



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

“Cross-Examination”

**Delivered by Mr. Justice Brian O’Moore as part of the Hardiman
Lecture Series 2026 in the Supreme Court on 24 June 2026**

1. Adrian Hardiman was a consummate media performer. He first came to national public attention during the course of the debate about the Eighth Amendment to the Constitution, the so-called “Pro-life” Amendment. Adrian was an ardent opponent of the proposed amendment, and appeared regularly on national television and radio outlining the reasons why, in his view, the Constitution should not be amended in this way.
2. It should be remembered that at this stage, in the early 1980s, he was still a very young man. Notwithstanding that, the incisiveness and passion

which he showed in arguing against the proposal made him a national figure in a way that very few barristers are at any stage of their careers.

3. While this aspect of Adrian's engagement with the media is well known, others are not.

4. It is only recently that I discovered that Adrian had featured in a programme on RTÉ called “Teen Talk” (or something like that) when he himself was a teenager. He also appeared in an RTÉ Irish language television programme in which he and a number of other barristers (Colm Mc hEochaidh, Sinead Ní Chulachain and Ercus Stewart) were interviewed about the provocative subject Barristers – are they really a greedy, archaic bunch; perhaps not the most balanced topic.

5. The most surprising thing about Adrian’s media career is to be found in his entry in the Dictionary of Irish Biography. It includes the enticing statement that:

“In 1999 he screen tested, unsuccessfully, as an RTÉ chat show host.”

6. This teasing reference is elaborated upon in the obituary that Adrian's great friend, Paul O'Higgins, wrote for the Bar Review. In this, Paul said:

“He dazzled on TV on divorce and pro-life amendment issues. He was also approached tentatively to replace Gay Byrne on the Late Late Show.”

7. In 1999, when all this was going on, Adrian was possibly the pre - eminent cross-examiner in the Irish Courts. It is almost certainly as a result of his expertise in the courtroom that he was invited to consider hosting what is now the world's longest-running chat show. I'm not sure that the relevant commissioning editor in RTÉ had actually ever seen a Hardiman cross-examination. The quality of controlled aggression that

Adrian often displayed hardly made him an ideal candidate for hosting the Toy Show.

8. This is what Adrian's son Hugh described as one of the great "sliding doors" moments of his career. Had Adrian become the host of the Late Late Show, is it entirely possible that he would have thrived in that role. There may never have been a direct appointment to the Supreme Court. There may never have been Hardiman the judge, the judgments, and possibly not his rich legacy as a Joycean scholar and historian. Adrian's career path, and his life, would have been very different.

9. Is worth noting that Adrian's skill as a barrister was not confined to cross-examination. He was a superb tactician in the courtroom.

10. It is also true that there were other notable cross-examiners at the Bar during Adrian's time as an advocate and as a judge.

11.However, since they are here to remember Adrian and since I have chosen the topic of cross-examination as the means of doing so, this talk will to a large extent deal with cross-examination by reference to Adrian's experience.

12.I am going to talk to you about four connected topics.

- (i) Firstly I am going to identify some significant features of the practice of cross-examination. In doing so I am going to use the well-known example of the cross-examination by Sir Charles Russell of Richard Pigott, who was responsible for the forgery of correspondence purportedly sent by Charles Stewart Parnell.
- (ii) Secondly, I am going to give some of my own views about how cross-examination should and shouldn't be done.
- (iii) Thirdly, I am going to examine the contrasting approaches of Adrian Hardiman on the one hand and Sean Ryan on the other in

the cross-examination of Eamon Dunphy. Mr. Dunphy was at the time a very famous person. He was also a key witness in the legal saga of de Rossa against Independent Newspapers. This is one of Ireland's greatest ever libel actions. As it happened there were three different trials. In one of them Adrian cross-examined Mr. Dunphy. In the final trial, the same witness was cross-examined in a very different way by Sean Ryan, a future President of the Court of Appeal.

- (iv) Finally, I am going to share with you Adrian Hardiman's view of the two things you need to do in order to conduct your best cross-examination.

13. I had originally intended to make the cross-examination of Pigott the centrepiece of the whole lecture. While I was reading into it, I discovered to my horror a week ago that a lecture on the cross-examination of Pigott

by Sir Charles Russell had been given just 10 years ago by the current Chief Justice. Inevitably, weighing in at 80 minutes, it was longer than the maximum time available to me. It is also still available as a podcast in the Law Library's Green Street Lecture Series.

14. This presented me with a dilemma. Either listen to Donal's lecture, in which case anything I said about the cross-examination of Pigott would be seen as derivative, if not a downright copy. Alternatively, I could say I hadn't listened to Donal's lecture and produce my own version in which case nobody would believe me and I would be thought to be guilty of plagiarism in any event.

15. So what I have done is to prepare some words about the Pigott cross-examination, which does provide some general lessons about the subject. It also informs my analysis of the cross-examination in the de Rossa case about which, at least to my knowledge, there is no competing Donal O'Donnell version available.

16. It seems to me that the Russell cross-examination of Pigott teaches us

four different things. They are: –

- (i) Firstly, the stress that the whole exercise can cause the cross-examiner. This is often overlooked. In fiction and films, the usual characterisation is of the brilliant, controlled questioner and the increasingly sweaty and uncomfortable witness. However, in any cross-examination, whether it's in Balbriggan District Court or in the Courts of Criminal Justice in Parkgate Street, the stakes can be very high as far as both the witness and the cross-examiner are concerned. It's trite to say that's the case when you are a leading English silk cross-examining on behalf of the leader of the Irish Party at Westminster, but if you are a very junior barrister cross-examining a Guard in a drunk driving prosecution, in order to

make your way into the profession, the stakes appear to be equally high.

- (ii) The second thing one can see in the cross-examination of Pigott is the need to appear to be composed and self-assured as a questioner, even if you are not. The appearance that the cross-examiner projects can be absolutely critical. This is not solely so in respect of the interaction with the witness, although that is central. It can also have an effect on the judge, the jury (if there is one) and the people in court, whose attention and reaction is often important.

On the topic of how the questioned presents themselves, I want to say a word about the late Garrett Cooney, also a brilliant cross-examiner. Two of the great natural advantages that Garrett had were his voice – my wife describes him as sounding like Darth Vader with a hint of menace – and his physical stature. He was both a very tall and very broad man, who always reminded me of

the head of the family in a very old Western television series called The High Chaparral. It cannot be said that Adrian was either tall or broad, but his voice was a commanding one and he never appeared to be flustered in any way.

- (iii) The third thing we learn from the Pigott cross-examination is the huge importance of the strong, preferably explosive start to the questioning. There are different views about that. Some barristers believe that one should save up the most damaging material in cross-examination for the end. This is clearly wrong. Whether the cross-examination is short or long, if you have a forceful piece of evidence to put to the witness it makes no sense to wait until your questioning is almost complete. At that stage the witness has given their evidence, has grown in confidence, and has possibly established a good relationship with the judge or the jury. There may be a dramatic satisfaction in ending your cross-examination on

a high, but it is forensically a terrible waste of a potentially compelling piece of evidence.

- (iv) The fourth lesson we learn from the Pigott cross-examination is the need for courage. I think the most striking thing about the cross-examination was the gamble that Russell took at the start of his cross-examination of Pigott. We will see in a moment just what that involved.

17. The background to this cross-examination is well-known. I will only give a very general description of it.

18. Charles Stuart Parnell was the leader of the Irish National Party in Westminster. On the 6 May 1882, Frederick Cavendish (the Chief Secretary for Ireland) and Thomas Henry Burke (the Undersecretary) were both murdered in Phoenix Park in Dublin. The London Times

published in facsimile a letter, purportedly written by Parnell, in which he seemed to approve of the murders. One sentence of the letter read: –

“I cannot refuse to admit that Burke got no more than he deserves.”

19. The enormous controversy caused by the publication by The Times of the letter led to the appointment of a Special Committee, composed of three judges, to investigate the charges made by the newspaper. Parnell's position was that the letter was a forgery. He was right. It had, in fact, been forged by a man called Richard Pigott.

20. At the hearings before the Special Committee, Parnell was represented by a team led by Sir Charles Russell, a Newry man who had become one of the foremost barristers in England. Russell cross-examined Pigott, leading to the complete discrediting of the case against Parnell. Among many others, there are vivid accounts of the cross-examination by Barry

O'Brien (Russell's biographer) and by Brian Cregan (in his novel 'Parnell').

21. In his direct evidence, Pigott stated that he had been engaged by the Irish Loyal & Patriotic Union to find documents which might incriminate Parnell, and he then bought the facsimile letter in Paris.

22. O'Brien describes Russell's appearance both before and at the commencement of the cross-examination:-

"During the whole week or more Russell had looked pale, worn, anxious, nervous, distressed. He was impatient, irritable, at times disagreeable. Even at luncheon, half an hour before, he seemed to be thoroughly out of sorts, and gave you the idea rather of a young junior with his first brief than of the most formidable advocate at the Bar. Now all was changed. As he stood facing Pigott, he was a picture of calmness, self-possession, strength; there was no sign of

impatience or irritability; not a trace of illness, anxiety, or care; a slight tinge of colour lighted up the face, the eyes sparkled, and a pleasant smile played about the mouth. Though obeying the manner of the man, as he proudly turned his head toward the box, showed courage, resolution, confidence. Addressing the witness with much courtesy, when a profound silence fell upon the crowded court, he began...”.

23.I will pause there. This vividly demonstrates what I said earlier about the intense stress visited upon the cross-examiner, and how this must be put to one side as soon as it’s showtime. If Russell had appeared anxious and distressed when facing the witness, the questioning would have been far less successful.

24.Russell then asked Pigott, to the surprise of many at the hearing, to write a series of words on a sheet of paper. There is no need to go into all of

them. It was obvious that there was something very significant about what Russell asked Pigott to do, but the importance of it was not made clear until the following day. It was this. In one of the letters which Pigott provided to The Times, before it had published the correspondence, the word “hesitancy” had been misspelt. This was one of the words that Russell had asked Pigott to write. The misspelling in the letter was exactly the same as the misspelling which Pigott had committed at the start of his cross-examination.

25. This was not the only success achieved by Russell during the cross-

examination. It is, however, the one which is remembered most vividly.

Between the writing of the words on the sheet and the revelation (late the

following day) that “hesitancy” was misspelt in the same way both by

Pigott and by the author of the crucial letter, Russell had also caught

Pigott out in a range of untruths given by him in the course of his

evidence.

26. However, it took no little courage for Russell to begin the cross-examination as he did. If, for example, Pigott had spelt every word correctly – which was a real possibility – the opening of the cross-examination would have fallen flat. This would almost certainly have had a knock-on effect on the balance of the cross-examination. It would have disturbed the questioner, though maybe not on the surface, and emboldened the witness, who would have surmounted with ease the first hurdle that the cross-examiner had erected for him. The gambit worked all the better because it took place at the very start of the cross-examination. If it had failed, it would have failed all the more spectacularly because of its positioning.

27. There is one other lesson to be taken from this episode. After Pigott had written the required words on the sheet of paper, Russell naturally asked for the sheet to be handed back to his solicitor. Opposing counsel, the Attorney General at the time, then got to his feet and asked that the

document be “photographed”. In his excellent book on Parnell, Brian

Creegan describes what happened then:-

“... Russell roared at him [the Attorney General]

Sit down Sir, and do not interrupt me in my cross-examination with
such a request.

The Attorney General resumed his seat immediately flushed with
embarrassment... Russell was not going to allow any person – not
even the Attorney General – to derail his cross-examination with
trivial requests. The judges did not intervene.”

28. In the O’Brien account, it is noted that Russell added an edge to his
rebuke by speaking in an Ulster accent – “which sometimes broke out
when he felt irritated.” That sounds plausible.

29. The exchange forcefully indicates one of the other things that one should

keep in mind about cross-examination. There are cases, such as where

the cross-examiner is asking a question on a false premise, when the odd

interruption may be justified. However, in any other case even the most

trivial and nonthreatening intervention – such as we have just seen – must

be clamped down on by the trial judge. Interruption of a cross-

examination is simply a mortal sin. It is sometimes attempted, but should

never be tolerated.

30. Of course, what Russell was doing was not merely to see off that

intervention but also to put his opponent in his place. His opponent gave

Russell the perfect opportunity to do so. I have no doubt that the Attorney

General was in some way trying to pull rank on Russell by taking control

of the paper. He failed. It may have been dispiriting for the witness to see

his barrister attempt a professional foul, only to end up injuring himself.

31. The cross-examination was long. It had just concluded when the Special Committee broke for the weekend.

32. By then, the cross-examination had been so effective that Pigott fled and later acknowledged that he had forged the correspondence. He is thought to have committed suicide in a hotel in Madrid.

33. One wonders if the cross-examination would have been as successful if it had been time limited. Keep in mind that the words written on the piece of paper were not, in themselves, enough for Russell to get to the truth.

There was a whole series of involved questions on a range of other issues over the intervening day and a half. In his judgment in *Maguire v.*

Ardagh, Hardiman described the cross-examination as one “of extraordinary skill and drama”. In his judgment in *O’Callaghan v.*

Mahon, returning to the theme, Adrian went on to say:-

“I would point out that, had Parnell’s counsel been precluded from cross-examining that witness from his own previous writings and statements, or compelled to give notice of the documents in advance of cross-examination, he would not have exposed him as a perjurer who attempted to destroy Parnell from a combination of greed and hatred, in the manner in which he did.”

34. I would add the reservation that, if Russell had not had limitless time to cross-examine Pigott, it is quite possible that he would not have revealed the truth as comprehensively as he did. Time-limited cross-examination inevitably plays to the advantage of the witness. An astute witness can always take time by asking for clarification of a question, looking for documents, asking to return to their statement and so on. One might complacently say that such tactics will be noticed by the judge and the witness's credibility thereby reduced. However, to use the language of

the great British Jurist, Lord Acton, as quoted by Hardiman in

O'Callaghan v. Mahon:-

“The lynx-eyed judge who can discern the truth teller from the liar by looking at him is more often found in fiction or in appellate judgments than on the bench.”

35. This may be a bit hard on appellate courts but, equally, a judge in a lengthy trial managing a huge amount of evidence may be as likely to blame the cross-examiner as the witness for any failure to finish on time.
36. I am aware that in the recent case between aircraft lessors and their insurers, handled with great skill by the trial judge, a protocol with regard to the length of evidence was put in place. In particular, there was a limit on how long counsel could cross-examine witnesses. There are horses for courses. Obviously in that case it was possible, without real objection by the parties, to enter into such an arrangement. In the main, however, I am

very against the time limiting of the cross-examination of a witness. In most cases, it simply is not in the interests of getting to the truth.

37. There is one small coda to the Pigott cross-examination. I said that Mr.

Pigott was thought to have taken his own life in a hotel in Madrid. In its

December 2004 Edition, An Phoblacht published an interesting article

which included this:-

“Like many a paid perjurer hired by the British before and since,

Pigott became a liability once he had outlived his usefulness. There

was always the danger that he would indeed expose his 'handlers'.

At the very least, his death was most convenient for them.”

38. This theory has an echo in the Chief Justice's lecture, where he noted that

the last person with whom Pigott was seen alive was William O'Shea who

was, of course, the estranged husband of Parnell's lover, Kitty O'Shea.

The meeting of the two men at this critical time may have been more than a coincidence.

39. Now for my second topic. I am going to go through some, but by no

means all, of the things that the questioner should and should not do. In

every case, the cross-examiner and the witness have different advantages.

The witness, it must be remembered, knows more about his subject than

the questioner possibly could. Whether it is a witness in a personal

injuries case, or in a criminal assault case, they've lived through the

events. If it is an expert witness, they should have a greater grasp of the

technicalities, and sometimes the facts, than the cross-examiner does.

Those of us who have cross-examined a professor of stereochemistry

about cis isomers and trans isomers know that it is a really terrifying

thing to do. These types of witnesses have a great ability, if they choose

to exercise it, to lead the questioner to areas where the examiner's

knowledge simply runs out. The advantage of time and the control of

time should be used by the cross-examiner to offset this disadvantage on their part.

40. Let me explain what I mean. A trial will usually run from 11am to 1 pm and 2pm to 4pm. That means that the examiner is left to their own devices for at most 120 minutes at any time. They can decide what topics to cover. If they are not making progress on one topic or, even more frighteningly, if the witness is having the better of the exchanges, the cross-examiner can simply move on to another topic in order to buy time until the next break. This is a power that the witness simply does not have. So, while the cross-examiner can leave a particular issue for the moment and perhaps return to it later, the witness cannot really ask to stop the questioning about a particular topic until they have a chance to think about it or to recast their evidence. The arrangement of time is something that is often overlooked by the carrying out of a cross-examination but is a huge advantage.

41. Secondly, the cross-examiner frames the questions. This is done carefully to reduce the risk of an unhelpful answer. Ideally, the questions should be brief and to the point, giving the witness little or no chance to obfuscate and dodge.

42. When considering the form of the question, we now see absolutely everywhere, advice that you should never ask a question to which you do not know the answer.

43. This may be true in some cases. But, in most cases this is simply a boneheaded maxim, elevated to the status of a golden rule. Very often you do not know the answer to a question. That doesn't mean you shouldn't ask it. The real trick is to have worked out in advance the range of possible answers, and to have some idea about how you will respond to them. As I have already said, Russell had no idea how the request that Pigott write certain words on the sheet of paper was going to end up.

Undoubtedly, however, it was a very worthwhile thing to do. The fact is

still recognised as one of the classic cross-examination gambits of the last two centuries demonstrates that.

44. In preparing this lecture I spent some time trying to hunt down the rationale for this fatuous piece of advice. This was not a successful search. However, my quest did reveal a 7-minute clip on Courts TV recorded in March 2019, where the presenter of course described this maxim as his golden rule. I have to say that this was a bit undermined by his later opinion that:-

“In some of the most effective cross-examinations I've seen the answer does not even matter.”

I would pay good money to see the productive line of questioning in which the questions were all important, but the answers could simply be ignored. So – ask the question even if you do not know the answer.

45. Thirdly I want to mention the use of notes in prompting the cross-examiner. I have previously expressed my view that the provision of the illegible Post-it placed before the cross-examiner as they are nearing a critical part of the cross-examination is far from helpful. Let me explain why.

46. This goes back to the use of time. It is always possible to have enough material to fill the two-hour hearing. At the end of that period, you can always consult with the rest of the team about the direction that the cross-examination is then to take. At that stage, any points of detail can always be gone over. Primarily, of course, this will happen before the trial begins but, in any event, something new is likely to crop up during the hearing. There's no shame on the part of the questioner in coming back to a topic that they have already covered. What is not helpful is the provision of a flood of notes while the questioner is on their feet. It can be incredibly distracting, not least because they are often difficult to read.

47. Even if a note is completely legible, it may sometimes give bad advice about the line for the cross-examiner to take. Apart altogether from these considerations, the note can sometimes be so complicated that reading it gives rise to an obvious pause in the examination of the witness, which in turn inevitably gives the impression that the person asking the questions is lost as to where to go. Needless to say, that is not the best impression to create.

48. Finally, and while I am on the subject of notes, if you are cross-examining you should make sure that the witness cannot read either your notes or any of your papers. I was cross-examined on one occasion. My evidence was to counter the evidence of someone called Gerard Hogan, whatever happened to him.

49. One thing that struck me while I was being cross-examined is that I could see very plainly from the witness box the documents that my questioner was using to cross-examine me. He had very helpfully highlighted the

passages on the pages in the core books which he thought were relevant in either yellow or orange highlighter. Every competent witness should be familiar with the key documents, and it is of no little assistance if you can see the highlighted passages that are about to be put to you.

50. I now want to turn to the third topic, the De Rossa trial. In that case, the stakes were very high. The plaintiff was a successful politician who at the time of the first and second trials was one of the most senior cabinet ministers in the country. The defendant was, at the time, the biggest print media organisation in the State. The libel complained of was, as we will see in a few minutes, remarkably serious. There were three different trials in the one action. The first trial was aborted because of an alleged contempt of court on the part of Independent Newspapers. The second trial resulted in a disagreement by the jury. The third trial concluded with a record award of damages for libel in favour of De Rossa.

51. I will focus on the cross-examination of Eamon Dunphy, the main witness for Independent Newspapers and the author of the article in suit. It is possible to carry out a compare and contrast exercise between the cross-examination by Adrian Hardiman in the second trial and the cross-examination by Sean Ryan in the third trial. The change in counsel was because Adrian, not for the first or last time, found himself with an overfull diary and could not take part in the third trial.

52. I will set the scene. Proinsias De Rossa was the leader of Democratic Left, a party which had evolved from the Workers Party, which in turn had evolved from Official Sinn Féin. Official Sinn Féin was commonly thought to have had connections with the Official IRA.

53. Mr. De Rossa, for whom Adrian appeared, was a very successful politician and at the time of the first and second trials was the leader of one of the three parties in what was called a rainbow coalition government. He was also the Minister for Social Welfare.

54. On the 26 October 1992, the London Independent published an article about the Workers Party. It stated that in the autumn of 1986, Mr. De Rossa and one other had visited Moscow and delivered a seven-page letter to the Soviet Communist Party Central Committee. This letter was looking for money. It said:

“The continued growth of the party in the public domain makes both “special activities” more hazardous for the party which has more than enough enemies and the establishment ready to pounce on mistakes or difficulties.”

55. The letter explained that the party had been funded by “special activities of which is not possible to detail here because of reasons we are sure you will understand”.

56. The letter was purportedly signed by Mr. De Rossa. In an article published two months later, in December 1992, Eamon Dunphy wrote an

article in the Sunday Independent in which he elaborated upon what he believed “special activities” meant. He wrote: “The ‘special activities’ concerned were criminal. Among the crimes committed were armed robberies and forgery of currency. The people engaged in this business occupied that twilight world where the line blurs between those who are common criminals and others of that ilk who would claim to engage in political activity... This world is populated by myriad groups, some dealing in drugs, prostitution, or protection rackets, crimes of which the weakest members of society are invariably the victims”. The article continued with the statement that “there is evidence, strengthened by revelations in the Irish Times this week, that De Rossa was aware of what was going on”. I should stress that this contention was ultimately rejected in the firmest terms by the jury.

57. It is now necessary to say a word about Mr. Dunphy. Eamon Dunphy was a professional footballer, notably playing for Millwall. He later

wrote a bestseller about his experiences, became a prominent football commentator on television, a journalist known for his strong opinions about a range of different issues apart from sport, and was of the best-known public personalities in Ireland. For a time, he has his own radio show on Today FM and a talk show on national television. He was no ordinary journalist and no ordinary opinion columnist.

58. As I said, the first trial led to the discharge of the jury. Mr. Dunphy did not give evidence in that. In the second trial, however, the clash between Eamon Dunphy as witness and Adrian Hardiman as cross-examiner was eagerly anticipated.

59. The cross-examination took place over two days. On one view, Mr. Dunphy need not have been a critical witness. He did not purport to give any evidence about the truth of the article. His evidence did touch on the meaning of the article, but of course meaning is classically a matter for the jury. However, his status as a public figure proved impossible to

resist and Adrian's cross-examination was a well-plotted and elaborate affair. As one might have expected, early in his cross-examination Adrian launched a strong line of questioning. Hardiman forcefully put to Eamon Dunphy the contents of an interview that Dunphy had given to Hot Press magazine. In that interview, Mr. Dunphy recounted an incident that had occurred between him and Fintan O'Toole. Mr. O'Toole was, then as now, a leading journalist. According to Eamon Dunphy in his interview, the conversation included the following statement by him:

“And then what I said, once he started dissembling, was ‘Fintan I’m going to effing have you baby. Watch the back page next Sunday’. That’s what I said and he said don't threaten me and I said I’m not. I’m promising you.”

The back page of the Sunday Independent was the very prominent part of that newspaper where Eamon Dunphy’s column appeared.

60. In the Hot Press interview, Eamon Dunphy also said that he had written something which could have led to proceedings from Mr. O'Toole but nothing happened. Mr. Dunphy wrote the same piece about Mr. O'Toole again sometime later and added:

“We haven't had a writ yet ... where's the writ? Because if I was wrong I could take you for a million quid.”

I will pause there; Eamon Dunphy almost certainly meant to say that Fintan O'Toole could have taken Mr. Dunphy for “a million quid.” The interview went on, with Mr. Dunphy saying;

“We still don't have the writ. And the point about it is that he is a bit of guru. That I have made him a bit of a joke. And I can't understand why he did it.”

61. This line of questioning was gold dust for a number of reasons. First, it painted a certain picture of Eamon Dunphy. Secondly, the phrase “where’s the writ?” seemed to suggest that if somebody was libelled, they really should sue. And finally, the reference to a damages award of “a million quid” for defamation was a handy way of putting the idea of a large award in the minds of the jury.

62. I should say a word about the use of bad language in the Hot Press interview. Before the cross-examination of Eamon Dunphy began, we had the difficulty of Adrian Hardiman using coarse language in putting the questions to Eamon Dunphy. We came up with the idea of getting Mr. Dunphy to read out the quotes himself. That insulated the cross-examiner from any disapproval that we might have had about the use, on a fairly repeated basis, of any profanity.

63. The first day went well then, as a result of the careful use of set pieces, such as the Hot Press interview. However, Eamon Dunphy was an

extremely intelligent man. He clearly reflected on the day's events. And he struck back. His cross-examination resumed the following morning with prepared comments that, at the first opportunity, Eamon Dunphy delivered to the jury.

64. The theme of the first day's questioning had been Mr. Dunphy's assertion that he would use his column in the Sunday Independent to get at an individual. The following morning, he said this:

“I spent 10 years trying to convince the Irish people that Jack Charleton was no good – he became a national hero ... I wrote many dissenting pieces about Mary Robinson – she's the most popular person in the country. I said Roddy Doyle was a bad novelist. He is the most celebrated novelist in these islands. Fianna Fáil have begged me not to endorse Bertie Ahern.”

65. At this stage, the courtroom was convulsed with laughter. This required an immediate response from the cross-examiner, which Adrian achieved. He told Mr. Dunphy that if he had anymore jokes, he had better tell them now. Dunphy in turn rose to the occasion.

66. Eamon Dunphy insisted that these were not jokes, and topped his answer by saying:

“The best thing that could happen to you, Mr. Hardiman, is to get on the wrong side of me. It could make you a national hero.”

67. Adrian parried these comments in a number of ways. At one point he told Mr. Dunphy:

“You’ll have to work without a straight man Mr. Dunphy.”

On another occasion, Hardiman encouraged the witness to “put away your idiot boards”. Nonetheless, the morning assault by Mr. Dunphy had

been remarkably effective. In a way, it was a version of the cross-examiner starting with a strong line of questioning. Eamon Dunphy managed to start the second day with a strong line of answers, though admittedly these were answers to questions that had been asked about 20 hours beforehand.

68. The balance of the day was more difficult for Mr. Dunphy. As an example, he was questioned about statements that he had made in which he described the Sunday Independent – his own newspaper – as a publication in which there was “a cancer” and that the newspaper was “pernicious and evil”. Mr. Dunphy's adverse comments about other well-known people also came back to haunt them. These included Vincent Browne, Gay Byrne and Pat Kenny. In evidence that will be hurtful to at least one member of my Court, Eamon Dunphy was taken to task about his statement that Seamus Heaney was “a load of old codswallop”.

69. Mr. Dunphy scored his own points, notably towards the end of his cross-examination when he tried to reverse the impression that he had sought, using his power as a columnist, to damage Mr. De Rossa. Mr. Dunphy countered that Mr. De Rossa was a powerful government minister seeking to intimidate Eamon Dunphy.

70. As against that, Eamon Dunphy shipped some water when stating that he had not heard of the phrase “hatchet job”; this denial appeared unfortunate given that in 1996 Mr. Dunphy had posed on the cover of Hot Press with an axe or hatchet, and an accompanying headline:

“The axeman speaketh.”

71. In his report for the Irish Times, Frank McNally observed that Hardiman had “scored some palpable hits” while also noting that “Adrian Hardiman was almost alone in the courtroom in remaining unamused ...” by Mr. Dunphy’s entertaining evidence.

72. The reality is that the cross-examination was probably a three all draw.

This amounts to a win for the witness on away goals.

73. In Adrian's entry in the Dictionary of Irish Biography, this cross-

examination was described as including "some stellar repartee between

Hardiman and Dunphy". The author has, very precisely, put his finger on

the real problem from the De Rossa side. The whole cross-examination

became a show. It was immensely entertaining. For those of us clustered

around Adrian Hardiman it was a thrilling experience. But somehow the

purpose of the cross-examination appears to have got lost in the

excitement of the performance, the abuse of Gay Byrne, the threats (or

promises) to Fintan O'Toole.

74. When reading through the newspaper cuttings of the time, I was surprised

to see in the report in the Irish Independent that Mr. Dunphy said in

evidence that he accepted that Mr. De Rossa had no knowledge of the

Moscow letter before it appeared in 1992 and that he believed he did not knowingly sign it.

75. That was a critical admission for the purpose of the case. It was lost among the pyrotechnics of the cross-examination and the entertaining references to other famous people who had nothing to do with special activities, the Workers Party, or with any alleged approach to the Soviet Communist Party's Central Committee in Moscow in 1986.

76. In fact, Independent Newspapers must have realised at the time the significance of the concession. For the third trial, they engaged a handwriting expert to examine the signatures on the original of the letter in the archive of the Kremlin. In order for that to be done in a legally meaningful and proper way, the late Mr. Justice Carney appointed himself commissioner to take evidence in the Kremlin attended by the full team of lawyers on both sides. However, that surreal event is not directly relevant to my talk today.

77. The second cross-examination of Mr. Dunphy took place in July 1997. It was conducted by Sean Ryan, who had come in to replace Adrian Hardiman. It was much shorter. On the one day – the 23 July – evidence on behalf of Mr. De Rossa was given by Pat Rabbitte, at the time a former Democratic Left Minister. The defence case was outlined to the jury, in an hour-long speech, by their new senior counsel, Michael McDowell. Mr. Dunphy gave his direct evidence. And, most importantly for current purposes, Sean Ryan began his cross-examination.

78. Sean Ryan was not a media personality. He was in all likelihood unknown to Eamon Dunphy. Sean Ryan was not, in a couple of years, to be approached to be the host of the Late Late Show. However, he had done two important things in his preparation of the cross-examination. Firstly, he must have carefully studied where Adrian's cross-examination had succeeded, and where it had not. So, on the second day of his cross-examination of Eamon Dunphy Sean Ryan briefly

repeated questions about, for example, the portrayal of Mr. Dunphy as a hatchet man. However, the second thing that the cross-examiner had done was to consider the real issue from the jury's perspective. This boiled down to the sort of journalistic values that Eamon Dunphy had. Ryan therefore began his cross-examination, in the limited time available to him on the first day, with a minutely calibrated sequence of questions. These were set out in the court report in the Irish Independent:

“Sean Ryan SC ... asked whether Mr. Dunphy accepted that in his profession there were standards to be applied and adhered to. He agreed. He was asked if a journalist should use fairness and moderation. Mr. Dunphy said he agreed with fairness but he added: “I don't think moderation is a virtue in a journalist necessarily”. Asked whether there were other criteria, he said that the other in the context of what they were discussing was

passion. Asked about reasonableness, he said he thought reasonableness would not be the first quality to look for in a columnist, or even a journalist, or possibly in a human being. He agreed care and diligence were criteria.”

79. Sean Ryan then summed up the answers. Fairness yes, moderation no, passion yes, reasonableness no, care and diligence yes. Mr. Dunphy agreed with that summary. From their eventual award, one can take it that the jury (at least in 1997) wanted their journalists to be reasonable and moderate in their writings.

80. Even reading this 30 years later one can see the incredible force in these 10 minutes of cross-examination. At the time, it was devastating. After this line of questioning, the day's business ended, Sean Ryan sat down, and the jury were left to reflect on what they had heard. As I have said, the cross-examination continued the following day but at much less

length than the cross-examination in the earlier trial. In any event, the damage had been done. This was no score draw. It was a clear win for the questioner. Importantly, it was achieved by questioning that the Irish Independent described as gentle and “without fireworks”.

81. I think there are a number of things to learn from these contrasting cross-examinations. The first is the danger, inevitable in Adrian’s case given his public prominence, of becoming part of the show. The second is that the strong opening line of questioning as an approach was never more vindicated than it was in Sean Ryan’s case. The third, to return to my bugbear, is that Ryan could have had no idea what the answers to the questions were going to be. If Sean Ryan had worked for one of the large American law firms whose websites are peppered with the “golden rule” that you never ask a question to which you don't know the answer he would have been fired. He could not have known what Mr. Dunphy was going to say. For example, he could never have anticipated, no matter

how carefully he plotted the questioning, that Mr. Dunphy was going to throw “passion” into the mix as an attribute. And once again we are reminded of the courage required leading off with a line of questions which could go badly wrong.

82. The two cross-examinations were stellar. The Ryan effort was ultimately the more rewarding. There are two reasons for this. Firstly, like a good golfer Ryan had learned from Hardiman’s putt. Secondly, Eamon Dunphy was at his best when sparking off Adrian Hardiman. It enlivened him and caused him to raise his game. There simply was no similar repartee with Sean Ryan. As a result, Eamon Dunphy was a less effective witness in the final trial.

83. I now turn to the final and shortest sections of this talk. I started with Adrian’s media appearances and I will end with them.

84. A year after the De Rossa trial, a cross-examination of global significance took place. This was the testing of the evidence of President

Clinton in the context of various allegations of impropriety on the President's part. At the conclusion of the cross-examination Adrian gave his views on the evidence in a special edition of Prime Time. I will play two clips from the programme. I am very grateful to RTÉ Archives for allowing me to use these excerpts. In the first of these Adrian talks about how Clinton had coped with the cross-examination.

Interviewer: Let's talk to Adrian Hardiman, senior counsel, and Sarah Dillon, lecturer in law at University College Dublin.

Adrian Hardiman, in broad terms before we go into the details, if you were the President's barrister today, would you count him a good witness?

Adrian Hardiman: Yes, I would. I would count him a very good witness. He started with several difficulties, most of which I think he surmounted. His main difficulty was that he had taken this

rather narrow line of what was sexual relations in the Jones deposition, and he came out fighting on that one. I heard Mark Little calling it a rather narrow pedantic legal argument earlier. That, with respect, is like forcing a man to play golf but then complaining that all he hits is golf balls. He was put into a legal trap. He said, "I worked on a definition that was not mine, it was the Jones' lawyer's definition, and sure I did it narrowly, I did it legalistically, I didn't see why I should help them, they were corrupt".

I included that simply because it exemplifies how a capable witness can deal with cross-examination. It also displays Adrian's dexterous use of language. Command of language, and an extensive vocabulary, are great advantages either to the questioner or the witness in any cross-examination. Adrian had these attributes in spades.

85. In the second, he gives his view about the way in which the cross-examiners had performed.

Interviewer: Adrian Hardiman, to your professional ear, how well did the prosecutors handle themselves?

Adrian Hardiman: Well, very badly. I mean I suppose we've all heard some great American cross-examiners, in particular, Johnnie Cochran, I think is the best available, the lawyer who defended O.J. Simpson, Barry Scheck, people like that.

These guys were pedestrian...there was only one, Mr. Wisenberg, who got off the starting blocks...

Interviewer: I heard it suggested that what they were doing was essentially allowing the President to talk himself into trouble.

Adrian Hardiman: Well, it is quite interesting because August 17th he gave that testimony. He hadn't at that stage seen the tapes or

the transcripts of Lewinsky's evidence or Betty Currie's evidence.

There was remarkably little contradiction which I think showed there was a lot of "I don't recall", but there was remarkably little contradiction. I personally don't think that not recalling things that happened eight, nine months ago in detail...

Interviewer: Of course, as we keep saying in this discussion, Mr. Clinton's legal defence against the charge of perjury is one thing, what was at stake today was his defence before the American public.

86. The answer is, very unfortunately, twice interrupted by the presenter.

87. A day or two later I asked Adrian what he was going to say before he was interrupted. He said there were two things you always had to keep in mind when preparing a cross-examination, and that neither of these were evident in the Clinton cross-examination. The first is that you either

know as much the witness, or at least pretend that you do. The second is to move at speed. No matter how eminent or competent the witness, you always had to be ahead of them. The pace of the questioning was really important.

88. You can immediately see the sense of that. If the witness thinks you know everything they do, they are less likely to obfuscate or (to be blunt about it) to tell untruths. As for pace, a cross-examination can be long, but never slow.

89. This is good advice, from one of the best in the business. If any of you find yourself getting ready to cross-examine a witness at any time in the future, you could do worse than to keep Adrian Hardiman's words in mind.