**The Cross Examination**

**I. Purpose**

 **1) Repair or minimize damage done on** **direct** – if a direct examination hurts your case, can you make the witness retract statements or offer other facts that may help you?

 **2) Enhance your case** – opposing witnesses may provide facts that help your case

 **3) Detract from your opponents’ case**—an opponent’s witness can establish facts that hurt their own case (often times, opponents will try to hide these facts – you must get them out!) Try to create inconsistency in their witnesses, too!

 **4) introduce evidence –** this is very difficult and takes knowledge of the rules of objections and procedures of evidence, but, evidence brought in on a cross can also help to damage the witness and an opponents’ case.

 **5) Discredit the witness or another witness** – introduce bias, interest in the outcome, reasons to stretch the truth, misrepresent, fabricate testimony, and past instances of untruthfulness. You can also use the witness to discredit other witnesses.

**\*\*\*Remember\*\*\*** Stay in control of your witness – witnesses will most likely be hostile and evasive so control your witness!

**Cross examination Organization**

* Don’t worry about starting strong
* Use topical organization
* Give the details first – details are very important for crosses!
* Scatter the circumstantial evidence – create a logical path with known and established details first before you make circumstantial conclusions
* Save a zinger for the end! End on your strongest and most damning note.

 Make sure:

 a) make sure your question/point is admissible

 b) make sure your question/point is undeniable

 c) make sure you state your question/point with conviction

**Cross examination Rules**

* **Ask leading questions**
* **Get in and get out – don’t go through a wide-range of topics – make cross as short as possible**
* **Ask only questions to which already know the answers to – never allow your witness to surprise you or take control from you!**
* **Is each of your questions short, fair and in proper form –** don’t let the opposing lawyer object to your questions!
* **Don’t ask the ultimate question**  - the witness won’t agree on it anyway and save it for the closing.
* **Be comfortable insisting that the witness answer your questions.**

**Sample cross format:**

 **a) friendly information**

 **b) affirmative information (build up the value of your case)**

 **c) uncontrovertible information**

 **d) challenging information**

 **e) hostile information**

 **f) end with a zinger**

**Role of Witness on a Cross:**

 **1) Don’t be hostile –** you will be asked tough questions that are aimed to make you look bad, but the nicer and calmer you respond, the better you look!

**2) Pick your battles!** Some points you have to concede on, but some you must fight on.

 **3) Don’t deviate from the facts!** While you will want to protect your image, you CANNOT make facts up or state facts that blatantly go against your affidavit.

 **4) Spin the truth –** Defend your case the best you can. All facts are debatable – make sure you state them in a way which makes you/the defendant/your side look best/innocent.

 **5) Stick to your case theory** – Your case theory is the major points that your team’s case hinges on. Make sure you not only highlight these points, but don’t let the other side ruin them.