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Cross-Examining Experts at Trial

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What makes cross-examination of an expert witness different and how does that impact the approach you take to the exam? In this video, Proskauer litigation partner Lee Popkin shares strategies for cross-examining expert witnesses.

Transcript

> **Lee Popkin:** A good place to start when you are thinking about cross-examining an expert is to ask yourself what is the purpose of this exam? What approach do I want to take with the witness? Maybe this is an expert you actually want to engage on the substance. You want to joust with them on the science, for example. It could be that the focus of your exam is going to be establishing the expert's bias. Maybe this is an expert who you want to put in a box and really limit the applicability of her opinions; of her expertise to the issues you are going to have to decide, or you could be that you just want to get the concessions you can and get out of there. If you take that step back to think about the bigger picture—what do I want to accomplish here? That can help you structure your exam, figure out the tone that you want to be taking with the witness and ultimately help you develop that content.
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> When it comes to the actual exam, what makes expert witnesses different? The first thing is obvious; they have specialized knowledge, training and experience. That is why they are testifying as an expert witness. Another thing is that they often have experience testifying, they have courtroom experience. You may even be dealing with a professional expert witness. Those folks tend to be trained to not give you the clear, clean answers that you are looking for.

"Impeach early and impeach often on non-trivial matters."

Lee Popkin, Partner, Litigation

So what do you do? You impeach early and often because then you are using those things that set the expert apart – their confidence, their specialized knowledge. You are using that against them.

What do I mean by that? If we think about the psychology of impeachment, it does not feel good to give an answer to a question and then have the lawyer read to the jury a different answer than you gave the last time you were asked that question. And that is especially true for expert witnesses—they really do not like that. And so the results can be dramatic.

To take an example from my recent experience, I was cross-examining an expert. He's a seasoned physician who has a very impressive resume and is working at an impressive institution. At the start of my cross he was answering questions in much the same way he had on direct. He was speaking in a loud voice, with confidence, and giving fairly lengthy answers. Within about 10 to 15 minutes, and after I had impeached him a handful of times, there was a noticeable shift in the witness. He started to slide down a bit in his chair, his voice got softer, and his answers got progressively shorter until I was getting those clean yes, nos that I was looking for.

It doesn't always work quite that well, but if you show the expert that you have impeachment for every question that you are asking—the impeachment is there and you are not afraid to use it, that can be an incredibly effective technique for controlling the witness.

Related Professionals

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