



## HEARSAY AND EVIDENTIARY ISSUES AT SOAH

**"It's Not What You Know, It's What You  
Can Prove"**

UTLAW CLE

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**LOOK WOODY. CHANGE,**

**CHANGE EVERYWHERE**

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In the words of David Bowie, “Turn and face the strange changes . . .”

- Virtual Hearings are the New Normal . . . Forever.
  - Must file exhibits in advance (Movelt or Party Sharefile)
  - Must display exhibits virtually
  - File Cross-Examination exhibits the night before
  - Must provide proposed exhibits to court reporter before, and file actual admitted exhibits with court reporter afterward
  - Avoid exhibits that require special software (such as GIS files)
- Evidentiary Rules Appear to be More Strictly Applied at SOAH.

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### Expert Witnesses

- Testifying Experts – Most everything is fully discoverable in state regulatory proceedings (what they review, what they have been provided, communications, etc.)
- Consulting Experts – If hired by attorney for purposes of assisting in the rendering of legal advice, then they are an extension of the lawyer and most everything is privileged

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It has been presumed by many that, if a client offers testimony as an expert witness, then the attorney-client privilege may be waived in regard to communications with the witness that related to the subject matter of the "expert" testimony, pursuant to Tex. R. Evid. 192.3(e)(6)

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Tex. R. Evid. 192.3(e)(6):

“A party may discover . . . all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for [an] expert in anticipation of a testifying expert’s testimony.”

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## Title search: Hearsay and Evidence Issues at SOAH

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