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Cross-examination

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There are three objectives to be achieved in a complete cross-examination:

1. Stating your case

This is more than putting your case to the witness to comply with *Dunn v Brown*. It is an opportunity to make a persuasive statement of the defence case for the benefit of the court. You should cross-examine with a clear concept of the defence case and in skilful hands cross-examination can be an effective defence address, even if the witness makes no concession.

2. To lessen or destroy the effects of hostile evidence

This I call negative cross-examination.

3. To obtain evidence for the defence

Many a Crown witness can be persuaded to give some evidence to assist the defence. This I call positive cross-examination.

Obviously one does not seek to achieve all of these objectives with every witness. If a witness does not contradict the defence case and is not a good possibility for objective (3) think again before cross-examining at all.

There is an old rule - **do not ask a question if you do not know what the answer will be**. Better stated, the rule should be - **consider the risk before asking any question**. Sometimes in desperate cases one runs extraordinary risks, and sometimes they come off. If you have a strong case avoid taking, running risks. If you have a weak case there is no point in going down in perfect order.

For positive cross-examination obviously a friendly polite approach is called for. For negative cross-examination be especially gentle for children and nervous witnesses. Do not attract sympathy for the witness by bullying, unless the witness is a bully himself or herself.

In sex cases be gentle, even if the complainant is a liar on the defence case. Avoid embarrassing references to the complainant's body unless they are really necessary, and then make the references with tact and be polite.

Avoid calling a witness a liar. It is better to suggest that the witness is not telling the truth and knows what the truth is.

Beware of attacking a witness on weak instructions. The graver the allegation the stronger the instructions should be.

Cross-examination is rather like the constrictions of a python. These are only effective if the snake's tail finds a secure anchorage. A good cross-examiner may well seek a secure anchorage of undoubted fact as the basis for cross-examination, eg a photograph, a statement, a letter and so on.

Look for the unusual or the fact alleged which does not fit in. These may well be the weaknesses of the witness.

Above all before you ask a question know what the defence is and choose the issue or issues (not too many) on which you will fight. A scattergun defence is unlikely to succeed.

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