

1. Seemingly small case handled by “big” firm or well-known plaintiff attorney
2. “Safety Rules” Both general and specific: e.g.,
 - a. General: You would agree that government workers should follow safety rules when working on a roadway, correct?
 - b. Specific: You would agree that government workers should place caution signs in a manner so as not to obstruct traffic passing by the construction scene, correct?

Retort: The government protects its citizens with safety rules; the voters, the taxpayers and their representatives in government, i.e., the “people” created the safety rules. The defendant/government here followed the safety rules that were created by the “people”; the government implements the rules set up by society, they were not pulled out of a hat.

3. “Frequency Facts”- questions to expert (either defense or plaintiffs, both in depo and on the witness stand: e.g., in a slip and fall case):
 - a. Isn't it true that slip and fall accidents are the number two cause of death in America, second only to traffic accidents?
 - b. Isn't it true that more than 2,000,000 Americans are killed or seriously injured by slip and fall accidents every year? And this is why we must have safety rules in place to prevent unnecessary falls, correct?

Retort: First, object to “frequency facts” on hearsay or other grounds; second, if allowed, then combat with your own “frequency facts” (e.g., 70% of all slip and fall accidents are caused by the person’s own negligence or lack of care; slip and falls on public property have decreased by xx% in the past 10 years due to new ADA safety rules implemented; no previous injuries reported at this location in last 10 years, etc.)

4. “Harms and Losses”- Plaintiff uses this phrase repeatedly—including in deposition of experts (plaintiff and defense)—to describe damages.

Retort: “Harms and Losses caused by...e.g., Plaintiff’s unfortunate choices, another Defendant’s conduct, a singular, non-recurring type of accident”

5. Terms (or "Codes") designed to elicit a jury reaction, such as "mobility" for health (Plaintiff has lost mobility, not just suffered a health issue), or "opportunity" rather than "trial". For Government, likely attempt to tie that in with "cold" or "bureaucrat" or "rigid".