

Witness Control Factors

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- Use leading questions beginning with:
 - “Do you/did you”; “Can you/could you”; “Will you/would you”; “Have you/had you”; “Are you/is it”; “Was it/were they”
- Make the witness agree with a short, simple thought
- Be patient. Make progress in short steps
- Select the proper form and tone of the question
- Work from specifics to generalities. Start with a single fact and add additional single facts in building block fashion.
- “Yanking the leash”
 - Repeat the question
 - Ask the witness to repeat your question
 - Ask the witness if the question was heard; if so, ask the witness what the question was
 - Provide the answer yourself
 - Q: Did you see the car? A: Ramble, ramble, ramble.
 - Q: Did you hear my question? A: Ramble, ramble, ramble.
 - Q: Then your answer is “yes”
 - Enter into an agreement with the witness
 - Q: I’m going to ask you some questions which can be answered yes or no. If you cannot answer my question yes or no, please let me know and I will rephrase the question for you.
 - Challenge the witness on the rambling.
 - Q: Did you see the car? A: Ramble, ramble, ramble.
 - Q: There is something which prevents you from answering yes or no? A: Not really.
 - Q: Then are you ready to answer my question yes or no?
 - Allow them to run in a small area and challenge them on it.
 - Q: Did you see the car? Ramble, ramble, ramble
 - Q: Is there anything else you want to tell us about that? A: Ramble, ramble.
 - Q: Anything else? A: Ramble, ramble.
 - Q: Anything else? A: Ramble.
 - Q: Anything else? A: No.
 - Q: Now let me ask you again, did you see the car?

Cross-examination as the “because” part of typical argument structure

Typical “People-Argument”

You forgot about our anniversary.

Because...

You say that it is a “special day”.

It’s easy to remember because it is four days
from your birthday.

You have a calendar on your desk.

You could write it down on that calendar.

It wouldn’t take much effort to write it down.

You didn’t do that.

Argument
Point

Supporting
Facts

So...

It must not be very “special”.

You forgot it.

Argument
Point

Same “argument” as cross-examination

You have an anniversary?

Same date every year?

It is close to your birthday.

It is four days from your birthday.

You remember your birthday?

You have a calendar?

That calendar is on your desk?

You are at your desk every day?

You note things on that calendar?

Things you want to remember?

Special things?

It’s not hard to make those notes?

You didn’t make a note about the anniversary?

Cross-examination
is the typical
argument done in
reverse order. The
supporting facts are
presented while the
witness is on the
stand, and the
“argument point” is
made in closing.