

2009 SUMMER CONFERENCE

by: *Thomas F. Cavalier**

Highway 489 cuts through rural Oscoda County in northeastern Michigan, between M72 and Lewiston. The landscape is unremarkable: woodlands and fields of corn, their growth slowed by the cool summer weather. But a few miles south of Lewiston that all changes when you turn off the road and enter the beautiful grounds of Garland Resort, site of the 2009 Litigation Section Summer Conference.

Garland greeted Conference attendees with a wide variety of recreational opportunities. The resort is a golfer's paradise, boasting four championship courses. For those who preferred other types of recreation, Garland offered swimming, basketball, tennis, and biking. Or visitors could simply stroll the well-manicured lawns set among stands of fragrant pine trees.

The Conference began on Friday, July 31st with an evening reception featuring an open bar and delectable hors d'oeuvres. The next morning, Conference participants gathered in a spacious light-filled room to enjoy a continental breakfast followed by a seminar, "Advanced Cross-Examination Techniques."

For six hours, seasoned trial attorneys Larry Pozner and Roger Dodd educated the group in their pioneering approach to cross-examination, while at the same time entertaining the crowd with self-deprecating humor, colorful war stories and good-natured barbs tossed at one another (and occasionally at audience members). This short article cannot do justice to the many useful principles and tips presented and explained by Pozner and Dodd. Here, though, are the highlights of what we learned.

- Build your case through cross-examination. Your questions should draw out facts from the witness that help to establish your case. Facts admitted

by an adverse witness are more believable and memorable.

- Develop facts in "chapters", a story that ends with the main point you want to establish. The questions in each chapter should create a "picture" that will be retained by the jury.
- Three rules of cross-examination:
 1. Use leading questions: to control the witness and show the jury you have mastered the facts.
 2. Each question should ask about one new fact.
 3. Organize questions in a logical progression to create the desired picture.
- Tips on leading questions:
 1. Use short declarative sentences.
 2. Avoid starting a question with who, what, where, why, explain. These allow the witness too much latitude and permit her to become the focal point.
 3. Use vivid words to paint the desired picture.
- Tips on one fact per question
 1. Break a compound factual scenario into constituent facts; the smaller the fact, the more likely the witness will admit it.
 2. Asking one fact per question avoids objections.

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3. One fact at a time, presented logically, allows the jury to reach the desired conclusion on its own.

- Tips on logical organization:

1. Each chapter must have a specific well-defined goal.
2. Each goal must either help the cross-examiner's case or undermine her opponent's case.
3. Move from general questions to increasingly specific questions until the

goal is established. Establishing the goal does not mean that the witness admits the ultimate conclusion; rather, the goal is to have the witness admit enough facts so that it is inevitable that the jury will draw that conclusion.

The techniques offered by Pozner and Dodd should enhance the cross-examiner's effectiveness and self-confidence. Expectations, however, should be kept modest. Your case is unlikely to be won on cross-examination. Your questioning may not neutralize all "bad" facts presented by the witness on direct. As Larry Pozner advised, towards the end of an enlightening seminar, "Do what you can. Suffer what you must."