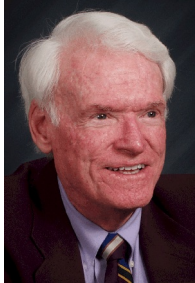


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#WIT503 Standard Cross-Exam Questions.

Standard Questions to Use Against Adverse Witness

WHEN THE ADVERSE WITNESS IS SLOW IN ANSWERING

[You want to rattle the witness into answering faster, and also tell the jury to suspect the witness because he is taking too long in answering to really be telling the truth. Ask in *quick succession*.]

- Are you thinking of the answer to give?
- Did you hear the question?
- Did you understand the question?
- Are you trying to think of the best answer to give?
- Don't you want to answer the question?

CROSS EXAMINATION ON DISCREPANCY FROM DEPOSITION

- Were you examined under oath on (date) at (place)?
- Your attorney was present? Court reporter?
- Sworn to tell the truth? Your attorney had prepared you for the depositions?
- [You then read aloud to the jury and to the witness the question and answer.]

Contrary to the thinking of many attorneys and judges, you do not have to have court first admit the deposition Q&A into evidence, and certainly any thinking adversary attorney will not want to object and make a "big deal" out of the Q&A when it is received into evidence. However, should the court insist upon it, you can first offer the question and answer into evidence as an "admission" under the evidence rule regarding exceptions to the hearsay rule. Then after the Q&A is admitted into evidence, return to reading aloud to the jury and to the witness the question and answer.]

[Then, do NOT ask yet whether the answer was true, instead ask the following.]

- Did I read that correctly?

[Optionally, at this point you can turn to the judge and offer the question and answer into evidence as an admission under the evidence rule regarding exceptions to the hearsay rule.]

[Continue by asking the following questions. Insist on "yes" or "no" answers.]

- I'm showing you the signature page. Is that your signature, saying the deposition was true?
- Is your memory of the accident better today than it was on [date of deposition]?
- Let me read that question and answer back to you. Listen to it carefully, and then I will ask you a question about your answer [read question and answer]
- Was that answer true when you gave it?

ANYTIME YOU WANT TO EMPHASIZE WRITTEN MATERIAL

- [Read the written material to the witness, then ask the witness the following.]
- Did I read that correctly?

WHEN WITNESS ADDS AN ARGUMENT

[Point out that it was an argument, and not a fact, by quickly saying something like either *one* of the two following items.]

- That is for the jury to decide.
- Your attorney can do the arguing, I want facts from you. If you don't know the fact I am asking you about, just tell us you do not know. Here is my next fact question. ".....?."

TWISTING THE KNIFE: TO EMPHASIZE A POINT, BY REPEATING IT

- You have testified that " . . . "
- Do you want to change your testimony?
- Is your testimony true that " . . . "?
- Or for variety, ask:
- So, it is a fact that " . . . "
- No question about that, is there, that " . . . ?"

WHEN YOU CANNOT CROSS-EXAMINE BECAUSE IT IS A TRUTHFUL, GOOD ADVERSE WITNESS WITH ROCK HARD TESTIMONY, BUT YOU NEED A QUESTION [To give the impression that you were not overwhelmed by the witness.]

- Did you say that it *IS* a fact that " . . . X. . . . ?" (X being a fact which was helpful to your case, or at least neutral in his testimony against your client.)

TO EMPHASIZE GOOD TESTIMONY

[This works with your own witnesses, as well as with adverse witnesses.]

- Will you please look to the jury, because they want to get all of this.

MIXING A WITNESS UP ON DISTANCES OR FIGURES

[There is an old standby to make the jury think the witness has no real accuracy. When a witness has said a number that has been estimated as involved with an event, almost always you can get them to say they could be off more than 15%, by asking them "Could it have been?"]

For example, if a witness has said the red car was 100 feet away from the blue car when it stopped, and you want to *lengthen* the distance to conform more with your witness's version, ask:

- "You have testified to a distance of 100 feet. Could it have been 115 feet? Could it have been 125 feet?
- Now you yourself were about 150 feet or more away from what was happening, weren't you?
- You have just testified that the distance between the red and blue car was anywhere from 100 feet to 125 feet. But from 150 feet away, your estimate of any distance involved in something happening 150 feet away from you is only approximate, isn't it?
- So when you estimate 125 feet, it's only approximate, and could be plus or minus another 10 or so feet couldn't it?

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