# 7 Tips To Help Your Witness Be A Cross-Exam Heavyweight

By **Ken Broda-Bahm** (October 24, 2024)

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At the Democratic National Conventional in late August, among the many speakers and videos offered to build on the public's knowledge and opinions of the then-new presidential candidate, there was one montage that highlighted Vice President Kamala Harris' skills as an aggressive cross-examiner.

The audience saw some of the greatest hits from her Senate questioning of former Attorney General Bill Barr, former Attorney General Jeff Sessions, Justice Brett Kavanaugh and others. And the fact that they were set to the tune "Savage" by Megan Thee Stallion underscored the message.

It was a reminder that just the act of being questioned can be aggressive — and that's something all witnesses should know.

Within the more conventional constraints of civil litigation, cross-examination can be an important moment for the key witness. In trial, it tends to get some added attentiveness from the jury. Knowing that they're now seeing one side pitted directly against the other, jurors will sit forward a bit in their seats to see who gets the better end of the deal.

Even after a very good direct — perhaps especially then — a witness still has a lot to lose, or gain, once opposing counsel takes the lectern. Particularly when you're putting on a savvy witness, it's important to devote some preparation to the idea that the good witness stands to not just survive cross-examination, but to thrive in it as well.

Make sure your witness understands that their first goal is still to answer the questions clearly and honestly. But also acquaint them with the hard fact that the other side is trying to advance their own case with their help, so help them find a balance: They want to make that difficult for opposing counsel without coming across as difficult to the jury.

For those witnesses with some understanding and experience, they can achieve that balance. For those who help to prepare those witnesses, I believe there are seven good habits that help create a witness who is tough to cross.

**1. Know the prior testimony cold.**

The first step for a witness is to know the full terrain that opposing counsel will ask about.

Where there is a prior record — a deposition, affidavit, report, etc. — it makes sense to start there and to know that material very well. A very complete practical recollection of prior testimony is a witness's sword and shield, protecting the witness from mischaracterization and alerting them to opportunities to return to the main messages.

Attorneys should make sure witnesses are not only provided with these materials, but are also instructed on how to review, remember and use that information in a constructive fashion.

**2. Stay relentlessly polite.**

A good witness should be assertive in defending themselves and their testimony, but should never be aggressive toward opposing counsel or the court. They can strive to get the point across, as long as they can do it without fighting.

The witness doesn't want the jury to see them as defensive, or as an advocate — i.e., as just another lawyer. Practice with them on keeping their face and body relaxed, their tone measured and pleasant, and their words respectful and patient.

**3. Embrace the role of being helpful — to the fact-finders.**

The witness's goal isn't to help opposing counsel. But ultimately, they are not talking to opposing counsel. The other side gets to ask the questions — and, to be clear, they have a right to the witness's answers. But those answers are for the jury.

Help the witness keep the focus not on the adversary who is attacking, but on the jurors who are just trying to understand. A witness's vocabulary and level of explanation should be geared toward a juror's likely comprehension and attention. The tone should be one that conveys, "Here's what you, the jurors, need to understand."

**4. Know the tricks.**

A witness doesn't need to go to law school and become a lawyer, but a little understanding of Cross-Examination 101 is a good thing.

Start with the case-specific idea of what the other side is trying to do with the testimony: their strategy, goals and themes. Then add to that a broad understanding of the toolbox that attorneys tend to use in cross-examination.

Teach your witness that opposing counsel will try to plant language, leverage small inconsistencies, and get the witness out of sync with the timeline or the records, for example. And they may try to get the witness to concede to oversimplified standards contained in "reptile theory" questions.

The more the witness understands and anticipates these tricks, the more prepared they'll be.

**5. Don't be led.**

The biggest cross-examination trick, of course, is to lead the witness by asking an "Isn't it true…" question in a way that suggests the preferred answer.

This appeals to an attorney's North Star in cross-examination — the mantra to "control the witness." Counsel will aim to do that by picking the testimony and offering it to the witness for their confirmation.

A prepared witness will resist that, not by fighting over language, but by simply expressing the answers in their own words. Instead of just answering "yes" or "no," the witness should

answer in a complete idea, a sentence that the witness constructed on their own.

**6. Know the home bases.**

The attorney on the other side will not give a good witness the floor to say what they want to say. But if they did, would your witness know what they want to say? Would they know the central points relevant to their role in the case that are essential for jurors to understand?

Good witnesses should have these answers in mind. They should know the case's talking points, and use those main messages as a home base to return to when it is relevant and responsive to the question.

Ultimately, it is about answering the questions, but when the witness can answer them in a way that returns them to their own ground, that will be stronger and more memorable for jurors.

**7. Counterpunch when possible.**

Because a witness wants to stay polite and get their message across to a jury, they don't want to treat cross-examination as a fight. But when there is a polite way to score a point in the jury's eyes, a good witness should take that opportunity.

If it is possible to respond to a question while pivoting it to end on a strong point — e.g., "…and that is why any other choice would have carried a greater risk" — that can create a strong impression with the jury. The fact that your witness made the point to opposing counsel's face makes it all the more impactful.

The witness who tries to do this on every question will be seen as annoying or defensive. But the witness who picks their moments and does this once or twice can be very strong.

There's one final benefit for a witness: A witness who is tough to cross often makes for a short cross. Counsel ends up just making the few points they know they can make, and cuts it off. That's a win.

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*Ken Broda-Bahm is a senior litigation consultant at Persuasion Strategies.*

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