

A photograph of a courtroom interior. In the foreground, a wooden bench is visible. To the left, a black leather chair is partially shown. In the center, an American flag stands on a wooden base. The background features wood-paneled walls and a door.

# Successful Cross Examination Techniques

**LORMAN**<sup>®</sup>

Published on [www.lorman.com](http://www.lorman.com) - October 2017

Successful Cross Examination Techniques, ©2017 Lorman Education Services. All Rights Reserved.

## INTRODUCING

Lorman's New Approach to Continuing Education

# ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 1300 available
- ☑ Slide Decks - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



**Get Your All-Access Pass Today!**

# SAVE 20%

Learn more: [www.lorman.com/pass/?s=special20](http://www.lorman.com/pass/?s=special20)

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

\*Discount cannot be combined with any other discounts.

Cross examination has been referred to as an art form by many famous books on the subject. While it is true that there are lawyers who seem to have an innate gift for cross examining witnesses, being good at it does not require being equipped at birth with the ability to elicit information. What it does require is being a good listener, being prepared beforehand and keeping an eye out for any cracks in the testimony.

The overall idea is to cross examine to the point of encouraging enough information without exhausting the witness or going over the same point repeatedly. A cross examination is also playing to the jury in convincing them of the defense or offense. Always remember that the idea of cross examination is to support the argument that has been set up before the trial even began. All of the information that has been drawn from the witness goes to drive home the closing argument to the jury. Therefore, stop before going too far and muddling up the precision of the point that is being made.

### **Never Ask a Question That You Don't Know the Answer To**

This is the cardinal rule of cross examination. The statement may be glib, but it has its purpose. Knowing the answers to a question before asking it controls the situation. Being unprepared for the answer can not only lead to an uncomfortable situation, it also demonstrates to the jury that the lawyer is not on his game. This lack of perceived control can make or break a case.

### **Know the Objective of the Questioning Beforehand**

Questioning a witness has to culminate in a point being made or risk losing the jury with

endless, pointless questioning. Having a point to make in mind before getting up to question goes towards countering the effect of the direct examination. To that end, keep notes from studying the case and ask questions from them.

### **How to Properly Use Notes During Cross Examination**

Before the trial begins, chances are good that the attorney has written down questions that are to be asked of the witnesses. Most likely there have been notes taken during the initial examination of the witness by opposing counsel. The best way to use these notes is to either leave them on the table or only refer to them for a brief moment as a refresher. There are good reasons why to not depend on them.



Using notes in front of a jury and a witness and relying upon them to ask questions gives off an impression of not being prepared. This is absolutely the worst image to project to all who are involved in the proceedings. Avoid this practice at all costs.

Juries expect the lawyers to be confident and in control of the questioning. The jury and witness also expect some kind of eye contact from the questioning lawyer. They all want to be able to read the body language of the lawyer to gauge the intent of the question.

Having a head down and reading notes does little to drive home any of the questions being asked, nor does it impart the ability to ask a question when a witness response comes from out of nowhere.

Create notes that are brief and simple reminders to direct the questioning. They should be just enough to jog a memory for a question. This act of recall impresses upon the jury that the lawyer is in control, is quick on his feet and commands respect. Ultimately, the jury pays attention to the strength of the case that is being made as opposed to getting annoyed with a lawyer who just reads their questions.

### Creating and Framing Questions

Stay away from asking questions that are complicated or can be answered in more than one way. Giving the witness room to argue back or become confused reflects poorly on the attorney who is doing the cross examination. Another issue is the witness can more easily deny the action they are being accused of which undermines the case.



Instead, ask tight questions that are restricted to one fact only. Don't ask in a format of "isn't it true?" This gives the witness an opportunity to shoot down the line of questioning. Short,

succinct and to the point is all it takes to leave an answer hanging in the air and discredit the witness. Also use the questions as a way to make a statement that the witness agrees with. This bolsters the argument that is being made, and in a clear manner that is impressed upon the jury.

Use the opportunity to ask a question in a way that indicts the honesty of the opposing counsel. For example, if an expert witness is being paid for their testimony, and opposing counsel did not point this out, take the opening to ask a pointed question about remuneration. While the jury may or may not be concerned about compensation for testimony, it is a perfect opportunity to question the veracity of the opposing counsel and their intentions.

### Only Ask Leading Questions

This is another cardinal rule of cross examination. The cross examiner is free to ask questions in any manner, and leading questions are fair game. Using them gives the lawyer the opportunity to testify with the witness verifying the leading question.

Every lawyer's style of asking leading questions is different, but stay away from old and trite phrasing. This loses the jury's interest quickly. Utilizing a more laconic, even laid-back style of questioning adds a bit of familiarity to the proceedings. This has the added bonus of engaging the jury more intently as the lawyer is "speaking on their level."

The only time to avoid the leading question is during the questioning of expert witness. The expert is there to bolster the case, so an attempt to control their testimony is an unnecessary tactic.

## **Know When to Stop Asking Questions**

At times, there are witnesses who have little to offer apart from a minor role in the case, or are absolutely honest about their testimony. Make a judgment call of asking enough questions to reiterate a point, or just a couple of simple yes and no responses. Going too far might result in being called out for badgering. Even if nothing gets said openly, the jury may feel that the lawyer is picking on a witness unnecessarily and turn on counsel. Also, this kind of witness may not add much more to what has already been said, so consider not asking them any questions at all and pass for the next witness.

## **Know When to Keep Asking**

Never outright challenge a witness that is recalcitrant or reluctant to answer questions. Instead, let them hang themselves with their own rope. When the witness is being evasive or obtuse, keep asking the same question over and over, clearly and precisely. Give the witness an opportunity to answer the question. If the witness never comes out with a clear answer, he makes himself look ridiculous to the jury.

Above all, maintain a polite demeanor throughout with a difficult witness. Projecting an air of self-confidence, even a little arrogance, catches the eye of the jury and has them looking forward to the questioning. Do not get flustered or let the jury and witness see any annoyance whatsoever. It demonstrates a lack of self-control as well as an inability to control the witness in general.

## **Work Towards Discrediting the Witness**

A witness can only testify if they have personal knowledge of the event in question. The discovery phase is where counsel can uncover

what the witness claims to have direct knowledge of. Sometimes, a witness strays out of this area of information, attempting to speculate or outright lying about what they experienced at the scene. Knowing the facts beforehand from discovery gives the opportunity to call attention to the lie or misdirection, which does its own damage to the case.

Other questions that can be asked is if the witness was at a party, were they drinking or otherwise impaired, is the information they have hearsay, even what time of the day the incident happened. An honest witness sticks to the facts with their replies. A witness that is being dishonest is easily caught out, cheapening their testimony with their own words.

Point out or demonstrate bias when there is a financial incentive for a witness to testify. As mentioned before, point out where an expert witness has been paid to provide testimony. The witness may be a family member of the plaintiff that stands to gain money if the case settles in their favor. Money is a powerful motivator to lie, something that juries recognize.

Never go after a witness that apologizes for an honest mistake. Juries are going to align themselves with the idea that people make mistakes, and an honest retraction is acceptable. Trying to hammer on an apologizing witness for their mistake is going to backfire on counsel.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.