Cross-examination is a demanding skill for even the most seasoned trial attorneys. The importance of a trial attorney’s ability to dissect a witness’ direct testimony, and expose its weaknesses in a manner in which a jury can understand cannot be underestimated, and is often the difference between a favorable and an unfavorable verdict. Although cross-examination is often viewed as an art, rather than a science, the following guidelines can assist even novice trial attorneys in conducting an effective cross examination.

1. **Preparation is Key**: As is true in nearly all efforts in the legal profession, proper preparation is the key to success in cross-examination. Effective cross-examiners are “quick on their feet” and are able to lead their witness down a pre-selected path to obtain the information that is vital to their case or defense. Such skills are only possible through thorough knowledge of the facts of the case, as well as the law upon which the case is based. In an ideal world, the examining attorney will already know all the information he or she elicits from a witness during cross-examination. Preparation allows the trial attorney to clearly lay out that information for the jury. However, in many cases, unexpected responses arise. In those circumstances, preparation is the key to quickly devising a strategy for the use of such unexpected information. As Louis Pasteur said, “chance favors the prepared mind.”

2. **Cross-Examination is Not Always Necessary**: Preparedness also allows a trial attorney to determine perhaps the most important issue with regards to cross-examination - whether or not to cross-examine the witness at all. If the potential benefits of a cross-examination are outweighed by the potential detriments, or the potential for allowing the witness
to redeem a poor direct testimony, the cross-examination may not be necessary or even desired. A trial attorney must examine whether the direct testimony has helped or hurt his or her case, whether a cross-examination will help his or her case, whether the cross-examination will allow the witness to redeem or clarify poor testimony or include omitted testimony, and/or whether cross-examination may allow a witness to resurrect credibility lost during direct examination. The decision to stand up and say “no questions” after direct is very difficult but may be the best choice.

3. **Have a Goal for Your Effective Cross-Examination:** Effective cross-examinations accomplish a goal to the benefit of a trial attorney’s case or defense. The specific goal will be dictated by the specific knowledge each individual has or is expected to have. The following are common goals of cross examination:

   a) Highlight inconsistencies with other witness’ testimony;
   b) Demonstrate bias on the part of the witness;
   c) Attack the witness’ credibility through impeachment or other means;
   d) Highlight errors or confusion in the witness’ testimony (but be careful not to allow the witness to correct or clarify);
   e) Identify the portions of your own case that the witness can corroborate;
   f) Identify and highlight portions of the witness’ testimony that bolster your own case or defense.

4. **Have a Plan for Your Effective Cross-Examination:** The most effective method in reaching the determined goal is by formulating a plan to elicit relevant knowledge from the witness. Prepare for an ideal cross-examination by establishing the basic points which must be established through your questioning. A trial attorney may find it helpful to construct an outline detailing the plan of action for the cross-examination of each witness, creating bullet
point lists of topics to be discussed and 2-3 word summaries for each question to be asked. Identify the potential areas for impeachment prior to the examination, and make a reference list for each witness of exhibits and deposition testimony that may be used for impeachment. In short, plan and organize for an ideal cross-examination.

5. **K.I.S.S. (Keep It Simple, Stupid):** When devising the plan for your cross-examination, remember to keep it simple. Even the most intricate and complicated cases can be summarized into simple points which will ultimately determine the outcome. Cross-examination is no different. A complicated series of questions can not only confuse the jury, but also the examining attorney. Determine your goals, develop a plan to obtain those goals, and determine the simplest means of executing that plan.

6. **Learn the Intricacies of Impeachment:** Nothing can taint a witness’ direct testimony like the loss of credibility that occurs through a proper impeachment. On the flip side, nothing can ruin a trial attorney’s professional credibility like an admonition from the court after a botched impeachment attempt. The rules and techniques for impeachment are a seminar unto themselves. Suffice it to say, a trial attorney should become proficient with them in order to use them as his or her weapon, and to avoid the pitfalls that come from their improper use. See Fed. R. Evid. 607 (governing who may impeach a witness); Fed. R. Evid. 608 (governing impeachment based on evidence of character and/or specific instances of conduct); Fed. R. Evid. 609 (governing impeachment based on evidence of conviction of a crime); and Fed. R. Evid. 610 (governing impeachment based on religious beliefs or opinions).

7. **Learn the Intricacies of Attacking Credibility Through Means Other Than Impeachment:** Impeachment is not the only mechanism for attacking a witness’ credibility. Some witnesses destroy their own credibility through evasive and unresponsive answers. A
skillful trial attorney need only let the witness do the work for him or her in those circumstances. Other witnesses may give seemingly bullet-proof testimony on direct, only to be discredited based on the financial arrangements which secured their testimony, their personal, professional, or financial interest in the outcome of a case, the means by which they prepared for their testimony, their interaction with other witnesses prior to trial and since the event which led to trial, or their relationship to the opposing party. Even in circumstances where cross-examination seems unnecessary, it may be beneficial to conduct the examination for the simple purpose of eliciting these facts for the jury to consider.

8. **Take Control of the Courtroom With Your Questions and Your Presence:**

   During direct testimony, a trial attorney should remain in the background and focus the spotlight on the witness. To the contrary, cross-examination is the time for the attorney to step to the forefront, and focus the attention of the jury on what he or she has to say. Cross-examination is your opportunity to testify without being sworn or taking the witness chair. In fact, in conducting an effective cross-examination, a trial attorney can be his or her client’s best witness. Here are some methods for accomplishing this goal:

   a) **Control the Witness With Leading Questions:** Leading questions are those which suggest the answer. In other words, leading questions are simply veiled statements of fact, which request a simple “yes” or “no” response from the witness. Leading questions allow the trial attorney to emphasize the points he or she wants the jury to focus on. Those points can be deemphasized or explained away by a witness who is allowed to have a dialogue with a jury. As such, a trial attorney should ask questions in such a manner as to preclude a witness from expounding on his or her answer, or providing a narrative response. Think of it this way. A trial attorney should use
questions on cross-examination as an opportunity to testify to the jury, and use the
questions to place the witness in the position of simply agreeing or disagreeing with the
trial attorney’s statements. For example: Leading questions seem like a more effective
means of cross-examining a witness, don’t they?

b) Direct the Jury With Leading Questions: Just as a witness can be
controlled through the use of leading questions, so can the jury. Since leading questions
are simply “veiled statements of fact,” they can be used to convey a message to the jury.
Just as closing arguments can be used to convey the picture of the case to the jury, a
cross-examination comprised of leading questions can be used to convey a witness’
weaknesses and the strengths of your client’s case or defense.

c) Control a Witness With Short, Concise Questions: Even questions that
suggest the answer can cease to be effective leading questions when they become too
complex. The complexity of a question can allow a witness wiggle room to deny a point
the attorney wishes to affirm, or vice versa. A compound leading question can have
multiple answers, and thus greater potential for a witness to disagree with the point you
are attempting to make. Moreover, it will lead to an objection by your opponent. Keep
the questions simple, and surprises are less likely to occur. In addition, a series of simple,
seemingly harmless questions can be used to paint a witness into a corner where he or she
cannot deny a major point of fact that has been established through his or her prior
answers.

d) Control the Testimony With Introductory Topics: During the course
of a cross-examination, it is important to let the witness, and the jury, know the direction
in which the questions are going. Although the examining attorney may know exactly
what it is that he or she wants to elicit from the testimony, those points can be lost on the witness, and more importantly on the jury, if they are not established by way of background introduction. When switching from one line of questioning to the next, it is important to guide the jury to the points you wish to make. Before switching to a new line of questioning, a trial attorney can make a simple statement such as “now I would like to talk about the incidents that took place on February 25, 2003.” This is not a question, but it indicates to everyone in the courtroom what the focus of the next question will be, and is an effective tool for highlighting important information.

**e) Control the Witness With the Law:** Simple and concise leading questions are typically an effective mechanism for controlling the witness. However, witnesses will often try to short-circuit a trial attorney’s attempts to control him or her by providing narrative or unresponsive answers to simple questions. The rules of evidence preclude such responses. When the witness attempts to reclaim control through such tactics, a trial attorney should move to strike the unresponsive responses, and ask the court to admonish a witness when necessary.

**f) Control Your Own Emotions:** The quickest way to lose control of a witness and the jury is to engage in an argument with a witness. Nothing demonstrates a loss of control like an inappropriate display of emotion or lack of courtroom decorum. An antagonistic witness will be readily apparent to the jury unless the trial attorney’s own actions become even more noticeable.

**g) Control the Witness With Your Ears:** During the course of testimony, especially a long one, a witness may make numerous statements that can be used to impeach his or her credibility, or otherwise bolster a trial attorney’s case. Many times,
trial attorneys focus on the next question rather than thoroughly listening to the witness’ answers. The only way the trial attorney can take advantage of the opportunities presented by a witness is if he or she becomes aware of them. Listen to the witness’ responses carefully!

h) Control the Witness With Your Eyes: It is more difficult to lie to someone else’s face. Make sure that if a witness is going to tell a lie, he or she has to look you in the eye to do it.

i) Control the Courtroom With Your Presence: Remember, during cross-examination, the trial attorney controls the show. Your demeanor can make or break the case. The trial attorney’s presence, style, and actual location in the courtroom can all have a significant effect on the jury’s perception. While these traits are usually specific and unique to each attorney, the following suggestions may aid a trial attorney in finding his or her “style”:

1) Engage the jury with your conversation. Although the witness is targeted for response, a trial attorney can focus the jury’s attention with his or her questions. Remember, leading questions are really veiled statements of fact. Make those statements to the jury, and ask the witness to confirm them for you.

2) Engage the jury with eye contact. Just as it is difficult for a witness to lie to a trial attorney’s face, it is hard for a jury member not to pay attention when the trial attorney is looking him or her in the eye. Engage the jury members individually with eye contact during the course of the examination.
3) **Be natural with the jury.** Forcing yourself to be something or someone you are not is a form of deception. If a jury senses this deception, the trial attorney’s credibility is lost. Be yourself.

4) **BUT, learn to be a good actor when the situation arises.** All trial attorneys will find themselves in a situation where the outcome looks bleak. If the jury senses that you think your case is weak, or that a witness’ response or judge’s ruling has ruined your case, then your case is ruined. Everyone loves a front-runner. Act the part, even when it feels like you are in last place.

9. **Keep it Safe . . . Most of the Time:** The classic rule of thumb during cross-examination is “never ask a question unless you already know the answer.” Surprise can destroy even the best of preparation. A trial attorney can avoid surprise by eliciting only those responses that he or she knows are coming. The exception to this rule occurs in circumstances when the chance of victory is bleak, and the attorney’s case has a slim chance of winning. Some of the greatest victories are achieved through gambling on a slim chance. If there is nothing to lose, then the unexpected answer might be the answer needed to obtain victory. Put it this way, if the known facts will lead to certain defeat, the only chance for victory is to elicit unknown facts.

10. **Start Strong and Finish on a High Note:** A trial attorney should plan a cross-examination in such a way to ensure that the last question elicits a significant response. Jury members have short attention spans, so a rule of thumb is to start strong, since the jury’s curiosity will be piqued at the introduction of a new examination, and finish strong, since a strong finish will leave a lasting impression for the entire examination. Once you have made the final significant point, end the examination. Too many trial attorneys make the mistake of trying
to win the case with one extra question – trying to hit a homerun, so to speak – and the
examination ends up ruined by an unexpected or unfavorable response to the last question the
attorney asks. Make your last big point, and sit down. Remember, if you reach your
predetermined goals for the cross-examination, you have already hit a homerun.

Cross-examination is an invaluable tool in the hands of a prepared trial attorney in that it
can be used not only to bolster his or her own case or defense, but also to demonstrate the
weaknesses of the opposition’s case. While no substitute exists for the experience that comes
from conducting numerous cross-examinations, the above guidelines can be a useful tool for
those trial attorneys trying to develop their own style and techniques, or trying to fine tune those
techniques developed through past experiences.

These guidelines, however, are by no means intended as an exhaustive authority on the
subject of cross-examination. Numerous authorities are available to guide a trial attorney in
developing styles and techniques for a proper and effective cross-examination. For those
interested in learning more about cross-examination, the following books and articles represent a
small sample of the available materials.


2. Haydock, Roger & Sonsteng, John, Examining Witnesses: Direct, Cross, and

3. Brodsky, Stanley L., Coping With Cross-Examination and Other Pathways to
   Effective Testimony (1st Ed. 2004).

4. Babitsky, Steven & Mangraviti, James J., Jr., How to Excel During Cross-


17. Strong, John W., McCormick on Evidence, Section 19 (5th Ed. 1999).