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Clark Sellers

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## CROSS-EXAMINATION FROM THE VIEWPOINT OF A TECHNICAL WITNESS

Clark Sellers

Clark Sellers, Examiner of Questioned Documents, Los Angeles, is widely recognized in his profession and has participated as an expert witness in many trials, both civil and criminal, which have attracted nationwide interest. Some of these cases include the Winnie Ruth Judd case in Phoenix, the trial of William E. Hickman at Los Angeles, Flint vs. Nicholson in Providence, the trial of Alfred L. Cline at San Francisco, and the State of New Jersey vs. Bruno Richard Hauptmann. Mr. Sellers, who is president of the American Society of Questioned Document Examiners, presented this paper at the annual meeting of the Society at Denver in August, 1949, and Journal readers will undoubtedly find his observations of value and assistance.—  
EDITOR.

Too often the end objective of testimony is overlooked, and this is especially true in cross-examination, where in the heat of battle the real goal may be lost sight of. The qualified document examiner, and for that matter any technical witness, should strive to express a correct opinion, and further, to give the reasons for his opinion so clearly and forcefully that the judge, the jury, and an appeal court will be convinced of the correctness of that opinion. Thus, the end objective of testimony is to *convince those who are to act on the testimony that it is correct.*

In order to understand a subject fully it is helpful to consider some of the things which the subject is not. Certainly, the end objective of cross-examination from the standpoint of the qualified document examiner is not to win a personal victory over the opposing lawyer, or to demonstrate that the witness knows more than some other expert, or that he is one of the smartest persons in the world. His object is to be right in the opinion expressed and convince those who are to act on his testimony that it is right.

What does it avail the witness to make an opposing lawyer look cheap, and by so doing perhaps confuse the issue or offend some juror or judge? Topnotch trial lawyers, as well as successful witnesses, recognize the futility in most cases of making personal attacks, or embarrassing anyone. Wigmore in his *Principles of Judicial Proof* states that the world famous English trial lawyer, Scarlett, scorned to waste his time in badgering witnesses, which was more entertaining to the spectators than effective with the jury.

One of the best trial lawyers that the writer knows stated that he went about a trial exactly as he did in piling cord-wood. He just methodically laid one stick on at a time and refused to be sidetracked with side issues. So it should be with the

expert on cross-examination. When the expert sticks to piling on the evidence to the sole end of convincing the jury, he gets much further than when he attempts to appear a clever witness or a match at repartee with the lawyer.

It is not here suggested that the expert should make his testimony uninteresting, that he should meekly submit to abuse or unfair tactics on the part of the opposition, or that he should not make justified rejoinders.

The cross-examiner may try to make the witness angry, or to lull him into complacency so as to sidetrack his mind before he is asked a crucial question, or to distract the attention of the jury from the damaging evidence that has been given by questioning about generalities instead of about the specific evidence in the case. But if the expert keeps calm and does not lose his temper, is on guard at all times, and ties the answers as much as possible to the case at issue, he will get farther with his objective of convincing the jury.

It is well to consider what the attributes of an expert witness are which inspire confidence and carry conviction, and what the attributes are which create mistrust and disbelief. It is easier to name them than to make them a part of oneself, so that a person naturally does the right things and avoids the wrong ones. However, to recognize these qualities and know their psychological effect is a long step in the right direction. Particularly is this true if any false values have been placed on certain phases of cross-examination behavior.

One of these false notions is that the expert should know everything about everything or even that he should know everything about one thing. Modesty is a virtue which wins friends and confidence.

Another false notion is that the expert should entertain the jury with clever answers. The astute cross-examiner would revel in the opportunity to get the jury laughing, minimize the importance of the testimony, and get their minds off the damaging aspects of the evidence the expert has given.

From the jurors' point of view, they will be favorably impressed with the expert who is sincere and direct in his answers. They will like an expert who is benevolent toward the cross-examiner, who does not seize on an obvious opportunity to embarrass the opposing lawyer, and who modestly straightens out the lawyer who has asked an incorrect question. It is well never to forget that the juror is swayed by human nature instincts, and he will unconsciously lean toward the witness who is manifestly trying to be fair. On the other hand, the

juror will condemn the lawyer or the witness who is attempting to be unfair.

That witness usually convinces who is sincere, who knows what he is talking about, who is accurate in his statements, and who is clear and forceful in what he has to say. But on the opposite side, the witness usually fails to convince if he is evasive, conceited, or belligerent, or who uses obscure, high-sounding language, or who gives the impression of being a clever witness.

The expert who maintains an attitude of helpfulness in bringing out all of the facts irrespective of who is asking the questions, is almost sure to make a favorable impression on the jury. When an expert witness goes into the court room he should look and act like a professional man. The first entrance into a man's mind is very important. Make it a good one in appearance, language, and manner. Be a gentleman first, last, and all the time.