

## Basic points to consider in redirect examination

By: F. Dennis Saylor IV and Daniel I. Small ◉ June 15, 2017

Done right, redirect examination can help repair or limit some of the damage done on cross, explain new issues raised, and refocus the jury on what you believe is important.

However, it has significant limitations. Redirect will not bring a destroyed witness back from the dead. Nor will it make the other side's points disappear. Lawyers often expect too much from redirect, and try to do too much, only to lose what could have been a more limited but positive effect. Worse, their redirect may be driven more by anger or frustration than any actual strategy.

So tread carefully. Obviously, the nature and focus of redirect will vary widely from witness to witness. However, there are some basic points worth considering.

1. **Plan ahead.** That may be a surprising thing to say about something that's supposed to be a mere rebuttal. You may not know everything your opponent will do with your witness on cross, but chances are you have a good idea. Don't just hope that an effective redirect will rise magically from the yellow pad on which you took notes on cross. Like any good combatant, plan ahead: If your opponent does X on cross, how will you respond? Think through several likely approaches in advance, then adapt them to the actual cross.
2. **Don't lead on redirect.** Mysteriously, almost all lawyers lead almost all witnesses almost all of the time on redirect. This has become so pervasive that someone out there must be teaching that it's OK. Some leading is necessary and desirable, to direct the witness to particular issues raised on cross-examination. Otherwise, it is improper. Don't do it.
3. **Don't let your opponent lead on redirect.** Just as mysteriously, almost no one ever objects to leading on redirect. Maybe lawyers are exhausted from the cross-examination and aren't listening closely enough. If your opponent leads improperly, object.
4. **Keep redirect within the scope of cross.** Most judges limit redirect to matters that were raised in the cross-examination. Judges have wide discretion on this, so know your judge and limit your redirect accordingly. If your opponent's question is outside the scope of cross, object.
5. **Don't try to hit everything.** It's usually impossible to do an effective redirect that addresses every point raised in cross-examination. Moreover, it will badly dilute the effect of your important points. Anticipate the cross-examination and raise matters on direct where feasible. Also, most redirect is unnecessarily scattershot; try to be as organized as you can.
6. **If you need to rehabilitate, do it properly.** Sometimes your witness says something unhelpful or confusing on cross that can be explained, or otherwise repaired, on redirect. If you need to do this — to "rehabilitate" you witness — take the time to do it properly. Don't rush through it. Whatever you do, don't ever make it look like you can't wait to get your witness off the stand.
7. **Don't be afraid to make it short, or even to take a pass.** Take a deep breath. Much redirect examination is repetitive, disorganized and unnecessary. Plus, juror patience is at a low ebb during redirect. Stop and think before you stand up: Did my opponent really accomplish anything? Keep it as short as necessary, and consider not doing it at all. Sometimes, the most effective redirect is a low-key shrug and "No further questions."

An effective redirect can sometimes make a difference. But it's important to lower your expectations, plan ahead, do it right, and don't try to do too much.

*Previous installments of Tried & True can be found here. Judge F. Dennis Saylor IV sits on the U.S. District Court in Boston. Prior to his appointment to the bench, he was a federal prosecutor and an attorney in private practice. Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. He is a former federal prosecutor and teaches CLE programs across the country.*

Copyright © 2017 Massachusetts Lawyers Weekly

10 Milk Street, Suite 1000,

Boston, MA 02108

(800) 451-9998