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Criminal Procedure Fundamentals

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Cross-Examination Essentials for Criminal Proceedings

Criminal Procedure Fundamentals

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CROSS-EXAMINATION ESSENTIALS FOR CRIMINAL PROCEEDINGS

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INTRODUCTION

As trial lawyers we often visualize (or fantasize about) a trial in which our advocacy skills overcome the impossible odds and win the case because of a tactful, calculating cross-examination. For the defence lawyer, it is the Matlock moment where we have painted the Crown witness into a corner they cannot escape from and they tearfully admit from the witness box that they are indeed the true perpetrator of the crime..."You're Goddamn right I ordered the code Red!!!" For the Prosecutor, the loathsome, lying accused is taken to task by a razor sharp examination that leaves him no choice to but to abandon his false alibi and confess to the crime.

These scenarios, while great for TV, rarely, if ever, happen in real life. Nevertheless, a well-prepared and carefully executed cross-examination of an opposing witness remains the best tool the trial lawyer has for balancing the opponent's evidence and ensuring your theory of the case is front and centre in the mind of the Judge or Jury.

As with everything else in trial advocacy, effective cross-examinations are a product of preparation and practice. These materials and the associated presentation will hopefully provide insight on how to properly prepare and execute your cross-examination

PART I – PREPARATION

A. Know Your Theory

Before you even step foot in the courtroom you must have a theory of your case and it is that theory that will guide your cross-examination. One of the single biggest mistakes made by junior and unprepared lawyers is asking questions that do not advance your case. Having your theory in the forefront of your mind when cross-examining a witness will ensure you do not venture into dangerous ground and ask that "one question too many" and find yourself trying to argue around evidence that YOU just introduced.

Examples:

1. Impaired/Over .08

Defence theory: the officer exaggerated his evidence regarding the observations he made of the accused and he is therefore **unreliable**

*every question and group of questions must be relevant to the core theory