



# Effective expert cross-examination

*Be wary of “killing” the defense witness in deposition; you can often use him at trial.*



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## GEORGE ELLARD & WILLIAM VEEN

Prior to cross-examining an expert trial witness, ensure you have cross-examination goals. The goals essentially boil down to developing favorable testimony, limiting harmful testimony and impairing credibility. Here are a few tips to assist in achieving those goals.

### **Do not use all of your bullets in the witness's deposition**

Revealing in deposition your methodology and points of attack strips you of cross-examination latitude at trial and may preclude your ability to achieve the cross-examination goals. “Killing” the witness in deposition is not necessarily a good thing if you suspect the case will be tried. Determining when to hold back in deposition is difficult, but after you refocus on your goals, this decision becomes clear.

### **Narrow the basis of expert opinions to questionable assumptions**

An expert relying on numerous assumptions is exposed to alternative assumptions of greater validity. Therefore, elicit the greatest possible number of assumptions relied upon by the expert. Then, demonstrate alternative, valid assumptions which are helpful to your case that the expert did not consider.

### **Draw out the expert's arrogance**

We have all encountered the expert who knows everything and has every answer. Use this arrogance to create distrust or dislike of the expert. For example, the witness may claim to be an expert in accident reconstruction, playground safety, product design, fire cause/origin and other diverse areas. Attempt to elicit the greatest range of the expert's practice areas. Should a defense expert who opines on automobile accident reconstruction and also considers himself or herself an animal behavior expert really be taken seriously?

### **Set up helpful admissions**

Use defense experts to validate facts relied upon by the plaintiff's experts. This creates credibility for plaintiff's experts and maintains plaintiff's case in the jurors' minds even during the defense case. Along those lines, use the defense expert to testify about plaintiff's injuries and damages. While the expert will not agree that the defendant's vehicle caused the plaintiff's hip injuries, get the expert to agree that hip injuries like the ones claimed are painful, can incapacitate and may not be visible on radiograph.

### **Establish your credibility by demonstrating a thorough knowledge of the field**

By engaging the defense expert in the technical language of the case, you create a degree of respect for yourself and the plaintiff's case. If the plaintiff's lawyer cannot appreciate the technical issues, the jury will not appreciate the plaintiff's case. You must learn the medicine, engineering principles and other areas of the expert's field. Your learning process should have been underway from the time you agreed to take the case.

### **Deal with hypothetical questions**

A primary reason to challenge the defense expert with hypothetical questions is to educate the jury that the issue is the *question*, not the answer. This helps to focus the jury as to the true issues of the case and cuts through the smoke screen the defense will attempt to create. Also, by presenting the plaintiff's case in your hypothetical questions, you have yet another opportunity to maintain the plaintiff's case in the jurors' minds.

*George Ellard is a trial attorney at The Veen Firm, San Francisco. He has significant experience representing the severely injured in products liability, construction site, premises liability, aviation and professional negligence matters. He is an “AV” rated lawyer who has handled cases throughout California and is a former Naval Officer.*

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