Preparing for the Great Cross:
What Do You Know

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PREPARING FOR THE GREAT CROSS: WHAT DO YOU KNOW?

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The art of cross-examination is largely a matter of comfort, confidence and style. "Comfort" is an ease of communication where the cross-examiner is able to make his or her points in a fluid and organized manner. "Confidence" is the knowledge that the cross-examiner brings into the courtroom. The number one rule to cross-examination is stay with what you know. The cross-examiner should rarely, if ever, within the scope of his or her examination venture into areas which are unknown or unproveable. Such a folly will only possibly result in unfavorable information being actually presented during the course of the cross-examination to the determent of the client. Finally, "Style" is the methodology the cross-examiner uses to present his or her points during the course of the examination. The "Style" can vary depending upon the cross-examiner, the witness being examined and the nature of the information presented. The focus of this article is on the first two elements: comfort and confidence. In order to establish the comfort and confidence there is one simple question to be answered: "what do you know?" In terms of actual presentation, this single question is synonymous with "what can you prove?"

The confident cross-examiner is in all respects well prepared. He or she knows the case and his or her theory or theories of the case. Knowing the case means that the cross-examiner is conversant with all of the prior testimony of the witnesses, the pleadings, affidavits, sworn statements, documents, non-documentary materials, exhibits and all other materials amassed during the preliminary phases of the case. With that knowledge and mastery of the case, the confident cross-examiner then marshals these elements into subjects that he or she anticipates

can be presented through each witness called by the opposition, the court's witness, as well as the cross-examiner's calling the opposing party as his or her witness.[1] The key to being a confident cross-examiner is preparation.

A comfortable cross-examiner is able to use what he or she knows during the examination in a cohesive and fluid presentation. This individual never merely follows the questions, the order of the questions or the subjects presented during direct-examination. Rather, given the scope of the subjects presented during the direct, the cross-examiner then plugs in the subjects of the anticipated cross in a manner emphasizing the cross-examiners theory of the case. It is critical in order to do this that the cross-examiner move smoothly through each of his or her pre-planned subjects gaining the necessary admissions, highlighting the inconsistencies, impeaching the witness and emphasizing what hopefully becomes false and misleading testimony and exhibits. In order to be able to function as described above and become a comfortable cross-examiner, the key is organization of the materials mastered.

Word of caution, doing what is about to be described can be time consuming and is potentially costly. All litigation is. However, if the practitioner is able to perform as described, the potential benefits to the client can be tremendous.

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[1] In most, if not all jurisdictions, courts have the ability, particularly in custody/visitation cases, to appoint professionals to conduct evaluations or assessments of the parties and/or their child or children and provide testimony to assist the court in making its determination. In Illinois the authority for this is found in section 604 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/604). The Courts are also permitted in most jurisdictions to appoint Guardian Ad Litems and in at least 4 jurisdictions hybrid individuals ("Child's Representatives"). These hybrids act with quasi Guardian Ad Litem powers with some powers of an Attorney for a Child. While these capacities are controversial, conflicting and possibly unconstitutional, these individuals also act as the court's witnesses. In some jurisdictions courts may be empowered to appoint professional personnel to assist the court with financial issues (i.e. accountants, tax lawyers, business evaluators, etc.). *See In Re The Marriage Of Parello,* 87Ill.App.3d926, 932, 42 Ill.Dec.846, 851, 469 N.E. 2d 461, 466 (1st Dist 1980). As the court's witness, reports are typically submitted and each side then has the ability to cross.

Parties are typically deemed to be hostile or adverse witnesses. Under Illinois law the authority for this is section 2-1102 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1102). Such a designation allows each party to call the opposition in that parties' case in chief and cross-examine that party.

I. Preparation:

What do you know? The effect of preparation is to answer the question. The answers to the question therefore control the cross-examination.

The foundation to being able to determine what do you know is the information accumulated during the discovery process. The following is a list (this list may not be exhaustive since each case has unique aspects) of the typical sources of information:

1. Prior Testimony or Representations of Counsel:

This category consists of deposition testimony, testimony of the parties or witnesses in pre-trial hearings, testimony of parties or witnesses in unrelated proceedings and/or representations of counsel made in court.[2]

In most cases these sources of information are the most important information for preparation purposes. A possible trend, however, is beginning to develop limiting the right to deposition testimony. For example, in Illinois, all depositions are limited to a maximum of three hours absent good cause shown. For this reason in jurisdictions with such limits, the depositions are usually the last discovery taken after all of the other information has been assimilated. Depositions or other sworn testimony can usually result in direct impeachment. In some jurisdictions, deposition testimony is directly admissible. In other jurisdictions, testimony in

[2] In Illinois an attorney's representations to the court can be considered as judicial admissions. *Beverly Bank v. Coleman Air Transport*, 134 Ill.App.3d 699, 704, 89 Ill.Dec. 702, 705, 481 N.E.2d 54, 57 (1st Dist. 1985). As judicial admissions, these statements and representations are conclusive and have the effect of removing the issue from contention so that no further proof of it is necessary. *In Re The Estate Of Rennick,* 121 Ill. 2d 395, 466, 229 Ill. Dec. 939, 945; 692 N.E. 2d 1150, 1156 (1998); *Lossman v. Lossman*, 274 Ill. App. 3d 1, 5, 210 Ill. Dec. 818, 823, 653 N.E. 2d 1280, 1285 (2nd Dist. 1995). Only upon the showing of specific facts which the court concludes constitutes inadvertence or mistake of fact is that person allowed to offer contradictory information. *Los Amigo Supermarket, Inc v. Metropolitan Bank & Trust Co.,* 306 Ill. App. 3d 115, 124-25, 239 Ill. Dec. 155, 162, 713 N.E. 2d 686, 693 (Dist 1999). Even if the Court finds mistake or inadvertence, if the admission was made under oath (deposition, trial testimony or sworn pleading) the admission is still an evidentiary admission.

depositions can only be used for impeachment of a witness, for judicial admissions, or for other dispositive pleadings (summary judgment, dismissal, etc.)[3]

2. **Affidavits and/or Sworn Statements:**

Any affidavits or sworn statements are similarly important. The contents of these documents can be used for impeachment, prior inconsistent statements, judicial admissions and the like. In most jurisdictions such statements taken alone are not evidence in and of themselves. The attorney obtaining such statements is getting the potential witness committed to a story. The opposition is looking for inconsistencies with other evidence, possible impeachment and in some cases for the statements to fit within his or her theory of the case.

3. **Interrogatories/Depositions Based Upon Written Questions:**

In most jurisdictions, interrogatories can be issued requiring the parties to answer in writing and under oath certain questions. Again, some jurisdictions limit the number that can be issued. For example, in Illinois, the number of interrogatories may not exceed thirty (30) including sub-parts unless there is prior leave of Court.[4] An exception exists in Illinois in that court approved interrogatory forms may be used. In Illinois these forms are in excess of thirty (30) questions including subparts. Attached hereto and incorporated herein as **Appendix "A"** are the approved interrogatories in dissolution of marriage actions in Illinois. Such interrogatories require the disclosure of lay witnesses, the subject of their testimony and expert witnesses, their conclusions, opinion and the basis therefore.

Also in most of the major counties in Illinois there are requirements of full disclosure of mandatory information under oath. The forms will vary depending upon the county. However, these disclosures typically require each party to disclose under oath his or her

[3] *See Illinois Supreme Court Rule 212, 735 ILCS 512-609, 1005*).

[4] *See Illinois Supreme Court Rule 213*

income, expenses, assets and liabilities. Copies of the Cook County forms, DuPage County forms and Lake County forms are attached herein as **Appendix "B"**.

Finally, in some jurisdictions, while interrogatories are only submitted to parties, there are procedures to force potential witnesses to answer written questions. In Illinois there is a procedure whereby a witness must appear in a Court Reporter's office and answer under oath written questions submitted by counsel. This is called depositions upon written questions.[5] The key to all of the above is that parties or witnesses are required and/or can be compelled to provide information sought by counsel under oath. Like depositions, other testimony, affidavits and/or sworn statements, such can be used for impeachment or admission purposes and, if relevant, can be independently admissible.

4. Documents Supplies by the Client:

A proactive client in the gathering of information is of great assistance. Anything in the home (bank records, credit card records, journals, diaries, calendars, pictures, school records, answering machine tapes, correspondence, cards, any other financial records, etc.) is fair game. E-mails from the home computer have also been found to be fair game is some jurisdictions.[6] All such documents can be admissible if relevant with the correct foundation being laid. Further, if the parties file joint returns, the accountant is a fiduciary and must tender these returns to the client as his or her request. If the client is technically in the family business, he or she should, but not always does, have access to the business records upon demand. Also the IRS has forms, which can be submitted with only one spouse's approval, resulting in actual copies of returns if available being sent by the IRS to counsel. Attached hereto is a copy of this

[5] *See Illinois Supreme Court Rule 210.*

[6] *See White v. White*, 344 N.J. Super. 211, 781 A2d 85(2001); Expectation of Privacy in Internet Communications, Waldman, 92 A.L.R. 5th 15(2001).

IRS form 4506 as **Appendix "C"**. Similarly, if the parties have joint bank accounts, credit card accounts, loans, etc., the client can obtain the information directly and/or have these documents at his or her written direction submitted to his or her counsel.

5. **Public Documents**:

Deeds, police reports, reports filed with the SEC, title searches and the like are all accessible as public records. In some jurisdictions, if not most jurisdictions, if certified and proper notice to opposing counsel is given, these documents can be self-authenticating. Individual jurisdictions may have rules allowing for other records to similarly be self-authenticating if the statutorily prescribed rules are followed.[7]

6. **Documents From The Opposing Parties:**

In all jurisdictions, if the proper request is made, a party can be required to produce documents within his or her possession and control with an affidavit under oath that the production is complete. This is a critical tool since anything the opposition tenders together with the under oath statement is potentially admissible.[8]

Occasionally, the quasi-honest litigant actually produces documents that are helpful to counsel and are not necessarily helpful to his or her position without being compelled to do so. In most cases what a litigant attempts to omit is usually extremely important. Also the affidavit or sworn statement as to the completeness of the production becomes important and a potential source of impeachment concerning information which is gathered from independent sources which a litigant has access to but failed to produce. This is especially the case where the information is harmful and which the litigant elects not to produce. If not directly impeaching, such omissions go to the parties' or witness' credibility.

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[7] *See Illinois Supreme Court Rules* 236; 753 ILCS 8/1201 *et seq.*

[8] *See Illinois Supreme Court Rule 214*

7. Documents Collected From Third Persons or Entities By Subpoena or During Depositions:

In cases where there is concern that the disclosure by the opposing party and/or his or her counsel is less than accurate or complete, despite representations to the contrary, it is important to seek confirmation from third persons or entities. Take, for example, the issue of accounts. A significant amount of the population maintains his or her accounts at only one or two institutions. In cases involving a closely held business, frequently business accounts, personal accounts and loans all are held at the same institution. A subpoena to this institution requesting the account information and particularly any loan files, personal financial statements and/or loan applications is critical. The latter two types of documents are usually also signed under oath. It is important for enforcement purposes not to be duplicative. It is suggested to include social security numbers, employer identification number and specifically exclude information already produced. An example of such a request actually used in a case is attached hereto as **Appendix "D"**.[9]

Any witness identified by the opposition should be deposed and required to produce any documentation or tangible objects involved with the subjects disclosed. In certain cases, these witnesses can also be requested to bring in information helpful to the client. Always request copies of any affidavits or statements given. For example, a sibling of the opposition is listed as a witness by the opposition as to the party's fitness for custody is also the business partner of the opposition. In addition to any documents or tangible objects supporting the disclosed subject (be detailed in your request), the attorney should ask for affidavits, written statements, business records (only those needed and not previously produced), etc.

[9] The names have been changed to protect the identity of the individuals and the case.

8. **Pleadings:**

Pleadings contain formal statements by a party and/or representations by a party and/or his or her attorney that are frequently useful. Further, since such documents are part of the Court's file, the Court can take judicial notice of the contents of these documents. An added bonus is that many pleadings will be submitted under oath or at least signed by the party. As such, without any foundation because the facts or representations can be taken by Court as a result of judicial notice, these pleadings can be useful sources of information to be integrated into the cross-examination where useful. In cases that span a significant period of time, frequently litigants forget positions asserted early in the case. Inconsistent positions or testimony arising over time can be used as admissions or to raise issues as to credibility.

9. **Treatises, Authoritative Publications and Prior Publications:**

In dealing with experts, treatises and authoritative publications, which the expert acknowledges or cites to as authority for opinions is a good source of information for possible cross-examination. Occasionally, such publications, while acknowledged or allegedly used or relied upon, do not support the opinions expressed. Such publications sometimes contain qualifications and/or cautionary notations as to how the information espoused should be used, relied upon or considered. For example, some business valuation experts use publications by Robert Morris & Associates to compare statistical information of the reporting companies to the company being valued to develop comparables. Yet, this publication specifically cautions against such usage. In cases involving allegations of sexual abuse of children, some evaluators administer the ABLE test to determine whether the alleged abuser shows any sexual interest in children. However, the test itself cautions the evaluator against using this test in this a fashion.

In addition, experts typically publish articles in the areas in which they are being called upon to proffer opinions. A review of such publications may offer insights as to the expert's opinion and in some cases may provide written statements contrary to the positions being asserted.

10. The Oppositions Exhibits & Stipulations:

In many jurisdictions exhibits and stipulations are required to be exchanged before trial. Occasionally, these exhibits contain information that is useful in cross-examination. For example, in representing a business owner and an issue exists as to the value of the business, most business valuation experts normalize earnings before arriving at the net income figure for the business. This sometimes involves adjusting downward the owner's compensation thereby increasing net income and value. If the non-owner spouse is seeking support based upon income of $300,000 yet the non-owner spouse's expert bases the value of the company with normalized compensation of $150,000, an argument exists that the non-owner spouse can't have it both ways.

II. Preparation – Themes:

During the course of the gathering of information, the practitioner develops what he or she knows and develops themes and issues for the case. The "theme" is the overall impression that the practitioner wants the trier of fact to accept. High conflict cases may have multiple themes. The themes will emerge as the case progresses.

Themes should not be confused with issues. As an example, a theme could be:

> "The Husband is solely interested in control and manipulation. He seeks joint custody to continue his control of his wife. He manipulates facts to justify his position. In order to continue his control, he has sought to

minimize any obligations he has to contribute to his wife's financial independence. Hence he remains in control."

The theme is the context – how everything fits together – how it all makes sense. Issues, on the other hand, are the specific areas of controversy developed during the preparation of the case. Staying within the above theme, an issue could be:

"The Husband's sale of the home in Israel using the power of attorney without the wife's knowledge or consent."

As indicated above, the theme will be developed over the period when the information is gathered. The issues will be controlled by the information itself – what you know.

III. Organization – Outline of Cross:

A confident cross-examiner is an organized cross-examiner. The cross-examiner should never just follow the issues and questions raised in his or her notes during the direct-examination and use this as the basis of the cross-examination in order and subject matter. If he or she does, he or she falls into the trap of the opposition's issues and themes. Rather, assuming there are disclosure requirements and there is preparation, the cross-examiner has prepared his or her issues that fit within his or her themes and issues. Naturally, there may be surprises in the direct. Such surprises, if it is necessary to address, need to be integrated into the cross-examination. During the note taking process, the cross-examiner should note the point that may need to be addressed, the issue and how to refute the issue or point. Occasionally the cross-examiner needs to re-group following a direct. He or she should focus on integrating or rethinking what has been presented. Sometimes the information is diametrically opposed to the information sought to be presented. It is usually best to stay with the planned presentation as opposed to dealing with

unexpected issues. If the witness is neutralized as far as his or her credibility, what he or she has said should have little weight.

To effectively prepare for each witness, each witness needs to be addressed separately. An outline needs to be created as to what each witness should state or must state when confronted by the exhibits or prior testimony. As will be discussed later, the process is not to outline questions, but rather, answers. As will later be discussed, the key here is not getting distracted on the questions written and focusing on the answers given and on the case to be presented. Listen to the answers as opposed to being committed to a script.

The exception to the "answer" rule is the "great question and answer." Occasionally, a question in a deposition or at a preliminary hearing is so perfect in light of the answer given that it is important to replicate the answer. The answer may be so important or incriminating that it becomes crucial and the same words and phrases are important to make sure the answer is elicited. This is particularly important with expert witnesses.

By organizing the outline by answers, this forces the attorney to listen to the answers given. Many practitioners have scripted questions and one of two problem areas typically results: (1) the practitioner does not hear the answer and any subtle differences thereby loosing a chance at impeachment because he or she is married to the question; or (2) if an inconsistent answer is given the attorney becomes "a deer in the headlights" and as a result he or she is thrown off their script. A seasoned practitioner with the proper answer in front of him or her and preparation knows how to get the desired answer.

IV. Organization– How To Outline:

Outlining is the combination and assimilation of all the information known and provable into the subjects and themes to be presented. How this eventually is done is a matter of personal taste. The following is a possible methodology:

1. Prior Testimony:

During the course of the case preparation, prior testimony of witnesses (deposition, prior hearings, unrelated proceedings) is abstracted. The abstraction process is the manner in which questions and answers are summarized into statements of fact. Those statements are then arranged into subjects. For example, a general subject could be historic employment. The questions and answers in a deposition could be as follows:

"Q. Where were you next employed?

A. I was employed at Heritage Bank.

Q. What was your position?

A. I was Executive Vice President.

Q. What was the time period you were employed by Heritage Bank as Executive Vice President?

A. From June of 1997 until December of 2001.

Q. During the period of time June 1997 to December 2001 your wife remained unemployed?

A. Yes."

The abstract under the category of historical employment would be as follows:

"D[10]68-69 Employed by Heritage Bank from 6/97-12/01 as Executive V.P.

D69 6/97-12/01 Wife unemployed."

[10] "D" references deposition testimony.

Because the issues and possible themes of a case by necessity are modified over time, in preparing for trial, these abstracts are then reviewed to group the desired testimony and admissions into the subjects and themes that will be used during the actual trial. This is done at the end of the process of the accumulation of information but prior to the trial.

This information is somewhat fluid in categorization in that answers to a particular question may be used for multiple subjects themes. The categorization of this testimony forces the practitioner to concentrate on subjects, themes and the elements of proof. This also creates organization – the ability to organize information to present in subject matters so that the trier of fact can easily follow the testimony as outlined on a witness-by-witness basis.

Once this is completed, non-testimonial evidence is then added to each subject to support the issue and theme. Keeping with the above example, assume one of the themes in a financial case in an equitable distribution state is as follows:

> "As a result of the Husband's superior financial abilities as evidenced by this historic earnings, the Husband will merely replace whatever the Wife receives by reason of the divorce. The Wife, on the other hand, in light of her sacrificing her career and her devotion to her homemaker duties, will likely only have for her future whatever the Court awards to her. As a result, equity and common sense demands that the Wife receive a disproportionate share of the marital estate."

In order to bolster this theme, an organized and logical presentation should include as a subject a time-line of the Husband's employment history and earnings. Focusing on the employment referenced above, a portion of one of the subjects in the outline would be as follows:

"D.68-69	Employed by Heritage Bank from 6/97–12/01 as Executive V.P.
WEX[11] 31	– 2001 Personal tax return w/W-2

[11] "WEX" references Wife's Exhibits.

WEX 32 – Annual Compensation Summary breaking down elements of total compensation.

WEX 32 – salary $230K
– bonus $85K
– perquisites declared for Medicare/Medicaid purposes $22K
– total benefits $337K"

The cross-examination questions based upon the segment of the outline at trial integrating testimony and documents could be as follows:

References in Notes:		Non-Scripted Questions
D.68-69	Q.	During the period of June 1997 until December 2001 you were employed as an Executive Vice President by Heritage Bank, correct?
	A.	Yes.
WEX31	Q.	Showing your wife's exhibit number 31 this is a true, correct and complete copy of the joint tax return you filed with the Internal Revenue Service for the calendar year 2001, correct?[12]
	A.	Yes.
WEX31	Q.	Attached to this return, on the last page, is your W-2 from Heritage Bank for 2001, correct?
	A.	Yes.
WEX31	Q.	On the W-2 as is reflected on your tax return your gross wages were $337K, correct?
	A.	Yes.
WEX32	Q.	Showing your wife's exhibit numbers 32, this is a summary that you received from your employer during 2001 that you

[12] Under Illinois law there is technically a possible objection to this question under the best evidence rule. If made and if the Court agrees with the technicality, a foundation is necessary that the original is with the IRS, he does not have access to it and the copy is an accurate reproduction of the original.

produced during discovery that shows the components of the $337K, correct?[13]

WEX32 Q. As evidenced by wife's exhibit 32 your salary was $230K, correct?

A. Yes.

WEX32 Q. As evidenced by Wife's exhibit 32 your bonus was $85K, correct?

WEX32 Q. As evidenced by Wife's exhibit 32 you were required to declare as additional income $22K for perquisites, correct?

A. Yes.

WEX31 Q. Going back to your tax return, no income is reported as being received by your wife for any type of employment correct?

A. No income appears on the return.

Q. Is that a yes?

A. Yes.

D.69 Q. In fact during the period of time your wife was not employed outside of the household, correct?

A. Yes."

The significance of this methodology is training the witness. By "training the witness", by organizing and presenting the materials in a fashion that the cross-examiner can impeach with each question any answer which is inconsistent with what is known, the witness quickly learns that the cross-examiner is in control. Any variance from a "yes" answer will lead to impeachment or credibility issues.

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[13] Under Illinois law this document is technically hearsay. Further, the question is compound in nature. However in most instances by incorporating that the witness produced this during discovery lends itself to the argument that it is an exception to the hearsay rule may be a statement against self-interest. If the Court were hyper-technical the employer would need to be called to lay the foundation for this document as a business record. If necessary the question can then be broken down into subparts.

In the real world, it may not be possible to have every point confirmed by prior testimony or a non-testimonial exhibit. In this case it is best to bury such an inquiry into the outline after a long series of leading questions. After the witness is trained, like Pavlov's dog, he or she will likely just start responding in the affirmative as long as the question is not to obvious. Copies of an actual outline from subjects prepared for a case are attached and incorporated herein as **Appendix "E"**.

As indicated earlier, an exception exists for not writing out questions instead of subjects. The exception, which occasionally exists, is where an answer is so perfect that it supports the main thrust of the subject or the theme. The importance of the answer is such that the cross examiner wants to keep the same phrasing of the questions used in the prior testimony so that the precise answer must follow. A simple example of this is the following prior testimony:

> "Q. During the course of your marriage, since the birth of your first child, was your wife employed outside of the home?
>
> A. No."

The Outline would then reflect in quotes the following:

> "Q. During the course of your marriage, since the birth of your first child, your wife was not employed outside of the home?"

V. <u>Practical Tips Regarding The Outline</u>:

How the outline is actually put together is a matter of style and comfort level. The following are some tips:

1. The outline will go through many drafts. Initially the outline should merely state specific points with space between points to add information, document references, etc.

2. If the practitioner is not computer friendly, it is not a bad idea to do the outline in pencil with each subject on a separate sheet. This allows for additions between points to insert corroborating information or documents.

3. Because the practitioner wants to be fluid in the presentation, especially in a long cross, when referencing corroborating testimony or documents, it is useful for such references to be in a different color - say red. This allows the cross-examiner to quickly scan the outline and immediately identify where to go if there is divergent testimony.

4. Following the direct, the additional issues raised in direct which were not part of the planned cross-examination need to be integrated. If it is a weak issue, by putting it in the middle of the cross and if it does not work out, it may not impact on the rest of its cross. If the issue is totally unanticipated and will be rebutted by other evidence, don't bother to even attempt an unplanned cross – you should be able to do enough damage with the planned cross-examination.

5. When moving from subject to subject, telegraph to the court you're changing your course. For example, in moving from an issue of income or earnings to expenses, preface the change with:

> "Q. Changing subjects from your income history, you supplied an affidavit of expenses in this case, correct?"

6. In a case involving a large number of exhibits, prenumber the exhibits and keep them in a binder. There should be a binder for the Court, for the opposition, for the witness and the cross-examiner. This prevents exhibits from being misplaced. It is very distracting to have a great cross-examination going only to be

interrupted when an exhibit cannot be found and the cross-examination is interrupted. This fosters a fluid presentation.

7. Each witness should have a subfile containing his or her deposition, abstract and outline. An alternative is to have a binder with tabs for each witness containing the same materials. This issue is again the fluid nature of the cross-examination.

VI. Incomplete or Non-Existent Information:

All of the above contemplates and assumes all of the necessary information is gathered, analyzed and reviewed. However, there are frequent instances when a hearing occurs where the discovery process is not complete (temporary issues) or when, in hopefully rare instances, the practitioner is dealing with a truly unknown undisclosed rebuttal witnesses.

In the temporary hearing stay again with what you know. It could be a "he said/she said" situation where you don't want to confront the opposition with your client's testimony and provide an opportunity to rebut. Use what you have. Ask the softball questions. For example, when seeking support and questioning the family's financial provider, ask: "You have an obligation to support your children, correct?"; "You want your children to enjoy a comfortable life-style, correct?"; or "Your children are your first priority, correct?"

For a true rebuttal witness who is a surprise, resist the perceived need to cross unchartered territory. If you have done your work, it may not be necessary. If cross-examination is necessary, use what has been established. Although objectionable, use what has been established to refute the testimony. For example, the opposition calls a

relative to testify as to something he or she witnessed which is contradicted by other non-related witnesses. A clearly objectionable but powerful question could be as follows: "Prior to giving your testimony today concerning your alleged observations of the events of April 4, 2002, were you made aware that a police officer has testified that your brother admitted to the officer that he struck his wife?" Technically, all you're asking is his or her knowledge and challenging her veracity. More importantly, however, is that you are educating the court as to the contrary evidence from a biased witness.

CONCLUSION

Organization creates or assists in a fluid presentation. A well-organized and prepared lawyer is a comfortable and confident lawyer. The combination of both creates a deadly and effective cross-examination. Most importantly, two results will be achieved:

(1) The Court will have confidence in your case and therefore will look to you for a reasonable solution; and

(2) the client will also be impressed and grateful.

The later translates into getting paid and future referrals.

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