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Are you lying now, or were you lying then?

Are you lying now or were you lying then? You want to know who asks this type of question and why it's a horrible question. Come join me for a moment as I share with you some great information. Hi, I'm Gerry Oginski. I'm a New York medical malpractice and personal injury lawyer practicing law in the state of New York. You will find inexperienced, novice attorneys asking this type of question when they catch a witness in a lie, when they catch a witness saying something that is untruthful, comparing it to something they said during pretrial testimony during the course of their lawsuit and now giving testimony at the time of trial.

Here's typically what will happen. During the course of your civil lawsuit whether it's for an accident matter or a medical malpractice or even wrongful death, the defense attorney will have an opportunity to question you as part of the pretrial testimony process. That's known as a deposition. It's really a question and answer session that's given under oath in your attorney's office. There is a court reporter present. There is no judge. There is no jury, but it carries the same exact weight as if you are testifying at trial.

Now, the defense attorney is likely going to be asking very similar questions to try and elicit the same type of response from the witness. What happens if there are contradictions between what the witness says at the time of trial and what he said two years earlier during his deposition, his pretrial testimony? Now, the defense attorney is going to use that testimony those two contradictions to show to the jury that you're being less than truthful. You'll find that young, inexperienced attorneys may turn to the witness in front of the jury and say, "Mr. Jones, are you lying now or were you lying then?"

You'll hear their attorney get up and yell, "Objection, Judge." Here's why this is a terrible question. There is no reason to highlight this key contradiction. You've made the point. You've established that there is different testimony between what he said at the time of trial and you've shown to the

jury exactly what that contradiction is from his pretrial testimony. You will find that the best trial lawyers simply don't highlight it. They don't jump up and down, say, "Yes, I've got a contradiction. Look at this. This guy's a liar." They don't do that with the witness still on the witness stand.

Instead, what do they do? They wait until he leaves the witness stand. They wait until the very end of the case. Now, during closing arguments, they can stand in front of the jury and say anything they want about the testimony and how this guy was so untruthful, and look at the clear contradictions. Guess what. The witness is not there to reply. That's the best time to show to the jury that this guy has no credibility whatsoever and he cannot be believed. The judge is also going to tell the jury at the very end of the case that if they find that a witness has testified falsely about one thing, they are permitted to disregard all of that witness' testimony.

There is a Latin phrase for that called "Falsus in uno" that the judge instructs the jury about. Why do I share this quick information with you? I share it with you because this comes up over and over again in every type of civil lawsuit in New York. It's the young, inexperienced attorneys who turn around while the witness is still on the witness stand and say, "Excuse me Mr. Jones. Are you lying now or were you lying then?" "Objection."

I realize you're watching this video because you have questions or concerns about your own particular matter. If your matter did happen here in New York and you're thinking about bringing a lawsuit, but you have questions that need answers first, what I encourage you to do is pick up the phone and call me. I can answer your legal questions. This is something I do every single day. I'd love to chat with you. You can reach me at 516-487-8207 or by email at Gerry@Oginski-law.com. That's it for today's video. I'm Gerry Oginski. Have a fantastic day.