Cross Examination Practice Pointers

IMLA: April 9, 2022

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Timed Agenda

A. Introduction: (10 minutes)

- Context/Scope: - Trial initiative since 2011, federal civil jury trials in EDNY &SDNY

B. Opening Comments: (20 minutes)

- **Practice Tips for Success**
    - Objections/Control of Courtroom
    - Style
    - Where to start
    - Techniques
    - Don't wait for summation to tie it all together
    - Brevity is ok
- **Practice Tips for Avoiding Common Pitfalls**

  The Traps:
    - Trap 1 - Pl contradicts prior theory and adopts something new for the first time on direct
    - Trap 2 - You Inadvertently Adopt Plaintiffs Version of Disputed Events

- Trap 3 - Overzealous Impeachment/Unorganized Impeachment
- Trap 4 - You make your case about damages rather than liability
- Trap 5 - Allowing plaintiff to take control/evoke sympathy or understanding by use of documents
- Trap 6 - The Judge Does Not Let You Finish Your Cross -
- Trap 7 - Jury Taken By Adversary's Drama

C. Demonstrations: Crossing Plaintiffs (20 minutes)

D. Questions (10 minutes)

DEMONSTRATIONS TRANSCRIPTS

Cross Examination: Anette Sorenson

Q: Ms. Sorenson, you testified that before you arrived at the Dallas BBQ you had drinks at another cafe?

(Obj - Overruled) Q: Is that right, Ms. Sorenson?

A: No. I said we had one drink.

Q: I think you said you had a small drink?

A: Yes. that's right.

Q: You went to a place called Tinty Looloo, is that right?

A: That's correct. yes.

Q: And in fact, you each had frozen margaritas, that is, Mr. Wardlaw had one and you had one, isn't that right?

A: That's correct.

Q: You considered those to be small drinks, is that right?

A: Yes.

Q: After you finished what you considered to be small drinks, you then went to the Dallas BBQ, true?

A: Yes.

Q: At the Dallas BBQ you drank a margarita there as well, right?

A: That's right.

Q: And Mr. Wardlaw also had a margarita there as well, is that right?

A: That's right.

Q: I think you said you had tequila shots with the margaritas?

A: We got a shot from the waiter to pour in the frozen margarita.

Q: So you poured a shot of tequila into your margarita?

A: Yes.

Q: This shot of tequila was in addition to the tequila already in the margarita, right?

A: Right.

Q: Okay. These margaritas you drank at the Dallas BBQ were bigger drinks than what you considered to be small drinks at Tinty Looloo, true?

A: Yes.

Q: Your Honor, at this time I would like to show the witness what's been marked as Defendant's 11. May I approach the witness?

Court: Proceed

Q: Ms. Sorensen, I'm showing you what has been marked as Defendant's Exhibit 11. Was the margarita you drank at the Dallas BBQ served to you in a glass like defendant's Exhibit 11?

A: Yes. It was a similar glass, yes.

Q: At this time, Your Honor, I would like to move into evidence Defendant's Exhibit 11. (No objection) (Received)

Q: Now, you came here from Denmark in May, right?

A: That's correct.

Q: When you came to New York City in May, you brought with you some suitcases, right?

A: Yes.

Q: The suitcases contained clothing and whatnot, right?

A: Yes.

Q: You were staying in May at an apartment in the East Village, is that right?

A: That's correct.

Q: And you in fact had lived in that very apartment once before, isn't that right?

A: That's right.

Q: When you went out on May 10 you left your suitcases and some of your personal belongings in the apartment, isn't that right?

A: Yes.

Q: And you locked that apartment when you left, isn't that right?

A: I don't remember, but I guess so.

Q: Okay. You said that when you went into the Dallas BBQ you brought your purse with you, right?

A: That's correct.

Q: And in your purse was a wallet, right?

A: Yes.

Q: And in your purse was your camera, right?

A: Yes.

Q: And you had your purse in your lap in the Dallas BBQ?

A: No, I had it on – you know, I put it her on my side.

Q: Like you have it today, you have a purse with you at your side today in the courtroom, isn't that right?

A: Yes.

Q: So your personal belongings you left at the apartment were locked up, right?

A: That's right.

Q: You had in the restaurant, with you, your purse, right?

A: Right.

Q: Your camera was also in the restaurant with you, right?

A: Right

Q: And you left your baby outside on the street, right?

A: That's correct

John Aponte Cross Examination Using Medical Records:

- *Brief Intro on Case/Claims/Concerns on Cross*

Cross Examination:

Q: You've told this jury that you were strangled in Miss Brown's apartment, right?

A: That's right

Q: You say your neck was squeezed so tight you actually started to black out?

A: Yeah, and when that started happening I let him have it. I knocked him out. Two punches.

Q: You claim that your arm got all swollen and bruised from being put against the wall, right?

A: Yes

Q: You went directly from the apartment to Staten Island University Hospital, correct?

A: Yes

Q: You were driven in an ambulance?

A: Yes

Q: When you arrived at the hospital, you were angry?

A: Was I mad? They cuffed me to the bed. I was mad.

Q: You cursed at the hospital staff?

A: Hell yes I cursed them out

Q: I want to take a look at your medical records from that day (directing your attention to D8 (on elmo) - This says that you had an altercation with police/nypd. You told the medical staff that, right?

A: Yeah

Q: It says - "Pt states that his girlfriend was going to attack him with "a knive" and that he "punched her." Those phrases are in quotation marks. You said that, right?

A: No, I never said that. I didn't punch her.

Q: So these records are false, the doctors are lying here?

A: I guess so.

Q: Now, this also says – "pt. state that police came in his house and that he "punched" one of the officers because he "attacked me." - That part came from you, right?

A: Yeah that's right I punched him because he choked me.

Q: So this line is accurate -you said this?

A: Yes.

Q: Mr. Aponte, these records don't say anything about choking, right?

A: I don't know it should

Q: (give him a copy of the exhibit and wait - ask him to find the page)

A: It's not here but I definitely was choked

Q: The records don't say anything about being strangled?

A: No

Q: The records don't say anything about an arm lock?

A: No

Q: In fact, (directing your attention to D8) - the record says that you denied any physical complaint. [Defendant's H - SIUH Certified Med Records – "Denies Physical Complaint" (D 8)]

A: I guess

Q: Directing your attention to D9 – "Patient is combative" You were combative to the hospital staff, right?

A: No, that's bullshit

Q: In fact, a doctor ordered that you be put in four point leather restraints.

A: Never happened

Q: So this entry in your record - Defendant's H - SIUH Certified Med Records – "4. Restraints applied" (D 9) (D 15) - Order: behavioral restraints – "high risk for causing significant disruption of treatment environment" (D 15) – according to you, that is also a lie?

A: Yes, they're lying.

Q: You were also evaluated by psychiatric doctors at the hospital, right?

A: Yeah, I think so

Q: You told those doctors, "I don't want to hurt nobody. My mother taught me right. I treat a lady with respect until she raises her hand to me." Defendant's H - SIUH Certified Med Records - (D 10)

A: That's right, that's how I was raised. I don't put my hands on a female unleass she starts it.

Q: And you told the psychiatric doctors that you felt you were "improperly treated by police." Defendant's H - SIUH Certified Med Records - (D 10)

A: Absolutely.

Q: But again, you didn't say you were choked?

A: No

Q: Nothing about being strangled?

A: No

Q: Nothing about an armlock?

A: No

Q: Now, during the psychiatric evaluation doctors ordered doctors ordered Haldol and Lorazepam - to calm you down - but they didn't give it to you, right? Defendant's H - SIUH Certified Med Records - (D 10)

A: Yeah, that was a trap. They were trying to make me look like this (mimic being comatose) like I was doped up.

Q: You believed that, even though you were with doctors, in a hospital, you thought it was part of a plan by the police to make you seem "doped up, right?"

A: Yes. It was

Q: So you threatened the woman, the medical provider, who tried to give you the medication?

A: You're damn right. I told that bitch, you stick me with that needle, word to everything I love, you work in this hospital. I will be back, when I get out

of jail I'll break your fucking jaw. Don't listen to those cops...."

Q: And then, after psych, you refused to have any further treatment, right?

A: Yes, I refused

Q: You were released.

A: Correct