

Memorandum

Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.

To:

From: Mary Kennedy

Date:

Subject: TOP TEN LIST FOR CROSS-EXAMINATION

NUMBER ONE: LEADING QUESTIONS. PERIOD.

Because cross-examination is all about control, your questions must be leading. Leading questions help you to control the pace of the examination, the flow of the information, and the attention of the fact finder.

NUMBER TWO: ONE FACT PER QUESTION

Or, at a minimum, one new fact per question.

NUMBER THREE: SHORT QUESTIONS

Witness should be answer with a "yes" (preferably) or "no." Research shows the shorter the question the shorter the answer.

NUMBER FOUR: NO TAGS

Particularly not repetitive ones. E.g., "right?", "isn't that correct?"

NUMBER FIVE: PLAIN LANGUAGE

No "legalese" or "policese." No "exiting vehicles" or "obstructions to views."

NUMBER SIX:

KNOW THE ANSWER

From discovery, from investigation, from Jencks.
Cross is the time to make your points, not find out
information.

NUMBER SEVEN:

LISTEN & LOOP

When you get a gem, include the answer in the next
question. E.G., "It all happened so fast."

NUMBER EIGHT:

NO EXPLANATIONS

Move smoothly past requests by witnesses to explain

NUMBER NINE:

NO FIGHTING

Unless you have "permission" from the fact finder

NUMBER TEN:

NO ULTIMATE ISSUES

You don't need to make the point with the witness.
Save it for argument.