



Preparing for Cross Examination

MAY 4, 2018

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- ▶ Argue with the witness

Types of Witnesses

- ▶ Defendant
- ▶ Critical/Peripheral Witness
- ▶ Fact v. Character Witness
- ▶ Evasive, argumentative, difficult

What Is The Purpose of Cross



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"PICKS"

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Plausibility

What makes testimony implausible?

Attention to detail: moving from vague and general to specific and precise.

Prior Inconsistent Statements

Know your case!

Confront the witness with the inconsistency

Save it for closing

Credibility

Credibility of the Witness *Calcrim 226*

- ▶ Ability to perceive
- ▶ Ability to recall and describe
- ▶ Behavior while testifying
- ▶ Bias or prejudice/personal relationship or interest
- ▶ Admission of untruthfulness
- ▶ Character evidence
- ▶ Immunity or leniency

Knowledge or Lack Thereof

Lack of Knowledge

- ▶ Physical limitations – vision, hearing, etc
- ▶ Ability to recollect
 - ▶ Passage of time
- ▶ Drug or alcohol influence

Supporting Your Case

- ▶ Admissions that make your case stronger
- ▶ Officers were polite/professional

Planning for Cross

- ▶ Outline of Areas to Cover

Outline of Questions

1. You turned the screw driver in three days earlier.

What doing with knife during the interim

Show us

Sharp tip would have put a hole in your pants.

Would have cut yourself.

Brought it with you knowing that a fight was possible.

2. What kind of damage do you think a knife this size could do?

Did you think about doing that to Denis?

3. You triggered this encounter. Not a surprise. You texted Oscar with the request for Denis.

You wanted to get your money. That was your purpose. You told us you're not a hot head. You knew what you were doing



4. You felt mad. Felt “played” “trying to get one over on me.” Never his intentions to take you. You were mad because you thought he was your friend. You thought you were fun to hang around with.

You knew Denis had no reason to fight you

Would have returned the money to you

You left the house with the knife.

You could have brought Oscar with you. Denis was your friend. You didn't because you wanted to attack him

Why threaten him with a knife.

You knew he did not carry a weapon.

Why not bring both friends with you.

Why did you take the knife out at all?

You started this by pulling out the knife – wanted him to see it as a threat

5. Explanation of how the fight went

How could you stab him in the back if you were swinging at him

How could you stab him so many times/

How does the victim not have any other injuries?

You pulled the knife first

He said talk to me like a man, put the knife a way

You did not respond

You said tried to open pocket to put the knife away. Why?

Why not let it drop.

Fight never went to the ground. He pushed past you.

6. Why did you leave if you didn't know what you had done.

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- ▶ Taking Notes During Cross
 - ▶ Highlight areas to cover on cross and incorporate into your outline

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- ▶ How to begin and how to end
- ▶ Consider the type of witness- fact or character

Character Witness

- ▶ Eg. Self defense – defendant's character for peaceful behavior
- ▶ Eg. Reputation for honesty
- ▶ Areas to consider:
 - ▶ Bias
 - ▶ Basis of knowledge
 - ▶ Testing the knowledge – were you aware?
 - ▶ You weren't there
 - ▶ You don't know what he was thinking

Difficult Witnesses

- ▶ Keep your questions simple and clear - no wiggle room
- ▶ Be patient and repeat the question
- ▶ Ask the court to order the witness to answer

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- ▶ Is it outside the scope of direct?
- ▶ Are you listening to the answer?
- ▶ You need to practice
- ▶ Embrace your weaknesses

Common Mistakes

- ▶ Redoing what was one on direct
- ▶ Not listening closely— being tied to your script
- ▶ Not asking precise questions – wiggle room
- ▶ Not controlling the witness
 - ▶ Get the court to assist
- ▶ Quarreling with the witness

Questions?