Cross-Examination

"Cross-examination is the interrogation of a witness by a party other than the direct examiner upon a matter that is within the scope of the direct examination of the witness. Generally the scope of examination is limited to matters covered on direct examination."

The right of cross-examination is one of the most powerful instrumentalities provided lawyers in the conduct of litigation. One of the most important purposes of cross-examination is to attempt to destroy the testimony and/or the credibility of the opponent's witnesses. Justice is not served if a witness is unable to communicate credibility to a jury. The search for truth is the ultimate and idealistic end of all litigated matter in a court trial.

A clever witness under cross-examination can, by proper response to opposing counsel's questions, signal a necessity for questions to be asked on redirect examination. This is usually done in those situations where the witness is apparently compelled to admit some damaging factor under cross-examination. In those instances he usually admits the fact as true, but adds, "That's true under certain circumstances or conditions." This is a signal to the lawyer who engaged him to ask on redirect examination, "Mr. Jones, you said so and so was 'true under certain circumstances and conditions.' Just tell the judge and the jury under what circumstances and conditions that would be true."

Rather than get argumentative during cross-examination, the witness should rely on his side's lawyer to clarify the witness' position on redirect examination.

If the expert witness testifies in a partisan manner, he ceases to be an independent witness and has become an advocate, which challenges his credibility.

A witness need not give an opinion when he actually has no opinion; and, if he does give an off-hand opinion, a foundation will be laid for invalidating the weight of his original opinion.

Once an expert witness offers his opinion, he exposes himself to the kind of inquiry which ordinarily would have no place in the cross-examination of a factual (lay) witness. The expert witness invites investigation into the extent of his knowledge, the reasons for his opinion, including facts and other matters upon which it is based and which he took into consideration. He may be subjected to the most vigorous cross-examination concerning his opinion and it's sources. If an expert witness relies on a published treatise, he any read it into evidence, but the treatise itself may not be received into evidence as an exhibit unless the opposing attorney requests it.

A witness is not wholly in control of what he would like to say; he must respond to questions by the lawyers and/or judge.

Jurors seem to pay more attention to a witness' testimony during cross-examination than during direct examination. If during direct examination of a witness his testimony proved to be very damaging to the other party, the opposing lawyer may ask the witness, "Have you ever lied?" If the other lawyer doesn't make a timely objection, the witness is on the spot, and must answer the question. If he hesitates, he is in trouble; by the same token, if he answers in the affirmative, or

even in the negative, he leaves himself "wide open." If he says he has lied, his credibility will be on the line; on the other hand, how can he say he has never lied? Who has never uttered "white lies?" An appropriate answer might be "Never under oath."

The expert should "…not break his stride or visibly change his demeanor as the cross-examiner gets up and begins. He should give the impression that what he said on direct, in the comfort of that role, is what he always says and will continue to say on cross. No change. No gearing up for the onslaught. No deep breath, digging in the heels and waiting. Just a calm even demeanor and a clear straightforward look at the cross-examiner."