Deflating the Government’s Witness: Organizing an Effective Cross

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Trial and Cross – As Teaching

• A trial is about what we choose to teach the jury.

• The more time, the more important it appears.

• Cross uses a witness to educate jurors about facts.

• We can increase juror learning by:
  – Grouping facts together
  – Ordering facts logically within the group
Cross Examination – When it Works

”... beyond any doubt the greatest legal engine ever invented for the discovery of truth.”

John Henry Wigmore
Cross Examination – Went it Doesn’t

• I’m bored, the jury must be, too.
• I’m confused. The jury must be, too.
• Why do we need to know all these details?
• Why does he keep going over the same thing?
• Why is she repeating the most damaging part of direct?
• Wow, that new fact doesn’t help her case.
• Does this judge ever break for lunch?
A Book’s Chapters:

• Cover a subject/create image
• Often subsections
• Use the best material available
• Have a defined beginning and end
• Use a sequence appropriate to topic
Cross Chapters Like Book Chapters

• Cover a subject/create an image
• Often subsections = points
• Use the best facts available
• Established by leading questions
• Asked in a teaching sequence
• Have a defined beginning and end
Chapters and Points Defined

• Chapter is a major inference
• Points are the smaller points supporting the major inference.
• Each point is made with facts
• Each chapter is made of points.
• Points should be one page long
• Points require more than one question
The Art of Slicing Thinly
Chapter Points Can:

• Highlight a fact from direct
• Dispute or weaken a fact from direct
• Introduce a new helpful fact
• Set up a later inference
• Set up a credibility argument
  – Incredibility of this or another gov’t witness
  – Credibility of a defense witness
Identifying Possible Points to Teach

• Already have your theory of the case
• Already have you major arguments for closing
• Where is the witness in the story?
• What does witness know?
• What should witness know?
• What do we know about the witness?
• What are the patterns, connections, inferences?
Preparing the Point to Teach It

• Each point should have a heading
• Arrange helpful facts to teach the jury the point
• Start from the most basic fact
• Sequence to the conclusion
• Close necessary doors along the way
• Think: I want to teach the point to a non-lawyer new to the case
# Point: He Lied on His 2012 Return

<table>
<thead>
<tr>
<th>Fact</th>
<th>Source</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>File taxes</td>
<td>Copy from IRS</td>
<td></td>
</tr>
<tr>
<td>Filed in 2012</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012 return filed with IRS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signed at the bottom</td>
<td>Page 2 at bottom</td>
<td>Admitted in co D’s case</td>
</tr>
<tr>
<td>Where you swore it was true</td>
<td>Page 2 at bottom</td>
<td></td>
</tr>
<tr>
<td>Under penalty of perjury</td>
<td>Page, 2 at bottom</td>
<td></td>
</tr>
<tr>
<td>Tax return had place to list income</td>
<td>Line XX</td>
<td></td>
</tr>
<tr>
<td>You listed X in income</td>
<td>Line XX</td>
<td></td>
</tr>
<tr>
<td>That year you got X from W-2</td>
<td>W-2</td>
<td>Admitted in co D’s case</td>
</tr>
<tr>
<td>That year you got Y from W-2</td>
<td>W-2</td>
<td>Admitted in co D’s case</td>
</tr>
</tbody>
</table>
Why do this

- Clear organization
- Easy for jury to follow
- Still flexible – find, add, delete, modify
- Increases chances of getting ALL you need from the witness for closing
- And increases chances that the jury will learn what your case is really about