

CROSS-EXAMINATION US EXPLAINED

THE ART OF CROSS-EXAMINATION: A COMPREHENSIVE GUIDE

CROSS-EXAMINATION US EXPLAINED INVOLVES A CRITICAL STAGE IN LEGAL PROCEEDINGS WHERE ATTORNEYS CHALLENGE THE TESTIMONY OF OPPOSING WITNESSES. IT'S A POWERFUL TOOL, OFTEN SEEN IN DRAMATIC COURTROOM SCENES, DESIGNED TO TEST THE ACCURACY, CREDIBILITY, AND COMPLETENESS OF EVIDENCE PRESENTED. THIS PROCESS IS NOT JUST ABOUT MAKING A WITNESS LOOK BAD; IT'S ABOUT UNCOVERING THE TRUTH, IDENTIFYING INCONSISTENCIES, AND ENSURING A FAIR TRIAL. UNDERSTANDING THE NUANCES OF CROSS-EXAMINATION IS CRUCIAL FOR ANYONE INVOLVED IN OR INTERESTED IN THE U.S. LEGAL SYSTEM. THIS GUIDE WILL DELVE INTO ITS PURPOSE, STRATEGIC TECHNIQUES, ETHICAL CONSIDERATIONS, AND ITS VITAL ROLE IN THE PURSUIT OF JUSTICE. WE'LL EXPLORE HOW ATTORNEYS NAVIGATE THIS COMPLEX DANCE OF QUESTIONING TO ELICIT SPECIFIC FACTS AND EXPOSE WEAKNESSES IN TESTIMONY.

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WHAT IS CROSS-EXAMINATION?

CROSS-EXAMINATION IS A FUNDAMENTAL LEGAL PROCEDURE THAT OCCURS AFTER A WITNESS HAS TESTIFIED FOR ONE PARTY IN A TRIAL. THE OPPOSING PARTY'S ATTORNEY THEN HAS THE OPPORTUNITY TO QUESTION THAT SAME WITNESS. THINK OF IT AS A SECOND CHANCE TO HEAR FROM A WITNESS, BUT WITH A VERY DIFFERENT OBJECTIVE. INSTEAD OF SIMPLY ELICITING INFORMATION IN SUPPORT OF THEIR OWN CASE, THE CROSS-EXAMINING ATTORNEY AIMS TO SCRUTINIZE THE WITNESS'S TESTIMONY, HIGHLIGHT ANY POTENTIAL INACCURACIES, AND DEMONSTRATE WEAKNESSES IN THEIR STATEMENTS. IT'S A VITAL MECHANISM FOR TESTING THE RELIABILITY OF EVIDENCE PRESENTED.

IN THE UNITED STATES LEGAL SYSTEM, CROSS-EXAMINATION IS A CONSTITUTIONALLY PROTECTED RIGHT IN CRIMINAL CASES, ENSURING THAT DEFENDANTS CAN CONFRONT AND QUESTION THOSE WHO TESTIFY AGAINST THEM. THIS ADVERSARIAL PROCESS IS DESIGNED TO BRING OUT ALL SIDES OF THE STORY AND ALLOW THE FACT-FINDER – WHETHER IT'S A JUDGE OR A JURY – TO MAKE A WELL-INFORMED DECISION. IT'S A CAREFULLY CONTROLLED PROCESS, GOVERNED BY STRICT RULES OF EVIDENCE AND PROCEDURE, TO ENSURE FAIRNESS AND PREVENT UNDUE PREJUDICE.

THE PURPOSE OF CROSS-EXAMINATION

THE PRIMARY PURPOSE OF CROSS-EXAMINATION IS TO TEST THE TRUTHFULNESS AND ACCURACY OF THE TESTIMONY GIVEN BY A WITNESS DURING DIRECT EXAMINATION. WHEN A WITNESS TESTIFIES FOR ONE SIDE, THEY ARE TYPICALLY ASKED OPEN-ENDED QUESTIONS DESIGNED TO PRESENT THEIR VERSION OF EVENTS FAVORABLY. CROSS-EXAMINATION FLIPS THIS SCRIPT, USING MORE TARGETED QUESTIONS TO PROBE FOR INCONSISTENCIES, MEMORY LAPSES, BIASES, OR OUTRIGHT FALSEHOODS. IT'S ABOUT UNCOVERING THE FULL PICTURE, NOT JUST THE ONE PAINTED BY THE INITIAL QUESTIONING.

BEYOND SIMPLY CONFIRMING OR DENYING FACTS, CROSS-EXAMINATION SERVES A BROADER FUNCTION WITHIN THE ADVERSARIAL LEGAL SYSTEM. IT HELPS TO REDUCE THE IMPACT OF UNRELIABLE OR BIASED TESTIMONY, ENSURING THAT THE JURY OR JUDGE IS NOT SWAYED BY POTENTIALLY MISLEADING INFORMATION. BY CAREFULLY QUESTIONING A WITNESS, AN ATTORNEY CAN CLARIFY AMBIGUITIES, BRING FORTH IMPORTANT DETAILS THAT WERE OMITTED, AND POTENTIALLY ELICIT DAMAGING ADMISSIONS THAT WEAKEN THE OPPOSING CASE.

KEY OBJECTIVES OF CROSS-EXAMINATION

ATTORNEYS UNDERTAKE CROSS-EXAMINATION WITH SEVERAL DISTINCT OBJECTIVES IN MIND. THESE GOALS ARE NOT MUTUALLY EXCLUSIVE AND OFTEN OVERLAP, CONTRIBUTING TO A COMPREHENSIVE STRATEGY. THE ULTIMATE AIM IS ALWAYS TO ADVANCE THEIR CLIENT'S CASE, EITHER BY STRENGTHENING THEIR OWN ARGUMENTS OR BY UNDERMINING THE OPPONENT'S.

- **TESTING CREDIBILITY:** ONE OF THE MOST CRUCIAL OBJECTIVES IS TO ASSESS AND POTENTIALLY DISCREDIT THE WITNESS'S CREDIBILITY. THIS INVOLVES CHALLENGING THEIR HONESTY, THEIR ABILITY TO PERCEIVE EVENTS ACCURATELY, OR THEIR MEMORY OF THOSE EVENTS.
- **ELICITING FAVORABLE FACTS:** WHILE OFTEN SEEN AS AN INTERROGATION, CROSS-EXAMINATION CAN ALSO BE USED TO SUBTLY ELICIT FACTS THAT SUPPORT THE EXAMINING ATTORNEY'S CASE, OFTEN BY GUIDING THE WITNESS TO ADMIT CERTAIN DETAILS THEY MIGHT NOT HAVE OTHERWISE OFFERED.
- **HIGHLIGHTING INCONSISTENCIES:** ATTORNEYS WILL OFTEN LOOK FOR CONTRADICTIONS BETWEEN THE WITNESS'S CURRENT TESTIMONY AND PREVIOUS STATEMENTS THEY MAY HAVE MADE, OR EVEN BETWEEN DIFFERENT PARTS OF THEIR CURRENT TESTIMONY.
- **REVEALING BIAS OR MOTIVE:** UNDERSTANDING WHY A WITNESS IS TESTIFYING CAN BE AS IMPORTANT AS WHAT THEY ARE TESTIFYING ABOUT. CROSS-EXAMINATION AIMS TO EXPOSE ANY PERSONAL BIAS, FINANCIAL INTEREST, OR OTHER MOTIVE THAT MIGHT INFLUENCE THEIR TESTIMONY.
- **CONFINING TESTIMONY:** SOMETIMES, THE GOAL IS SIMPLY TO GET A WITNESS TO STICK TO A NARROW SET OF FACTS, PREVENTING THEM FROM OFFERING UNSOLICITED OR HARMFUL OPINIONS OR INFORMATION.

STRATEGIES AND TECHNIQUES IN CROSS-EXAMINATION

EFFECTIVE CROSS-EXAMINATION IS A SOPHISTICATED ART FORM, REQUIRING KEEN OBSERVATION, PRECISE QUESTIONING, AND STRATEGIC THINKING. IT'S NOT ABOUT AGGRESSIVE BADGERING, THOUGH THAT CAN SOMETIMES OCCUR. INSTEAD, SKILLED LITIGATORS EMPLOY A VARIETY OF TECHNIQUES TO ACHIEVE THEIR OBJECTIVES. THE APPROACH WILL VARY SIGNIFICANTLY DEPENDING ON THE WITNESS, THE CASE, AND THE ATTORNEY'S SPECIFIC GOALS.

THE POWER OF CROSS-EXAMINATION LIES IN ITS CONTROLLED NATURE. UNLIKE DIRECT EXAMINATION, WHERE BROAD QUESTIONS ARE PERMITTED, CROSS-EXAMINATION IS TYPICALLY LIMITED TO QUESTIONS THAT ARE RELEVANT TO THE WITNESS'S TESTIMONY OR THE CASE ITSELF. THIS CONTROL IS WHAT ALLOWS ATTORNEYS TO STEER THE CONVERSATION AND EXTRACT THE DESIRED INFORMATION.

LEADING QUESTIONS: THE CORNERSTONE OF CROSS

THE MOST DEFINING CHARACTERISTIC OF CROSS-EXAMINATION IS THE LIBERAL USE OF "LEADING QUESTIONS." UNLIKE OPEN-ENDED QUESTIONS LIKE "WHAT DID YOU SEE?", LEADING QUESTIONS SUGGEST THE ANSWER THE EXAMINER IS LOOKING FOR, SUCH AS "YOU SAW THE RED CAR SPEED THROUGH THE INTERSECTION, DIDN'T YOU?" THIS TECHNIQUE IS PERMITTED BECAUSE

THE ATTORNEY IS QUESTIONING AN ADVERSE WITNESS; THEY ARE NOT PRESENTING THEIR OWN WITNESS AND THEREFORE DON'T NEED TO ELICIT SURPRISE TESTIMONY. THE GOAL IS TO CONFIRM FACTS EFFICIENTLY.

LEADING QUESTIONS ARE INVALUABLE FOR A NUMBER OF REASONS. THEY ALLOW THE ATTORNEY TO CONTROL THE PACE OF THE TESTIMONY AND BREAK DOWN COMPLEX EVENTS INTO MANAGEABLE PARTS. BY ASKING A SERIES OF LEADING QUESTIONS, AN ATTORNEY CAN BUILD A NARRATIVE PIECE BY PIECE, CONFIRMING EACH STEP WITH THE WITNESS. THIS IS A STARK CONTRAST TO DIRECT EXAMINATION, WHERE THE GOAL IS OFTEN FOR THE WITNESS TO TELL THEIR STORY IN THEIR OWN WORDS.

IMPEACHING WITNESS CREDIBILITY

ONE OF THE MOST POWERFUL TOOLS IN A CROSS-EXAMINER'S ARSENAL IS THE ABILITY TO IMPEACH A WITNESS. IMPEACHMENT MEANS TO CHALLENGE THE CREDIBILITY OF A WITNESS, SUGGESTING THAT THEIR TESTIMONY SHOULD NOT BE BELIEVED. THIS CAN BE DONE IN SEVERAL WAYS, OFTEN BY DEMONSTRATING THAT THE WITNESS IS UNRELIABLE, HAS A POOR MEMORY, OR HAS A REASON TO LIE.

FOR EXAMPLE, IF A WITNESS CLAIMS TO HAVE PERFECT VISION, BUT IT'S KNOWN THEY WEAR THICK GLASSES, AN ATTORNEY MIGHT USE THAT FACT TO IMPEACH THEIR ABILITY TO CLEARLY OBSERVE THE EVENTS IN QUESTION. SIMILARLY, IF A WITNESS HAS A PRIOR FELONY CONVICTION, THAT CONVICTION CAN BE USED TO QUESTION THEIR TRUSTWORTHINESS, DEPENDING ON THE JURISDICTION'S RULES.

USING PRIOR STATEMENTS TO CONTRADICT TESTIMONY

A COMMON AND HIGHLY EFFECTIVE IMPEACHMENT TECHNIQUE INVOLVES CONFRONTING A WITNESS WITH A PRIOR STATEMENT THAT CONTRADICTS THEIR CURRENT TESTIMONY. THIS COULD BE A STATEMENT MADE IN A DEPOSITION, A POLICE REPORT, AN AFFIDAVIT, OR EVEN A PREVIOUS INTERVIEW. THE ATTORNEY WOULD FIRST ESTABLISH THE WITNESS'S CURRENT TESTIMONY, THEN INTRODUCE THE CONTRADICTORY PRIOR STATEMENT.

FOR INSTANCE, IF A WITNESS TESTIFIES THAT THEY WERE ALONE AT THE TIME OF THE INCIDENT, BUT THEY PREVIOUSLY STATED TO POLICE THAT THEIR FRIEND WAS WITH THEM, THE ATTORNEY WOULD HIGHLIGHT THIS DISCREPANCY. THIS DOESN'T NECESSARILY MEAN THE WITNESS IS LYING, BUT IT CERTAINLY RAISES QUESTIONS ABOUT THE ACCURACY OF THEIR MEMORY OR THEIR CURRENT VERSION OF EVENTS. IT FORCES THE WITNESS TO EXPLAIN THE CONTRADICTION, WHICH CAN BE CHALLENGING.

EXPLORING WITNESS BIAS OR MOTIVE

UNDERSTANDING A WITNESS'S MOTIVE FOR TESTIFYING IS CRUCIAL. IS THE WITNESS TESTIFYING OUT OF A SENSE OF CIVIC DUTY, OR DO THEY HAVE A PERSONAL STAKE IN THE OUTCOME OF THE CASE? CROSS-EXAMINATION IS THE TIME TO EXPLORE THESE POSSIBILITIES. ATTORNEYS WILL QUESTION WITNESSES ABOUT THEIR RELATIONSHIPS WITH THE PARTIES INVOLVED, ANY FINANCIAL INCENTIVES, OR ANY PERSONAL ANIMOSITY.

FOR EXAMPLE, IN A PERSONAL INJURY CASE, A WITNESS WHO IS A CLOSE FRIEND OF THE PLAINTIFF MIGHT BE QUESTIONED ABOUT THEIR LOYALTY AND WHETHER THAT LOYALTY INFLUENCES THEIR TESTIMONY. IN A CRIMINAL CASE, A WITNESS WHO IS RECEIVING LENIENCY ON THEIR OWN CHARGES IN EXCHANGE FOR THEIR TESTIMONY AGAINST THE DEFENDANT WOULD HAVE THEIR MOTIVE FOR TESTIFYING THOROUGHLY EXPLORED. THIS HELPS THE JURY EVALUATE WHETHER THE WITNESS'S TESTIMONY IS OBJECTIVE OR DRIVEN BY PERSONAL INTERESTS.

LIMITATIONS AND ETHICAL BOUNDARIES

WHILE CROSS-EXAMINATION IS A POTENT TOOL, IT IS NOT WITHOUT ITS LIMITATIONS AND STRICT ETHICAL GUIDELINES. ATTORNEYS ARE NOT PERMITTED TO HARASS, EMBARRASS, OR MISLEAD WITNESSES UNNECESSARILY. THE EXAMINATION MUST REMAIN RELEVANT TO THE ISSUES IN THE CASE, AND QUESTIONS DESIGNED SOLELY TO INFLAME THE JURY OR PREJUDICE THE WITNESS ARE GENERALLY PROHIBITED.

THE RULES OF EVIDENCE PLAY A SIGNIFICANT ROLE IN SHAPING CROSS-EXAMINATION. HEARSAY, FOR INSTANCE, IS GENERALLY INADMISSIBLE, MEANING AN ATTORNEY CANNOT TYPICALLY ASK A WITNESS WHAT SOMEONE ELSE TOLD THEM, UNLESS A SPECIFIC EXCEPTION APPLIES. THE JUDGE ACTS AS A GATEKEEPER, ENSURING THAT THE QUESTIONING STAYS WITHIN THE BOUNDS OF THE LAW AND MAINTAINS A DEGREE OF FAIRNESS.

THE ROLE OF THE JUDGE IN CROSS-EXAMINATION

THE JUDGE PRESIDES OVER THE COURTROOM AND HAS THE ULTIMATE AUTHORITY TO CONTROL THE PROCEEDINGS, INCLUDING THE SCOPE OF CROSS-EXAMINATION. IF AN ATTORNEY ASKS AN IMPROPER QUESTION – ONE THAT IS IRRELEVANT, ARGUMENTATIVE, REPETITIVE, OR DESIGNED TO HARASS – THE OPPOSING COUNSEL CAN OBJECT. THE JUDGE WILL THEN RULE ON THE OBJECTION, EITHER SUSTAINING IT (MEANING THE QUESTION CANNOT BE ASKED OR ANSWERED) OR OVERRULING IT (MEANING THE QUESTION IS PERMISSIBLE).

JUDGES ALSO PLAY A ROLE IN ENSURING THAT CROSS-EXAMINATION REMAINS FOCUSED ON ELICITING FACTS AND TESTING CREDIBILITY, RATHER THAN DEVOLVING INTO PERSONAL ATTACKS. THEY CAN INTERVENE TO GUIDE ATTORNEYS, CAUTION THEM ABOUT THEIR QUESTIONING, AND ENSURE THAT THE PROCESS IS CONDUCTED WITH DECORUM AND RESPECT FOR THE COURT AND THE WITNESSES.

CROSS-EXAMINATION IN DIFFERENT LEGAL CONTEXTS

THE PRACTICE AND EMPHASIS OF CROSS-EXAMINATION CAN VARY SOMEWHAT DEPENDING ON WHETHER THE CASE IS CIVIL OR CRIMINAL, AND IN DIFFERENT TYPES OF PROCEEDINGS. WHILE THE CORE PRINCIPLES REMAIN THE SAME, THE STAKES AND THE SPECIFIC OBJECTIVES MIGHT SHIFT.

CIVIL VS. CRIMINAL CROSS-EXAMINATION

IN CRIMINAL CASES, CROSS-EXAMINATION CARRIES THE ADDED WEIGHT OF THE DEFENDANT'S LIBERTY. THE STAKES ARE INCREDIBLY HIGH, AND ATTORNEYS ARE OFTEN INTENSELY FOCUSED ON CREATING REASONABLE DOUBT OR BOLSTERING DEFENSES. THE CONSTITUTIONAL RIGHT OF CONFRONTATION IS PARTICULARLY SALIENT HERE. THE PROSECUTION WILL CROSS-EXAMINE DEFENSE WITNESSES, AND THE DEFENSE WILL CROSS-EXAMINE PROSECUTION WITNESSES, WITH THE ULTIMATE GOAL OF CONVINCING THE JURY OF GUILT BEYOND A REASONABLE DOUBT OR PROVING INNOCENCE.

IN CIVIL CASES, THE STAKES TYPICALLY INVOLVE MONEY DAMAGES, PROPERTY, OR CONTRACTUAL OBLIGATIONS. WHILE STILL ADVERSARIAL AND CRITICAL, THE FOCUS MIGHT BE MORE ON ESTABLISHING LIABILITY OR THE EXTENT OF DAMAGES. THE CROSS-EXAMINATION OF WITNESSES BY OPPOSING COUNSEL IN CIVIL LITIGATION SERVES TO CLARIFY FACTS, CHALLENGE CLAIMS, AND ENSURE THAT THE EVIDENCE PRESENTED IS ACCURATE AND RELIABLE FOR THE JUDGE OR JURY TO MAKE A DECISION ABOUT FAULT AND COMPENSATION.

THE IMPORTANCE OF PREPARATION

NO MATTER THE CONTEXT, THOROUGH PREPARATION IS THE BEDROCK OF EFFECTIVE CROSS-EXAMINATION. ATTORNEYS WILL METICULOUSLY REVIEW ALL DISCOVERY DOCUMENTS, PRIOR STATEMENTS, DEPOSITIONS, AND RELEVANT EVIDENCE. THEY WILL

DEVELOP A CLEAR STRATEGY, ANTICIPATE POTENTIAL RESPONSES FROM WITNESSES, AND CRAFT SPECIFIC QUESTIONS DESIGNED TO ACHIEVE THEIR OBJECTIVES. A WELL-PREPARED CROSS-EXAMINATION CAN BE THE TURNING POINT OF A TRIAL, EFFECTIVELY SHAPING THE NARRATIVE AND INFLUENCING THE OUTCOME.

FAQ

Q: WHAT IS THE PRIMARY GOAL OF CROSS-EXAMINATION IN THE U.S. LEGAL SYSTEM?

A: THE PRIMARY GOAL OF CROSS-EXAMINATION IN THE U.S. LEGAL SYSTEM IS TO TEST THE ACCURACY, CREDIBILITY, AND COMPLETENESS OF THE TESTIMONY GIVEN BY AN OPPOSING WITNESS DURING DIRECT EXAMINATION, THEREBY AIDING THE FACT-FINDER (JUDGE OR JURY) IN DETERMINING THE TRUTH.

Q: ARE LEADING QUESTIONS ALLOWED DURING CROSS-EXAMINATION?

A: YES, LEADING QUESTIONS ARE NOT ONLY ALLOWED BUT ARE THE CORNERSTONE OF CROSS-EXAMINATION. THIS IS BECAUSE THE ATTORNEY IS QUESTIONING AN OPPOSING WITNESS, AND THE AIM IS TO EFFICIENTLY CONFIRM SPECIFIC FACTS OR ELICIT DESIRED ADMISSIONS.

Q: HOW DOES AN ATTORNEY IMPEACH A WITNESS DURING CROSS-EXAMINATION?

A: AN ATTORNEY CAN IMPEACH A WITNESS BY CHALLENGING THEIR CREDIBILITY. THIS CAN BE DONE BY REVEALING INCONSISTENCIES WITH PRIOR STATEMENTS, EXPOSING BIAS OR MOTIVE, DEMONSTRATING A LACK OF PERSONAL KNOWLEDGE, OR HIGHLIGHTING PAST INSTANCES OF UNTRUTHFULNESS, SUCH AS PRIOR FELONY CONVICTIONS (DEPENDING ON JURISDICTION RULES).

Q: CAN AN ATTORNEY ASK QUESTIONS ABOUT ANYTHING DURING CROSS-EXAMINATION?

A: NO, AN ATTORNEY CANNOT ASK QUESTIONS ABOUT ANYTHING. CROSS-EXAMINATION MUST BE RELEVANT TO THE WITNESS'S TESTIMONY OR THE ISSUES OF THE CASE. JUDGES CAN SUSTAIN OBJECTIONS TO IRRELEVANT, ARGUMENTATIVE, OR HARASSING QUESTIONS.

Q: WHAT IS THE DIFFERENCE BETWEEN DIRECT EXAMINATION AND CROSS-EXAMINATION?

A: DIRECT EXAMINATION IS CONDUCTED BY THE PARTY WHO CALLED THE WITNESS, AIMING TO ELICIT FAVORABLE TESTIMONY. IT GENERALLY USES OPEN-ENDED QUESTIONS. CROSS-EXAMINATION IS CONDUCTED BY THE OPPOSING PARTY AND USES LEADING QUESTIONS TO CHALLENGE TESTIMONY, TEST CREDIBILITY, AND ELICIT SPECIFIC FACTS.

Q: DOES CROSS-EXAMINATION ALWAYS HAPPEN IN EVERY TRIAL?

A: CROSS-EXAMINATION IS A STANDARD AND CRUCIAL PART OF MOST TRIALS IN THE U.S. LEGAL SYSTEM, PARTICULARLY IN BOTH CIVIL AND CRIMINAL PROCEEDINGS, WHENEVER A WITNESS TESTIFIES ON DIRECT EXAMINATION FOR ONE PARTY.

Q: CAN A JUDGE STOP A CROSS-EXAMINATION?

A: YES, A JUDGE CAN AND WILL STOP A CROSS-EXAMINATION IF THE QUESTIONING BECOMES IMPROPER, SUCH AS BEING IRRELEVANT, HARASSING, ARGUMENTATIVE, OR VIOLATING THE RULES OF EVIDENCE.

Q: WHAT HAPPENS IF A WITNESS REFUSES TO ANSWER A QUESTION DURING CROSS-EXAMINATION?

A: IF A WITNESS REFUSES TO ANSWER A PROPER QUESTION DURING CROSS-EXAMINATION, IT CAN HAVE SERIOUS CONSEQUENCES. THE JUDGE MAY ORDER THE WITNESS TO ANSWER, OR THEIR TESTIMONY MAY BE STRICKEN FROM THE RECORD, MEANING IT CANNOT BE CONSIDERED BY THE JURY. IN SOME CASES, A WITNESS'S REFUSAL COULD LEAD TO CONTEMPT OF COURT CHARGES.

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