

Lecture Five:

Trial Issues

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Cross Examination

Cross Examination is Difficult because you need to make the witness admit things they would rather not admit, but you always want to look like a person of integrity—someone that the judge (and jury) will trust. You need to put pressure on the witness, but you need to make it look like the witness is the person being rude, not you.

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

Demonstration:
Asking Leading questions

Verses

Non-leading questions

Make the witness to answer
your specific questions.

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

Don't ask witnesses 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

Try to 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.

New Topics . . .

The Law Firm of the Future

**What are YOU going to do about
automation?**

Will you be taking advantage of technology whenever it can help :

1. fulfill operational needs,

2. streamline systems,
and

3. improve client service?

Will your law firm be
paperless?

Will you scan and digitally
file all paperwork and
Shred what you don't need?

Will your law firm be mobile?

Will you be able to use mobile
technology to work productively and
securely from outside the office?

How can we improve the following and make them more efficient processes?

Client Intake

Establishing Fees and Drafting Retainer Contracts

Minimize Expenses

Attending Meetings

Communicating with the Courts and with Other
Attorneys

Keeping your Data Secure.

Keeping your Client's Data Secure

Delivering Pro Bono Services

Preparing for Trial

Coordinating with other Members of the Law Firm

Drafting Court Filings

Maintaining the Practice of Law to be an
Honorable Profession rather than a "factory."