

MOCK TRIAL PART VI - CROSS EXAMINATION

by M. Donna Ross

*Mock Trial Law of the Positive Spin
For every vision there is an equal and
opposite revision.*

Cross examination is the part of trials most like debate. The purpose of C-X is to bring out evidence from hostile witnesses that will help your side or to impeach the witness by showing that he should not be believed. You must be in total control. Start by taking center stage. Place your notes on a table or podium (do not hold them) that is directly in front of the jury and 8 feet from the witness. You want the jury to look at you, not the witness. While it is best not to use any notes at all, here are a couple of things that may help if you think you have to. First, write out all anticipated questions word-for-word. Then, use the inside of one manila folder for each witness and write one word for each question which will jog your memory if you forget what comes next. Leave it down and open where you can refer to it if you need to.

Do's and Don'ts

1. Ask only questions you absolutely know the answers to or questions that will help you no matter how the witness answers.

2. Ask yes-or-no questions. Ask them in a coherent series that will end up accomplishing a main purpose. Lead the witness to give the answers you want. Never ask open-ended questions, i.e., how, why, describe, etc. These will waste your time. Ask a series of "Did you--" questions, then point up the key thing you want people to remember by starting the "killer" question with "Isn't it true that--"

3. Don't be too pushy when asking questions. It makes you look really bad if you don't let the witness answer. The key is to ask the question so that he has to answer it briefly and in a way that helps you or look sneaky.

4. Always listen to the answers to the questions and follow up with another question based on the answer if possible. Always be ready to cite the testimony page and placement for every question. Have a highlighted and notated copy of the witness testimony ready.

5. If the witness is being unrespon-

sive to a question, then:

a. Let him babble on, then

b. Complete the answer for him.

For example, "So the answer to {restate the question} is yes (or no), correct?"

c. If he still goes off, ask the judge to direct the witness to reply.

d. If the witness persists in stalling on the next question, condescend to him by pointing out his lack of forthrightness. For example, say, "I know you are not used to testifying and that you must be very nervous, so I will try to ask questions that can be answered simply. Most of my questions can be answered with a 'yes' or 'no.' Would you please answer my questions that way? The prosecution/defense will have a chance to ask you to explain more later on redirect/recross." Then, ask the question again. If there is no improvement, ask the judge to instruct the witness to answer.

6. Talk slowly and make sure your questions are understandable.

7. Ask short questions.

8. Watch your time. Don't be afraid to request more time if there have been delays.

9. On witness character, never ask a guy to admit he's a scumbag or to admit anything directly that would really hurt his side. Don't ask that "one question too

many" which will allow the witness to weasel out. Save your conclusion for the closing. Of course, you want the jury to see it from your questioning. Create a picture for the jury of bad things that the witness cannot deny. Then the jury will see that he's not to be trusted. You bring up the facts. The jury will do the interpreting.

Cross examination is crucial in establishing a strong case. Know what you want your witness to say, then get him to say it.

The Lawbster's CX

In Neptune's court, a high-profile legal lawbster named Crabowitz was cross-examining Mr. Monkfish, a stand-up comic who imitated crustaceans for a living.

Lawb: Mr. Monkfish, do you or do you know who poisoned the Seaweed King, Senor Conch?

Monk: Yes.

Lawb: Is that, "Yes, you do know," or "Yes, You don't know?"

Monk: Yes.

Lawb: Please tell us clearly. Do you

know or not?

Monk: Yes.

Lawb: You're making me crabby, Monk. Will you answer me or will you not?

Monk: I am answering you. But your questions are full abalone, and I must say I don't much like your tuna.

*(Mary Donna Ross, co-host of the
1998 Gateway Nationals, is currently
working on a book on Mock Trial.)*

