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—Barbara Moddes, Program Planner, State Bar of Wisconsin

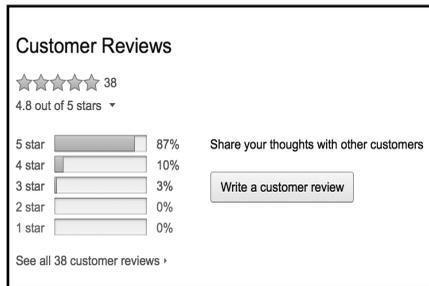
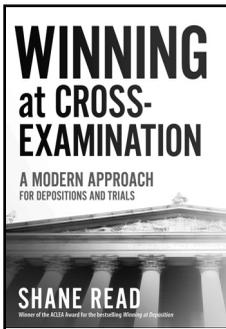
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**WINNING
AT
CROSS-EXAMINATION**

**A Modern Approach for
Depositions and Trials**

SHANE READ

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For Linda

CONTENTS

INTRODUCTION	1
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PART ONE The Principles

CHAPTER 1	DEVELOP A WINNING CASE STRATEGY	5
1.1	THREE QUESTIONS YOU MUST ANSWER TO DEVELOP A CASE STRATEGY	5
1.2	KNOW THE LAW	5
1.3	WHAT IS YOUR BOTTOM-LINE MESSAGE?	8
1.4	HOW ARE YOU GOING TO TELL YOUR STORY? ..	14
1.5	CREATE A TRIAL PLAYBOOK.....	23
1.6	CHAPTER CHECKLIST	24
CHAPTER 2	ESSENTIAL TECHNIQUES OF CROSS- EXAMINATION	27
2.1	DEPOSITION VERSUS TRIAL	27
2.2	MOST CROSS-EXAMINATIONS ARE SUICIDAL AND NOT HOMICIDAL	28
2.3	FOUR MYTHS ABOUT CROSS-EXAMINATION.....	28
2.4	IRVING YOUNGER'S TEN COMMANDMENTS ARE WRONG	31
2.5	HOW TO CHOOSE YOUR TOPICS FOR CROSS	40
2.6	DO YOU NEED TO CROSS?	44
2.7	THE 10 PERCENT VERSUS 65 PERCENT PRINCIPLE.....	48
2.8	HOW TO PREPARE A CROSS-EXAMINATION	49
2.9	HOW TO ASK QUESTIONS	54
2.10	HOW TO AVOID OBJECTIONS	65
2.11	CHAPTER CHECKLIST	66

CHAPTER 3	ADVANCED TECHNIQUES.....	69
3.1	LESS IS MORE	69
3.2	RULE OF THREE.....	70
3.3	USE INSIGHTS FROM BEHAVIORAL SCIENCE TO PERSUADE JURORS	71
3.4	YOUR DEMEANOR.....	78
3.5	HIGHLIGHT WHAT WAS NOT ASKED ON DIRECT	79
3.6	IMPEACHMENT WITH PRIOR INCONSISTENT STATEMENTS.....	79
3.7	THE ABCs OF IMPEACHMENT.....	81
3.8	THE BIGGEST MISTAKE LAWYERS MAKE DURING IMPEACHMENT.....	85
3.9	IMPEACHMENT WITH PRIOR INCONSISTENT OMISSION.....	86
3.10	PROVING UP IMPEACHMENT.....	88
3.11	USE COMMON SENSE TO BUILD YOUR QUESTIONS	88
3.12	MASTER THE WITNESS WHO EVADES THE QUESTION.....	93
3.13	THE “I DON’T REMEMBER” WITNESS.....	99
3.14	THE CHARACTER WITNESS.....	100
3.15	THE WITNESS WHO QUIBBLES.....	101
3.16	THE THREE CAMERA DEPOSITION	105
3.17	EXAMPLES FROM THE O.J. SIMPSON CIVIL CASE.....	107
3.18	CHAPTER CHECKLIST	116
CHAPTER 4	THE EXPERT WITNESS.....	121
4.1	REQUIREMENTS OF THE DAUBERT STANDARD	121
4.2	DISCOVERY QUESTIONS TO ASK AT A DEPOSITION.....	122
4.3	PREPARING FOR CROSS-EXAMINATION.....	123

4.4	KEYS TO ATTACKING AN EXPERT EFFECTIVELY	127
4.5	CROSS OF AN EXPERT IN ZIMMERMAN TRIAL.....	138
4.6	MARK LANIER CROSS-EXAMINES AN EXPERT	141
4.7	CHAPTER CHECKLIST	142

PART TWO
The Masters

CHAPTER 5	TOM GIRARDI CROSS-EXAMINES IN <i>STOW V. DODGERS</i>	147
5.1	TOM GIRARDI.....	147
5.2	GIRARDI'S STRATEGIES FOR CROSS-EXAMINATION	148
5.3	BACKGROUND OF <i>STOW V. LOS ANGELES DODGERS</i>	152
5.4	CROSS-EXAMINATION OF DEFENDANT'S EXPERT	156
5.5	CROSS-EXAMINATION OF THE HEAD OF OPERATIONS OF DODGER STADIUM	169
5.6	AFTERMATH	179
5.7	CHAPTER CHECKLIST	180

CHAPTER 6	MARK LANIER CROSS-EXAMINES DEPUY'S HEAD OF CLINICAL RESEARCH	183
6.1	THE PLAINTIFF'S LAWYER, MARK LANIER.....	183
6.2	LANIER'S STRATEGIES	184
6.3	BACKGROUND OF THE DEPUY HIP IMPLANT LITIGATION	190
6.4	CROSS OF DR. PAM PLOUHAR.....	192
6.5	THE POWER OF LANIER'S VISUAL AIDS	216
6.6	CHAPTER CHECKLIST	218

CHAPTER 7 MARK LANIER CROSS-EXAMINES THE PRESIDENT OF DUPUY221
7.1 CROSS OF ANDREW EKDAHL 221
7.2 USING THE “SIMPLE TRUTH” IN A QUESTION ..246
7.3 CHAPTER CHECKLIST246

CHAPTER 8 MARK LANIER CROSS-EXAMINES DR. THOMAS SCHMALZRIED..... 249
8.1 CROSS-EXAMINATION OF DR. THOMAS SCHMALZRIED.....249
8.2 SUMMARY OF MARK LANIER’S CROSS-EXAMINATION STYLE271
8.3 CHAPTER CHECKLIST 273

PART THREE
Famous Trials

CHAPTER 9 THE PROPOSITION 8 TRIAL PERRY V. SCHWARZENEGGER 277
9.1 SUMMARY OF *PERRY V. SCHWARZENEGGER* 278
9.2 SUMMARY OF OPENING STATEMENTS 279
9.3 SUMMARY OF DIRECT EXAMINATION OF BLANKENHORN (PART I)..... 280
9.4 BOIES CONDUCTS VOIR DIRE OF THE EXPERT 281
9.5 SUMMARY OF BLANKENHORN DIRECT EXAMINATION (PART II)..... 287
9.6 BOIES’S CROSS-EXAMINATION OF BLANKENHORN 290
9.7 SUMMARY OF BOIES’S TECHNIQUES 306
9.8 CHAPTER CHECKLIST307

**CHAPTER 10 THE O.J. SIMPSON AND
GEORGE ZIMMERMAN TRIALS.....309**

10.1 BACKGROUND OF *PEOPLE V. O.J. SIMPSON*... 309

10.2 CROSS-EXAMINATION OF MARK FUHRMAN310

10.3 CROSS-EXAMINATION OF OFFICER
DENNIS FUNG315

10.4 BACKGROUND FOR *STATE V. ZIMMERMAN* 322

10.5 CROSS OF JOHN GOOD 325

10.6 CHAPTER CHECKLIST 333

ENDNOTES 337

ACKNOWLEDGMENTS339

ABOUT THE AUTHOR..... 341

INDEX 343

INTRODUCTION

The purpose of this book is to expose the greatest myths of cross-examination and teach the correct techniques in a very engaging way. If you walk into any courtroom today, you are likely to see lawyers conducting very boring, long, and ineffective cross-examinations. The same is true of cross-examinations at depositions.

Instead, you should never be ineffective—much less boring—on cross-examination. Your job is to captivate, educate, and motivate jurors to believe the truth of what you are asking the witness and to discredit the witness's answer if he doesn't answer the way you want. It is that simple.

If you have read any of my other textbooks, you know that I am a passionate believer that the best way to learn trial skills is through the examination of famous trials and great lawyers. I believe if you cannot watch a live trial, the next best thing you can do is study videos or transcripts that are from interesting trials. After all, it is a lot easier to remember a principle or technique if it is taught in the context of a memorable event from a trial that grabs your attention. As Benjamin Franklin said, "Tell me and I forget. Teach me and I remember. Involve me and I learn."

Consequently, I hope you will find that this book engages, enlightens, and entertains you. The book is divided into three parts. Part I, "The Principles," focuses on basic and advanced skills. In this regard, it does something unusual. Most cross-examination textbooks don't discuss how to develop an effective case strategy but focus solely on the mechanics of cross, or they don't treat it with the great importance it deserves. Not any more. This book begins with the most important part of any cross-examination: developing a case strategy that contains a bottom-line message that ensures victory.

Part II, "The Masters," analyzes how highly accomplished lawyers conduct cross-examination. It serves as a guide for taking what you have learned in Part I as you examine how Tom Girardi and Mark Lanier have used these skills in their most interesting trials.

Part III, "Famous Trials," examines videos of cross-examinations from the O.J. Simpson and George Zimmerman trials. Those trials were selected because of the compelling facts that caused the nation to follow them intensely. In addition, the trials were broadcast on television, providing a unique opportunity for you to learn from videos of famous cross-examinations on the book's website, www.winningatcross.com.

2 Winning at Cross-Examination

In addition, Part III analyzes the cross-examinations from the Proposition 8 trial where the plaintiffs challenged California's Proposition 8, which banned gay marriages. The trial was so important that it was performed as a one-night stage reading on Broadway. It was directed by Rob Reiner and had an all-star cast, including George Clooney and Brad Pitt. (You can view it at www.winningatcross.com.)

I also believe that less is more. Let's get right to it.

PART I

The Principles

Part I teaches how to develop a case strategy so that your cross-examinations have a purpose. You will also learn basic and advanced techniques of cross-examination. Finally, you will learn the special skills to cross-examine an expert witness. After completing Part I, you will be ready to cross-examine anyone. We will then look at master cross-examiners in Part II and cross-examinations from famous trials in Part III. Let's begin this fascinating journey. As Nietzsche said, "He who would learn to fly one day must first learn to stand and walk. . . ."

PART II

The Masters

Now that we have examined the principles of cross-examination and challenged the conventional wisdom, let's look at two masters as they conduct cross-examinations: Tom Girardi and Mark Lanier. You will find that each attorney follows the principles discussed in the previous chapters but that they also have a unique style. We cannot forget that cross-examination is also an art form. Once you see what works for each attorney, decide if the way they apply the principles would fit your personality and natural skill set. If you like what you see and the results, do your best to imitate these attorneys. Or, perhaps you will need to make adjustments to what you see so that the technique fits your personality. The aim of Part II is to reinforce what you have already learned and inspire you to be creative in order to have even more success.

CHAPTER FIVE

Tom Girardi Cross-Examines in *Stow v. Dodgers*

“On cross-examination, you want to be pinpointed, focused, and then sit down.”—*Tom Girardi*

5.1 TOM GIRARDI

Tom Girardi is a partner of the law firm Girardi Keese and has been practicing law since 1965. His distinguished career includes many firsts. He was the first lawyer in California to win a million-dollar verdict in a medical malpractice case. He was the youngest member ever to be admitted to the International Academy of Trial Lawyers, an organization limited to 500 lawyers in the world. In addition, he is a member of the Inner Circle of Advocates, an organization limited to 100 lawyers who have obtained the largest verdicts in the United States.

Girardi was inducted into the Trial Lawyer Hall of Fame by the California State Bar in 2003. In a recent survey of 65,000 lawyers to determine the finest lawyer in California, he received the most votes. He was the 2015 president of the Litigation Counsel of America and president of the American Board of Trial Advocates. In April 2014, he was inducted into the American Trial Lawyer Hall of Fame.

He has had many record-setting verdicts but is most famous for *Anderson v. Pacific Gas & Electric*, which involved two trials that lasted over seven months and resulted in \$131,000,000 for 40 plaintiffs. These verdicts caused an eventual settlement of the entire litigation for \$333,000,000. The litigation became immortalized in the movie *Erin Brockovich*. In addition to his unrivaled legal career, he

CHAPTER ROAD MAP

- Be focused like a laser on your cross.
- Set up the ultimate question you want a “yes” to by getting the witness to answer “yes” to several set-up questions.
- Ask questions that have the power of undisputed facts and common sense on your side.

is a Trustee of the Library of Congress and the host of the weekly radio show, “Champions of Justice,” which is broadcast on both coasts.

5.2 GIRARDI’S STRATEGIES FOR CROSS-EXAMINATION

Girardi believes the trick to successful cross-examination is to be “limited and pinpoint,” because as soon as you get too far afield, you let that witness argue for the other side. You want to focus on those points “where you really have them and forget about the other stuff. Don’t give them the opportunity to get up there and start explaining a good part of the defense case. You want to be pinpointed, focused, and then sit down.” Another reason that it is important to conduct a focused cross-examination is that the jury is a lot more likely to follow and remember your cross if it isn’t diluted within a three-hour session.

Most attorneys err on the side of very long crosses because they want to make sure they cover every possible point. So I asked Girardi if it takes a lot of experience and confidence to conduct an efficient short cross. Girardi provided the following analogy:

Well, if you’ve ever argued with your wife, you know how to get your points across; it isn’t with some long speech. It’s just, “Hey honey I was sorry I got in late last night. I was with these lawyers, and it was hard to get away.” And end it.

We’re in the persuasion business. How do you get somebody to say I’ll marry you? Is it with a 20-paragraph thing, or is it “I love you” and she comes back and says “I’ll marry you”? So I think we forget sometimes, as trial lawyers, we’re in the persuasion business, and how we persuade in other times [involves] the same things we should be using when we persuade a jury. And that is to be concise, hit the point, don’t be overbearing, don’t be overreaching, be a nice guy—all that really is much better at selling [and being persuasive].

Girardi used a boxing analogy to describe the kind of demeanor an attorney should have on cross-examination. He explained that you do not want to be too argumentative, except on the rare occasion when you have a “real jerk on the stand, [then] you can’t be too docile.” But in a typical cross, he thinks that “three left jabs and a right [punch] is probably the best way you cross. And you set ‘em up.”

Girardi gave the following example:

The left jabs would be, “Now you’re employed by the defendant in this case, are you not?” “Yes.” “And matter of fact, the reason that you’re in the case is because the very fine defense lawyer hired you to come in and give

opinions, right? And that very fine defense lawyer told you the reason that this case is there, isn't it?" And they say yes to all those. And then you say, "Isn't it a fact that the document that you didn't see says this? You didn't see it did you?" So then the jab, jab, jab and then, you know, the one good punch you got, then put it on there.

That's much more effective than [being] high pitched, with every question trying to be a knockout punch on stuff that doesn't matter. The other thing is this: the witness starts to feel at ease when you ask the softball questions. And then the witness thinks that, "OK, I got this," and then you come in with the thing that you got in your briefcase that really massacres him.

Not only does this strategy work for getting the answer you need, but you also maintain your credibility with the jury. Girardi gave another example. "Suppose that you have a medical malpractice case and you are cross-examining a doctor who speaks in soft tones and says, 'That's a good question counsel, but I think this.' Well, you better not be laying into that guy, baby, because that jury loves him. And if you start being an asshole in front of him, you've lost everything."

In such a situation, limit yourself to your best points and be content. Girardi shared how this might play out:

"But doctor, you know, you never reviewed the medical records from Cedars Sinai, did you? And doctor, wouldn't you think as a man of your profession, a man who wants to come here and guide this jury, it would be important to know all the facts and not just some of 'em? You'd agree with me on that, right?" So that's your play there, OK?

I followed up with Girardi on this point because I believe so many lawyers fall into the trap of arguing with the witness. Girardi agreed. He put it this way:

You have to have gone through this a bunch of times, and having gone through it a bunch of times, it becomes much easier to know how to do it. Because there's a huge . . . , the problem is, you wanna say, "You rotten, lying SOB, this is what you said here and now look at you." That isn't near as effective as saying, "Doctor, did you violate the very oath you took in this courtroom in any way?" Now that's much more effective, isn't it, than calling the guy a dirty bastard son of a bitch.

Here's the thing that you gotta remember. I don't wanna call this witness an ass, a liar, a cheat, or a thief. I wanna lay it out, and I want the jury to go into the jury room and say, 'That guy was a liar.' You want them to say it, not you.

—Tom Girardi

In chapters 2 and 3, we looked at how to get the witness to give an outrageous answer, one that does not have the ring of truth to it. I asked Girardi about his technique for doing this. He instructs that you need three or four yeses in a row before you ask the ultimate question. Then when the witness says no, he looks bad. For example, you might ask an expert witness the following: “Doctor, in this case, it was important for you to know the history, wasn’t it? It was important for you to know that he’d had a prior heart attack. Wasn’t that important? It was important for you to know that if you have a prior heart attack, that one better be very careful of the drugs that are to be given? And doctor in this case, you saw that they were somewhat careful about the first three issues, but doctor, they weren’t careful about the fourth, were they?”

Based on the previous admissions, when the doctor denies there was any wrong doing in the last question, the jury won’t believe him because it is not a reasonable position to take.

Girardi believes that while other lawyers can help you get ready for some parts of the trial, “when it comes time to the cross-examination of key witness, it’s all up to you, baby. And you’re the person that has to dig it out because you gotta have those facts.” This preparation results not only in a focused cross as discussed above, but it allows you to have a commanding presence during cross. He explains that you don’t want to refer to a bunch of notes in the courtroom because that will put the jury to sleep. “The last thing you want to do is walk up there with your notes and read them. On the other hand, you don’t want to forget certain issues. So I’ll have a little piece of paper and I’ll have ten words on it just to make sure I cover each of those ten subjects. And that’s all you need and then you never read it. As you’re finishing one thing, you kind of glance down and remember what the next thing is and then you talk about that. So it never looks like you’re reading anything.”

When a witness answers differently than Girardi expects, he has the deposition transcript or exhibit ready, so that he can confront the witness with it. He explains how he takes the witness’s deposition answers and builds them up to confront the witness during cross:

Doctor, you know, I suppose the most important thing about a trial is the fact that the people who come in, people like you, testify under penalty of perjury, right? Doctor, in this case, when you took the stand, this wonderful court attendant, Margie, asked you to raise your right hand. And she asked you, do you declare under penalty of perjury the testimony you’re about to give is the truth, the whole truth, and nothing but the truth. You were here for that right, doc? And doctor, if you violated that in front of this jury, that would be bad, wouldn’t it? Because if you violated on one

issue, I suppose maybe they're gonna not necessarily believe you on the next issue. Do you agree with me or not? And Doctor, in this case, let me read from your deposition. Doctor, that was also under penalty of perjury too, wasn't it? The person there, the court reporter also said to you that your answers are under penalty of perjury, and here's your answer, yes. And here's the question you were asked, and here's the answer you gave. It's pretty bad, isn't it, Doc?

As noted before, there are two schools of thought on whether you should show your hand in a cross-examination at a deposition. Here is Girardi's viewpoint:

In a deposition, you save it, that's what you do. You got the knockout punch. You keep that in your pocket. All you do in the deposition is set him up and let him say a few more times the lies that you can impeach him on. And you don't go further than that because then at trial, you've really got something to work with. If you try to do the knockout punch, they're gonna do everything they can to clear the ice. For example, "Doctor, didn't you make a mistake when you said such and such, and was it really such and such?" They clean it up. It's hard, especially for young lawyers, to keep things in their pocket. You know, you get so excited. You got this guy nailed, baby. You wanna go for it.

I asked Girardi how he would respond to the argument that since so many cases settle, if you save the knockout punch for trial, you're really saving it for nothing. He quickly responded:

No, you're not at all. So, if the case is going to settle, one of the reasons that it settled is because they know you got the ammo, and if the case is gonna settle, the large cases, it's always gonna be settled in conference in front of the judge. So even if you want five million bucks and they offer three, at that settlement conference, you're gonna start to reveal some of the good shit you have. And that settlement judge is gonna say, "Holy Toledo," and bring them in and say, "Hey you guys, you could be toast." You know what I mean? So saving it even though the case settles, doesn't mean you save it.

And then sometimes you can tell the other side, "Hey listen, I want you to look at page 34 of the depo." This is now when they're pretty serious about settling it. "Look at page 34 of the depo. Do you think that's gonna be a problem for you? Let's see if we can resolve this."

Girardi discussed the importance of starting your cross strong. He explained that you want the witness to start to wiggle a bit. Not only does it get the witness on the defensive after a good direct examination, but the jury sees this change in confidence. “So if you have a pretty good punch right at the beginning, we fire that, and it’s not the entire case but it’s just a pretty good punch. And then you go through the cross and then you end up with something pretty good too. Because you want that guy up there uncomfortable, and if the first punch keeps him on edge, you gain a lot. And then hold the final punch till the end.”

I asked Girardi if he agreed with Irving Younger’s commandment (see chapter 2) that you should be subtle on cross and tie everything up in closing. Girardi believes you need to be clear enough that the jury will understand your points. If you save it for closing, it is too late because jurors make up their minds very quickly. He told me of an experiment he conducted, with the agreement of the opposing attorney and the judge, in three of his cases. The jurors were given a short questionnaire after voir dire, after opening statement, and at the close of the case on how they voted.

Eighty-five percent of the jurors voted the same way after opening statement as they did on the final verdict at the end of the trial. Girardi was quick to point out that the experiment is not scientific because you are talking about 36 and not 3600 people, but “that’s a little hint that these guys are making up their minds early.”

Practice Tip

Since the opposing party can gather a lot of ammunition on your expert if he has testified a great deal, one strategy is to get a fresh expert and not use the usual crowd.

For expert witnesses, you have to be prepared. Girardi pointed out that the other side has the ability to get the testimony in every single case that that expert has testified in. And indeed, that could be a ton of great stuff, and it’s going to hurt you in your case. So, you need to not only prepare your expert, but you

also need to be doing the same when you cross-examine the opposing expert, whether it is in a deposition or a trial.

5.3 BACKGROUND OF STOW V. LOS ANGELES DODGERS

Before we look at Girardi’s cross-examination transcripts, let’s familiarize ourselves with the main facts in the case, because doing so will help to put the cross’s argument in context.

On March 31, 2011, Bryan Stow and his friends went to Dodger Stadium for the opening-day game of the 2011 season. He and his friends were San Francisco Giants’ fans and were wearing Giants clothing. As Stow was leaving the game, he was assaulted in the parking lot by Louis Sanchez and Marvin Norwood. The

attack caused massive brain damage that would leave Stow wheelchair-bound and prevent him from ever working or living independently again.

At trial, Girardi had to prove that the Dodgers failed to use reasonable care in protecting their customers. Girardi contended that the Dodgers tried to blame everyone but themselves for Stow's beating. This included blaming the LAPD, the fans in Sanchez and Norwood's section who failed to report the duo's conduct to ballpark security, and, of course, Bryan and his friends.

Amazingly, for all the security for opening day, there was none in Parking Lot 2 after the game where the assault took place. Also, there were no officers in the Loge section where Louis Sanchez was visibly intoxicated, verbally assaulting others, throwing things at Giants fans, and starting fights in clear violation of the Dodgers' own policies and procedures. For example, no security guard or usher was assigned to work in the section where Sanchez and Norwood were sitting throughout the game. Moreover, while two security guards were deployed to Lot 2 after the game, they arrived approximately 20 minutes after the end of the game and after Bryan was attacked. The Dodgers attempted to paint the picture of a drunken Bryan Stow who shared blame for the fate he met on that evening.

Upon arriving at the Dodgers game, Bryan and his friends came across a Dodgers security guard who said, "Look at these fucking idiots," while looking directly at them. This was the Stow groups' first interaction with anyone at Dodger Stadium.

Others continued the heckling. While some fans were engaging in good-natured fun, others were out to harass, intimidate, and make Giants fans feel as uncomfortable as possible. Unfortunately for the Stow group, the Dodger fans they ran into fell into the latter category. Even though they did encounter some rough fans, the Stow group made it through the game without any major incidents. That is because Norwood and Sanchez were on the other side of the stadium.

Marvin Norwood and Louis Sanchez arrived at the game with Dorene Sanchez (Louis's sister and Marvin's fiancée), and Louis's son, Louie. Upon arriving at Dodger Stadium, Marvin and Louis drank beer in the parking lot. This violated Dodger policy prohibiting alcohol consumption in the parking lot and was grounds for ejection from the premises. Marvin and Louis purchased beers shortly after entering the stadium. Soon Louis began heckling Giants fans in their area, Loge 149. The heckling progressed to vulgarity. Louis began yelling, "Fuck the Giants" at the top of his lungs. Louis was directing his statements at the two Giants fans, Griffith McDaniel and Katie Gillespie, seated in his section. The Dodger Fan Code of Conduct explicitly prohibits "foul/abusive language or obscene gestures." Sanchez's actions also violated another code which provides that "our fans experience will not be disrupted by unruly actions or behavior."

Louis and Marvin consumed approximately six to ten 16-ounce beers during the game. One fan seated in section Loge 149 stated that Louis “was so drunk, he couldn’t even walk...he was like wobbly.” The Dodger Fan Code of Conduct provides “fans will consume alcoholic beverages in a responsible manner. Intervention with impaired, intoxicated, or underage guests will be handled in a prompt and safe manner. Those appearing intoxicated will be denied entry or will be subject to ejection from the stadium.”

Soon thereafter, Louis began throwing food at the same Giants fans. He even hollered “You’re next” to Griffith McDaniel after a fight broke out in the Loge area. Because there was no security to report his behavior to, Grif McDaniel and Katie Gillespie hoped it would defuse on its own. Because Louis did not have his own sunflower seeds, he began taking them out of another fan’s purse without her permission. Again, when throwing food was not causing enough of a ruckus, Louis switched to even more outrageous behavior.

Louis then decided to throw a soda at the two Giants fans he had been harassing all day, Katie Gillespie and Grif McDaniel. Louis took a soda, shook it, and released the cap causing liquid to squirt all over the two Giants fans. In shock, Katie and Grif stood up immediately. Then, Louis stood as if to provoke a fight. Grif, Katie’s boyfriend, stood there staring at Louis; the two men were engaged in a standoff, and a crowd gathered. Then, Marvin intervened, pulling Louis back. Security never responded to the altercation. Throughout the entire game, Katie and Grif looked for security or an usher that they could report Louis’s behavior to, but they never saw any Dodger personnel. Following the altercation, the Sanchez group then went toward the exit of the stadium; Katie and Grif went the other direction.

Upon reaching the parking lot, Louis and Marvin decided to smoke marijuana, a violation of Dodger policy, as well as a violation of the law at that time. But, again security did not respond to their behavior.

Prior to encountering Bryan Stow and his friends in Lot 2, Louis and Marvin encountered a group of young Giants fans as they were leaving the stadium. Louis ran toward the teenagers, began punching them, and said, “Fuck the Giants.” The young men were stunned by the behavior. The young men just kept walking away, and Louis and Marvin retreated. Louis and Marvin began yelling slurs and profanity at the other Giants fans that would walk by their vehicle. They were saying, “Fuck the Giants,” “Giants Suck,” and other profanity.

Following the game, Bryan and his friends arrived at Lot 2. Since they had arrived by taxi, they planned to leave the same way. Due to the length of the cab line and the heavy traffic, the Stow group decided to try to catch a cab that was about to enter the stadium, rather than one already stuck in stadium traffic. It was during this process that Bryan encountered Louis and Marvin.

Louis and Marvin were in the parking lot getting high. When Bryan walked by Louis and Marvin, Louis began yelling “Fuck the Giants,” “Fucking faggots,” and started harassing him. In response to Louis’s harassment, Bryan said something to the effect of “It’s not that serious. It’s not like a heart attack. You know what a heart attack is?” Bryan and his friends continued to walk away. Upon hearing Bryan’s statement, Dorene Sanchez told Louis that Bryan was “talking shit.” In response, Louis took off looking for Bryan. Marvin followed after Louis.

Louis yelled, “What the fuck did you say, homey?” Then he pushed Bryan, causing Bryan to fall into his friends’ arms. Bryan and his friends continued walking through the parking lot away from Louis and Marvin. A few minutes passed. Then Bryan was punched from behind by Louis, and Bryan fell to the ground unconscious. Then Sanchez and Norwood began kicking Bryan in the head repeatedly. Corey, Bryan’s friend, ran over to Bryan, threw his body on top of Bryan’s, and yelled, “You’ve already knocked him out. Leave him alone!” Then, Louis and Marvin ran off.

Louis and Marvin ran back to Dorene Sanchez’s vehicle yelling “Drive, drive, drive,” and “Get in the fucking car, drive.” The group then drove off. As Louis and Marvin fled, Bryan lay unconscious in Lot 2 waiting for help. Approximately eight minutes after Bryan was knocked unconscious, an ambulance still had not arrived at the scene.

Bryan suffered a traumatic brain injury and now has heterotopic ossification (a common but very painful complication where bone grows in abnormal places such as soft tissue), as well as severe cognitive defects. Bryan requires 24-hour attendant care. He cannot walk more than a few feet even when aided by a walker. He has difficulty engaging in everyday activities and requires assistance in most basic activities, such as bathing.

At trial, Girardi presented evidence that there were previous incidents of fan violence at Dodger Stadium. For example, on September 19, 2003, during a Giants-Dodgers game, there was a shooting in the parking lot at Dodger Stadium that resulted in a fatality. On July 17, 2005, during another Giants game at Dodger Stadium, there was a brutal assault on Maria Helenius that left her with three facial fractures and the permanent loss of sight in one eye. It was also known that there was a higher incidence of violence when the Dodgers were playing the Giants, especially on opening day. In addition, in 2009, uniformed LAPD officers were no longer allowed inside the stadium.

One of the Dodgers’ primary defenses was that they had plenty of security on opening day. The Dodgers claimed that 223 Dodger personnel were on duty, with 67 of them in the 27 parking lots. There were also FBI agents and 195 LAPD officers on duty during the game.

At trial, Girardi pointed out that the FBI was deployed to prevent terrorism, and of the 195 LAPD officers, more than half were patrolling areas outside of Dodger property, such as the exterior streets and Elysian Park. In fact, only the Parking Lot Group, which was comprised of 54 officers, was dedicated solely to monitoring the parking lots at Dodger Stadium. Based on these figures, there was approximately one LAPD or security guard for every 455 fans. Each of the 121 LAPD/ LAD security personnel was responsible for several acres of parking lot, as the Dodger Stadium property is comprised of 330 acres.

In particular, the two Los Angeles Dodgers employees assigned to patrol Lot 2 following the game, Bryan Hill and Bryan Hines, made it to their designated post well after the beating of Bryan Stow and at least 20 minutes after the game had ended. According to the eyewitnesses who were present at the scene of the incident, there was no security in sight when Sanchez and Norwood were stalking Bryan Stow and his friends through the parking lots. There also was no security in sight when Stow was attacked and repeatedly kicked in the head, and no security was present when Sanchez and Norwood fled the scene.

5.4 CROSS-EXAMINATION OF DEFENDANT’S EXPERT

As you will see, what stands out most about Girardi’s cross is how efficient it is. Most attorneys get bogged down in the details with an expert and consequently spend way too much time examining them. Girardi’s cross-examination only fills up 25 transcript pages. It is difficult to translate that into minutes, but by any standard, it is a very quick cross-examination.

Girardi conducts an efficient and very effective cross-examination because he focuses only on the most important points that he wants to make. As discussed in chapter 3, less is more. Let’s look at the topics he addresses and then examine some excerpts.

The topics Girardi wants to discuss (and the points he wants to make) really fall under these three categories: 1) the law the Dodgers had to follow to protect their fans, 2) the expert’s lack of qualifications, and 3) an expert’s opinion that defies common sense. Applying the acronym of CROSS that we learned about in chapter 2, let’s see which topics Girardi will use in his cross-examination. Repeat this exercise as you read the transcripts in this chapter and the remainder of the book. If you do, you will quickly master the skills and be able to identify successful areas to cross-examine in every case.

The first topic Girardi wants to discuss corresponds to the second “S” of CROSS: *support your case*. Girardi will use this expert to admit to the jury the standard of care the Dodgers had to provide to its fans at the game. Girardi knows he will get the answer he wants to this question because if he doesn’t, he can show the expert what the law is. This is an important topic for Girardi

to discuss because the law helps the plaintiff. The law requires the Dodgers to protect its fans, and it is a responsibility that it cannot delegate to other police or security forces.

The second topic he wants to discuss at cross is the “O” of CROSS: *outrageous statement*. It is the hardest topic for attorneys to succeed on, because the lawyer’s questions must be so well-crafted that as soon as the jurors hear them, they will answer them the way Girardi wants them to, in spite of the opposite answers that the expert gives.

The third topic is the “C” of CROSS: *credibility*. As with any expert, you want to poke holes in his claimed expertise by establishing his lack of experience, education, or some other failing. Girardi knows that the expert will have to admit certain facts that undercut his expertise.

Finally, you will see that Girardi uses the themes on his cross that he will weave into his closing argument. Those themes are related to his bottom line message that framed his entire case that we analyzed in chapter 1. Girardi wanted the jury to hear throughout the trial that the McCourt Dodgers would shift the blame for the lack of protection of its fans to other police agencies even though the law required them to be solely responsible for fan safety. Girardi called such a tactic the “ABMD” defense: the Dodgers would try and shift responsibility to “Anyone But the McCourt Dodgers.” This bottom line message also reminded the jury that the plaintiff was not suing the current owners of the Dodgers, who were very popular, but instead the former owner (Mccourt), who was not.

Start Strong

William Squire was the defendant’s expert who was called to testify that the Dodgers provided a safe environment for their fans at the game. Girardi does not waste any time getting to the bottom line message of his case, which, as we learned in chapter 1, is Anyone But the McCourt Dodgers (ABMD). He forms his first question from the words that will be used to instruct the jury on a landowner’s responsibility.

Practice Tip

Always start your cross-examination on a strong point that you know will win. It is the most important point in a cross. The jury wants to immediately know if it should accept or reject the witness’s testimony on direct examination.

Q1. *You understand, don’t you, that it’s the obligation of the owner of the property to make sure the place is safe for the people?* [**He knows the witness has to answer yes because the question is based on what the law is.**]

A. Yes.

Q2. *Absolutely, positively, without a doubt, right? [If your point is important, find a way to repeat the question so the jury will be certain not to miss it. Asking a witness how certain he is of his answer is one way to do it.]*

A. Yes.

Q3. *Now, then, you gave the opinion that even if Hines and Hill [Dodger security personnel] were in Lot 2, that all the assaults would have happened, right?*

A. Yes.

Q4. *So the Dodger policy was to have Hines and Hill there, and they weren't there. And you are of the opinion that it would have happened anyway?*

A. Well, yes.

Q5. *So your whole idea here is that the Dodgers' policy, where they had two people assigned to Lot 2, would not have prevented the five assaults that took place in Lot 2 from the time the game ended up until the time Bryan Stow got massacred?*

A. That's my opinion.

Mr. Fox: **It's argumentative, the end of it.**

Court: **Objection overruled.**

Q6. *So there can be assaults going on for about 25 minutes, I guess, in Lot 2, five of them, and no security there, and it doesn't matter as far as you're concerned, that the Dodgers were doing the right thing, right? [said sarcastically]*

Mr. Fox: Asked and answered.

Court: Overruled.

Witness: Well, I believe there was security out there.

The expert is forced to take a difficult position at trial based on the facts. He asserts that the Dodgers were correct when they *scheduled* two security personnel for Lot 2 but were not negligent when the two security personnel *failed to show up* for their scheduled duty. Such an opinion defies common sense, but it is really the only position the expert can take. It is Girardi's task to phrase his questions in such a way that the expert's inconsistent positions are highlighted for the jury. This culminates in Q6, where Girardi sarcastically asks how the expert can suggest the Dodgers were doing the right thing if five assaults occurred in Lot 2. The defense attorney tries to protect his witness from the answer the question calls for, and when he fails, the witness dodges the question and explains that there was other security out there.

One important technique to remember on cross is to listen carefully to make sure the witness answers your question. Unlike most lawyers, Girardi's head is not buried in notes that he is carrying; instead, he is focused intently on the witness. When the witness does not answer his last question, he breaks the question down (shown below) into a few simple questions to effectively ask it again. Girardi knows that the witness will not confess that the Dodgers were negligent,

but he benefits by letting the jury hear the witness's answers again, thus letting it can decide whether the answers are outrageous or not.

Q7. *No. Just a minute. The obligation for security is the Dodgers', right?*

A. Yes.

Q8. *And they had two people assigned to that?*

A. Yes.

Q9. *And they weren't there?*

A. Correct.

Q10. *And there were five assaults?*

A. I don't know if there were five, but correct.

Q11. *So, it's your position that the Dodgers were doing the proper thing to take care of the fans in Lot 2?*

A. Is this a yes or no answer?

Q12. *Yes.*

A. Yes.

This exchange perfectly demonstrate the technique of how to ask the ultimate question, which Girardi discusses at the beginning of this chapter. Q11 is what the entire battle at trial is about. So, Girardi needs to set it up in a way where the jury will disagree with the witness's answer. To use Girardi's boxing analogy, he asks several questions where the witness must answer yes. These are the left jabs. After the left jabs set the witness up, he comes in with the right punch, which is Q11. It does not matter that the witness does not admit that the Dodgers were negligent—and Girardi does not expect him to—it only matters whether the jury believes this answer after having heard the witness's previous answers.

Using the CROSS acronym, which topic for cross-examination does this fall under? It's the second "S" of CROSS, since Girardi is using this section to *support* his case. He wants to get as many admissions as possible from the expert that are consistent with what his own expert will say. In addition, through the witness's answer to Q11, he gets the *outrageous statement*, the "O" of CROSS.

Witness's Expertise

Girardi then switches to the witness's expertise. He asks how many times George Steinbrenner, then-owner of the New York Yankees, fired him, and then he quickly uses that answer to undermine the witness's claimed expertise regarding his opinion that the Dodgers acted appropriately.

Q. *Did you get fired by Steinbrenner five times?*

A. Four.

Q. *Four times.*

A. Yeah. Yes.

Q. *So I guess, as I understand it, we wouldn't have to have any security in any of those lots to prevent assaults on people after the game, right?*

A. Is this still a yes or no answer?

Q. Yes.

A. Yes.

Q. *That's your opinion?*

A. Yes.

Q. *So, that would discharge an owner's responsibility, in your view, to keep the area safe when the Dodgers don't have any security people in that whole parking lot, right?*

A. Still a yes or no answer?

Q. Yes.

A. Yes

Q. *Gee. The Dodgers were wasting a heck of a lot of money by hiring the few guys they had?*

MR. FOX: Argumentative, Your Honor.

COURT: Sustained.

MR. GIRARDI: I'll withdraw it.

Whether a question is argumentative or not depends on its context and the judge. Not every judge would have sustained—that is, upheld—this objection, and you will see that a different judge overruled similar objections in the trial discussed in chapter 6. If you lose the objection, simply move on as Girardi does next or you can rephrase the question that cures the problem. In the above example, it would be hard to rephrase the question. Girardi knows he has made his point, the jury has heard it despite the objection, and he wisely moves on.

Applying the CROSS acronym, Girardi first attacks the witness's credibility, the "C" of CROSS, and then gets an outrageous statement, the "O" of CROSS. For each section below, continue this exercise of deciding what topic of CROSS the section falls under and you will soon develop the skills to organize your questions for the desired effect based on the acronym.

Expert's Opinion

Q. *We know they scheduled it, and the reason they scheduled it is because they knew they better have somebody in Lot 2, right?*

A. That was the best practice to have people in the parking lots at the game, yes.

Q. *And you know that, although it's the best practice to have people in the parking lot, security in the parking lot after the game, you knew that the Lot 2 people didn't get there for 25 or 35 minutes? [Girardi frames the question perfectly. If the jury silently*

believes that security should have arrived sooner than 25 minutes after the game, Girardi wins no matter what the witness answers.]

MR. FOX: It's been asked and answered. Cumulative.

COURT: Overruled.

Q. *Right?*

A. Not correct, no.

Q. *How long did it take them to get there?*

A. Well, it took them 25 minutes to get to the scene and didn't take them 25 minutes to get to Lot 2.

Here, the expert does his best to defend the Dodgers, but the distinction he makes—that security got to Lot 2 sooner than the scene of Stow's assault in Lot 2—does not matter, as Girardi will quickly point out to the jury.

Q. *Well, this thing happened in Lot 2?*

A. It did, in the back of Lot 2, yes.

Q. *Matter of fact, they were told by other fans, as they were coming, that there was a terrible assault that took place, and they went **directly** to that assault, didn't they?*

A. That's correct.

Q. *And it took them 25 minutes from after the game to get there?*

A. I think about 25, yeah.

Girardi has now forced the expert to implicitly admit that there really is no difference between arriving at Lot 2 and at the scene of Stow's assault, since the security personnel went directly to the Stow assault when they arrived at Lot 2. The expert has to admit that it took 25 minutes to get to Lot 2 because that is what the facts showed.

Q. *And it's your opinion that an owner who has the responsibility to keep the place safe for the fans **didn't have to have somebody on point [in the parking lots] when those 55,000 people were coming out of those doors?***

A. Well, the 55,070 people that was paid attendance that night or were in the building. Those officers had a **responsibility until the game was over** to make sure they were safe inside the building.

MR. GIRARDI: We will make a motion to strike.

COURT: It's nonresponsive. Objection sustained.

Q. *Sir, the owner of the property has the only responsibility for the safety of the fans, true or false?*

A. I think I've answered that. Yes.

Practice Tip

You have two options when a witness does not answer the question. Repeat it until he does or object that the answer is non-responsive and move to strike the answer, and then, if you want, ask the court to instruct the witness to answer.

Q. *Would it surprise you that other teams, when it gets to the end of the game, that people will be deployed two innings ahead, two and a half innings ahead so they could be in the parking lot to make sure the fans are properly taken care of?*

A. Would I be surprised by that?

Q. Yes.

A. No.

Q. *Matter of fact, do you know of any stadium in trying to protect the people that are going into the parking lot and has the obligation to protect the people that would not have the security people deployed before the end of the game?*

A. I can't answer that. I'm sure that there are. I'm sure that there's some that don't.

Q. *You don't know of any. You can't give us any, right?*

A. Yes.

In the second-to-last answer, the witness tries to help the Dodgers as best he can given the facts of what other stadiums do. Unfortunately, there is nothing he can do because he cannot name another team that does not deploy its security to protect its fans outside the stadium.

Q. *Now, the Dodgers staff was in total disarray with respect to important security decisions, weren't they? [Girardi turns to a new theme: total disarray.]*

MR. FOX: It's vague, your honor. It's argumentative.

COURT: Do you understand the question?

WITNESS: I certainly don't, no. **[It does not matter that the witness does not agree that the staff was in total disarray or that he states that he does not understand the question. Girardi has alerted the jury to the theme he is going to pursue.]**

COURT: Alright. Rephrase.

Q. *You read, I think, the testimony of Shahram Ariane, right?*

A. Yes.

Q. *As a matter of fact, one of the reasons he quit, as he testified to here, is because they were getting rid of uniformed police officers. Do you know that?*

MR. FOX: Misstates his testimony, your honor.

COURT: Well, he's asking for his knowledge. Objection overruled.

WITNESS: I believe that was one of the reasons, yes.

Q. *Ray Maytorena, you read his testimony, did you not?*

A. Yes.

Q. *Did you read his testimony that Francine Hughes wouldn't know security if her life depended on it, and he was going to quit because she was incompetent?*

MR. FOX: Objection, your honor. Misstates evidence.

COURT: Well, it's asking again, I have no way of knowing that, but if you—

WITNESS: I read that he was not happy having to report to Francine. I remember that, yes. **[The witness minimizes the damaging fact and suggests that Maytorena was simply not happy.]**

Q. Well, you recall that he didn't like Francine because she didn't know anything about security?

MR. FOX: It's argumentative, your honor.

COURT: Objection overruled.

WITNESS: I think he didn't want to report to a woman, to be honest with you.

Q. *Did he say that?* [**This question gives the witness the chance to either say yes or no. It does not matter what the witness says because whatever the answer is, Girardi can show the witness the deposition that proves Maytorena never made the statement the witness claims.**]

A. No. I don't believe he did, but I—

Q. *But the truth of the matter, she did have zero security training, right?*

A. As I did when I took over, yeah. [**The witness does not answer the question. Girardi listens and sarcastically responds with the question below.**]

Q. OK. *Fine. She had zero security training?*

A. Well, she—training, yes. But she had some experience with security in a real estate environment in her life. Yep.

Q. *And Ray Maytorena indicated that he was going to quit because he could not stand to operate under somebody who had no security experience, right?*

A. That's what he said, but I think he was going to be let go before he decided to quit.

The witness finally answers the original question in response to the last question, but he still feels compelled to add an opinion that Maytorena was going to be fired. Girardi has achieved two goals by carefully listening to the answers and being persistent. Whenever he notices that the witness does not answer a question, Girardi then repeats the question, and each time the witness does not answer a simple question from Girardi, the jury sees Girardi as being more credible and the witness as being biased.

Expert's Qualifications Continued

Q. *You do not claim to be an expert in stadium management, do you?*

A. I certainly do.

Q. *What courses have you taken in stadium management?*

A. What courses have I taken?

Q. *Yeah.*

A. I actually teach a course there. [**The witness does not answer the question. Girardi will repeat it next.**]

Q. *No. Which ones have you taken?*

A. Mr. Steinbrenner's theory on running a stadium for three years. I got my master's and PhD., I think, there. Working at—being recruited to work at Giants stadium, being recruited to work at Walt Disney World, being recruited to work at Cleveland Browns stadium, being recruited to work at Giants stadium, hired on by other stadiums to

consult. Whether I passed any actual courses, no, but I think I've got the experience to consider myself an expert in stadium management, yes. [**The witness has not answered the simple question. Girardi could have asked it again, but sometimes moving on is fine, especially if the witness's answer is so clearly self-serving and you think there are bigger battles to fight.**]

Practice Tip

Make sure your expert is better qualified than your opponent's expert. If he is, then it is very effective to highlight the differences for the jury.

Q. *Have you ever written a book like Gil Fried, "Managing Sports Facilities"?* [**Gil Fried is the plaintiff's expert.**]

A. No, I do that work. I don't write.

Q. *Once again, sir, have you ever written any book like Gil Fried, "Managing Sports Facilities"?* [**Using the phrase "once again" to**

begin a question that the witness has previously dodged is a great way to signal to the jury that the witness has not answered a simple question.]

A. Not written a book, but I actually did the intro to chapter 3 of his book, yes.

Q. *That wasn't really your intro?*

A. I wrote that.

Q. *No. That was somebody else?*

A. No. I wrote that, sir. Well written, too, I thought.

Q. *Yeah. We'll see. Do you have an opinion that a uniformed police presence is a larger deterrent than a guy with a t-shirt?*

A. Not necessarily, no.

In the last question, Girardi pivots to another topic: the fact that the Dodgers replaced many uniformed officers with employees wearing security t-shirts. Girardi is confident that the jury will use its common sense to answer the last question differently than the witness did. If common sense tells the jury that uniformed police officers provide more deterrence than personnel wearing t-shirts provide, Girardi wins the battle.

The last question's effectiveness is increased dramatically because Girardi asks it after a series of simple questions about the expert's qualifications are not answered as directly as they should have been. The witness appears defensive. At that moment, Girardi asks the last question, for which common sense dictates only one answer.

Girardi then questions the witness about the failure of Dodger security to observe the altercations in section 149 where Sanchez was sitting. This next excerpt provides a good view of the tug of war between an attorney and a witness. Notice Girardi's response when the witness does not directly answer the question. Also, see if you would make the same objections as defense counsel does, or if the objections sometimes highlight a damaging answer that follows the overruled objection.

Dodger Security Fails to See Fights in Stands

Q. *Then you recall the testimony, do you not, that through this whole two and a half hours, this guy Sanchez was jumping up and down in a drunken stupor yelling, "F the Giants," right?*

MR. FOX: Misstates the evidence, jumping up and down. **[The objection to correct the fact that the witness was standing instead of jumping up and down when he yelled, "F the Giants," is not worth the damage done when Girardi gets to repeat the question a second time for the jury.]**

COURT: The question of whether or not this gentleman remembers it that way, the question—

WITNESS: No.

Q. *BY MR. GIRARDI: You didn't read anything that this person was standing and yelling, "F the giants"?*

A. Not for two and a half hours, no. OK.

Q. *How many hours was he doing it?* **[This is a non-leading question, which is usually not a good to ask on cross unless you can force the witness to answer differently if he gives you a bad answer or if any answer he gives cannot hurt you. The former exception applies here. Girardi knows that the testimony of other witnesses reveals that the bad behavior did not just quickly appear and vanish but persisted for a long time.]**

A. I don't know. I think Ms. Burge—it was about the sixth inning where he started getting louder. So that wouldn't be two and a half hours.

Q. *All right. Then you know about the fact that he threw the coke at the two young people, right?*

A. I understand he shook the coke, and he sprayed her. I don't recall throwing the coke. That's semantics. **[Since it really doesn't make a difference, the witness should have just directly answered the question.]**

Q. *And then you recall he gets out of his seat and he goes walking over to the two young people where he's going to cuss the guy off. You saw that?*

A. Yes, I read that. I didn't see it.

Q. *And he was pulled away?*

A. Yes.

Q. *Now, all this was going on under the careful watch of the security people and ushers at Dodger stadium, right?* **[Girardi sarcastically points out how all of this could have happened if security was in place to protect the fans.]**

A. Well, once again, as I stated earlier, when everybody is standing up, it's a pretty tough thing to see. It was the end of the game, correct?

Q. *It's OK to assault people at the end of the game if you have the responsibility to keep things safe?* **[Girardi pounces on the excuse that the witness gives. Always carefully listen to an answer. If the witness gives you a disingenuous answer, use it as part of your next question as Girardi did here.]**

A. I didn't say—I'm just saying it's more difficult to see everything when everybody is standing up and leaving. [**The witness makes a good point but look at Girardi's response.**]

Q. *Especially if you're [security] in 161 and these people are in 149, right?*

A. Well, especially when people are leaving the aisles and walking on the concourses, yeah.

Q. *You saw the video of the fight. You said that, right?*

A. Yes.

Q. *And it took place for quite some time, didn't it?*

A. Define "quite some time."

Q. *OK. It wasn't one guy pushing another guy, like this was it?*

A. No.

Q. *It went—we saw it. They were going hammer and toe to each other, right?*

A. Yeah. Well, from what I saw, yes.

Q. *Was it a little surprising to hear in Dodger stadium where the owner has the responsibility to secure safety for the fans that you had something like this and not one safety person would come up? [**Girardi reminds the jury in this question that the Dodgers had the legal responsibility to keep fans safe.**]*

A. I don't know what they were doing at the time. It could have been, you know, handling some issues on the concourse, giving directions. I don't know, but it was surprising it was not addressed, yes.

Q. *So your opinion that if we had somebody in the stands who was behaving the way Sanchez was behaving that that would not be a basis to throw him out?*

A. If it was observed or reported, yes.

Q. *Well, there's an obligation to observe in these ushers and security people. They're not there to watch the game. They're there to observe stuff like this, aren't they?*

A. Whose to say they weren't observing the section.

Q. *I beg your pardon? [**Girardi has the power of facts and common sense on his side. If Sanchez was acting badly since at least the sixth inning as the witness admits, then someone in security should have seen it.**]*

A. Who's to say they were not observing the seating section.

Q. *Well, if they were observing, don't you think they should have done something about it?*

A. Had they seen something, yes.

Q. *And then the mere fact that the outrageous behavior took place at the end of the game, isn't it just as important that we protect the fans at the end of the game than in the eighth inning of the game?*

A. Protect the fans at all times.

Q. *At all times. And that's why we have the two people in security in Lot 2?*

A. They were scheduled to be in Lot 2, yes. That's where they had them scheduled, yep.

Q. *Just so we're clear, absolutely, positively, without a doubt for the Dodgers to have nobody in Lot 2 at the end of the game, did not violate any policy, and they still were meeting their standard to take care of the fans leaving the game, right?*

MR. FOX: Asked and answered. And argumentative.

COURT: Overruled.

WITNESS: I believe they would have been negligent had they not scheduled somebody to be in Lot 2.

Q. *I take it, though, scheduling somebody in Lot 2 doesn't mean a darn thing to a fan if when he gets to Lot 2 and there ain't nobody there?*

MR. Fox: Speculation.

COURT: Overruled.

WITNESS: As I mentioned yesterday, had they been in Lot 2, it's not guaranteed that they would have seen the incident.

Q. *Well, for the 25 minutes the two guys are in Lot 2, they're not guaranteed they would see the incident, right? [said sarcastically]*

A. That's correct.

Q. *So it wasn't guaranteed they would see the incident. Do you think maybe we needed some more people in Lot 2 to make sure we took care of the fans?*

A. I think that's — LAPD was in Lot 2. Should have been out there.

Q. *The Dodgers have the responsibility, not LAPD. Did the Dodgers, therefore, need more people to be able to pick up this five-person assault?*

A. Once again, I think the Dodgers met with the LAPD. They saw the event action plan, and they thought there would be LAPD out there.

Q. *There's no evidence of any LAPD person being in Lot 2, is there?*

A. There's no evidence they weren't either.

Q. *No. No. There's no evidence they were, yes or no. [Again, Girardi listens carefully to the answer and repeats his question when necessary.]*

A. No.

Practice Tip

When the witness gives an answer that is inconsistent with common sense, Girardi will repeat the answer sarcastically to highlight it for the jury.

Girardi then concluded his cross by pointing out that although there was a police watchtower in Lot 2, it was unoccupied.

Redirect

Let's fast-forward to the end of the redirect examination conducted by defense counsel (redirect occurs after cross-examination and gives the opposing lawyer the opportunity to clear up any points he wants to that were made on cross).

Q. *Have any of the questions asked you by Mr. Girardi changed your opinion that the Dodgers acted within industry standards in terms of the operation of their stadium on March 31, 2011?*

A. No.

Q. *One other area. We talked about the Dodgers doing the right thing and whether they— Mr. Girardi asked if they acted perfectly. You said, “I don’t think they acted perfectly,” right?*

A. Yes.

Q. *But here’s the question: on March 31, 2011, did the Dodgers organization act reasonably?*

A. Yes.

Q. *Nothing further.*

Defense counsel has ended strong. Girardi does not let his good finish last long and immediately attacks on recross (some judges, as this one did, allow attorneys to conduct a recross examination after redirect).

Recross

Q. *So they acted reasonably, even if they violated their own rules of who to put in Lot 2? That’s reasonable, isn’t it? [said sarcastically]*

A. They scheduled somebody for Lot 2. They had done that for games previous to this.

Q. *Right. We’re talking about acting reasonably. They didn’t act reasonably if they didn’t even put the people in Lot 2 that they knew they had to get to Lot 2, right?*

A. I stated they scheduled those two people for Lot 2.

Q. *No. No. I understand they scheduled them. But deployment is just as important as putting it on the list, isn’t it?*

A. Yes.

This last answer is a huge admission. The reason Girardi gets it is because common sense requires it. It would make no sense if the the witness said that the Dodgers were required to schedule security for Lot 2 but then not be required to deploy security there.

Use Your Theme from Cross-Examination in Your Closing Argument

Girardi knows how important it is to tie the themes you make in cross to the points you are going to make in closing argument. Here is an excerpt from his closing argument that was built in part on the cross-examination of this witness.

Hines testified under oath that the only way to provide proper security was to have more security in Lot 2. That was the guy that couldn’t get there because they had him over in the stands someplace, and he was trying to get back. . . .

Security is not just numbers. It's having the people doing the right job [a powerful theme]. That's important, too. It doesn't matter if there were a hundred security people if they are all sitting in one corner. You have to have the security people in the right places. . . .

Our best expert, I think, was their guy Squires. Squires said that it met protocol to assign these two people to Lot 2, but apparently you didn't actually have to have the people there [said with sarcasm]. You just had to assign them there, and then that's all you had to do, and then we've done what we should do.

You see, assigning people to Lot 2 doesn't do anybody in Lot 2 too much protection unless you actually go to Lot 2.

I want to talk about the uniformed police issue. As you know, there was an issue about uniformed police officers being there on security.

And there was a cost item. So I think they're five-hour shifts. And if you have a T-shirt on, you only get 30 bucks [per hour]. If you have the full uniform on, you get 50 bucks [per hour]. There's a 20-buck difference. That would be a hundred bucks per police officer.

So if you had a hundred police officers as opposed to polo shirts but in uniform, that would be a substantial amount of money. That would cost about \$10,000 per game. If you had 80 games, that would be about \$800,000.

Well, the total budget they had was 2 million. . . . So this would bring up the budget to almost 3 million bucks.

And the evidence was pretty clear, especially when you have gang problems, just maybe the appearance of the man in blue would stop some of the nonsense.

Do you think Sanchez would have been yelling those obscenities for five innings if, in fact, a few rows up was a person in blue watching it?

Do you think he would have been thrown out of the game immediately when he was doing those sorts of things, throwing beer, charging for a fight, et cetera?

5.5 CROSS-EXAMINATION OF THE HEAD OF OPERATIONS OF DODGER STADIUM

Francine Hughes was in charge of operations at Dodger Stadium.

Unlike Irving Younger's commandment to be subtle on cross, Girardi gets right the to the point. He wants to show the jury who was in charge and what was done.

Q. Ms. Hughes, you were in charge of security on the opening day of March 2011; is that correct?

A. I was responsible for the oversight of security, yes.

and Bonnie Stow, Bryan's sister, said, "I envy those people who can forgive others who commit crimes against their loved ones. I'm not one of those people."

As Judge George Lomeli delivered the sentence, Sanchez chuckled, which drew further ire from the judge. "Rarely, do I comment, but this is the kind of case that demands it. Even now, with your smirks, you show no remorse. Not only did you blindside Mr. Stow, you continued to hit him on the head and kick him in the head. You're complete cowards."

5.7 CHAPTER CHECKLIST

Girardi's Cross-Examination Strategies

1. The trick to successful cross-examination is to be "limited and pinpoint," because as soon as you get too far afield, you let that witness argue for the other side.
2. Don't dilute your good points by conducting a three-hour cross-examination when it could be a lot shorter. Keep the jury's attention.
3. Lawyers forget that they are in the persuasion business and that the skills they use to persuade outside the courtroom should be used inside it as well.
4. "How do you get somebody to say, 'I'll marry you?' Is it with a 20-paragraph thing and then she says, 'I'll marry you,' or is it 'I love you' and she comes back and says that?"
5. Girardi does not use a bunch of notes in the courtroom that will put the jury to sleep. "The last thing you want to do is walk up there with your notes and read them. On the other hand, you don't want to forget certain issues. So I'll have a little piece of paper and I'll have ten words on it just to make sure I cover each of those ten subjects. And that's all you need and then you never read it. As you're finishing one thing, you kind of glance down and remember what the third thing is and then you talk about that. So it never looks like you're reading anything."
6. A good cross is like a boxing match: Three left jabs set up the right-hand knock-out punch. That is much better than trying to make every question a knock-out punch and being argumentative and high pitched. That will turn off the jury.
7. Resist the temptation to call the witness a liar. "Here's the thing that you gotta remember. I don't wanna call this witness an ass, a liar, a cheat, or a thief. I wanna lay it out, and I want the jury to go into the jury room and say, 'That guy was a liar.' You want them to say it, not you to say it."
8. When the witness is likeable, "you better not be laying into that guy, baby, because that jury loves him. And if you start being an asshole in front of

- him, you've lost everything. In such a situation, limit yourself to your best points and be content.”
9. When asking the ultimate question, set it up by getting the witness to answer yes to your preceding three or four questions. Then, when you ask the ultimate question, it won't matter that the witness denies your proposition, because his answer won't be believed.
 10. Don't rely on others to help you prepare for cross-examination, “It's all you, baby.”
 11. When cross-examining at a deposition, do not use your knockout punch. Save it for trial. Even if the case settles, you can use the knockout punch at the settlement conference for great effect. If you use the knockout punch at the deposition, the other side will be able to fix the damage by the time of trial.
 12. Start strong to get the witness defensive after a good direct examination so that the jury will see the change in confidence.
 13. Don't be subtle on cross and save the points you want to make for closing. You need to be clear so the jury can follow you and because jurors do not wait until closing arguments to decide the case.
 14. Use themes from your cross-examination that are the same or relate to your bottom line message for the trial. Tie everything together so it is clear to the jury exactly what you are trying to prove on cross-examination so that you can remind them in closing of the points you made on cross.
 15. For expert witnesses, you have to be doubly prepared because the other side is certainly prepared for yours.

Lessons from transcripts

1. Girardi's cross-examinations are very clear and efficient. His cross of the defendant's expert took only 25 transcript pages.
2. With both witnesses, he started with very strong points he knew he would win.
3. Girardi's themes were clear. With Squires, his questions fell into three simple categories: 1) the law the Dodgers had to follow to protect their fans, 2) the expert's lack of qualifications, and 3) an expert's opinion that defies common sense.
4. If your point is important, find a way to repeat the question so that the jury will be certain not to miss it. Asking a witness how certain he is of his answer is one way to do it.
5. For an expert, attack his lack of training and publications if they are considerably worse than your expert's.
6. When the witness does not answer a question, Girardi uses a variety of tactics. One is that he sternly responds with “no” and then repeats his ques-

tion. For example, he asked the expert, “What security courses have you taken?” When the witness answered, “I actually teach a course,” Girardi responded, “No. Which ones have you taken?”

7. A second technique Girardi uses when a witness does not answer a question is to follow the evasive answer with a question that begins, “Once again, sir, [repeat question].”
8. A third technique is to use a disingenuous answer as part of your next question. Here is an example. Q. Now, all this [fights in the stands] was going on under the careful watch of the security people and ushers at Dodger stadium, right? A. Well, once again, as I stated earlier, when everybody is standing up, it’s a pretty tough thing to see. It was the end of the game, correct? Q. It’s OK to assault people at the end of the game if you have the responsibility to keep things safe?
9. Girardi uses his boxing match analogy to set up the ultimate question (right knock-out punch) by first asking three or four questions he knows the witness will answer yes to (left jabs).
10. Tie the admissions you have obtained on cross to the points you are going to make in closing argument. In his closing, Girardi refers to the specific testimony he got from the defendant’s expert witness. “Our best expert, I think, was their guy Squires. Squires said that it met protocol to assign these two people to Lot 2, but apparently you didn’t actually have to have the people there [said with sarcasm]. You just had to assign them there, and then that’s all you had to do, and then we’ve done what we should do.”
11. Connect your themes on cross to your themes in closing. Here, Girardi ties the theme of Francine Hughes, who tried to deflect responsibility on cross, to his theme in closing that the Dodgers tried to blame others instead of taking responsibility for their mistake.
12. Use cross-examination to point out that the witness is unprepared. Girardi points out to the jury that witness Francine Hughes should have investigated the cause of the assault more than she did, if she truly cared about stadium security.