



CROSS COUNTRY

BY LARRY POZNER



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Unpacking the Many Deceptions Inside a Single Lie

The hostile witness has admittedly lied: “Yes, I gave the detective an alibi, but really I was with the defendant committing the crime.” Or perhaps the lie goes like this: “I had no idea he was coming over that night. We had no relationship.”

Lawyers tend to boil down an admitted lie to “You said something, and you knew at the time that it was untrue.” They mistakenly believe that the payoff is the admission of the untruthful statement. The big payoff is something deeper: the work it took to construct the lie. The use of real events or people to make the deception more believable and the motivation to make oneself look better are the building blocks of a lie. Lawyers expose these additional elements of deceit as they tell the jury more about the character of the witness.

Initially the witness gives a false story: “I was eating pizza with my cousin Ronnie. We were at his house — 7154 Jackson. Peperoni pizza. From Dominoes. He picked it up.”

But now the witness says that the truth is he was with defense counsel’s client, robbing a liquor store. When lawyers deconstruct what the witness now calls a lie, they see it is built on many deceptions. The witness’s new story is that he has lied about where he was, who he was with, and what he was doing. He has added an innocent third party to make his lie more believable. He can even recite a nonexistent meal from a real company. To

stick to his new story, the witness is vulnerable to cross-examination on the many false aspects of his earlier story. The cross-examination goes like this:

When the detective came to your house, you were unsure why.

Then he began asking you about where you were last Friday night.

You had only seconds to come up with a story — a story you now admit was completely made up.

On the spot you made up a story you wanted to sell to the detective. You knew you needed a lie. Because, according to you, if you told the truth, you were admitting to a felony. A felony that could get you sent to prison. And the one thing that motivated you was the need to make up a story that might let you evade responsibility for what you now say is a crime you committed.

So, you built your false story around some things that were real — you do have a cousin Ronnie and you know where he lives. You even added details: a pizza that didn’t even exist. You could even name what kind. But when it came to where Ronnie got it, you were skillful enough to avoid details. You knew that if you said Ronnie had the pizza delivered, the cops could do detective work and prove you were lying. That’s why you were careful on what details to make up, and what details to avoid.

Result: The jurors are better informed on how easy it is for this witness to make up a detailed lie with the goal of getting his deal. His “get out of jail free” card. The building blocks of deception always consist of some things real, some things invented. His story about the client’s involvement is just more of the same. He can recite details of the robbery because he was one of the robbers. All he has to do is

drop in the name of the client, just like he dropped in the name of his cousin. And if he can sell it, he gets his deal.

Defense counsel’s technique is to drill down into a story a hostile witness admits was untrue. What were the several component lies? What facts did the witness attempt to hide? Why was it important to the witness to hide these facts? Drilling down into a story is essential even if the complaining witness is not being accused of any criminal misconduct. Why did the witness want to deny the truth? To look better in the eyes of her friends or her parents? To keep from exposing conduct that she had long denied? To hold to a false story she had earlier related to others?

When lawyers expose the motivations for deception, the several components of the false story, and the willingness and ability to mislead, they reveal to the jury a great deal more about the witness than can be summed up in “You lied.” ■


About the Author

NACDL LIFE MEMBER Larry Pozner is co-author (with Roger Dodd) of *Cross Examination: Science and Techniques* (3d edition 2018). He lectures throughout the country and is an NACDL Past President.

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