'may' have caused the damage..." The appeals court noted that he did not "express that there is a greater than fifty percent likelihood that [the runoff] produced the occurrence at issue in the case." The testimony, therefore, did not meet the reasonable degree of engineering certainty standard and was properly excluded.

Expert Testimony -Conclusion-

1. Meet regularly with counsel
2. Do not delegate
3. Test accurately
4. Use standards – no deviations
5. Peer Review
6. Edit carefully
7. Meet with client before finalizing report
8. Understand your opponents position

Trial Testimony -Key Tips

1. Be a Teacher - judges & juries want to be spoken to and taught
2. Never talk down to the judge, jury or opposing counsel
3. KISS – Keep it Simple Stupid
4. Relate to judge/jury - use everyday concepts
5. Dress the Part
 - ▶ Expert: Suit & tie for men, business attire for women
 - ▶ Fact: Business casual – fly the colors of the company

Trial Testimony -Key Tips

6. Honesty is still the best policy
7. Do not change your demeanor on cross and questions from the judge
8. The eyes of the world are following you
9. Confidence is key
10. RESPECT
 - ▶ the process
 - ▶ the parties
 - ▶ the judge
 - ▶ the jury
 - ▶ opposing party/counsel

Carla Martin

**“Does anyone know who
she is and why she is famous?”**

Witness Trial Preparation: Post Moussaoui Concerns

- Government attorney who prepped witnesses for death penalty phase of Al Qaeda suspect Zacharias Moussaoui
- Judge barred all witnesses she prepared

Moussaoui Case

- FRE 615 – witness sequestration order issued
- Purpose - Keeps witnesses from tailoring testimony
- Aids in detection of less than candid testimony
- Martin sent copies of office's testimony to witnesses
- Told witnesses how to testify to shore up weaknesses in case
- Life in prison was sentence: much of the evidence was kept out due to Carla Martin

“Witnesses should be coached, so long as they are not coached to play dirty...not all coaching is bad”. *Superior Oil Co. v. Mississippi* 280 U.S. 350 (1930).

Witness preparation may be promoted as a truth-seeking device to help witnesses recall facts and details “previously overlooked”. *Nix v. Whiteside*, 475 U.S. 157, 190-191.

Witness Preparation

- To represent to beset of ability – must prepare
- Can't offer false or perjurious statements
- Must be ethical
- Must be truthful
- Must review exhibits
- New York Times – would you say it for quote on cover page
- Meet separately to avoid impropriety

Conclusion

Be Prepared – Properly!

QUESTIONS & ANSWERS

- Any questions on Section Two need addressed?

THANK YOU

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