

Cross-Examination

■ **Gerry Spence Reading:** "Exposing the Hidden Truth—Cross-Examination," in Gerry Spence, *Win Your Case* 168-222 (New York: St. Martin's Press, 2005)

—"Cross-examination is simply storytelling in yet another form. Cross-examination is the method by which we tell our story to the jury though the adverse witness and, in the process, test the validity of the witness's story against our own." [Spence, *Win Your Case*, at 169] ["When the lawyer gets up to cross-examine he should have a significant story in mind that he wants to tell with this witness."][218] ["Basic cross-examination is nothing more than a true-or-false test administered to the witness, in the course of which our story, as it concerns that witness, is told, question by question, to the witness. It makes little difference whether the witness answers yes or no. Question by question, our story is being told. It's for the jury to determine whether the witness is telling the truth when he denies the statements contained in our questions. If we took each statement out of our cross-examination and joined them, we would have presented our story for that witness." *Id.* at 170] ["[B]efore we begin the cross-examination, we must have in mind the story we wish to tell through this witness. We have prepared the story for each witness and we'll not muddle around asking a bunch of meaningless questions in order to hear our own melodious voices, nor will we repeat the questions we heard on direct examination, except where it is necessary as foundation for a well-prepared cross. And, at last, we ask ourselves, do we want to cross-examine this witness at all?" *Id.* at 218-219]

—"Only the deluded or naive believe that somehow the taking of an oath prevents witnesses, even honest witnesses, from lying where they must." [*Id.* at 187] ["Every witness is sworn to tell the whole truth and nothing but the truth. But few do. If they did there would be no cause for cross-examination. But the human mind does not grasp whole truths. It grasps only those truths that serve it." *Id.* at 192]

—A Cautionary note:

"Witness after witness comes to the stand, and you step up with the tender hatchet and begin to hack away. And when you are through, the witness steps down off the stand, and he is never the same in the juror's eyes.

But after you have destroyed enough witnesses, something begins to dawn on the jury: This man could do this to *every* witness. This man could do this to me. Not one single person has taken the witness stand and escaped. And the jurors begin to look at you in a new way. What trick will he use against the next witness? Is he fair? Is the witness lying, or is the lawyer just good at twisting things? A lawyer can lose his credibility by being too nifty with the blade." [Gerry Spence, *O.J., The Last Word* 211-212 (New York: St. Martin's Press, 1997)]