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1: Cross-Examination - Criminal Defense Wiki

Cross-Examination. The questioning of a witness or party during a trial, hearing, or deposition by the party opposing the one who asked the person to testify in order to evaluate the truth of that person's testimony, to develop the testimony further, or to accomplish any other objective.

Transition Closing Subject "Looping" is a method of sequencing questions to highlight certain facts. A defense attorney "loops" questions when he uses the answer to the prior question to begin another question. Looping has three stages: Use fact to ask second question emphasizing the fact. Continue to build in a continuous loop. One method of structuring cross examination is the Chapter Method. The Chapter Method organizes cross examination into a cluster of favorable points called chapters that ultimately help you tell the judge or jury your side of the story. To follow this method: First, define your purpose of cross examination for the witness. Is it to expose bias or motive? To bring out inconsistencies of facts? Or to simply show that the witness cannot be believed? Your purpose may be different for each witness. It should be determined based upon all of the facts and the purpose should coincide with your theory of the case. Second, once you determine the primary goal of your cross examination of a specific witness, decide what points you would like to make. The points will help you reach your primary goal. Each point will become a chapter and will deserve at least one page. A point may be the existence of a fact, the introduction of a new fact, or the weakening of an existing fact. Third, place the point that you wish to make on the top of the page. Each point will be the title of each chapter. Begin with general questions and move to specific questions. Use simple, one fact per sentence, leading questions. For Example, The robbery occurred at 10pm at night? At 10pm at night, it is dark outside? You were outside when the robbery occurred? When the robbery occurred, you were outside standing in the dark? Fifth, and finally, be sure to include a form of reference to your points and cross examination questions. The reference may be used in the event that the witness tries to disagree with you. The reference can be a small notation or shorthand pointing to the specific resource that you obtained the information from: The goal in cross examination should not be to have the witness recite the facts in a chronological order. This simply mimics the prosecution and solidifies their side of the story. That is why the chapter method is so effective. It helps the judge or jury focus on your specific points that illustrate your theory of the case. At the end of your cross examination you should achieve your primary goal through your chapters and the specific points you made. These chapters and their points can then be used in closing arguments to remind the judge or jury of what the evidence is and how it is consistent with your theory of the case. Witness Control Being in control of the questioning is extremely important. As the attorney you want to be assertive, but not aggressive. However, if a witness is adversarial and non-responsive, maintaining control is crucial. Phrase questions as narrowly as possible and try not to give them any wiggle room. However, you should try not to become visibly flustered by the witness. While it is important to repeat questions that are not being answered, your tone should remain even, unless the witness is hostile. Be very careful when acting aggressively. Watch out for these type of responses: Quibbling over facts Rambling speeches Answering different questions. In addition, the defense attorney may impeach the witness by confronting them with a prior written or oral statement if it contradicts their current testimony. The more a witness resists giving straight answers, the more he or she will damage their credibility in front of the judge or jury. However, explaining an answer is not the same as resisting; make sure to look for the difference. Preparing for Cross-Examination Cross-examination is a real, live event. Therefore, your ability to anticipate, plan, prepare, and practice in advance is crucial to a persuasive presentation. A good trial attorney prepares extensively for cross-examination in advance. The witness should have given a statement to the police or the prosecutor. As the defense attorney, you should go through the statement and identify what points are helpful or harmful to the client. In these circumstances, the co-defendant may actually be helpful at trial. On the other hand, the co-defendant may have a motive to shift blame onto your client. Regardless, a good defense attorney thoroughly investigates all pre-trial statements. If the witness deviates from the script of his prior statement, the defense attorney will have ample grounds to argue that he is inconsistent or unreliable. Consider these questions when preparing for cross-examination:

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What are the facts beyond dispute? What is the context for the facts beyond dispute? Is the fact important to the judge? Is the fact necessary to your theory of the case? Which witness are able to corroborate or deny these facts? A successful cross-examination requires preparation by the attorney both prior to and during trial. You should try to interview all witnesses as soon as possible after the crime. Beware of interviewing the victim or any party represented by a lawyer. Certain jurisdiction do not permit formal depositions of victims or witnesses before trial. However, if you are able to obtain a deposition, it may prove useful at trial. Depositions can be presented as direct evidence if the witness in unavailable. Or depositions can be used to impeach a witness. Following is a sample grid to prepare for cross-examination: Do not take notes of facts you agree with -- you are just wasting time. Take note of the theme Note facts that are new or unknown to you Note facts that differ from your own Note facts that you doubt can be proven Note facts that are overstated Take note of the specific words that are uttered -- for later use in your cross. Impeachment Impeachment is an allegation, supported by proof, that a witness who has been examined is unworthy of credit. Impeachment may be indirect, as through a second witness or presentation of other physical evidence. Or impeachment may be direct, which is typical in cross-examinations or even direct examination if permissible. Cross-Examination is one of the primary places that a defense attorney can impeach a witness. Generally, a defense attorney may impeach prosecution witnesses subject to limitations in the evidence code. Under certain circumstances, an attorney may even impeach their own witnesses. Bias, interest, motive, prejudice, corruption, plea deal, etc. The most common method of impeaching the credibility of a witness is bias, particularly when a witness has a personal relationship with the victim. Similarly, a witness who has been given a special deal by the prosecution has a strong incentive to lie. Prior convictions and bad acts The admissibility of prior convictions and bad acts varies from country to country. However, a defense attorney should always keep these in mind. In the United States the rules regarding the admissibility of prior convictions as impeachment evidence is complex. However, as a general rule convictions that substantiate or undermine the honesty of a witness are the most powerful. Prior bad acts are also helpful on cross, if admissible. In the United States, prior bad acts are not admissible to substantiate a subsequent claim of the same bad act. Thus, evidence of prior burglaries cannot be used to prove a defendant is guilty of burglary. However, prior bad acts may be admissible in the United States for other, so-called "non propensity" reasons: The rules of evidence surrounding prior bad acts will vary greatly from jurisdiction and the defense attorney should study these carefully. Prior dishonest conduct Prior dishonest conduct, like prior convictions for tax evasion or perjury, may be admissible for credibility purposes. For instance, a witness may claim it was raining when in fact it was sunny. Prior inconsistent statements A defense attorney can also impeach a witness through prior inconsistent statements during cross-examination. There are at least two ways of looking at prior inconsistent statements. In some cases, the lawyer will want to argue that the first statement is the most accurate of the two. In other cases, the lawyer may argue that the second statement is more reliable. In some cases, the lawyer may simply want to show that the witness is totally unreliable. Commit the witness to the statement by asking leading questions. Commit the witness to the circumstances surrounding the statement that increases the chance that the statement was accurate.

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2: Cross-Examination and the Perfect Question

Cross-examination is a key component in a trial and the topic is given substantial attention during courses on Trial Advocacy. The opinions by a jury or judge are often changed during cross examination if doubt is cast on the witness.

Integration of Goals on Witness Examination A. Control in Cross-Examination No skill of the trial advocate epitomizes adversarial confrontation as dramatically or significantly as that of cross-examination. The timeless nature of the adversarial skills required of the cross-examiner was recognized by the eminent New York trial lawyer, Francis Wellman, 90 years ago in his excellent treatise on the Art of Cross-Examination: Once mastered, however, it is also the most significant skill, since it is from the crucible of cross-examination that truth most often emerges. As with all significant skills, mastery of the basic principles and techniques must combine with hard-earned experience to mold the neophyte into a seasoned cross-examiner. The purpose of this chapter is to present an overview of several principles and techniques of cross-examination that have been passed to our generation from the master advocates who have preceded us. Top of Page B. The categories you should carefully consider for the silent cross-examination technique include the scope of cross-examination permitted under the rules, the harmless witness, the unimpeachable witness, avoidance of the baited trap, avoidance of unnecessary reiteration, and avoidance of improper motives to cross-examine. Scope The seminal point in preparing and conducting cross-examination is a clear understanding of the rules controlling the scope of permissible cross-examination in the particular court in which the case is to be tried. A significant disparity exists between the restrictive federal rule and the common law rule regarding the scope of permissible cross-examination. The common law rule, which is retained in many state courts, regards cross-examination as the acid test of the truth and affords the parties a wide latitude in the cross-examination of an adverse witness. This rule permits counsel to question the witness on any subject relevant to the dispute and does not restrict the scope of cross-examination to matters on which the witness was questioned on direct. This rule requires the cross-examiner to call the witness as part of his own case if he wants to range farther afield. Scope of Cross-Examination Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. A cross-examiner confined by the restrictive rule risks re-emphasizing the harmful effects of the direct examination without the opportunity for a collateral attack to discredit or impeach the witness. The Harmless Witness When a witness has not hurt your case, there is little to be gained and potentially much to be lost by cross-examining that witness. The witness who was ineffective during direct testimony may recoup during cross-examination and offer testimony that is even more damaging to your case because it emerges on cross-examination. Additionally, by cross-examining, you give opposing counsel the opportunity to redirect, rehabilitate the witness, and elicit adverse testimony. The potential for scoring points during cross must be weighed against the potential for losing points on redirect. And when you consider that opposing counsel on redirect will be dealing with a cooperative witness, cross-examination of the harmless witness becomes an option to avoid. The Unimpeachable Witness You will encounter witnesses who are totally unimpeachable, who are giving factual accounts and honest testimony, and who are not subject to any legitimate cross-examination. The Baited Trap When an opposing witness fails to testify on direct examination to a known, important fact that is detrimental to your case, you should be alert to the possibility of a baited trap. Opposing counsel may have chosen not to elicit the evidence on direct examination to allow the testimony to emerge during cross-examination, thereby giving it more impact and allowing the witness to score points against you. The theory is that such evidence, emerging adversely to the cross-examiner, will have a greater impact on the minds of the jurors than if elicited during direct examination. You can deny your opponent this planned impact by either 1 avoiding the subject matter or 2 if otherwise appropriate, choosing not to cross-examine, thereby also denying opposing counsel the opportunity to elicit the evidence on redirect. Unnecessary Reiteration If, on examination by opposing counsel, a witness has testified unfavorably to your opponent, you will be strongly tempted to elicit the same testimony on cross-examination to reiterate it for the jury. This should be avoided since such cross-examination allows the

witness to explain and thereby reduce or eliminate the effect of the adverse testimony. This is particularly true if there has been a recess between direct and cross-examination during which opposing counsel can tell the witness how to explain away the adverse testimony. Such repetitive cross-examination is wholly unnecessaryâ€”and precarious. While it is true that opposing counsel may try to elicit an explanation on redirect, this effort will appear contrived and will not have the same ring of truth as the witness extricating herself on cross-examination. Improper Motives for Cross-Examination Avoid deciding to cross-examine to please your client, to attack a witness, or to maintain your aggressive posture in the eyes of the jury. Cross-Examination Top of Page A. Attention to detail during direct examination is often the key to successful cross-examination. If, during direct examination, you determine that cross-examination is necessary, conduct a quick damage assessment from the perspective of the juryâ€”keeping clearly in focus that the jurors are the sole judges of factual disputes, the credibility of the witnesses, and the amount of damages to be awarded. Approach cross-examination with three principle goals: Depending on the veracity and integrity of the witness, your attack may range from demonstrating a bias of the witness to total impeachment. In most jurisdictions, pretrial discovery of information with which to reduce or destroy the credibility of potential adverse witnesses is permissible. Under these procedures, surprise witnesses should be a relic of the past. However, you should directly attack the character of a witness only when the evidence is conclusive, and then only as a last resort. An attack on character is, by far, the most dangerous form of impeachment. The backlash resulting from a failed impeachment attempt can damage your case. A less dangerous way to discredit the witness is to elicit facts that demonstrate bias or prejudice, for example, if the witness is a relative, close friend, co-worker, or professional colleague of the defendant. Questioning a witness about bias is a double-edged sword. You must seek a balance between timidity and reckless aggression during cross-examination, being mindful that most of the wounds you can suffer during cross-examination are self-inflicted. At no point in cross-examination is your preparation more important than when you attempt to impeach a witness by bringing out prior inconsistent statements. Most modern rules of civil procedure provide ample opportunity to discover statements such as depositions, signed statements, sworn statements, sworn answers to interrogatories, and prior testimony in other proceedings. Before the trial, you must personally read all prior statements of the witness and cross-index every deposition by name and evidentiary topic. Thus prepared, you can listen very attentively during direct examination of the witness and readily recognize conflicts in testimony when they occur. When the witness is passed for cross-examination, carefully consider the most auspicious time for impeachment. Then take the witness back over the testimony given during direct to fix the point of impeachment clearly in the minds of the jurors. Ask the witness whether he has ever testified any differently. Top of Page At this point you must carefully consider the relationship between the witness and the jury. With a witness who has made a mistake and freely admits it, your object should be to discredit rather than to destroy. Americans love an underdog, and so do American juries. Jurors occupy a position in court much more closely aligned to that of the witness than to that of the attorney, and they will forgive the witness for what appears to be an honest and admitted mistake. Consider first that opposing counsel is aware of the prior sworn testimony and should have prepared the witness to respond to the cross-examination. In this situation, the witness and counsel have probably prepared an acceptable reason as to why the witness is testifying differently: It is essential to learn to distinguish between discrediting and impeaching a witness. It is part of the art of cross-examination to determine how far to go in attacking a witness who has given inconsistent testimony. A few factors that you must consider include the overall effect the witness has had on the jury; whether the witness is a party, a hired expert, a partisan, or a neutral observer; and the significance of the evidentiary point on which the witness is being discredited. Common sense dictates that an impeaching statement must be on a matter of substance. The court and jury have little patience with a lawyer who attempts to discredit a witness by bringing up immaterial, minor inconsistencies. The technique of cross-examining through prior inconsistent statements is particularly valuable when confronting opposing experts, especially hired guns or in-house experts in products liability cases who travel the country testifying similarly in case after case. Before trial, you should make every effort to gather all prior testimony of such an expert, as well as all books and articles authored by the expert. Once you have accumulated this material, you

must read it all thoroughly. Your absolute control over the questioning is essential to impeachment. The complete avoidance of open-ended questions is crucial. At this point, you should approach the witness and stand next to the witness box so as to cause the witness to turn and directly face the jury. You must retain control at this point by allowing the witness to read only the specific answer from the deposition and not give any further explanation. If this is done properly, the jury is now fully aware that the witness has given prior inconsistent sworn testimony, and the witness is successfully impeached. At this point, many impeachments are lost by counsel asking one question too many: After the witness has read the impeaching material from the deposition, you should remove the deposition, leaving the impeached witness directly facing the jury. This leaves the impeached witness on the hot seat under the intense scrutiny of the judge and jury with no place to hide. Top of Page The entire courtroom is now focused for your next question of this impeached witness. The pause after impeachment, in addition to allowing the jurors to fully appreciate the significance of what they have observed, piques their interest as to the next line of inquiry. It is absolutely essential, to maintain control of the witness and to protect the impeachment that has occurred, that two things occur in the next line of questioning: The reason for moving away from the subject of impeachment is so that the witness has absolutely no opportunity in subsequent questions to regroup and explain away the basis of the impeachment. Therefore, you should be able to maximize the effect of impeachment by controlling the further examination of the impeached witness and eliciting favorable testimony on the outcome-determinative disputes. The witness may testify more favorably on the outcome-determinative issues for fear of being impeached again. If the witness refuses to cooperate with you and shades the testimony in favor of your opponent, the jury will not accept the testimony since the witness was just impeached. Be aware that total impeachment of a witness is rare. While total impeachment is desirable, you should not overlook the importance of the cumulative effect of numerous small disparities, as long as they are directly relevant to material issues in the case. In a common law jurisdiction, or if opposing counsel raises the subject on direct in a restrictive or federal jurisdiction, each witness called by the defense may become a damages witness for the plaintiff. For example, a defendant doctor called on the medical causation or negligence issue in a medical negligence case can become a powerful witness for the plaintiff on each of these damages issues. The more reluctance the doctor demonstrates in offering such favorable testimony, the more impact the testimony will have on the jury. Under the common law rule, the witness may be examined on any issue relevant to the case. The general practitioner can be called on to give a thorough explanation of board certification: If the general practitioner refuses to acknowledge that a board-certified orthopedic surgeon is more qualified to treat an orthopedic injury than a general practitioner, the jury will view this response as indicating bias and will doubt the credibility of the general practitioner. Properly utilized, this can be a win-win line of questioning for the plaintiff. No jewel shines more brilliantly in summation than the diamond that emerges successfully during cross-examination from the black coal of adversarial confrontation. You must plan the examination of witnesses with the understanding that testimony elicited on cross-examination is more memorable to the jury and carries more weight than direct testimony. Jurors will cling more diligently to the conclusions they reach on their own than to those that were spoon-fed to them on direct. You may then reiterate the evidence through direct examination of your own witnesses and remind the jury on summation that the evidence was elicited first from the adverse witness. Planning and Preparation of Cross-Examination Extemporaneous brilliance on cross-examination increases in direct proportion to extreme diligence in planning and preparation. A good cross-examination is seldom the result of chance. The more spontaneous a cross-examination seems, the more likely it is that counsel carefully planned the examination well in advance of trial. Cross-examination of a witness generally falls into two categories: One technique of cross-examination is to write out every question in advance.

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3: OPD > The Library > Criminal Law Casebook > Cross-Examination

How to Cross Examine. During a trial, your cross examination of the opposing counsel's witness is an opportunity to make him or her appear unreliable. Successful cross examinations capture the attention of the jury and judge and expose the.

Judicial Activism Cross Examination Cross-examination is the legal process of interrogating a witness that has been called to testify by the opposing party in a legal proceeding. When a party calls a witness to testify in court, he must follow certain rules in questioning the witness. An effective cross-examination may bring to light certain contradictions, raise doubt, or even obliterate the prior testimony of the witness. To explore this concept, consider the following cross-examination definition. After that attorney ends his questioning, the attorney for the opposing party is given the opportunity to ask questions of the same witness. Cross-examination is governed by different rules than direct examination in two ways: Cross-examination is a fundamental right in the United States judicial system. Types of Cross-Examination In general, there are two types of cross-examination: This type of questioning is not intended to attack the witness, or to discredit his testimony, but to obtain information that fills in the gaps in his testimony under direct examination, or to obtain some type of admission. The witness is unable to understand the obligation to tell the truth in court The witness has some problem of perception The witness is unable to effectively communicate his testimony The witness has a faulty memory The witness is biased, or has an interest in a particular outcome in the trial The witness has some motive to lie on the stand, such as if he has been threatened or bribed The witness has made prior statements that are inconsistent with one another, or with his current testimony The witness has prior criminal convictions that may affect his testimony or believability Cross-Examination Questions Cross-examination is one of the few times an attorney can pose leading questions to a witness. During this process, however, the judge has some control, and can put an end to questioning if he feels the cross-examiner is repeatedly asking the same question, or badgering the witness. Examples of leading vs. This may be done by showing that the witness is somehow prejudiced in his understanding or testimony, or that he has a stake in the outcome of the proceedings. Redirect Examination and Recross Examination After a witness has been directly examined and cross-examined, both attorneys are given an opportunity for redirect examination and recross examination of the witness. This is often done to clarify testimony given, or address any subject brought up during, prior questioning. On direct examination, Jill testifies that she saw Robert hit Mark with a steel pipe on the date in question. On cross-examination, Jill admits that she forgot her glasses at home and was not wearing them when the incident occurred. On redirect, the prosecution establishes the fact that Jill had her contacts in at the time. On recross, the defense attorney tries to get Jill to admit that her contacts were not the right prescription, as she had not had an eye exam in several years. The Art of Cross-Examination Being able to render an effective cross-examination is a critical skill for any trial attorney. While each attorney ultimately develops his or her own method of cross-examination, the goal is the same. Some tips for developing the art of cross-examination include: In the beginning, police did not suspect Scott Peterson as their friends and family members strongly advocated his innocence following the disappearance. As time went on however, his story began changing, and police grew suspicious. This conversation, took place 14 days before Scott reported Laci missing. While Frey proved to be a star witness for the prosecution of Scott Peterson once he had been charged with the murder of his wife, the prosecution placed a great deal of weight on the testimony of various expert witnesses. Under cross-examination, however, Dr. When the prosecutor pointed out that there were no medical records confirming the June 9th date, Dr. March became agitated and confused. On November 12, , the jury convicted Scott Peterson of first-degree murder for the death of Laci, and of second-degree murder for the death of the unborn baby. On December 13, , the jury sentenced Scott Peterson to death. Related Legal Terms and Issues Expert Witness â€" A witness possessing training, education, skill, or experience in a specific subject, that is beyond that of the average person, who is allowed to give an opinion at trial. Jury â€" A group of people sworn to render a verdict in a trial, based on evidence presented. Second-Degree Murder â€" An intentional killing that is not planned or premeditated. Testimony

â€” A declaration or statement of a witness under oath, usually in court. Trial â€” A formal presentation of evidence before a judge and jury for the purpose of determining guilt or innocence in a criminal case, or to make a determination in a civil matter. Witness â€” An individual who can provide a firsthand account of something heard, seen, or experienced.

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4: Cross Examination - Definition, Examples, Cases, Processes

Cross-examination definition is - the examination of a witness who has already testified in order to check or discredit the witness's testimony, knowledge, or credibility. the examination of a witness who has already testified in order to check or discredit the witness's testimony, knowledge, or credibility.

Evidence Rule -- Prior Statements of Witnesses. Spradlin, Ohio App. After the woman rested her case, the male testified. She was not allowed to cross-examine. Cash, Ohio App. Among the blunders was the belief cross was limited by the scope of direct, as it is under the federal rules. Lowe, Ohio App. Browning , 98 Ohio App. Gillard , 40 Ohio St. A witness, other than the defendant, may be asked about a previous offense disposed of through a no contest plea. Daugherty , 41 Ohio App. Minor , 47 Ohio App. State , Ohio St. Miracle , 33 Ohio App. Also see State v. Rivers , 50 Ohio App. Burkett , Ohio St. Faulkner , 56 Ohio St. Haddix , 93 Ohio App. The rule does not distinguish between whether documents are intended to be used by the prosecutor in its case-in-chief or in cross-examination. Nobles , Ohio App. Miller , 56 Ohio App. This was done to protect a substantial corpus delicti issue. Though court tends to agree with a Franklin County case [State v. Farris March 24, Franklin Co. Grubb , Ohio App. Defendant had on his own made no claims concerning his good character. United States , U. Malott , 79 Ohio App. Judge held not to have abused his discretion by not permitting consultation. Prosecutor should have had his case prepared. Stearns , 7 Ohio App. Parker February 1, , Franklin Co. Erroneous failure to strike required new trial. Hartford , 21 Ohio App. Dick , 42 Ohio St. While proof of resistance is not required, inquiry was relevant to consent. Drummond, Ohio St. Issue is whether they are probative of bias, interest, or character for truthfulness or untruthfulness. Pinkney , 36 Ohio St. Hannah , 54 Ohio St. Brooks , 75 Ohio St. Bias, prejudice, interest or motive to misrepresent. Ferguson , 30 Ohio App. Perez , 72 Ohio App. Patton , 74 Ohio App. Riffle , 3 Ohio App. Kentucky , U. Defense claimed alleged rape victim had a motive to falsely accuse defendant to "left" late return home to man she was apparently having an affair with. Ferguson , 5 Ohio St. Doughty Maine , A. Sharkey , 70 Ohio St. Rapp , 67 Ohio App. Warren , Ohio App. Boulabeiz , 92 Ohio App. Then he backed over them. Opinion suggests that questioning of the defendant by the prosecutor regarding the culture and beliefs of people living in his native country, his family there, and the rights of women in that country, was irrelevant and improper. Mundy , 99 Ohio App. Hines December 11, , Franklin Co. Garfield , 33 Ohio App. Criminal Rule 16 B 1 g State v. Daniels , 1 Ohio St. Also see Palmero v. Johnson , 62 Ohio App. Bee , 67 Ohio App. Schnipper , 22 Ohio St. Jenkins , 15 Ohio St. W e see no reason why the mere fact that the document was a report from one police officer to another would automatically bar its productibility under Crim. Smith , 50 Ohio App. We hold that under certain conditions a police report may be producible under Crim. Houston Iowa , N. It must be shown, unless there is direct evidence the witness prepared, signed or adopted the statement, that it is minimally a continuous, narrative statement made by the witness and recorded verbatim, or nearly so. Billups , 68 Ohio App. Other Issues State v. Wilkinson , 64 Ohio St. Witness lived more than two months after deposition was taken. Prokos , 91 Ohio App. Wayt , 83 Ohio App. Litz , 8 Ohio App.

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5: Tips for Effective Cross-Examination - Gentry Locke Attorneys

verb (used with object), cross-exÂ·amÂ·ined, cross-exÂ·amÂ·inÂ·ing. to examine by questions intended to check a previous examination; examine closely or minutely. Law. to examine (a witness called by the opposing side), as for the purpose of discrediting the witness's testimony.

Cross Examination Impeachment of A Witness One of the most effective ways of impeaching a witness at trial is through the use of depositions and inconsistent statements. Unfortunately, many trial attorneys do not know how to properly impeach using depositions and inconsistent statements. This results in embarrassing situations for those attorneys. Depositions When a witness makes a statement in trial that is inconsistent with his or her deposition testimony, you should first highlight the question that was answered differently at trial. Make sure that the trial testimony being impeached is a direct inconsistent statement with the deposition given before trial. You should then ask the following questions: Do you remember having had your deposition taken on state the date? Do you remember that a court reporter was present at your deposition? Do you remember having been sworn in to tell the truth? Did you tell the truth on that date? If applicable Do you remember having your attorney present at your deposition? After you have set the foundation for the impeachment, then you should ask the witness the following question: Use of Inconsistent Statements in Documents A similar method may be used to impeach a person using an inconsistent statement in a document such as an affidavit, sworn statement or letter. The trial attorney should first highlight the inconsistent trial testimony that will be impeached. Next, the lawyer should identify and authenticate the document that will show the inconsistent statement given by that same witness. In order to establish the foundation necessary to impeach an individual with the use of an inconsistent statement, the witness should be asked the following questions: Do you remember having given a statement to person regarding how the accident occurred? Did you give that statement freely? Who was present when you gave your statement? When was the statement given? The witness should then be shown the exhibit and asked the following question: Is this a copy of your sworn statement? Finally, read the relevant portion of the statement that directly contradicts the trial testimony of the witness. Impeachment through the use of depositions or documented inconsistent statements should be accomplished in an organized fashion and should be performed smoothly and directly. The relevant pages and sections of the deposition should be marked and highlighted beforehand so as not to fumble through pages or lose control of the witness. There is nothing more impressive than to see an attorney properly impeach a witness through the use of inconsistent statements in documents or in a deposition. It is a very simple procedure to learn and, once mastered, will prove to be an effective means of cross-examining even the most "dangerous" witness at trial. Expert Witness At trial, there may be nothing more challenging and dangerous than cross-examining an expert witness. The lawyer about to cross-examine an expert witness needs to be very careful and very well prepared prior to cross-examining the expert. One of the problems that the trial practitioner encounters in attempting to effectively cross-examine an expert is that the expert usually controls the testimony by being very knowledgeable in the area he is testifying about. What makes it more difficult is that the lawyer usually is not as well versed in the subject as the expert. A trial attorney preparing to cross-examine an expert witness should first read and summarize the deposition taken of the expert witness in the case or read and summarize prior depositions given by that same expert in other cases. You will probably find many helpful statements in the prior depositions that will assist you in your case. Additionally, research whether the expert has written any articles, books or editorials that may contradict his opinion in your case. A trial attorney should be thoroughly prepared on the subject that will be the basis of the cross-examination. It is not advisable to directly challenge an expert within his or her field. A trial attorney should always cross-examine an expert witness. There is nothing worse then allowing an expert witness to give his opinions without challenge. Attempt to point out, if possible, the disproportionate amount of time in court which the expert spends in comparison to the amount of time he spends in his given field of expertise. Point out the number of times the expert has testified for parties that stand for similar things, for example, insurance companies, large manufacturers, or big businesses. No matter how qualified an expert witness may be in a

given field, there are probably levels in his field that the expert has not reached. For example, if the expert witness only has a masters degree, you may point out that he lacks a Ph. Moreover, do not do this if your expert does not have a Ph. If applicable, you should point out that the expert witness has not published any articles in his learned field, or has not held any teaching positions in colleges or universities. Obviously, you need to discover this information before cross examining the expert witness. Another inexpensive way of attaining information on experts is by serving expert interrogatories on your opponent. Another way of effectively cross examining an expert witness is by making the expert your witness. If you are able to have the opposing expert testify as to general principles that are consistent with your theory of the case, you will have succeeded in your cross-examination. While this may be very difficult to accomplish if the expert is honest and if the questions that you are asking are basic leading question which cannot be denied, you have a good chance of prevailing as the expert will have to admit the facts suggested in your question or appear foolish. You will always be able to point out that the expert received his facts and materials from the opposing attorney. Use this to your advantage and use hypothetical questions in order to change the facts so that they are consistent with your theory of the case; then, ask the expert controlled questions within the restricted scenarios that you have presented. This will allow you to tell your version of the case through the opposing expert. Be very careful when you do this so as not to allow the expert too much room when testifying. You should present the hypothetical question in long detailed factual patterns followed by a direct leading question relating to the factually restricted hypothetical. Even if the expert refuses to provide you with a favorable response, you have told the jury your story repeatedly by using the hypothetical question. Although there are many ways to effectively cross-examine an opposing expert, you should only choose two or three areas of attack at trial. If you try all of them you will probably make the cross examination too lengthy or overly confusing. Moreover, the longer an opposing expert witness is on the stand, the greater the likelihood that the expert will hurt your case. Attempt to have the expert witness agree that the author of the article, book, or treatise is authoritative or at least a well recognized expert in the field. Next, identify the article, and read the relevant portions that contradict the opinion of the expert. Finally, ask the expert if he agrees with the statement that you just read. Be extremely cautious as this is very difficult and dangerous. You should only attempt this if you are sure that you will succeed, or if the expert has made an obvious error in his investigation or in his calculations. Before attacking an expert "head on," you should confer with your own expert to make sure that the direct attack will be successful. This non-profit offer all a path to a better future with our children. Take the time to find out more.

6: Cross-examination | Define Cross-examination at www.enganchecubano.com

Cross-examination is the legal process of interrogating a witness that has been called to testify by the opposing party in a legal proceeding. When a party calls a witness to testify in court, he must follow certain rules in questioning the witness.

For the criminal defence lawyer, there are few things more important than cross-examination. In my experience, if a case is going to be won, it is usually during the prosecution case. My view is that approach is an error. It leads to the all too common situation of seeing an advocate conducting an effective cross-examination and then not making the most of it in the address or closing submission. Cross-examination is about providing the ammunition for a persuasive closing address or submission. The art of cross-examination is something which can be learned. There are very few natural cross-examiners. Few of us are born with this gift, but fortunately, it is possible to learn to become an effective cross-examiner. In this paper I will attempt to give you some ideas about how to become a more effective cross-examiner. I should stress at the outset that these are my personal views. In some respects, they do not represent the mainstream view about cross-examination. I will give some suggestions about what approach to take in a particular situation. You may discover a better approach. In an early draft of this paper, I attempted to diligently include the masculine and feminine or every personal pronoun. The result was that the paper was virtually unreadable. For that reason, although obviously many witnesses and clients are women, I have only used the masculine pronoun. The most important thing about being a good cross-examiner is preparation. Learning Advocacy Skills There are two ways of becoming a better cross-examiner: One way is watching someone else who is really good at it. When I first started instructing barristers in the s, I had three role models. Each of them had a completely different style of cross-examination. Kevin Coorey would for the most part charm a witness into giving him the answers he needed. Winston Terracini would and does blast a witness. John Terry used to clinically slice up a witness piece by piece. You need to develop your own style, a style which suits your particular personality. There are some patterns or templates of cross-examination which have been developed over the years by advocates for particular situations. If you were left to your own devices you might work out through trial and error that this pattern of cross-examination works in a particular situation. In this paper I hope to show you some common useful patterns of cross-examination. Watching good cross-examiners is important, but there is no substitute for getting onto your feet and cross-examining witnesses yourself. That is the second way in which you can become a better cross-examiner. They are distracting for the tribunal of fact. If you have the chance, read your own transcript whenever you can. Early in your career, it will be a painful experience. It certainly was in my case. You may find, as I did, that my questions tended to drift, because I had not fully thought out the question before I opened my mouth. In order to learn advocacy skills, you need to do a lot of each of these things, watching other good advocates, and doing it yourself on your feet. Legal Aid solicitors sometimes ask me, what is better preparation for going to the bar, instructing barristers in trials, or doing it yourself in the Local Court. My answer is generally, a fair bit of both. This is particularly true in complex cases. In a complex case, cross-examining a single witness, without knowing what is in the rest of the brief, is a bit like trying to play a game of chess, when you only know the position of one pawn; that is, it is an impossible task. If you are familiar with the entire brief, then sometimes shifting a single witness to a small degree can effect the complexion of the entire case. Analysing the brief The first step in preparing cross-examination is having a thorough understanding of the prosecution brief. Because of the nature of prosecution briefs, this will probably involve reading the brief at least twice; the first time to understand what the case is all about, the second time to understand the importance of individual pieces of evidence. I recommend sitting down with the brief with a pen, a yellow highlighter, and a pile of post-its. While you read the brief you might want to jot down notes on two possibly 3- see later separate pieces of paper. On another piece of paper, write down the dates and times when important things happened, in other words, a chronology. The third piece of paper on which you may want to make notes is about things that need following up. For example, documents which need to be subpoenaed, witnesses who need to be interviewed, and so on. Having a

conference with the client There is a reason why this part of the paper about having a conference with the client comes after reading the brief. I firmly believe that there is no point in having a detailed conference with a client about the facts of a case, unless you are on top of the brief. I would go further. To have a conference with a client about the facts of a case, without understanding the case against your client, is positively counter-productive. At minimum, it will be a waste of your time, and a waste of his time. At worst, it may result in undermining any confidence your client has in you. From time to time there will be clients who will insist on a conference before you have the brief, or before you have the full brief. If possible, in a conference with a client, the following things need to be discussed, if possible in this order. First, the nature of the charge, and the essential elements of the offence s , in a practical way, should be explained. A view I firmly believe that wherever possible, you should have a view of the scene of the crime. I appreciate that particularly in the modern homicide case, the brief contains photographs of nearly everything. However, nothing replaces having the hands on experience of seeing how the photographs fit together, seeing in reality distances and spaces, and seeing what witnesses could really see from the positions in which they say they made observations. Surprisingly often, witnesses say they saw events, when they were in positions when they could not have seen those events. The Committal Most cross-examination is cross-examination about prior inconsistent statements. The greater the number of prior inconsistent statements, the greater the scope for cross-examination. Therefore, I believe wherever possible, have a committal where witnesses are required to give evidence. I think this practice is unfortunate. If a witness is giving a dishonest or unreliable account of events, the mere fact of having to repeat a narrative of what happened is likely to produce inconsistencies. Subpoenas In almost every case, in my opinion it is useful to issue a subpoena to the Commissioner of Police before a trial. Again, one of the main reasons for issuing the subpoena is to create the potential for prior inconsistent statements. How much should I prepare a cross-examination? There are differing views about the degree to which cross-examination should be planned. When I started working as an advocate, the preferred view was to literally and metaphorically start with a blank sheet. A line would be drawn down the middle of the page. The cross-examiner would write down the evidence in chief on the left hand side of the page, and on the right would write down questions to ask in cross-examination. Frequently the cross-examiner would seem to have very little in front of him which looked like a note or plan of cross-examination. I have never been able to understand this approach. Usually in criminal cases, at the very least you have a statement of the witness in the witness box, and indeed all the other statements of the witnesses in the case. Most of the time I know, not always , the witness is likely to give evidence in very similar terms to that in the statement. It is hard enough to take down what a witness is saying in the witness box, let alone having to formulate a cross-examination as you go. Sometimes preparation can go too far. There is also an old and possibly apocryphal story about an advocate who used to meticulously plan his cross-examination on pieces of paper which he would pin to the bar table. He prepared hundreds of questions, and wherever possible, had a train of questions regardless of the answer given. However, when he got the answer he was not expecting for the first question, he had nothing prepared, and so he had to sit down. I am a bit obsessive about cross-examination. However, I believe it is far better to be over-prepared for cross-examination than under-prepared. I always make a list in very short form of what I want to ask the witness, with page references to what the witness has said elsewhere about the topic. There is no point in having a vague idea that a witness has said something in evidence which is different to a prior statement, unless you are able to quickly take the witness to that prior inconsistent statement. Identifying the issues Before preparing a cross-examination, it is worthwhile thinking about and perhaps even writing down the pieces of evidence which make up the Crown case against your client. In the typical case, there will probably be only 4 or 5 of them. In thinking about cross-examining a witness, you should be thinking about what evidence you can get from each witness which will weaken any of the parts of the Crown case, or strengthen the defence case. What do I want from this witness? Before you decide what to ask a witness, it is necessary to decide if you want to cross-examine the witness at all. You should only cross-examine a witness who you believe will give you an answer which will either weaken the Crown case, or strengthen your case. It is sometimes said that a cross-examiner should only ask a question if he already knows the answer the witness will give. If we all rigorously applied that rule, there would be very little cross-examination at all. It is very

rare that you know with mathematical certainty how a witness in cross-examination will reply to a question. What you need to be is prepared to respond to a wrong answer. Most of the time this means you need to be ready to immediately take the witness to a prior statement which contains the answer that you want. Later in this paper I will talk about cross-examining particular types of witnesses. The importance of transcript and notes Most of the time, when you are a criminal defence advocate, you do not have the benefit of a daily transcript.

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7: Cross-examination - Wikipedia

Cross-examination is an opportunity for the defense attorney to question the prosecution's witnesses during a trial. Cross-examination is an effective way for the defense to present evidence by using government witnesses.

Author[edit] Francis L. He dedicated the book to his two sons, hoping to encourage them to enter the legal profession. Wellmann compiled many examples of cross-examination techniques from colleagues and notable attorneys on celebrated cases. Notable references include such legal giants as Abraham Lincoln "in his twenty-three years" of trial practice prior to his political career chapter IV , then-Judge Benjamin Cardozo later a ground-breaking U. Supreme Court justice , U. Attorney General Benjamin Butler , the Vanderbilt family , and others. Well-known trial attorneys and their cross examination techniques are highlighted and interwoven with the stories of the day along with the prominent members of the legal profession, from New York City and also England. The book gives colorful, interesting facts on the trial participants; provides insights into various claims, disputes, marriage scandals; etc. The New York Times contrasted it with other, boring legal texts, and recommended it to both trial lawyers and non-lawyers for its entertainment value. It is filled with suspense regarding the outcomes of the compelling trials within the book. Equally suspenseful are the legal outcomes from the attempts of the attorneys to sway the juries with their erudition, wit, and charm. Some of the key topics covered include the following: It will be my endeavor in what follows to deal with this subject from its psychological point of few and to trace some of the causes of these unconscious mistakes of witnesses, so far as it is possible. The inquiry is most germane to what has preceded, for unless the advocate comprehends something of the sources of the fallacies of testimony, it surely would become a hopeless task for him to try to illuminate them by his cross-examinations. The sensation by itself will always be the same. The variance arises when the sensation is interpreted by the individual and becomes a perception of his own mind. Trials[edit] Some of the trials with cross-examination highlights in the book include the following: The cross-examination of Mrs. Reginald Vanderbilt by Herbert C. Smyth in the trial of Vanderbilt vs. Harry Payne Whitney - to recover child custody. Leonard Kip Rhinelander vs. Alice Jones Fhinelander - for annulment action against his wife spurred by racial prejudice. Livingston, a widow with five children, placed her stock in the hands of a broker she met at a social gathering. She was unwittingly allowing the firm to sell her stocks and then invest in a company owned by the firm. Though no damages were found, the plaintiff prevailed in having transactions reversed. There followed Wendt v. Whiteside - in their suit against two prominent Huntington, Long Island physicians, to recover damages for their ten-year incarceration in Kings Park State Hospital as insane patients. The cross-examination of Miss Martinez by the Hon. Choate for the defense, in the breach of promise case Martinez v. The cross-examination by Henry W. Frederick Peterson and Dr. Smith Ely Jelliffe, expert witnesses in the litigation over the will of Andrew F. It is currently published for free and still recommended reading for trial lawyers. Commercial sites and Google Books publish it in its entirety. It is also being sold online over a century later. The Art of Cross-Examination: Retrieved 30 July â€” via Internet Archive.

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8: cross-examination | Definition of cross-examination in English by Oxford Dictionaries

State v. Browning (), 98 Ohio App. 8 -- (1) At page "Cross-examination of a witness is perhaps the most effective means devised by the law for the discovery of the truth, and is an accepted universal right.

Use principals of primacy and recency. What the jury hears first and last are most memorable. There are two types of cross-examination, constructive and destructive. With constructive cross-examination, the lawyer seeks to get helpful testimony from the witness. Such testimony can corroborate the testimony of one of your witnesses or impeach another witness, either or both of which may be helpful to your case. Jones, can we agree thatâ€¦? For example, getting the witness to agree with you that your expert is, in fact, an expert or that his methodology is accepted and reliable in the field can be valuable. This is the type of cross-examination we typically think of and, more importantly, that jurors have come to expect from watching television and movies. Generally speaking, if you need constructive testimony from a witness, it is better to get it first before moving into destructive cross-examination. After having her credibility challenged, the witness will be more likely to fight you on the points about which you seek her agreement. Your goal is to establish your immediate control over the witness in his mind and in the minds of the jurors. Remember, utilize principals of primacy and recency. The first and last things jurors hear stick with them. Establish and maintain your control over the witness by following the traditional rules of cross-examination: Ask questions in which you dare the witness to disagree with you. This visual technique reinforces your challenge to the witness to disagree with you and tacitly tells the witness you expect certain answers from her and that she will pay dearly for varying from those answers. Your questions should be tight and limited to one fact per question. The more complicated a question or the more loaded it is with facts, the more easily the witness can quibble with it or deny it. The witness may fairly deny the question based the fact that a sub-part or minor fact, for example, is technically incorrect. Instead, you, the lawyer, should testify. While opposing counsel might object on the grounds that, technically, you are not asking a question, the question is implied from your tone of voice. Sometimes the best cross-examination, even of a critical witness who just completed a lengthy direct examination, consists of only a question or two. A colleague of mine claims to have done this and, while the story is perhaps apocryphal, it does illustrate the value of brevity. Never interrupt the witness, just go back and repeat your question. If the evasiveness persists, continue to repeat the question exactly slowing down and pausing between words, if necessary. Eventually, the witness will look obstructionist or ridiculous to the jury. You will look like a tattletale running to the teacher. Remember the Point of Cross-Examination. Cross-examination is not a time for the lawyer to grandstand or win a battle of wits with the witness. Cross-examination is, like all other parts of the trial opening, direct examinations and closing , a means by which you argue your case. This article borrows from the invaluable lessons taught in the program.

9: Cross-examination | Definition of Cross-examination by Merriam-Webster

The presentation of evidence at trial begins when the attorney for the "plaintiff" (the person suing) begins calling witnesses. The plaintiff's attorney does the initial questioning of the witness, which is called direct examination.

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