

# Contents

|   |             |
|---|-------------|
| <b>Acknowledgments</b> .....                                    | <b>ix</b>   |
| <b>About the Author</b> .....                                   | <b>xiii</b> |
| <br><i>Chapter 1</i>  |             |
| <b>Introduction</b> .....                                       | <b>1</b>    |
| <br><i>Chapter 2</i>  |             |
| <b>The Purpose of This Book</b> .....                           | <b>7</b>    |
| A. The System .....   | 7           |
| B. Change Your Thinking .....                                   | 8           |
| C. What Will We Say, to Whom, and How? .....                    | 11          |
| 1. What Are We Going to Say? .....                              | 11          |
| 2. To Whom Are We Going to Tell Our Story? .....                | 11          |
| 3. How Are We Going to Say What We Have to Say? ..              | 13          |
| <br><i>Chapter 3</i>  |             |
| <b>A Brief Interlude</b> .....                                  | <b>17</b>   |
| <br><i>Chapter 4</i>  |             |
| <b>An Early Cross-Examination: Susanna and the Elders</b> ..... | <b>23</b>   |
| <br><i>Chapter 5</i>  |             |
| <b>The Bad, the Ugly, and the Good</b> .....                    | <b>25</b>   |
| A. The Bad News .....   | 25          |
| 1. The Witness .....  | 25          |
| 2. The <i>Perry Mason</i> Syndrome .....                        | 26          |
| 3. Old School Cross-Examination .....                           | 28          |
| B. The Ugly News .....  | 31          |
| C. The Good News .....  | 36          |
| <br><i>Chapter 6</i>  |             |
| <b>Three Miscellaneous Considerations</b> .....                 | <b>39</b>   |
| A. The Purposes of Cross-Examination: Looking Good .....        | 39          |
| B. Three Housekeeping Rules .....                               | 44          |
| C. Primacy and Recency .....                                    | 47          |

*Chapter 7*

**The System, Part I: “Short”** ..... 65

- A. Three Reasons to Be Short ..... 66
- B. How Short Can You Get Your Cross-Examination? ..... 67
- C. How to Make Your Cross-Examination Short ..... 67
- D. Transitions ..... 68
- E. Example of Cross-Examination Using the System ..... 71
- F. Looping ..... 73

*Chapter 8*

**The System, Part II: Statements** ..... 77

- A. The Three Ways You Can Do Cross-Examination ..... 77
- B. The Law ..... 83
- C. The System Has a Philosophy ..... 87
- D. Crafting Your Statements ..... 91
- E. Details ..... 94
- F. Terms ..... 95
- G. Organization—Source of Materials ..... 101
  - 1. Witness Statements ..... 101
  - 2. Verisimilitude ..... 102
  - 3. Plausibility ..... 105

*Chapter 9*

**The System, Part III: Control** ..... 113

- A. Pace ..... 114
- B. Listen ..... 115
- D. The Intractable Witness ..... 120
- E. Exceptions ..... 127
- F. Safe Havens—What to Do When You Get Hurt ..... 131

*Chapter 10*

**Additional Considerations** ..... 135

- A. Possible Exceptions to the System ..... 135
- B. Misdirection ..... 137
- C. Ethical Considerations ..... 141

*Chapter 11*

**Why the System Works** ..... 143

---

|   |            |
|---|------------|
| <b>Appendix: Examples of Cross-Examination .....</b>  | <b>146</b> |
| Terence F. MacCarthy (Chicago, Illinois)—<br>Cross-examination of a psychiatrist in a federal<br>bank robbery .....             | 146        |
| Michael A. Sherman (Santa Monica, California)—<br>Cross-examination of a plaintiff’s CEO in a civil<br>trade secrets case ..... | 167        |
| Alison Siegler (Chicago, Illinois)—Cross-examination<br>of a prosecution witness in a federal narcotics case .....              | 170        |
| Steven R. Shanin (Chicago, Illinois)—Cross-examination<br>of a police detective in a federal narcotics case .....               | 176        |
| James Mercante (New York, New York)—Cross-<br>examination of a captain in an admiralty case .....                               | 186        |
| Heather E. Williams (Tucson, Arizona)—Cross-<br>examination of a county sheriff officer in a federal<br>murder case .....       | 195        |
| John Buckley, Ungaretti & Harris, Chicago, Illinois—<br>Cross-examination of a securities trading firm .....                    | 215        |
| Index .....   | 219        |