



# The Fundamental Craft of Cross

BY MARK KITRICK

**A**s most of us know, a successful cross-examination is rooted in careful preparation and is usually based on a strategic plan to poke holes in the defense. Whether you've been handling cross for 20 years or are just starting your legal career, here are some basic fundamentals to keep in mind.

**Control.** Generally, the essence of cross-examination is control. In most instances, every question should be a simple sentence containing one idea. Each question and answer is a foundational building block for the next one with no holes or gaps. For example:

- “You agree that traffic laws help keep roadways safe, correct?”
- “You also agree that safe driving requires that we all follow those traffic laws, yes?”
- “One such law requires us to stop at stop signs, right?”
- “A driver who fails to stop at the stop sign can endanger other motorists, yes?”

You then can move to evidence concerning the driver's actions, such as admissions, witness testimony, and physical evidence that proves fault.

**Eliminate physical barriers.** Well before trial when the courtroom is empty, make sure you've sat in every part of the room, including the jury box and the judge's chair. This helps you connect with and visualize your audience.

At trial, don't put anything between you and the jurors except the jury box. If you're required to stand behind a podium, request permission to move around, and then do so with purpose. Don't get too close to the jurors—you don't want to violate their personal space. When asking a question, face the jury, and then turn to the witness to hear the answer.

**Know when to keep silent.** Some witnesses you should not question. What will be gained by cross-examining this witness? Will it hurt your case? What points can you make that advance your theme? Using the same stop sign example above, assume the driver did not provide a coherent or credible account during direct. By

cross-examining the driver, you risk giving the defendant another chance, as well as an opportunity on redirect, to clean up the initial testimony.

**Be multisensory.** Use descriptive language that activates the visual, aural, and feeling senses to make your points. Instead of reading a transcript, show jurors the section of the video deposition that impeaches a witness's testimony. Let them watch how the witness squirms, hedges, contradicts, or takes too long to answer salient questions.

**Maintain attention from start to finish.** Everyone has heightened attention at the start of a cross, so consider beginning with the unexpected. Consider making it about the jury's community values—almost every group has concerns about safety and ensuring people abide by the rules. Keep the questions and topics to the point and moving at a good pace. As in the earlier stop sign example, going from general themes and values to specific evidentiary or legal issues can make your argument coherent.

If you want to summarize your theme, reassert something that you learned from the witness, or make a key point that you saved for the end of the cross, consider pausing on your walk back to your chair to ask one more question. For example, after obtaining several “yes” admissions, you could, if appropriate, emphasize this by summarizing those points in a final question that elicits yet another admission from the witness: “To make sure we understand your testimony, you admit for the first time that had you not looked down at your phone when you entered the intersection, you would not have smashed into my client's car and caused her the severe damages that bring us to this courtroom today?”

**Hostile and stubborn witnesses.** Of course, when the witness's responses are false or elusive, you hope that the jury understands what is happening. But if you want to get an answer or emphasize the witness's behavior, go to the flipchart, write out your question, and review it with the witness. Start with “In case I asked in a way you did not understand it,” or “Let's go over this question word by word.” This strategy can be powerful.

No matter how long you've been a trial lawyer, these techniques are a good refresher on the fundamentals of cross-examination—and may give you another way to approach your next witness.

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