

# Lecture Four:

# Trial Issues

Erich Vieth  
St. Louis, Missouri, USA

First, one more thing  
about writing

Bryan Garner's Four Writing Personas

# Back to Trial Preparation . . . .

# Calendar Trial Prep

# Parts of a trial

# Technology and Trials

Make sure that the Judge  
feels in charge of the  
Courtroom

Opening “Argument”



# Examining witnesses

Prepare your own  
witnesses thoroughly and  
repeatedly

Objections  
(don't object just because you  
can)

# Working with Judges and Opposing Attorneys

Work to Preserve Relationships!

You are always interviewing.

# Settlement issues

Don't Rush!

Think it through carefully.

Scope, confidentiality, penalty for breach,  
choice of law, damages you can't get from a  
judge (Federal Express)

# Cross Examination

A Difficult task because you need to make the witness admit things they would rather not say, but you always want to look like a person of integrity—someone that the judge (and jury) will trust.



Preparation is critical. You must know the area covered by the testimony.

Have a reason for asking every question you ask. Every reason must further your theory of the case.

Human Attention is Limited. Don't  
Bore the Judge!

Don't just argue with the witness and try to make the witness look like a "bad" person.

The judge will like you less if you do that.

You need to look like the most trustworthy person in the room.

Be firm yet professional,  
even with difficult witnesses

If the witness hurts you with an answer and there is no way to repair it, MOVE ON! Maybe you can come back to that topic before you finish.

Stay Calm . . .

Assume bad things will happen . . .

Cross exam should be short.  
Get to the point then sit down.

Begin and end your cross  
exam on some of your best  
questions.

Primacy and Recency

# Techniques for Cross Examination . . .



Try to pin down the witness testimony to find out what he or she REALLY knows or doesn't know.

Beware of Conclusions

Point out inconsistencies in the witness testimony.

Listen carefully to answers. Sometimes witnesses will give you gifts

Listening to my own witnesses: Like listening to your child perform at a music recital!

Make sure most of your questions are short and that they are **LEADING** questions.

Ask open ended questions if you are sure that any answer witness gives is a bad one

Make the witness to answer your specific questions.

Don't let them wander to say what THEY want to say.

Don't ask them to repeat the  
harmful things they already  
said on Direct Exam

Seems obvious but it often happens, because attorneys  
who are prepared tend to think out loud

Can you make the witness admit  
some of the good parts of YOUR  
case?

Can you make the witness admit that some parts of your opponent's case are not true?

Or that they don't know if those things are true?

Has the witness made a statement  
that conflicts with their direct  
testimony?



Deal with facts, not conclusions. If the witness states a conclusion, you can explore what he actually knows or doesn't know.

Use short, plain questions.

Don't give the witness an excuse for wandering and giving opinions.

Ask about only one new  
fact per question.

Use mostly leading questions  
which call for only a “yes” or “no”  
answer.

If necessary, ask the judge to order  
the witness to only answer the  
questions, don't explain answers.

Test the witness with specific facts to show that he is not certain of everything. Does the witness really remember something that happened 3 years ago? What else happened on that same day?

Set up the witness by making him or her strongly commit to a position where you have demonstrative evidence or other testimony that will show that this is a lie. Then, later, admit the contradictory position.

Unless the witness is falling apart and you are SURE that the witness will do this, don't try to get the witness to admit that your theory of the case is correct. YOU can do that in your closing argument.



Have the witness admit that he or she has committed crimes or done bad acts that are admissible.

How slow was the car  
going?

How fast was the car  
going?

Lack of foundation? Was the witness really in a position to know the things the witness claims to know?

Was witness really at the right place at the right time and able to see the things they say that they saw?

If the witness uses bad logic in making conclusions, walk the witness through the fallacious thinking.

Does the witness keep saying “I don’t know” to things he or she should know.?

Ask lots of questions to show all the important things that the witness doesn’t know.

If you can show that the witness is biased or has a financial interest in saying some things, make the witness admit these things.

If the witness says something  
VERY helpful and you worry  
he or she will back track or  
explain, QUICKLY ask another  
question on a new topic!

Does other evidence contradict what the witness is saying? If so, have the witness admit that other evidence contradicts his or her position.