



CROSS COUNTRY

BY LARRY POZNER

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Why Script Chapters?

I am a dedicated proponent of written cross-examinations. I have yet to hear a valid reason chapters of cross should not be written.

Justification: “I don’t want to just read the questions.”

Response: Then don’t. Our written chapters serve as the organizational framework for our crosses. Scripting our crosses prepares the mind so that we can enjoy the security that comes from knowing our goals and gathering the facts that logically bring a jury to understand how the facts matter.

Justification: “I don’t want the jury to see that my crosses are written.”

Response: Really? You believe preparation will harm your image with the jurors? Meandering crosses suggest to jurors that we are searching for a loophole, a technicality. Prepared crosses move with greater speed and an evident sense of direction. Our prepared chapters are a tangible sign to the jurors that the facts favor us.

Justification: “Written crosses will stifle my creativity.”

Response: We win most of our cases through crosses we planned, not crosses we lucked into. And a scripted chapter frees our mind to listen more closely to the answers and judge when an answer has provided a launching pad for additional areas of cross, or more likely, additional cross within the chapters we have planned.

Justification: “I am a very experienced lawyer, and scripted crosses are for beginners.”

Response: The reverse is true. The experience that most matters is not the number of our trials, but the amount of thought we put into drafting chapters.

Editor’s Note: Send comments concerning this column or any of Larry Pozner’s columns to pozneroncross@gmail.com.

Facts change, but themes repeat. For instance, our experience drafting chapters on a theme of “things not done” is an investment in our ability to both write and perform a “things not done” cross in future cases. Preparation is the most valuable experience. Preparation of chapters in any case leads to greater confidence and more fluid presentation in all the cases to come.

Justification: “I don’t have time to write my chapters.”

Response: The more conversant we are with the process of writing chapters, the easier it is to recognize the facts we can use and copy them onto a chapter form. Writing the chapters is simply a matter of placing into small goal-oriented stories the facts that fit the goals of each story. We filter facts out of discovery and onto the draft chapters as we read. This is far more efficient, and far less time-intensive, than if we try to read all of the discovery to write a chapter, then start all over in writing another chapter.

Justification: “It does not matter what I write. The witness tries to evade, so I am often working in areas without written chapters.”

Response: When witnesses evade, they do so because they do not like to answer within the chapter we are doing. Our cross is working, so we should not be lured into leaving our prepared materials. If the witness is volunteering something we did not intend to cover or do not know anything about, logically we should not engage on that issue, but should stay on script. If the witness volunteers something in a chapter we were going to eventually use, we stay on script and get to that material when we planned to do so.

Justification: “I once won a case with something that happened in trial. It could not be scripted before trial.”

Response: The operative word is “once.” We plan and execute our best approach to the case. If the witness

offers up more useful answers, we will add them to the planned cross, but not discard our planned cross. Besides, if we analyzed the transcript, it is likely that our prepared chapters put great pressure on the witness, causing the witness to blurt out some ill-considered evasion. Our prepared chapters worked. That is why the witness tried to evade.

Justification: “I don’t understand how Chapter Method cross works.”

Response: Happily, only a temporarily valid reason. The Chapter Method of cross is built around the idea that we are teachers more than persuaders. We gather related facts into short stories, and the stories either support our theory or undermine the prosecution theory. Our chapters are often built around providing greater detail in areas we like. As we see a small goal, we see a chapter. Then draft a group of leading questions that tells those facts. Chapters allow jurors to hear the facts in a context that enables them to understand the point we are making, and to see how that point supports reasonable doubt.

And show your chapters to defense lawyers you respect. They too are writing their crosses in chapters.

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About the Author

NACDL LIFE MEMBER Larry Pozner is recognized as America’s authority on cross-examination. *Pozner on Cross* lectures are entertaining programs that demonstrate how to become a master of cross without years of trials. His book is *Cross-Examination: Science and Techniques* (Lexis 3d edition 2018, by Pozner and Dodd).

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