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HEADLINE: **Trial Advocacy, The Voice Of Reason: A Powerful Approach To Cross-Examination**

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BODY:

Cross-examination allows you, as the advocate, to develop facts that provide the basis for a compelling argument on summation. The better the setup of the individual witness, the harder the witness can be knocked down during your cross.

The "voice of reason" approach to cross-examination allows you to setup the witness in such a way that he is prevented from wriggling out at a later point in time. Unlike the "baseball bat approach," where the attorney starts off screaming at a witness saying, in essence, "you are a liar," the "voice of reason" method allows you to lock the witness into a specific position and then slowly and carefully discredit that witness through his own words at a later point in time.

The Beginning

The beginning of this setup is crucial. Your questions must be both compelling and undeniably reasonable. There must be only one way in which the witness can appropriately answer the questions. Indeed, if the witness provides any answer other than "yes" to a "voice of reason" question he should be made to look and feel foolish.

In virtually every case in which an investigator or expert is called to the stand, this approach can provide a valuable line of questioning. Four "key words" worked into your initial setup questions can help you meet your goal. These words are: full, fair, thorough and complete.

Imagine the scenario in which an investigator is called to the stand to discuss his surveillance of your client, a man accused of selling alcoholic beverages to an already-intoxicated individual. On direct examination, that investigator was made to look like he conducted a competent investigation. On cross, however, after you have taken the time to complete the setup, he can be made to look foolish by pointing out that which he did not do. Assume you want to attack the investigator's ability to observe. Start out by working these four key words right into your questions:

Q: You conducted a full investigation of my client, true?

Q: Certainly one that you believed to be fair?

Q: An investigation that was thorough?

Q: And one that you would agree was complete, true?

Obviously, the only real choice the investigator has in answering these questions is to say "yes." In the event he chooses to say "no," imagine the followup that can be used to immediately undermine his credibility:

Q: Are you saying you choose to conduct a less-than-complete investigation?

Q: Are you suggesting your investigation was inadequate?

Q: We can agree then that your investigation was less than thorough?

Q: So, if given a choice you would prefer to be incomplete than complete and thorough, true?

Once the witness has answered "yes" to your initial questions, bolster the setup by working with the negatives as well.

Q: To the extent that you didn't conduct a full investigation, you would agree that this would be wrong?

Q: To the extent that you choose not to be fair, that would be inappropriate?

Q: You would agree with me that if you conducted a less than thorough job that it would not be in keeping with your own personal standards?

Q: That's why we know that you would not settle for anything other than a complete, well done surveillance, true?

Binding Witness to a Position

Through use of your "voice of reason" questions, you have now walked the witness "up and down the ladder." After committing him to his belief that his investigation was full, fair, thorough and complete, you have walked him down the other side, binding him to the position that anything less than an investigation that meets the criteria set forth on the "upside" of the ladder would be unacceptable and wrong.

Having effectively closed off all avenues for the witness' escape, you can move in for the kill:

Q: In conducting this thorough surveillance you positioned yourself in such a way that you had a clear view?

Q: A view that allowed you to see everything that was necessary?

Q: We can agree that you never followed the (alleged intoxicated person) into the store, true?

Q: You didn't see what he did in the store?

Q: You chose to remain in your car?

Q: There were times that your view was blocked by pedestrians?

Q: There were times when your view was blocked by cars and trucks?

Q: Your view was even blocked by advertising posters in the window of the store, true?

Q: Knowing this, you chose to remain in your car?

Q: No one forced you to remain in your car?

Q: But to make sure your surveillance was as thorough as possible, you never once went into the store, true?

Q: In conducting this full, fair and thorough surveillance you chose not to walk into the store to see what was going on, true?

Working with such negatives - that which the investigator did not do - can add a powerful line of attack to your cross. That line of attack is made stronger by first posing the "voice of reason" setup questions.

Portable Approach

The beauty of this approach is that it is portable and fits neatly into almost any case in which an expert, investigator or supervisor will be called. The person's job duties and title are irrelevant because any person with some level of responsibility in a given situation must concede that his work should comply with these reasonable

standards, and any failure to do so is inappropriate.

Take for example, a straightforward labor law case in which a worker was injured due to faulty equipment or inadequate cleanup at a work site. The cross of the project manager goes much the same way, beginning with "voice of reason" questions for the setup:

Q: Can we agree that one of your most important job-site concerns is safety?

Q: In fact, one of the most important job-site concerns is the safety and well being of the worker, true?

Q: After all, there is nothing more important than the health, safety and well being of those who work for you, true?

Can you imagine if the answer to any of these questions is "no"? The next question would be: "Q: So money is more important to you than safety, is that it?" Obviously, even if the witness truly believes that, he cannot say it in front of a jury without paying dearly for declaring those priorities.

Now, return to those four key words by working them into your questions and complete the setup:

Q: You do agree it's necessary to conduct a full inspection of the work site, true?

Q: A full and fair inspection is mandatory?

Q: One that is thorough is what you demand, true?

Q: Certainly a complete inspection of the work site is required, true?

Now adjust the questions to include the witness' own personal standards to further align the witness with the importance of complete inspections:

Q: To the extent that a full inspection was not conducted that would be wrong, true?

Q: If a thorough inspection was not done it wouldn't serve to promote safety, would it?

Q: You do agree that if a complete inspection was not done it would not be in keeping with your own personal safety standards, correct?

Q: That's why you take these work-site inspections so seriously?

Q: Because anything other than a full and fair inspection undermines the goal of safety, true?

Q: And anything less than a thorough and complete inspection would not serve to promote the health, safety and well being of the worker, true?

At this point, work in the facts of the case, in essence burying the project manager by using his own words against him:

Q: Sir, safety inspections of the work site are conducted daily?

Q: You agree that there is not one daily inspection report for the two weeks prior to the subject accident?

Q: There is not one written inspection of the machinery for the two weeks prior to the accident?

Q: You expected others to conduct these inspections?

Q: But you chose not to oversee the inspections?

Q: You cannot even state from personal knowledge that one was done?

Q: And in the event an inspection was not conducted, we can agree that someone was derelict in his duties?

Q: Simply put, that is something that is unacceptable?

Q: And that is certainly something that defeats the goal of safety, true?

Trainer or Teacher

An expert who performs training or teaching of others presents an enhanced opportunity to utilize this approach. Aside from asking the witness about her own personal standards, another area of inquiry is opened up: the standards used in educating others. Once again, the witness is compelled to agree with your setup questions. Take, for example, a medical negligence case in which a doctor inaccurately wrote a note. Rather than simply asking one question pointing out that the note was incomplete or wrong, build up the importance of this fact by using this technique. Using the "voice of reason" ask:

Q: You work at a teaching hospital, true?

Q: Over the course of your years on the job you've trained younger, less-experienced doctors and residents, true?

Q: You've taught them how to properly fill out a chart?

Q: You've explained that they have to be thorough when writing notes, true?

Q: That they must be complete in writing out notes?

Q: And they certainly must fairly and fully write out what has taken place, true?

Q: That's why you teach them to proofread the note before signing it, true?

Once again adjust the setup, only this time, since we are dealing with an expert, work in the operative terms from the charge to get even more mileage on the cross:

Q: To the extent that one of your residents provided inaccurate information in a note, that would be wrong, wouldn't it?

Q: Indeed, that resident would be derelict in her duties, true?

Q: In the event a resident failed to accurately note the medication used or its dosage, that would be inappropriate, true?

Q: In fact, in the event the wrong medication was used based on that note that would be a departure from accepted standards of medical practice, true?

Q: And such a departure from accepted standards of medical practice is simply put, unacceptable, true?

Patience Is Key

Success in the latter stages of your cross-examination is largely dependent upon your ability to remain patient in the early part of the cross. The "voice of reason" setup must be administered slowly and clearly, ensuring that you only ask one fact per question. The setup question itself must be non-controversial; in other words, if the witness can reasonably disagree with your question, it will not work within this technique. In done properly, you will find yourself surgically dissecting witnesses and ultimately, destroying the strength of their direct testimony.