

Expert Direct and Cross Examination

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Let your Expert be the Expert...

- > Don Herbert
- > KEETS
- > Simple memorable opinions (3)
- > Concrete demonstrated reasons - (3 per opinion)
- > Outline, not script
- > “Fish in the boat” – knowledge, experience, proof



Expert Direct Outline



- > Context.
- > Qualifications:
 - > General (education, etc.).
 - > Field Specific.
 - > Case Specific – "What have you done for this case?"
- > Offer and Blessing (optional).
- > Opinions ("Rule of 3s").
- > Reasons – "How do you know?"
- > Explanations – "Why does that matter?"
- > Anticipate and "defang" the cross.
- > Conclude with what you want the jury to remember and apply (opinions/reasons).



Expert Cross

- > Wrestling With Pigs
- > Abandon All Hope
- > 15 Ways to Cross an Expert



“No Fear” Cross Examination



- > **Short** (questions, duration).
- > **Leading** (mostly).
- > **Statements** (mostly “testimonial”).
- > Using the **witness’ own words**, if possible* (so you can impeach).
- > That **lead to, but do not reach** the conclusion you are after. (no So)
- > * if not possible, ask simple leading questions on obvious matters with which the witness must agree or look evasive/dishonest.

Goals of Cross

Get Good Stuff.

Alter the “heuristic balance”
(10% vs. 100% rule).

Master cross examiners play a
game they can’t lose.

Cross isn’t an argument.

Do no harm.

Abandon all hope of the “Perry
Mason” moment.

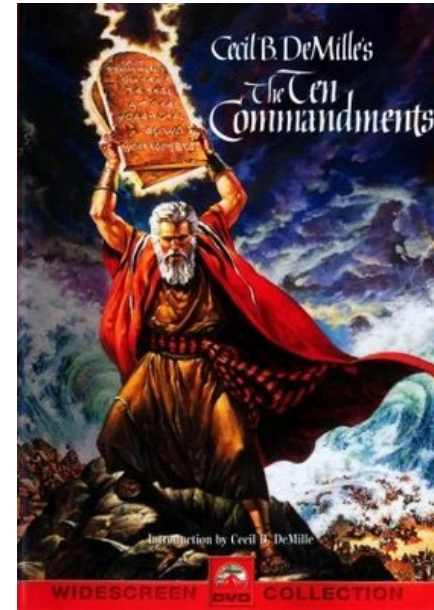


8 Reasons to Cross Examine (1 not...)

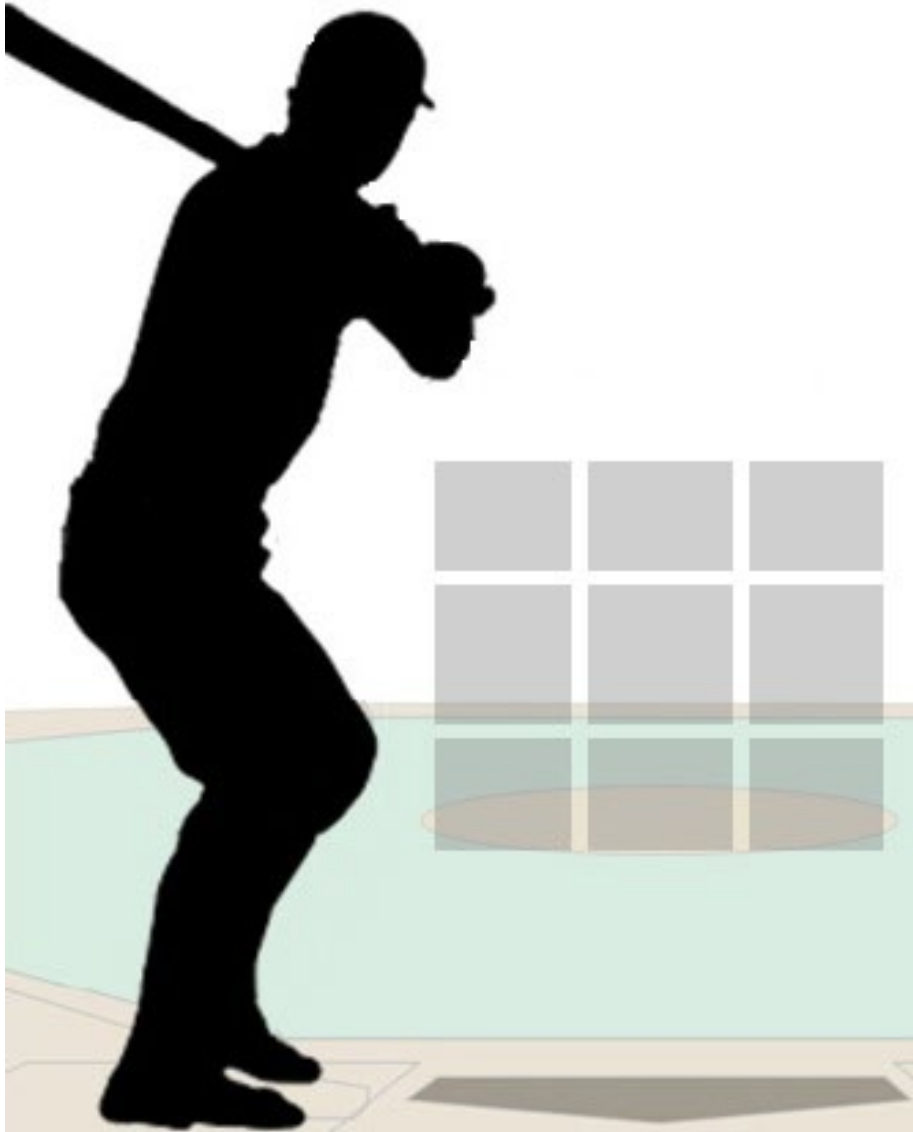
1. Get Good Stuff.
2. Memory.
3. Perception.
4. Interest
5. Prior Bad Acts (R. 404, 405)
6. Habit (R. 406)
7. Prior Criminal Convictions (R. 609).
8. Prior Inconsistent Statements (R.613)
(CONFIRM, CREDIT, CONFRONT).
9. Look good = look bad

How: The (new) Ten Commandments of Cross Examination

1. Be brief.
2. Plain words.
3. Lead most of the time.
4. Know the answer.
5. Listen to the witness.
6. Don't quarrel (permit evasion).
7. Don't allow witness to repeat the direct.
8. Control your questions.
9. Avoid the one question too many ("So...").
10. Know when to stop (end on a win.)



KEYS TO EFFECTIVE EXPERT CROSS



- > WORK OUTSIDE THE EXPERT'S STRIKE ZONE
- > USE SAME TECHNIQUES AS FACT WITNESS CROSS
- > TAKE A "TRIAL READY" DEPOSITION
- > DO YOUR HOMEWORK
- > DON'T TRY TO OUTSMART THE EXPERT
- > KEEP IT SIMPLE
- > ORGANIZE CROSS AROUND CASE THEMES
- > USE AN OUTLINE, NOT A Q&A SCRIPT
- > QUESTION CONTROL
- > END ON A WIN



Expert Cross Examination Subjects

- > **Get Good Stuff - the best topic of expert cross**
- > Interest – expert has a bias or charges too much
- > Crimes of Omission/Commission – anything the expert omitted or got wrong
- > Qualifications (KEETS) – look for odd or silly stuff (blueberries, spy novels)
- > Case Facts – easiest to do – what case facts are good for you that the opposing expert must acknowledge
- > Disclosures and Reports – limitations
- > Vary the Assumptions – GIGO - hypothetical questions
- > Good/Bad Science - what must expert agree on or be shown to be wrong/not credible
- > Other Experts – Theirs, yours
- > Exaggerations – opinions, CVs, denying the obvious
- > Prior Statements – depositions, publications
- > Possibilities – the good old “anything is possible” – vary the assumptions by this method
- > Articles and Treatises – find out in advance what authorities the expert is relying on, then get helpful admissions out of these
- > The Expert’s “File” – get it, read it, use it
- > Other – R.702 factors

Ten Expert Cross Don'ts

- Don't cross the expert on his or her expertise (if you can avoid it)
- Don't cross on bias if your expert is even more biased.
- Don't be sarcastic, rude or condescending
- Don't bicker or argue
- Don't try to put important exhibits in through the opposing expert.
- Don't ask for help from the judge.
- Don't fear evasion.
- Don't underestimate the power of a prior inconsistent statement.
- Don't overlook what you agree on.
- Don't let the jury see you sweat.



Questions?

- Email or call us.
- Send us your outlines.
- We will do the direct and cross in realistic order, Plaintiff first
- You may do a redirect but its not required.
- Try not to split cross the same way you split direct.



*"Let me interrupt your expertise
with my confidence."*