**WORKSHOP: CROSS-EXAMINATION**

**Format:** Student performance – *Not recorded*

**Overview:** TwoDefense witnesses from the each of the two Student Case Scenarios will be portrayed by the faculty assigned to each session. In order to save time, the "defense directs" will not be provided in the form of questions and answers, but rather the faculty will provide a short narrative which will offer their testimony. The students will be given 5 minutes to prepare their cross examination.

**Mechanics:**

**1.** The faculty will assign which witness the student will cross examine. Each student will have 5 minutes in which to conduct the cross-examination followed by a brief "live critique."

**2**. The workshop members should assume that the regular trial procedures have been followed: *for example, rules of evidence and objections*.

**3**. The students should focus on gaining meaningful concessions and advance the prosecution case theory whenever possible.

**4**. The students should maintain control and use any control factors when necessary.

**5**. The students should attempt to recognize any rabbit trails and be careful to avoid enhancing them or any reasonable doubt issues.

**6.** The students should determine which, if any, defense vantage points are being used and whether those vantage points can be diminished.

**7**. The students should focus on content and construction of the cross­ examination; the use of control factors; proper impeachment predicates; question format; question construction; and general success of the cross­ examination strategy.

**Cross Examination Standards and Checklist**

**Did Counsel:**

1. Appear prepared?

2. Avoid asking objectionable questions?

3. Have a purpose in mind? Avoid letting the witness know the purpose too early thereby undercutting effective cross?

4. Resist belittling or badgering the witness?

5. Avoid rehashing the direct on cross?

6. Frame the question in simple and direct language?

7. Break up the chronology of direct?

8. Avoid how and why questions. Maintain control of the witness? Ask leading questions when necessary?

9. Remember the theory of the case in cross-examining the witness?

10. Avoid strengthening the defense case?

11**.** Ask questions for a reason and to support the case theory?

12. Handle non-responsive or argumentative answers?

13. Lay proper foundation for impeachment and/or rebuttal?

14. Know when to stop?

15. End on a high note?

The following materials are primarily sourced from:

NATIONAL COLLEGE OF DISTRICT ATTORNEYS

**Expert Witness Cross Examination Standards and Checklist**

**Did Counsel (In General):**

1. Apply General Cross-Examination Standards?

2. Appear to know the expert's field?

3. Effectively attack the expert's qualifications in the area in which the expert is testifying?

4. Effectively attack the expert's methodology?

5. Effectively attack the expert's opinion?

6. Exploit any opportunity to make the expert a “State’s” expert?

**For Mental Health Experts**

1. Explore any bias of the expert *(e.g.,* number of times testified for the defense vs. number of times for the State)?

2. Examine the subjectivity or any unscientific nature of psychiatry or psychology?

3. Cross-examine on the facts, including:

a. Asking about the significance of certain facts showing cognitive thought *(e.g., flight, conceaalment of evidence)?*

b. Does the expert indicate ignorance of any of the facts Does the expert concede those facts are important, ask if the opinion is changed? *(If expert does not concede then the argument will be “the facts do not matter to their expert”.)*

c. Ask questions suggesting the expert's over reliance on the defendant's version as the source for the “facts”.

9. Show inadequacy of the mental health examination, including:

a. Asking about a brief examination of the defendant?

b. Inquiring about the effect of an extensive period of time after the crime about the examination?

c. Point out the absence of objective evidence for the diagnosis *(e.g., brain scan*)?

10. Where the expert testifies to "temporary mental state", point out the speculative nature by asking exactly when it began and ended?

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**CROSS EXAMINATION- Common Problems**

**In Content and Delivery**

1. Did not understand the role of the defense witness.

2. Did not adequately prepare.

3. Did not understand the requirements for the defense presented.

4. Did not catch the rabbit trail and spent too much time on defense's Case Theory.

5. Did not secure concessions from the defense witness.

6. Impeached defense witness prior to securing concessions.

7. Immediate, unexplained change in demeanor from direct examination.

8. Went for the ultimate or payoff answer instead of waiting for closing argument.

9. Did not make clear transitions between points.

10. Did not properly do lead-up or lock-in.

11. Did not maintain control of witness.

12. Maintained so much control that it appeared like an interrogation to the jury.

13. Did not follow up favorable responses or adopt better terminology when given by witness.

14. Did not use witness to fill in gaps in Case Theory.

15. Engaged in “nit-picking” during cross examination.

16. Did not take advantage of the psychology of evasive/hostile witness, and asked for Court's assistance too soon.

17. Tried to override witness's answers or appeared unnecessarily rude.

18. Asked argumentative questions.

19. Permitted deflective answers by the witness.

20. Framed questions so that witness could give a literally true answer AND avoid giving the desired answer.

21. Framed questions with compound elements so that witness was able to avoid giving the desired answer.

22. Questions were too long or had too many parts.

23. Cross exam tracked direct exam too much, thereby bolstering defense case.

24. Asked open-ended questions dangerously or added words like “since” and “because” to leading questions, making them open-ended.

25. Did not know the procedure for impeachment.