

Mastering the Art of Cross-Examination: Tips from a Judge

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According to at least one judge, most lawyers do a good job in their opening statements, direct examinations, and closing argument, but never learn the art of cross-examination. To master that art, lawyers need to give cross-examination the same attention they do other phases of trial.

[Judge William F. Rylaarsdam](#) offers the following tips to highlight the special purposes of cross-examination and to be a guide for mastering the art of cross-examination.

- **Don't confuse cross-examination with a deposition.** The purposes of each are completely distinct: the purpose of a deposition is to find out what information the witness has and nail the witness down to a particular version of the facts, and the purpose of cross-examination is to ascertain the truth of alleged facts.
- **Consider whether to cross-examine at all.** The answer to this depends on whether the witness has testified to anything that injures your case.
- **Control your own demeanor during cross-examination.** When counsel speaks pleasantly and frankly, shows confidence, refrains from acting surprised, and stays focused on the real issues, he or she projects credibility and adds to the credibility of his or her case.
- **Keep it simple.** Always keep cross-examination questions short and simple. Convoluted questions will lead the jury to conclude that you are trying to confuse witnesses rather than to get to the true facts.
- **Keep it short.** A long cross-examination may lead the jury to conclude that the witnesses' testimony must be of particular significance.
- **Only ask questions that help you.** Never ask a question on cross-examination unless (1) you know what the answer will be, and (2) the answer aids your side of the case.
- **Avoid open-ended questions.** Open-ended questions give the witness too much latitude to answer. They are particularly harmful when asked of an expert witness who will then look toward the jury in a very professorial manner and explain the matter yet again to the dummy lawyer who didn't get it the first time.
- **Know when to quit.** Always quit while you are ahead. When a cross-examination question elicits a helpful answer, don't elaborate by asking a further question on the same subject because the witness will likely use those further questions to try to explain away the earlier answer.

- **Make good use of deposition answers.** Having the witnesses' sworn answer to a question means that you can safely ask that question during cross-examination as long as it advances your position. If the answer is the same as that given during the deposition, then favorable information is before the jury, and if it differs, then you can impeach the witness with the deposition testimony.
- **Get the court's help with a recalcitrant witness.** Each time the witness gives an evasive answer, politely ask the court to instruct the witness to answer the question. Each time the witness's answer goes beyond the scope of the question, ask the court to strike the offending portion of the answer and to instruct the jury to disregard it.

Cross-examination has been called the ultimate test of the litigator's skill. The key to mastering the art of cross-examination is understanding its purpose, deciding carefully whether it's necessary, and conducting it sensibly and carefully.