

Tips, Tactics And Strategy

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The Ten Basic Rules of Cross-Examination

Trial lawyers enjoy most cross-examination and jury summation. However, they are more often less effective when cross-examining than when arguing their case to a jury. No one can guarantee that by following the ten general rules I am about to mention, one will necessarily conduct a devastating cross-examination. However, I do believe that the closer a lawyer adheres to these rules, the more likely he will be effective in cross-examining a witness. The rules are as follows:

1. BE BRIEF. Limit the number of points you wish to make with a witness. The more diffused the cross-examination, the less likely the jury is to remember the important points you make.

2. USE SHORT QUESTIONS AND PLAIN WORDS. Simple and direct words not only enhance the jury's

understanding of the case, but they also allow you to get closer to the jury as a human being. Legal words and phrases should be avoided whenever possible.

3. TRY ALWAYS TO USE A LEADING QUESTION. Unlike direct examination, you do wish to put words in the witness's mouth for you want to make him say what you want him to say, not what he wants to say.

4. ASK ONLY QUESTIONS TO WHICH YOU ALREADY KNOW THE ANSWERS. This rule is easier said than done. However, unless you know the answer to a question, or at least have a very good idea of the answer, do not ask the question. The use of proper pretrial discovery will enable you to closely stick to this important rule. When faced with a situation that requires you to explore virgin territory, try to ask innocuous questions so that you may probe the subject matter without totally committing yourself to asking the question in order to determine the percentages against going further.

5. LISTEN TO THE ANSWER. Too often lawyers are so busy taking notes or thinking of the next question that they miss recognizing a very favorable answer.

6. NEVER QUARREL WITH THE WITNESS. Arguing the evidence should be reserved for jury summation.

7. DO NOT PERMIT THE WITNESS TO SIMPLY REPEAT HIS DIRECT EX-

AMINATION. I believe this is the most common error of a trial lawyer. Breaking this rule merely emphasizes the direct examination and thus reinforces the testimony in the jurors' minds.

8. NEVER PERMIT THE WITNESS TO EXPLAIN ANYTHING. Once again, a very common error of the trial lawyer, most often occurring in the cross-examination of expert witnesses. The result of breaking this rule is to convince the jury that the witness really knows what he is talking about. The use of leading questions will control the witness's attention to explain the answer.

9. AVOID ONE QUESTION TOO MANY. It has been said by many writers on the subject that the real difficulty is recognizing the one question too many. Of course, as soon as you ask the question, you will recognize it. Having confidence in your ability to argue the case to the jury will help you avoid this pitfall. Jury summation is the time to ask the "one question too many" in the form of the rhetorical question. The witness is not there to answer it and you may suggest any answer you wish to the jury. Know when you have obtained everything possibly helpful from a witness and then stop.

10. RELY ON SUMMATION. This is the time and place to point out the inconsistencies developed by the cross-examination. The parties have rested and the evidence is in. No escape is possible from the logical conclusions the trial lawyer asks the jury to draw from the testimony. □