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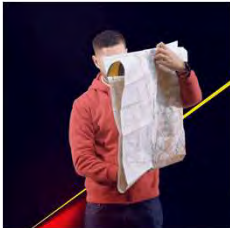
Surviving Cross-Exam

Managing Risks For Testimony At Depositions & Trial
[Abbreviated Version]
Presented by Tony M. Sain, Esq.

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Roadmap (Short Version)

1. The Three Commandments Of Cross Exam
2. Answer Android (Emotional Neutrality)
3. Skipping Shrapnel: Economical Answers
4. Exception: Golden Goals: Storytelling On Cross
5. The Danger Zone: Trick Questions & Solutions
6. Substantive Answers: Direct Exam & On Cross
7. Advanced Storytelling Techniques: Three C's.




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Purpose of Cross Exam

Official Purpose of Cross Examination: Get to the Truth



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Purpose of Cross Exam

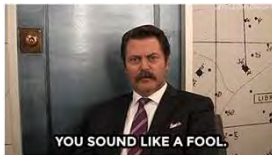
- *Un-Official Purpose of Cross Examination*
- **Turn Witness Into A Liar**



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Purpose of Cross Exam

- *Un-Official Purpose of Cross Examination (Cont'd)*
- **Turn Witness Into A Fool (Incompetent)**




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Purpose of Cross Exam

- *Un-Official Purpose of Cross Examination (Cont'd)*
- **Turn Witness Into The Bad Guy**
 - (For Experts: Turn Witness Against Expert's Client)



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The Stakes:
Impeachment

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Direct Exam v. Cross Exam
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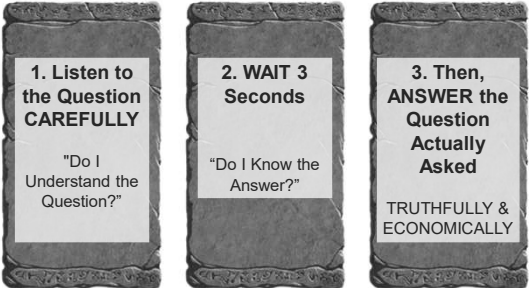
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1. The 3 Commandments for Surviving Cross Exam

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1. Listen to the Question CAREFULLY
"Do I Understand the Question?"

2. WAIT 3 Seconds
"Do I Know the Answer?"

3. Then, ANSWER the Question Actually Asked
TRUTHFULLY & ECONOMICALLY

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1. The 3 Commandments for Surviving Cross Exam
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2. Answer Android: Emotional Neutrality On Cross

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- **Why Care?**
 - ✓ Emotions Affect Quality of Listening
 - ✓ Emotions Affect Quality of Answers
 - Your Answers Are **Everything**
- Android Explosions – Examples:
 - Cody – “Move On!”
 - “Legal Mumbo Jumbo”



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Witness Position

- Neutral Body Position
- Key to Maintaining **Emotional Neutrality**
- Body Language **Tells** (Avoid...)
 - Arm-Crossing & Leg-Crossing
 - Fidgeting – Hands, Arms, Legs, Chair
 - Tilting Back – Disengagement



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Android Patience Tips

- Don't Worry About What's Coming
 - Focus on What's Happening **Now**
- Don't Try to *Speed Things Up*
 - Prepare Self to Be Under Fire All Day
 - Avoid Data-Dumps/Volunteering



Focus on here and now.

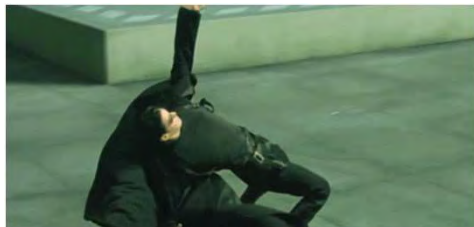
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Android Patience Tips

- Implications?
- Don't Worry How Q&A Make You Look
- Don't Worry About Defending Yourself
 - That's Why You Have **Us**



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3. Skipping Shrapnel: Economical Answers

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Skipping Shrapnel

- Each Word Of Your Answer Is **A Bullet**
 - You're Giving Opposing Counsel That Can Ricochet & Hurt You.
 - Why Give Them More Ammo Against You?



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DEMONSTRATION: Do You Know What Time It Is?



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In Civil Litigation...

WORDS ARE WEAPONS.



Don't Give Opposing Counsel Any More Weapons Than Are Needed.

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General Rules

- **Exception** to the Economical Answers Rule:
 - **Golden Goal Questions**



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Possible Answers to Questions on Cross

Yes	No	I Don't Recall (I.D.R.)
I Don't Know (I.D.K.)	I Don't Understand the Question (I.D.U.Q.)	Substantive Answer • Don't Hesitate to Give Substantive Answer to a Proper Question

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But... AVOID Evasive Answers (Question Types)

WHO	WHAT	WHERE	WHEN
HOW	WHY • (Why Is Always A List Question)		

Match Answer To Question Or Draw Objection (Non-Responsive, Evasive)

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**4. Exception: Golden Goals:
Storytelling On Cross**

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Golden Goals Are Rare, But...

Golden Goal Opportunities Usually Involve Spending a **Few More Word-Bullets To**

<p>Debunk Π's Themes & Theory on Cross</p>	<p>Develop Δ's Themes & Theory on Cross</p>	<p>Educate the Jury-Court On An Important Issue</p>
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4. Golden Goals - Cross Storytelling

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Go For Golden Goals Sparingly

- **Golden Goals = Exception**
 - Economical Answers: Rule/Default
 - Balance: Don't Let the Exception Become Your Rule...
 - But Don't Hesitate to Swing When the Opposing Net Is Open




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4. Golden Goals - Cross Storytelling

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5. The Danger Zone: Trick Questions & Solutions

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- Remember: Questions on Cross Are
 - NOT Designed to Reveal the Truth
 - **Designed to Create a Plaintiff-Favorable "Truth"**
 - Falling Into Traps Creates **ACCIDENTAL UNTRUTHS**
 - Becomes True As Far As Jury Is Concerned
 - Only Works If You Fall Into Trap



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5. The Danger Zone: Trick Q's & Solutions

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DANGERS OF FALLING FOR THE TRICK QUESTIONS...

- Deny True Fact
- Admit False Fact
- Stonewalling
 - (e.g., I.D.K., I.D.R., I.D.U.Q., Too Obvious Q's)



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5. The Danger Zone: Trick Q's & Solutions

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Typical Trick Questions EXPLAINED

Problems... And Solutions



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Presumed Lie Questions

False Premise Demonstration



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Presumed Lie Questions

- Usually Include A False Fact
 - That's Presumed To Be True
- Often, But NOT Always...
 - The False Presumption Is Buried At The Top Of The Question Before A True Fact
 - E.g., After You Shot J.F.K., At Some Point You Came To This Training Today, Right?



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Presumed Lie Questions

Solutions:



Fix and Answer (Correct The Lie, Then Answer The Rest of the Q)
• Strongest, Cleanest Solution



Denial: That's Not What Happened
• Medium Strength, But Can't Fix Till Proper Question



I Don't Understand the Question
• Weakest Option, But Good If You Brain-Freeze

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Compound Questions

- Often Contain False Premises
- Contain Two or More Unrelated Questions
- Yes or No To Whole Question: Answer to Both Parts
 - WARNING: Be Sure You're Listening
- **Solution:** Same as for False Premise



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Vague Questions

- **WORDS:** Wording With Multiple Meanings, Ambiguous Terms
- **CONTEXT:** Vague as to Time, Sequence, Persons
- **DEMONSTRATION:**
 - # Times Shot Someone



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Vague Questions

Solutions

Fix & Answer

(Correct The Vague Part, Then Answer The Rest of the Q)

I.D.U.Q.

... All of It



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Scope Shell Game Switcheroo

• Works By Presuming Sequential Questions Are Linked

• Typical Scope Switch:

1. Specific
2. Specific
3. Vague

• Demonstration



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Scope Shell Game Switcheroo

- Solution:
- Focus on Each Question By Itself (One Shot at a Time)
- Be Sure You Know Its Place In Time and Space and Sequence;
- Same Solution As Vague Question: **Fix & Answer**



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Misleading Questions

- Most (Or All) Questions On Cross: Leading
 - Ex.: You're tiny, right?
 - Ex.: You're dumb, correct?
 - Ex. You shot JFK, true?
- Only A Problem IF You Agree Without Thinking



5. The Danger Zone: Trick Q's & Solutions

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Misleading Questions

- Solution:
 - **Don't Fall For the Jedi Mind Trick!**
 - (Resist The Trance!)

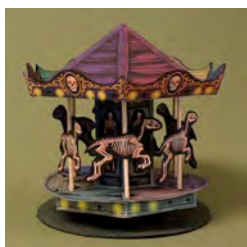


7. The Danger Zone: Trick Q's & Solutions

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Dead Horse Carousel

- Works By Repetitive Questioning That Makes You Doubt Prior Answer to Same Question
 - **Designed to make you change your answer**
- Demonstration:
 - Use of force
 - Are You Sure That...?



5. The Danger Zone: Trick Q's & Solutions

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Dead Horse Carousel

- Solution: Beat that Horse to Death
 - **No Matter How Many Times Attorney Asks Versions of Same Question, Give The Same Answer**
 - BUT... Listen Carefully For Substantive Changes to Questions



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Cutthroat Buddy

- Works By Lowering Your Guard
- Demonstration



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Cutthroat Buddy

- Solution:
 - **Focus on Words, Not Tone**
 - Opposing Counsel Is NOT Your Friend



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The Bully (a.k.a. The Angry Attorney)

- Works By Ticking You Off, Setting Off-Balance
 - Demonstration



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The Bully (a.k.a. The Angry Attorney) (cont'd)

- Solution:
- Focus on Words, Not Tone, and...
- Maintain Emotional Neutrality & Concentration



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The Bully (a.k.a. The Angry Attorney) (cont'd)

- If Attorney Is Mad At You, You're Probably Doing Something Right; The Madder, The Better!
 - If Happy With Or Nice To You...Uh Oh!



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Cunning Chaos

- Works By Distraction, Desire to Help
- Demonstration



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Cunning Chaos (cont'd)

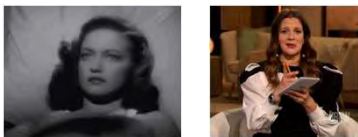
- Solution:
- **Focus on Words, Not Antics**
 - Don't Help Columbo (It's an Act)



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Record Hypnosis

- Works By Playing on Insecurity
- Feel Like Teacher Called You Out In Front Of Class...And You Didn't Do The Homework
- Demonstration



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Record Hypnosis Solution

Solution		
Know Record (Don't Guess)	OR	Admit Limits of Knowledge & Pivot To Underlying Facts/Incident Or To Stuff You Do Know

REMINDER: Record Pressure Is About The CONTENT Of Records

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Former Statement Swamp

• Objective:

- To Make You Look Like You're Lying By Creating Inconsistencies Between Your Testimony and a Prior Statement



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Former Statement Swamp (cont'd)

• Examples of Prior Statements:

- Report You Authored (or Adopt)
- Recorded Interview
- Prior Deposition/Testimony



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Former Statement Swamp (cont'd)

Trap Comes in Two Parts

Truthfulness – Accuracy of the Prior Statement

Example: You were being truthful in your interview?

Completeness of the Prior Statement

Example: In your interview, did you leave anything out?

- Sometimes the Trap Is Combined in a Question
 - Example: Did you accurately document in your interview all of the observations you made during the incident?



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Former Statement Swamps (cont'd)

Truthfulness Part – Making Corrections

Report

"In reviewing my report, I realized I inadvertently stated (or left out) some facts in a confusing way. To clear it up..."

Statement/Deposition

"In reviewing my interview/depo transcript, I found a question I inadvertently misunderstood. What I meant to say was..."

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Former Statement Swamps (cont'd)

Completeness Part: This is the Real Danger

Problem 1

If You Say **Yes** = Prior Statement Has All Details

Any Details You Add At Depo Become Lies/Fabrications

Problem 2

If You Say **No** = Omitted Details From Prior Statement

It Looks Like You Lied in Statement



This is what's called a "no-win situation."

Both Yes and No = Problem Answers

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Former Statement Swamp (cont'd)

Completeness Part Solutions	
Report	Interview/Depo
"I included all of the facts that, at the time, seemed pertinent to the crime/call I was investigating/responding to." <i>Missing Details Due to Lack of Relevance to Crime Response</i>	"I answered all of the questions I was asked truthfully and to the best of my ability." <i>Missing Details Due to Questioner Failure to Ask</i>

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Former Statement Swamps (cont'd)

- The Danger of Former Statement Swamps & Impeachment-
Examples:
 - Mr. T.B. (Stoner)
 - Mr. C.O. (Guevara)



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Former Statement Swamp: Danger of Impeachment

- T.B. (Stoner):
- On Direct, Claimed Plaintiff Stoner Was:
 - Laying Unconscious
 - Never Fighting
 - While Brutally Attacked By Police
Batons & K9...
- On Cross, Stepped Into The Swamp...



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Stoner Cross



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Former Statement Swamp: Danger of Impeachment

- C.O. (Guevara):
- On Direct:
 - Claimed Decedent Guevara
 - Never Advanced On Officer With A Knife
 - (Suggested No Knife, No Steps Toward Officer)...
- On Cross...You Can Guess Where This Is Going...



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Guevara Cross



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LIST Questions – Missing Easy Golden Goals

- Only a Problem IF Your List is Not Complete
 - ❑ Self-Destructed List: No Solution Available
 - ❑ Interrupted List
- If List Interrupted, Politely Say So:
 - You Do Not Need to Finish, as Long as Record Shows There Was More to Your List
- Key Words: Why; Always; All; Ever; Every; Any; Only...



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All & Every Questions

- Always & Never Are a Very Long Time
 - Always: One Time You Didn't Proves You're A Liar
 - Never: One Time You Did Proves You're A Liar
- Solution
 - Be Sure You're Right...
 - OR Use "Generally" & "Rarely" Instead



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No But Yes Questions

- Example: You've Never Walked on the Moon, Right?
- Problem:
 - Does "Yes" Mean You Did Walk on the Moon or That It's Correct That You Did Not?
- Solution
 - Give a Clear Answer w/o Yes or No
- Example:
 - "I have never walked on the moon."



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The Three C's of Telling a Compelling Story...

- C** Credibility
- C** Clarity of Details
- C** Connection

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Credibility: Being Perceived as Honest-Truthful

- Step 1** • **Be Honest & Truthful**
 - But That's Not Enough...
- Step 2** • **Be Knowledgeable About the Facts**
 - If You Are Confident & Correct About Less Important/Small Facts, Jury Will Believe You On More Important/Bigger Facts
- Step 3** • **Avoid Conduct/Movement That LOOKS or SOUNDS Dishonest**
 - E.g., Fidgeting, Shifting, Eye-Avoidance, Mad-Dogging, Etc.
 - The Smell Test (a.k.a. the "Bullsh*t Factor")

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Clarity of Details

- **Being Able to Explain the Facts In A Way That Others Can Easily Follow/Understand**
 - Sequence of Events and/or Relative Position
 - Policies & Rules That Apply
 - Techniques for Arrest, Force, or Other Action
 - Limits of Perception or Knowledge



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Clarity of Details

- **Being Able to Explain the Facts In A Way That Others Can Easily Follow/Understand**
- **TEST**
 - If You Weren't There, How Would You Explain It To Yourself So That You Would Understand What Happened?
 - Or What the Rule/Policy Is?
- "Explain It To Me Like I'm Four Years Old."
(Example: Chrysotile.)



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Connection

- **Allowing the Jury to Receive the Story From You As a Person**
- **Look At Them**
 - Tell the Story to the Jury
 - But Don't Stare At Them
- **Let Them Like You**
 - Let Them In
 - Treat Them Like Family Who Need to Understand
- **Be Real With Them**
 - Talk Like a Person, Not a Cop
 - They Can Smell B.S.
 - Let Them Hear/See Your Professionalism AND Your Humanity



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Wrap-up

- To Win Jurors' Votes, The Jury MUST:
 1. **Believe You** (That You're Telling The Truth)
 2. **Trust You** (That You're Truth Is Also Right)
 3. **Like You** (That You Deserve To Win).



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What's Next?

Q & A Time...



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