

Cross-Examination: Defendant

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**WEINER'S TEN COMMANDMENTS OF
CROSS-EXAMINATION OF A DEFENDANT
(With apologies to the late Irving Younger).**

I.

Read every article, book, and treatise on cross-examination techniques and strategies, including every one of the publications listed in the attached bibliography (and including, of course, Irving Younger's classic, "Ten Commandments of Cross-Examination."¹)

II.

After finishing Commandment No. I, make a futile attempt to resolve in your own mind the varying, and indeed, often conflicting advice found in these publications (i.e., do you go with Younger's "Ten Commandments of Cross Examination," Brown's "Thirty Maxims of Cross-Examination" or Stern's "Three Techniques of Cross-Examination"; do you always conduct a short cross to avoid boring the jury, or must your cross be long, detailed and thorough so the jury knows how important it is; should you always start with your strongest point or instead always ease into the cross-examination; must you always completely write out your cross-examination in advance or should you never do so because you must rely on your intuition and your instincts; etc, etc. etc.);

THEN, read Weiner's Commandments III - X and make up your own mind on what to do.

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- ¹1. Be Brief.
 2. Short questions, plain words.
 3. Always ask leading questions.
 4. Don't ask a question, the answer to which you do not know in advance.
 5. Listen to the witnesses' answers.
 6. Don't quarrel with the witness.
 7. Don't allow the witness to repeat his direct testimony.
 8. Don't permit the witness to explain his answers.
 9. Don't ask the "one question too many."
 10. Save the ultimate point of your cross for summation.

III.

Remember that an effective cross-examination of a defendant is entirely dependant upon effective pre-trial procedures. (Or, to put it another way, even the brilliant cross-examiner is unlikely to save the day when the defendant's deposition was poorly taken, the proper documents were never obtained in discovery, the plaintiff's investigation was inadequate, etc, etc.)

IV.

Remember that a defendant, as a party, can be called in the plaintiff's case and cross-examined.

V.

Remember that a defendant's deposition is substantive evidence, not merely impeachment material, and can be used for any purpose.

VI.

Remember that cross-examination techniques are just that, techniques only, and one should never focus on techniques to the exclusion of the purpose of the particular cross examination. (Or, to put it another way, don't let your focus on tactics cause you to lose sight of your strategy.)

VII

Know your case, know your case, know your case. (Seems to go without saying, doesn't it.)

VIII.

Remember who you are (you may not be Clarence Darrow, Gerry Spence or Ron Meshbesh, but then, they are not you either).

IX.

Ask yourself (multiple times if necessary), WHY are you are cross-examining that witness.

(Besides trying to impress the jury with your cross examination skills.)

X.

When trying to make the often difficult decisions on what tactics and techniques to employ to carry out your overall strategy, and accomplish the ultimate purpose of your cross, remember the classic (and usually correct) response of the experienced and savvy trial lawyer:

“Well, it depends.”

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