

Cross-Examination

- Peter B. Wold
- Wold Morrison Law
- Barristers Trust Building
247 Third Avenue South
Minneapolis, MN 55415
- 612-341-2525
- pwold@wold-law.com

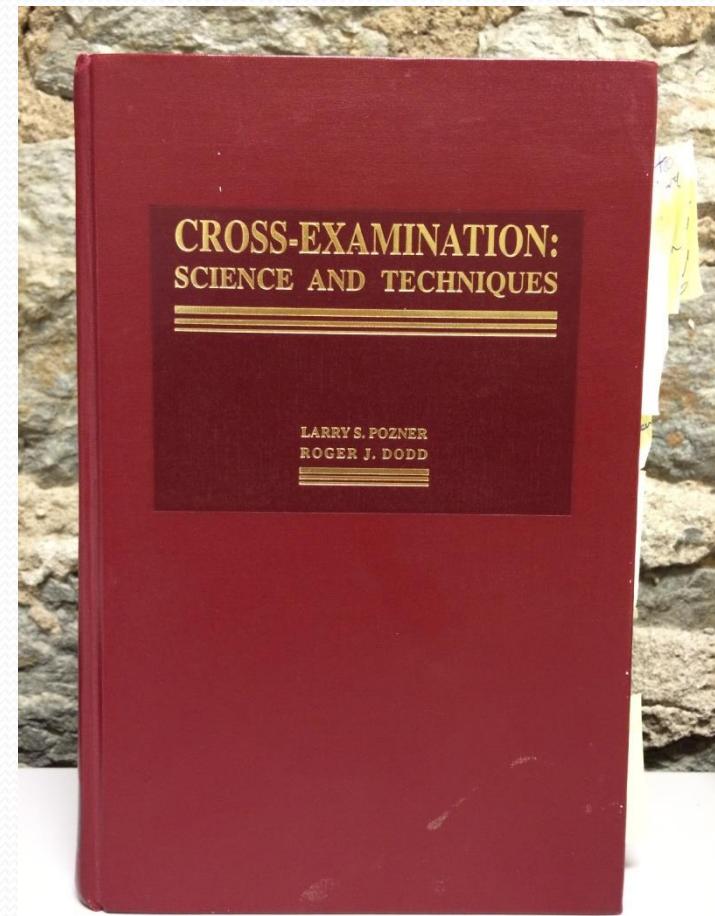
Cross-Examination

- CROSS-EXAMINATION:
SCIENCE AND TECHNIQUES

Larry S. Pozner

Roger J. Dodd

1993



Cross-Examination

- Goal:
 - Promote your theory of the case.

Cross-Examination

- 1. Leading questions only.
- 2. One new fact per question.
- 3. Logical progression to a specific goal.

Cross-Examination

- 1. Leading questions only
 - A. Leading questions do not suggest the answer—they declare the answer.
 - 1. What color was the light?
 - 2. Was the light red?
 - 3. The light was red.

No need for a question mark at the end of a leading question.

Cross-Examination

- B. Leading questions do not begin with:
 - Who
 - What
 - When
 - Where
 - How
 - Why
 - Explain

Never open ended.

Cross-Examination

- 2. One new fact per question.
 - A. You saw Bob.
 - B. You saw Bob run.
 - C. You saw Bob run from the house.

Control.

Cross-Examination

- 3. Logical progression to a specific goal.
 - A. Multiple Goals
 - Chapter Method
 - Minor goals
 - Big
 - Angry
 - intoxicated

Cross-Examination

- Detective Simon
 - Lead Detective.
 - Direct-Examination:
 - Q Detective Simon, at any time during this lengthy and detailed investigation did you ever determine that anyone other than the Defendant was a suspect in the murder of Joel Lovelien?
 - A No.
 - Q Detective Simon, was this a process of elimination in this investigation?
 - A Yes, there's a lot of that in investigations.
 - Q Did you eliminate everyone but the Defendant?
 - A Yes.
- State v. Stay

Cross-Examination

- Introduction of chapter.
 - Frame the case.
 - State v. Stay
- Detective Simon
 - Lead Detective.
 - Cross-Examination:
 - Q Sir, after all the testimony you gave this morning, you have no direct evidence of anyone killing Joel Lovelien, do you?
 - A I have no witnesses.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q You have circumstantial evidence and that's what you're basing your case on and that's what you based your process of elimination on, isn't that true, sir?
 - A Yes.
 - Q You know how circumstantial evidence works in this courtroom and every courtroom in North Dakota, don't you, sir?
 - A Yes.

Cross-Examination

- State v. Stay
- Detective Simon
 - Lead Detective.
- Circumstances Detective Simon relied on to meet probable cause.
 - 1. Costume piece close to crime scene.
 - 2. Injury to hands.
 - 3. Bus was gone before Joel Lovelien was attacked.

Cross-Examination

- Chapter
 - Things we agree on.
 - Facts not in dispute.
 - State v. Stay
- Detective Simon
 - Lead Detective.
 - Cross-Examination:
 - Q There's no question that Mr. Stay on the night in question was very intoxicated?
 - A Right.
 - Q Christy Swanson noticed a man in a yellow hooded sweatshirt getting his ass kicked, stumbling all over the place, he wasn't able to stand.
 - A I'm familiar with that statement, too.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q You talked to Mr. Raasakka, who described Mr. Stay as staggering down the alley before he took a swing that swirled him around and landed him on the ground.
 - A Yes.
 - Q And a taxi driver, Balstad, noted the fact that this individual wasn't even aware he had a significant injury and deep cut to his eye area, right?
 - A I'm familiar with that as well.

Cross-Examination

- Chapter
 - Timeline.
 - Set-up.
 - State v. Stay
- Detective Simon
 - Lead Detective.
 - Cross-Examination:
 - Q These were severe gratuitous acts of violence that were perpetrated on Joel Lovelien, do you agree?
 - A Yes.
 - Q And a person like him, with all evidence suggesting that he wasn't fighting back, a few rapid punches, a couple of kicks, those injuries could have occurred in a matter of seconds, isn't that true?
 - A Yes.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q And this is 11:33:56, where Mr. Lovelien walked out for the phone call, right?
 - A Right.
 - Q Okay. That's the first time he goes out?
 - A Yes.
 - Q 11:33:56. We know that phone call with Mr. Terry Overbo lasted 4 minutes, 11 seconds?
 - A Yes.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q Showing you now what is government Exhibit 223.18.
 - A Mm-hmm.
 - Q This is Tony Deziel, the bull, about to head out that door, right?
 - A He was over there. I don't know if he was going, you know, if he made it out.
 - Q Well, that's the last time you saw him?
 - A That's the last time I saw him.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q That's when he intercedes in the scrimmage that's going on, and pulls Wavra off and blocks somebody else that's trying to put a kick in, and Mr. Stay stands, falls, scrambles, tries to get out of there, right? Goes over by another car, right?
 - A Right.
 - Q Showing you 223.31. The time is 11:40:24, just after Bryce has gone out. This is Mr. Lovelien coming in after taking the phone call and witnessing the altercation, hearing the admonition from Bryce that you're off the bus, right?
 - A Right.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q Then 223.34, and we know he walks over to Ms. Eastling's table for less than basically 40 seconds.
 - A It was a very short time.
 - Q Showing you 223.34 when he's heading out the door again to go see if he can help Mr. Stay, right?
 - A Right.
 - Q So this is 11:41:04. We know Bryce has been outside now for over 30 seconds, right?
 - A Right.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q You know Bryce says that he rounded up his troops, went back outside, and a couple of his friends at that point say let's go over and give that kid a little grief, and other terms about what they want to say or do to this kid, apparently kicking him off the bus isn't enough at that point.
 - A Right, they went over to, like you said, you know, give him some grief.
 - Q Basically we have three minutes and 30 seconds, in that area, give or take a few, for Bryce and his boys to have this face-off with them, right?
 - A Yep, there was discussions going on.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q So they went over there, and actually these discussions are going on right by where the blood spot was found, real close to that area by descriptions we've had from the witness stand.
 - A If that's -- yeah.
 - Q So we know that they have three and a half minutes to have this face off, and be back on the bus, right?
 - A Correct.

Cross-Examination

- Chapter
 - Process of Elimination
 - Looping
 - State v. Stay
- Detective Simon
 - Lead Detective.
 - Cross-Examination:
 - Q But your process of elimination, sir, assumed, and when you charged Mr. Stay, when you put in the Affidavit you're speaking of to charge Mr. Stay, your conclusion, it was a conclusion, it wasn't a maybe, it wasn't the bus possibly could have still been there, your conclusion was the bus was gone before Lovelien was attacked.
 - A I thought that's what the evidence showed, yes.

Cross-Examination

- Continued:
 - Cross-Examination:
 - Q You hadn't gone through this videotape like this at that time?
 - A Not this extensively, no.
 - Q That's why, in your mind, the bus had left before Mr. Lovelien had been attacked—your process of elimination eliminated every one of those guys, right?
 - A Yes.

Cross-Examination

- Chapter
 - Bryce Larson an angry man
 - State v. Stay
- Detective Simon
 - Lead Detective.
 - Cross-Examination:
 - Q You were aware that Bryce Larson was an angry man that night?
 - A Yes.

Cross-Examination

- Chapter
 - Asphalt in hand
 - State v. Stay
- Detective Simon
 - Lead Detective.
 - Cross-Examination:
 - Q As you understand it, Mr. Stay was on the ground, on the asphalt, right?
 - A Yes.
 - Q Whether the backs of his hands were on the ground or the fronts of his hands were on the ground, you don't know?
 - A Right.
 - Q He was stumbling, and falling, and couldn't stand-up on the asphalt parking lot based on what you've heard from witnesses, true?
 - A Some witnesses said that, yes.

Cross-Examination

- Snitch
 - Cooperation. The defendant has agreed to cooperate with law enforcement authorities in the investigation and prosecution of his co-defendants. This cooperation includes, but is not limited to, being interviewed by law enforcement agents, submitting to a polygraph examination if the government deems it appropriate, and testifying truthfully at any trial or other proceeding involving his co-defendants. If the defendant cooperates fully and truthfully as required by this agreement and thereby renders substantial assistance to the government, the government will, at the time of sentencing, move for a downward departure pursuant to Guideline Section 5K1.1. The government also agrees to make the full extent of the defendant's cooperation known to the Court. The defendant understands that the government, not the Court, will decide whether the defendant has rendered substantial assistance.

Cross-Examination

- Snitch
 - Dennis Desender
 - See Handout.