

Awesome Cross-Examination

Purpose

The purpose of cross-examination is simple: to make your case gooder and to make your opponents case badder. You do this by impeaching the witness's credibility, i.e. calling him a liar, and/or by getting the witness nod and say "yes" while you testify to facts that help your case. Thus, before cross-examining a witness, you should ask two questions:

1. Can I impeach this witness?
2. Are there facts that the witness must agree to that help my case?

If the answer to both of these questions is "no," then you probably should decline to cross-examine the witness.

Preparation

Cross-examining a hostile witness without thorough preparation is like standing naked in the rotunda of the Matheson Courthouse. In both instances the likelihood of looking foolish and losing credibility is extremely high. Preparation requires a total command of the facts of the case and, more importantly, the facts as they relate to the witness you are crossing.

Gather All Statements from the Witness

1. Written and oral statements to police
2. Statements to friends, family, victims, co-defendants, anybody
3. Facebook, Twitter, blogs, journals

Identify Sources of Impeachment

1. Perception
2. Memory
3. Interest (Rule 608(c))
4. Character (Rule 608(a))
5. Conduct (Rule 608(b))
4. Prior felonies (Rule 609)
5. Prior inconsistent statements

Plan Your Cross

1. Select three or four of your best points.
 - a. Impeachment
 - b. Facts that help you (don't set the bar too high)
2. Outline a line of questioning that will allow you to argue each point in your closing.
3. Never ask a question to which you cannot prove the answer, unless the only reasonable answer is the one you want.
4. Prepare three copies of needed exhibits (one each for the court, defense counsel, and you):
 - a. Prior testimony
 - b. Prior written or recorded statements
 - c. Prior convictions

Execution

All the preparation in the world will not save a poorly executed cross-examination. Open-ended questions, poor witness control, and misuse of exhibits can turn what should have been a blistering cross into a disaster. Keep in mind the following as when you conduct your cross-examination:

1. Start strong and end strong. Put your weakest points in the middle,
2. Lead, lead, lead.
3. Don't argue with the witness. Seriously, don't.
4. Save exhibits for when the witness denies a fact in the exhibit. Don't lead with them.
5. Keep your poker-face. If a witness drops a bomb, don't react. Just move on.
6. When needed, control the witness with short, precise, questions.