

Cross Examination Tips

Focus on Key Points

- Limit your cross-examination to two or three main points that support your theory of the case. By focusing, you avoid diluting your strongest arguments, keeping the jury's attention on the issues most favorable to your client.¹

2. Use Leading Questions

- Leading questions are essential in cross-examination because they control the narrative by prompting "yes" or "no" answers.² Rule 611(c) of the Federal Rules of Evidence permits leading questions on cross-examination to maintain control over witness responses.³ For example, instead of asking, "Why did you approach the vehicle?" you could ask, "You approached the vehicle because it was parked near a closed store, correct?"

3. Break Down Key Points Step-by-Step

- Simplify complex points into manageable, leading questions to build your narrative slowly, maintaining control at each step.⁴

4. Build Doubt through Inconsistencies or Missing Details

- Look for omissions or inconsistencies in the witness's report. Pointing out gaps can raise doubts about the credibility and reliability of the testimony.⁵ For instance, if the officer noted nervous behavior but observed no illegal activity, it's worth highlighting: "In your report, you described Mr. Collins as nervous, yet you observed no criminal conduct at that time, correct?"

5. Challenge Assumptions and Observations

- Question the assumptions underlying the witness's observations to highlight potential biases or errors.⁶

6. Introduce Alternative Explanations

- Bring up plausible alternative scenarios to introduce reasonable doubt, such as the possibility that someone else left the drugs in the car.⁷

7. Know When to Stop

- Once you get a favorable answer, don't risk undoing your progress by pushing further. Stopping after a positive answer is crucial to maintaining control and keeping your strongest points intact.⁸ For example, if Officer Ramirez agrees that the smell was faint and no marijuana was found, it's often best to move on without excessive follow-up.

8. Anticipate Redirect

- Think ahead to what the prosecution might ask on redirect and consider how you can preemptively address any weaknesses that may arise. Lubet emphasizes that by subtly acknowledging minor weaknesses on cross, you can reduce their impact when the prosecution tries to clarify them later.⁹

¹ Mautet, Thomas A. *Trial Techniques and Trials* (11th ed.). Wolters Kluwer, 2020; Lubet, Steven. *Modern Trial Advocacy: Analysis and Practice* (5th ed.). National Institute for Trial Advocacy, 2019.

² Mautet, *supra* at 1.

³ Fed. R. Evid. 611

⁴ McElhaney, James W. *McElhaney's Trial Notebook* (4th ed.). American Bar Association, 2005.

⁵ Lubet, *supra* at 1.

⁶ Mautet, *supra* at 1.

⁷ Wellman, Francis L., and L. Lynn Hogue. *The Art of Cross-Examination*. Dover Publications, 1997.

⁸ McElhaney, *supra* at 4.

⁹ Lubet, *supra* at 1.

9. Practice Tone and Body Language

- Use a calm, controlled tone to keep interactions professional and avoid appearing combative.¹⁰ An overly aggressive tone can reduce credibility and create sympathy for the witness. Lead with confidence, using a firm but respectful approach to reinforce your control over the narrative.

Limitations of Cross Examination¹¹

- Must be within “scope of direct”
- No argumentative questions
- No unfair characterizations
- No compound, vague, or cumulative questions
- Do not intimidate, insult, demean, or harass the witness
- Every question must have a “good-faith basis”

Attack the Witness’:

- **Credibility**
- **Lack of knowledge**
- **Implausible statements**
- **Prior inconsistent statements**

Tips for Organization¹²

- Use topical organization – ask questions on the topics you want to cover with the witness.
- Primacy – the first thing the jury hears
- Recency – the last thing the jury hears
- Apposition - placement or juxtaposition of important facts in a manner that emphasizes their relationship.
- Repetition – the things the jury hears repeated
- Duration - more time spent on topic, more likely to remember
- Zinger – save a zinger for your last question. It should be:
 - Absolutely admissible
 - Central to your theory
 - Evoke your theme
 - Undeniable
 - Said with conviction

General Tips

- Do not repeat direct exam
- Short leading questions
- You testify, witness ratifies
- No WHY questions
- No fishing - never ask question unless you know the answer.

¹⁰ Mauet, *supra* at 1.

¹¹ Lubet, *supra* at 1.

¹² Lubet, *supra* at 1.