

CROSS-EXAMINATION

Grace Lawson¹

1. Introduction

Cross-examination is considered to be the most effective way of testing the accuracy of a witnesses' testimony. It is said to be the best tool for challenging evidence to ascertain the truth. It has therefore become the hallmark of the adversarial system in ensuring a fair trial for a defendant.² However, in recent years, criticism of the effectiveness of cross-examination has increased. Some argue that tactics used by aggressive cross-examiners intimidate and manipulate witnesses to the extent that they make "an honest witness appear at best confused, and at worst a liar".³ This type of cross-examination undermines the justice system.⁴

Defending a client vigorously by challenging the evidence against them without undermining the justice system calls for "superior cross-examination".⁵ It is often referred to as an "art" or an "intuitive skill" that is the most difficult of all lawyering skills to master.⁶ Nevertheless, celebrated counsel whose famous cross-examinations are often analysed and indeed make fascinating reading,⁷ were once junior themselves, embarking on their very first trial and cross-examining for the very first time. They mastered the skill of cross-examination by experience, trial and error.

Cross-examination is generally undertaken by barristers. However, increasingly, solicitors may need to cross-examine. For example, a client may lack the finances to brief a barrister

¹ Grace Lawson is a Barrister and Mediator at the private bar in Brisbane.

www.gracelawson.com.au;

Liability limited by a scheme approved under professional standards legislation.

©Grace Lawson, 2017.

² Bowden, P., Henning, P. & Plater, D., "Balancing fairness to victims, society and defendants in the cross-examination of vulnerable witnesses: an impossible triangulation" (2013) 37(3) *Melbourne University Law Review* 539, 551; Wheatcroft, J. M. & Ellison, L. E., "Evidence in Court: Witness Preparation and Cross-Examination Style Effects on Adult Witness Accuracy" (2012) 30 *Behavioural Sciences and the Law* 823; Eades, D., "The social consequences of language ideologies in courtroom cross-examination" (2012) 41 *Language in Society* 485; Howard, D., "Reflections on the art and technique of cross-examination" (2015) 126 *Precedent* 16, 17.

³ Bowden et al, above n 2, 551.

⁴ Wheatcroft & Ellison, above n 2, 823; Bowden et al, above n 2, 551.

⁵ Huestis, B. J., "Cross-examination by the Numbers" (2007) *The Army Lawyer*, October: 76.

⁶ Mauet, T. A. & McCrimmon, L. A., *Fundamentals of Trial Technique* (Thomson Reuters, 3rd ed., 2011) 191; Bates, W., Huntley, R. & Starnes, W., "Ten tips for direct examination and cross-examination" (2015) 39(2) *American Journal of Trial Advocacy* 339; McKechnie, J., "Basic trial advocacy: preparation for cross-examination" (2015) 42(5) *Brief* 20.

⁷ Mauet & McCrimmon, above n 6, 191.

for a hearing and the matter may not be overly complex. Because of their inexperience, barristers and solicitors alike may lack confidence and decline the brief, which they otherwise could have completed. Thorough preparation is the first step to gaining confidence. It is achievable if it is broken down into “manageable pre-trial tasks”.⁸ The purpose of this paper is to demonstrate how this can be done. It provides guidance on preparing for, structuring, and conducting cross-examination effectively. Over time, and with practice, practitioners will become confident and skilled cross-examiners.

First, practitioners are reminded of the importance to research and familiarise themselves with the evidence and procedural rules applicable in their jurisdiction. Second, the purpose of, preparation for, and structure of cross-examination are outlined. Third, tips on how to cross-examine are provided, with practical examples. Fourth, specific attention is given to situations which call for additional vigilance, such as cross-examination of experts, children, and vulnerable or special witnesses. Finally, objections to questions in cross-examination are discussed.

2. Legislation, case law and rules

Prior to preparing cross-examination, practitioners must research and understand the rules of evidence and the procedural rules that apply in their jurisdiction.

2.1 Legislation

Rules of evidence are contained in both statute and common law. Evidence itself is a large area of law. A good start is familiarity with legislation in the relevant jurisdiction. For instance, federal courts and state courts of Australian Capital Territory, Victoria, Tasmania, New South Wales, and Northern Territory, apply the Uniform Evidence Acts which mirror or are similar to the Commonwealth *Evidence Act 1995*.⁹ These Acts contain provisions specifically relevant to cross-examination,¹⁰ admissibility of hearsay or opinion evidence, relevance, and privilege.¹¹ Queensland applies the *Evidence Act 1977* (Qld), South Australia

⁸ Huestis, above n 5, 76. See also Mauet & McCrimmon, above n 6, 191.

⁹ *Evidence Act 2011* (ACT), *Evidence Act 2008* (Vic), *Evidence Act 2001* (Tas), *Evidence Act 1995* (NSW), *Evidence (National Uniform Legislation) Act 2011* (NT); Owen-Conway, S., “How to Cross-Examine a Witness in an Australian Court” (2014) *Gordon and Jackson* accessed at http://www.gordonandjackson.com.au/resources_uploads/how_to_crossexamine_a_witness_in_an_australian_court__sample.pdf, p. 6.

¹⁰ Sections 40-46.

¹¹ Chapter 3.

applies the *Evidence Act 1929* (SA), and Western Australia applies the *Evidence Act 1906* (WA), which contain similar provisions.

2.2 Procedural rules

In addition, each jurisdiction applies specific civil and criminal procedural rules. For example, the *Uniform Civil Procedure Rules 1999* (Qld) and *Uniform Civil Procedure Rules 2005* (NSW) contain directions on expert evidence, which is relevant to cross-examining expert witnesses. Procedural rules adopted in criminal jurisdictions contain specific directions on the conduct of trials and receipt of evidence, including evidence from vulnerable, special or protected witnesses.

Evidence and procedural rules are designed to safeguard the fairness of a trial.¹² Further, familiarity with rules pertaining to the admissibility of hearsay evidence or cross-examining witnesses on prior inconsistent statements, prepares the practitioner to argue for or against an objection, should such a situation arise.

2.3 Practice directions

Both federal and state courts regularly issue practice directions which the practitioner must be familiar with. Some jurisdictions publish best practice guidelines for cross-examining special or vulnerable witnesses, such as children or persons suffering a mental disability.¹³

Familiarity with evidence, procedural rules, and practice directions will not only prove helpful to the practitioner, but will also contribute to their reputation of a competent cross-examiner.¹⁴

2.4 Case law

In addition, practitioners need to be aware of principles derived from case law that apply to the admissibility of evidence and cross-examination. One of the most important rules is the

¹² *Randall v R (Cayman Islands)* [2002] UKPC 19 at [11], per Lord Bingham, in Henderson, E., "Best evidence or best interests? What does the case law say about the function of cross-examination?" (2016) 20(3) *The International Journal of Evidence & Proof* 183.

¹³ See, for example, Circular to Practitioners CRIM 2010/1 "Guidelines for Cross-Examination of Children and Persons Suffering a Mental Disability", issued by the District Court of Western Australia on 8 September 2010.

¹⁴ Howard, above n 12, 17.

rule in *Browne v Dunn*.¹⁵ The application of the rule in Australia means that in both civil and criminal trials the cross-examiner must put a contradictory version of events to the witness, to afford them an opportunity to respond.¹⁶ This is particularly important if there is an intention to rely on the contradiction, if inferences are to be drawn from the evidence, or if the witness is to be discredited because of the implied contradiction.¹⁷ A similar provision is contained in section 46 of the Uniform Evidence Acts.

Breaching the rule can have severe consequences. For example, the court may disallow the contradicting evidence to be called, allow a party to re-open their case to call evidence to rebut the contradictory evidence or to recall the witness to allow them to respond, or make directions to the jury in a criminal trial on how to view the evidence.¹⁸ This, however, does not mean that the case must be put in unnecessary detail, or that the practitioner use the words “*I put it to you*”. It is counterproductive as it generally results in hostile, unfavourable and negative responses.¹⁹ The rule in *Browne v Dunn* only requires the practitioner to put their case sufficiently, delicately and appropriately when it is necessary.²⁰ For example, in civil trials where the issues and evidence in dispute are known to all parties, the rule does not need to be stringently applied.²¹ Further, terminology such as “*it happened like this, didn't it*”, rather than “*I put it to you*”, is acceptable.²²

2.5 Barristers' and solicitors' conduct rules

Practitioners must remember that their duty to the client is second to the paramount duty to the administration of justice and to the court.²³ This means that cross-examination should only be used to test the evidence to advance the client's case. This should be done with vigour and determination. It should not be exploited for improper purposes.²⁴ Conduct rules which are specifically relevant to cross-examination will be referred to shortly.

¹⁵ [1894] 6R 67(HL).

¹⁶ Owen-Conway, above n 9, 2-3; Henderson, above n 12, 190-191; Tilmouth, S., “Courtroom advocacy: reflections of a trial judge” (2012) 36(1) *Australian Bar Review* 44; Salhany, R. E., *Cross-Examination: The Art of Advocate* (Butterworths, 1991) 11; Mauet & McCrimmon, above n 6, 195.

¹⁷ *Allied Pastoral Holdings Pty Ltd v The Commissioner of Taxation* [1983] 1NSWLR 1 at 16; *MWJ v The Queen* (2005) 80 ALJR 329.

¹⁸ Owen-Conway, above n 9, 3-4; Henderson, above n 12, 190-191.

¹⁹ Tilmouth, above n 16, 45.

²⁰ *Ibid.*

²¹ Above n 18.

²² Tilmouth, above n 16, 45.

²³ *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, rules 3 and 4; *Legal Profession Uniform Conduct (Barristers) Rules 2015*, rules 4, 23

²⁴ Henderson, above n 16, 196; Bowden et al, above n 2, 554; Johnson, P., “Controlling unreasonable cross-examination” (2009) 21(4) *Judicial Officers Bulletin* 32.

3. Cross-examination

As stated above, cross-examination should only be used to test the evidence to advance the client's case. To achieve this, the practitioner must remember that the purpose of cross-examination is to:

- a) Obtain evidence favourable to the practitioner's case;
- b) Obtain evidence that establishes the credibility of the practitioner's witnesses;
- c) Elicit facts from the witness which may be used to cross-examine other witnesses;
- d) Destroy or weaken the evidence elicited by the opponent in their examination-in-chief;
- e) Weaken or destroy the evidence of the opponent's witness by discrediting them; and
- f) Put an alternative case to the witness pursuant to the rule in *Browne v Dunn*.²⁵

With these principles in mind, the practitioner may embark on preparing cross-examination.

3.1 Cross-examination preparation

Thorough and meticulous preparation is the key for effective cross-examination.²⁶

Preparation for cross-examination commences with development of a case theory, or case concept. A case theory is "the basic underlying idea that explains not only the legal theory and factual background, but also ties as much of the evidence as possible into a credible whole".²⁷ It tells the practitioner what they need to prove to win their case, and what the opponent needs to prove to win theirs.²⁸ This requires analysing every aspect of the case to identify the:

- a) Relevant material;
- b) Agreed and disputed facts;
- c) Pivotal points and key issues for determination;
- d) Strengths and weaknesses of each side; and
- e) Evidence to be adduced from each witness.²⁹

²⁵ Owen-Conway, above n 9, 1; Huestis, above n 5, 78; Salhany, above n 16, 7; Glissan. J. L., *Advocacy in Practice* (LexisNexis Butterworths, 6th ed., 2015) 89; Mauet & McCrimmon, above n 6, 194-195; Stuesser, L., *An Introduction to Advocacy* (Thomson Reuters, 2nd ed., 2011) 118.

²⁶ Howard, above n 2, 16; Bates et al, above n 6, 351; McKechnie, above n 6, 21; Salhany, above n 16, 13; Glissan, above n 25, 20; Mauet & McCrimmon, above n 6, 23; Stuesser, above n 25, 2.

²⁷ Huestis, above n 5, 78.

²⁸ McKechnie, above n 6, 21; Salhany, above n 16, 13.

²⁹ Tilmouth, above n 16, 46.

These are derived from careful analysis of court documents such as pleadings, applications, responses and affidavits, and other documents such as financial reports and photographs. These documents should be organised in chronological order for easier reference.³⁰ Some practitioners use a roadmap, diagram, graph or table when preparing cross-examination for easier identification of issues, cross-referencing them to the evidence.³¹ A chronology creating a logical sequence of events is also recommended as it highlights inconsistencies between various witnesses.³² Preparing closing submissions first will assist in determining what needs to be proved, and the evidence that needs to be elicited from each witness.³³

Once these are completed, a list of witnesses needs to be prepared. Some jurisdictions require practitioners to provide notice of which witnesses will be called, and their evidence-in-chief is provided in affidavit form. In other jurisdictions, there is often no notice of the witnesses to be called until the opening statement, and their evidence-in-chief is given orally.³⁴ Evidence-in-chief given by the witness must be clearly understood before cross-examining them.³⁵ This includes noting inconsistencies, and considering how their testimony fits in with the practitioner's case theory.

3.2 Cross-examination order

Cross-examination should focus on disputed facts and the key issues for determination.³⁶ Questions need to be carefully arranged because "a planned cross-examination is an ordered cross-examination".³⁷ Questions can be ordered into clear chapters, topics, or segments.³⁸ Each chapter, topic or segments should contain questions relevant to a specific issue. Then, these can be arranged in a logical order that makes sense to the judge or jury.³⁹ A chronological order is often recommended.⁴⁰

³⁰ Huestis, above n 5, Owen-Conway, above n 9, 2-3; McKechnie, above n 6, 21; Glissan, above n 25, 22; Mauet & McCrimmon, above n 6, 23.

³¹ Tilmouth, above n 16, 46; Glissan, above n 25, 92.

³² Perry, M. G. & Hampel, G., *Hampel on Advocacy: A Practical Guide to Basics* (Leo Cussen Institute, revised ed., 2005) 51.

³³ Huestis, above n 5, 78; Owen-Conway, above n 9, 2-3; McKechnie, above n 6, 21; Glissan, above n 25, 22; Mauet & McCrimmon, above n 6, 23.

³⁴ Owen-Conway, above n 9, 1.

³⁵ McKechnie, above n 6, 21.

³⁶ Owen-Conway, above n 9, 2 & 7; McKechnie, above n 6, 23.

³⁷ Glissan, above n 25, 109.

³⁸ Howard, above n 2, 17.

³⁹ Melilli, K. J., "Risk Management in Cross-Examination" (2014) 38(2) *American Journal of Trial Advocacy* 333.

⁴⁰ Huestis, above n 5, 79; Glissan, above n 25, 109.

Alternatively, questions can be carefully arranged to help explain the theory of the case. This can be done by:

- a) Conceptualising the entire case;
- b) Determining what arguments need to be made about each witness;
- c) Determining specific attack points or factors that support each argument;
- d) Drafting leading questions that support each attack point; and
- e) Ensuring each question has a purpose in advancing an attack point.⁴¹

Another technique is to begin and end the cross-examination with the most important topics.⁴² This is because people remember best what they hear first and what they hear last, and jurors usually recall their first and last impressions best.⁴³ Whichever system is used, it must be coherent and logical to the judge or jury.

3.3 Deciding whether to cross-examine

Practitioners should only cross-examine on evidence which is adverse to their case. Therefore, if a witness' evidence-in-chief helped the cross-examiner's case, or did no harm to it, then it is not necessary to cross-examine them.⁴⁴ In fact, it is viewed as a "waste of time"⁴⁵ and incredibly "risky"⁴⁶ because cross-examining such a witness may provide them with an opportunity to damage the cross-examiner's case.⁴⁷ Damaging testimony elicited during cross-examination is more harmful than the same testimony elicited by the opposition during examination-in-chief.⁴⁸ Indeed, "a bad cross-examination is worse than no cross-examination"⁴⁹ at all. The only exception to this principle is if an alternative version must be put to the witness for their comment, in accordance with the rule in *Browne v Dunn*.⁵⁰

3.4 Cross-examining to discredit

⁴¹ Huestis, above n 5, 78-79; Owen-Conway, above n 9, 2 & 7; McKechnie, above n 6, 23; Glissan, above n 25, 22; Perry & Hampel, above n 32, 51.

⁴² Huestis, above n 5, 79; Melilli, above n 39, 333; Mauet & McCrimmon, above n 6, 195.

⁴³ Mauet & McCrimmon, above n 6, 195.

⁴⁴ Howard, above n 2, 14; Salhany, above n 16, 10; Glissan, above n 25, 90; Mauet & McCrimmon, above n 6, 192; Owen-Conway, above n 9, 2-3; Huestis, above n 5, 80.

⁴⁵ Bates et al, above n 6, 355.

⁴⁶ Howard, above n 2, 14; Glissan, above n 25, 90; Mauet & McCrimmon, above n 6, 193; Selby, H., *Advocacy: Preparation and Performance* (The Federation Press, 2009) 143-143.

⁴⁷ Howard, above n 2, 14-15.

⁴⁸ Melilli, above n 39, 317; Bates et al, above n 6, 356.

⁴⁹ Melilli, above n 38, 317 & 318.

⁵⁰ Owen-Conway, above n 9, 2-3.

If a decision is made to cross-examine a witness in order to discredit them, important principles must be remembered. Specifically, practitioners cannot cross-examine to suggest criminality, fraud or serious misconduct unless they believe on reasonable ground that there is material available to support the suggestion.⁵¹ Further, practitioners must

*not make a suggestion in cross-examination on credit, unless they believe on reasonable grounds that acceptance of the suggestion would diminish the credibility of the evidence of the witness.*⁵²

What a cross-examiner may do, is discredit a witness by exposing inconsistencies in their evidence.⁵³ Prior inconsistent statements may be used to attack and destroy credit.⁵⁴ A witness may be discredited by calling into question their competence, ability to accurately recall facts, or bias and prejudice.⁵⁵ Facts such as distance, position, weather, lightning conditions, or distractions bear on the likely accuracy of their observations.⁵⁶ A witness wearing prescription glasses, using hearing aids, being under the influence of alcohol or drugs, or being tired, terrified or shocked, may have poor recollection of the incident.⁵⁷ Their memory should not, however, be attacked on a point if there is intention to rely on their memory on another point.⁵⁸

3.5 Cross-examination style

Effective cross-examination is based on three elements: content, control, and tone.⁵⁹ Each element will be discussed below.

a. Content

The content of each cross-examination question must have a purpose and be closely linked to the case theory. Practitioners may amend their questions during cross-examination based

⁵¹ Glissan, above n 25, 101; Owen-Conway, above n 9, 15; *Strange v Hybinett* [1988] VR 418, *NZ Social Credit Political League Inc v O' Brien* [1984] 1 NZLR 581 at 586; *Rees v Bailey Aluminium Products Pty Ltd* [2008] VSCA 244.

⁵² *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, rule 21.5; *Legal Profession Uniform Conduct (Barristers) Rules 2015*, rule 67.

⁵³ Eades, above n 2, 476; Howard, above n 2, 17.

⁵⁴ Glissan, above n 25, 117.

⁵⁵ Owen-Conway, above n 9, 2; McKechnie, above n 6, 21; Glissan, above n 25, 115; Mauet & McCrimmon, above n 6, 205.

⁵⁶ Glissan, above n 25, 115.

⁵⁷ *Ibid*, 116.

⁵⁸ Huestis, above n 5, 79.

⁵⁹ *Ibid*, 75.

on what the witness says, and how the witness acts. Listening carefully to the witnesses' answers, and observing the witness, is therefore essential. Some argue that facial expressions, tone of voice, and body language such as shaking hands and perspiration, can indicate whether the witness is telling the truth.⁶⁰ Others disagree, claiming that a judge or jury is more likely to be persuaded by the testimony of the witness rather than their body language, and that frequent contradictions are better indicators of untrue testimony.⁶¹ Whichever view is taken, careful observation of the witness' reaction to the question and their tone allows the cross-examiner to carefully formulate the next question.⁶²

The cross-examiner should not, however, be so pre-occupied with formulating their next question that they fail to listen to the actual answer given.⁶³ Therefore, in addition to observing the witness, a cross-examiner must also listen to their answer. The witness may say something that may lead to further probing questions, resulting in an admission of great importance to the case.⁶⁴ The cross-examiner will also avoid embarrassing situations, as in the following example:

Lawyer: *"She had three children?"*
Witness: *"Yes".*
Lawyer: *"How many were boys?"*
Witness: *"None".*
Lawyer: *"Were there any girls?"⁶⁵*

b. Control

This refers to the cross-examiner having control of the witness, and of themselves. Cross-examiners control the witness by asking short, leading questions, using plain words, and limiting one issue per question. Controlling oneself is achieved by not asking a question the cross-examiner does not know the answer to, and avoiding asking the one question too many.

(i) Controlling the witness

⁶⁰ Salhany, above n 16, 15; Mauet & McCrimmon, above n 6, 197; Owen-Conway, above n 9, 6-11, 15 & 16; Tilmouth, above n 16, 46.

⁶¹ Salhany, above n 16, 15; Howard, above n 2, 17.

⁶² Mauet & McCrimmon, above n 6, 197.

⁶³ *Ibid*; Stuesser, above n 25, 133.

⁶⁴ *Ibid*.

⁶⁵ Bates et al, above n 6, 350.

Ask short, leading questions

Leading questions are not intended to embarrass, show hostility to, or take unfair advantage of the witness. They are simply questions which suggest an answer,⁶⁶ such as:

“After that, you took the knife in your hand?”

“You did that because you felt your life was in danger?”

Questions can also be leading through intonation and demeanour,⁶⁷ making the questions simpler, such as:

“The robbery happened at 9pm?”

“It was dark?”

“There was one street light?”

“The street light was some 10 metres away?”

“There was no street light closer to you?”

“And that is where the robbery occurred?”⁶⁸

Controlling the witnesses' evidence by asking leading questions prevents them from repeating their evidence-in-chief, which would reinforce the opponent's case.⁶⁹

Use plain words

Eloquence and flamboyance can confuse the witness.⁷⁰ It is best to use the language and terminology of the witness, and to be “simple, clear and precise”.⁷¹ This includes avoiding negatives, double negatives, multiple questions, and questions containing complex vocabulary.⁷² Studies demonstrate that such questions are likely to confuse even adult witnesses, and result in misleading or “significantly more inaccurate responses”.⁷³ Further, there is evidence that witnesses may believe that they grasped the meaning of the question,

⁶⁶ Huestis, above n 5, 80; Glissan, above n 25, 172; Mauet & McCrimmon, above n 6, 199-200; Stuesser, above n 25, 126.

⁶⁷ Mauet & McCrimmon, above n 6, 200.

⁶⁸ Ibid.

⁶⁹ Ibid. 195; Huestis, above n 5, 80.

⁷⁰ Salhany, above n 16, 16 & 41.

⁷¹ Glissan, above n 25, 105; Mauet & McCrimmon, above n 6, 200-201; Stuesser, above n 25, 126; Howard, above n 2, 17; Melilli, above n 39, 328; Bates et al, above n 6, 341.

⁷² Henderson, E., “Bigger fish to fry: Should the reform of cross-examination be expanded beyond vulnerable witnesses?” (2015) 19(2) *The International Journal of Evidence & Proof* 84-85.

⁷³ Ibid.

but if they have doubts or are confused, do not ask for clarification.⁷⁴ This may be because they feel disempowered, intimidated, bullied, or are not sure if they are permitted to seek clarification.⁷⁵ More concerning is the fact that where witnesses did ask for clarification, the rephrased questions “were often as complex as the original”.⁷⁶

Consequently, the use of simple and direct language delivered in a conversational tone is recommended.⁷⁷ There is also no need to pre-empt each question with “*Isn't it true that*”, “*Isn't it fair to say that*” or “*Isn't it correct that*”. Use simple questions, such as:

“You are 65 years of age?””

“You are a teacher?”

“You first qualified in 1990?”

“You worked as a teacher since that time?”

“On 1 March 2015 you went to work?”

“It was as sunny day?”

One issue per question

Asking a question that requires an answer to two or more separate issues risks confusion and may result in an incorrect answer. For example, the following question seeks one answer to three different issues:

“Two men came out of the red car and demanded money from you”?

An answer, whether “yes” or “no”, could be inaccurate if only one of those facts was correct.⁷⁸ The cross-examiner should instead ask:

“Two men came out of the car?”

“The car was red?”

“They demanded money from you?”

⁷⁴ Henderson, above n 72, 86; Wheatcroft & Ellison, above n 2, 823; Bates et al, above n 6, 358.

⁷⁵ Ibid.

⁷⁶ Henderson, above n 72, 86.

⁷⁷ Huestis, above n 5, 81.

⁷⁸ Henderson, above n 72, 85; Melilli, above n 39, 321; Bates et al, above n 6, 357; Howard, above n 2, 17.

Such short questions gain control of the witness.⁷⁹ Maintaining control includes avoiding open ended questions, particularly commencing with “*why*” or “*how*”, and preventing the witness from explaining themselves.⁸⁰ When a witness is provided with such an opportunity they generally seize it “to repair, restate or revive the evidence being challenged”.⁸¹ In rare circumstances, experienced cross-examiners will allow a witness to elaborate because additional facts may be disclosed which the cross-examiner can use to strengthen their case.⁸² This is a call only experienced cross-examiners should make.

One tactic that some cross-examiners use to control the witness, but one that is not recommended, is cutting them off and insisting on a “*yes*” or a “*no*” answer.⁸³ Judges may, in fact, intervene and allow the witness to finish speaking. This is because it is unfair to ask a question which is damaging of a witness, and to cut off an answer which the cross-examiner does not like.⁸⁴ This situation can be prevented by framing the questions so that the witness is inclined to answer “*yes*” or “*no*”.⁸⁵ Short, precise and single questions will accomplish this.

ii. Controlling oneself

Practitioners need to control the urge to ask a question they do not know the answer to, or to ask that one question too many.

Do not ask a question you do not know the answer to

Countless examples are provided in literature where a cross-examiner played a game of Russian roulette and asked a question they did not know the answer to, only to receive an answer that lost the case.⁸⁶ For example:

Lawyer: *“And since the accident 3 years ago, you never contacted my client to see how he was doing, did you?”*

Witness: *“I tried. I was so upset that I called my brother who came and took me home. About an hour or so later, we went to the hospital and tried to*

⁷⁹ Huestis, above n 5, 75.

⁸⁰ Perry & Hampel, above n 32, 52; Mauet & McCrimmon, above n 6, 198.

⁸¹ Glissan, above n 25, 146.

⁸² Owen-Conway, above n 9, 7.

⁸³ Howard, above n 2, 17; Salhany, above n 16, 40.

⁸⁴ Johnson, above n 24, 31.

⁸⁵ Howard, above n 2, 17.

⁸⁶ Owen-Conway, above n 9, 10.

see Mr Smith. The nurse said it wasn't a good time. I called the nurse's station every few days for an update, and I was so happy when they told me that Mr Smith was doing well and was going to go home. I didn't want to call the family since I received a letter from a lawyer; I think it was you, sir, a day or so after the accident".⁸⁷

Hence, it is recommended that cross-examiners never ask a question they do not know the answer to, unless they are confident that whatever the answer is, it cannot hurt their case.⁸⁸

Know when to stop

If an inference from the witnesses' testimony can clearly be drawn, the cross-examiner should refrain from asking the witness to spell it out. In other words, do not ask the one question too many.⁸⁹ This requires control. As soon as the cross-examiner obtains the information needed for closing submissions that an inference should be drawn from the witnesses' testimony, they should move on to the next issue.⁹⁰

Obtaining evidence from which to draw inferences can be done by frequently "echoing" the effect of previous evidence given in the case, for example, by using "piggy-back questions".⁹¹ In a case of a hold-up in a subway station, the following questions could be asked:

Lawyer: *"What was the condition of the light on the platform of the station?"*
Witness: *"Very dim".⁹²*

Submissions could then be made that because the light was dim, the witness could not be certain that the accused was the person with the gun.⁹³ In other words, it would have been difficult for the witness to properly identify the accused. Asking that one question too many could result in this:

Lawyer: *"If the light was dim, could you positively say that the accused was the robber?"*

⁸⁷ Nolan, K., "Cross-examination" (2011) 37(2) *Chicago* 65.

⁸⁸ Bates et al, above n 6, 362; Howard, above n 2, 17; Glissan, above n 25, 143; Mauet & McCrimmon, above n 6, 197; Perry & Hampel, above n 32, 53; Melilli, above n 39, 331.

⁸⁹ Bates et al, above n 6, 360; Glissan, above n 25, 91 & 144.

⁹⁰ Glissan, above n 25, 91; Mauet & McCrimmon, above n 6, 198; Stuesser, above n 25, 130.

⁹¹ Howard, above n 2, 17.

⁹² Salhany, above n 16, 61.

⁹³ *Ibid.*

Witness: *“Well, the platform may have been dim, but the accused and I were right under an electric light when he stuck the gun in my face and told me he would blow my head off if I didn’t give him my wallet!”*⁹⁴

Another example is the following cross-examination of a duck:

“I want to ask you questions about how you get around, you understand?”

“On land you walk?”

“In water you swim?”

“You also fly?”

“Your feet are orange in colour?”

“They have three toes?”

“They are webbed?”

“You swim in all weather?”

“You swim in the rain?”

“When it rains, the water rolls of your back?”

*“You have feathers?”*⁹⁵

In this example, the duck does not admit that it is a duck. The cross-examiner, instead, asks short, leading questions, obtaining an answer they knew they would get. An inferences can properly be drawn that the duck is a duck, although the duck never says so. Such cross-examination can have a powerful impact.⁹⁶

The principle of not asking the one question too many does not mean that the cross-examiner cannot employ the tactic of “building before destroying”.⁹⁷ This means that the cross-examiner does not start the cross-examination with “*Now, you didn’t really see the accident, did you?*” Instead, a series of interrelated, progressive questions are used to approach a point gradually, create uncertainty, and save the ultimate point for the closing arguments.⁹⁸ For example:

“You are familiar with the intersection at George Street?”

“You drove through that intersection many times?”

“You use the intersection on your way to work?”

⁹⁴ Salhany, above n 16, 61.

⁹⁵ Huestis, above n 5, 77.

⁹⁶ Howard, above n 2, 17.

⁹⁷ Glissan, above n 25, 91.

⁹⁸ Mauet & McCrimmon, above n 6, 201.

“And back home after work?”

“Five days a week?”

“For the last 5 years?”

“On 1 January 2015, at 7am, the weather was fine?”

“It was not raining?”

“So the road was dry?”

“After you crossed the intersection you heard a crash?”

“It was then that you noticed someone lying on the road?”⁹⁹

The questions are carefully arranged, closing all the gaps, before confronting the witness with a final damaging fact.¹⁰⁰ Here, an inference can be drawn that the witness was not expecting to see the accident, and did not notice anything out of the ordinary before hearing the collision.¹⁰¹ Although the final question was one with a purpose, it was not the one question too many that could damage the cross-examiner’s case.

c. Tone

Tone refers to the cross-examiner’s manner, and can vary from case to case, witness to witness, and topic to topic.¹⁰² Effective cross-examination styles are either friendly, adversarial, or a combination of both.¹⁰³ Some situations call for robust confrontation, whereas others for a subtle, gentle, and friendly approach.¹⁰⁴ However, cross-examination should never be “cross”.¹⁰⁵ Instead, a confident, commanding attitude that places the cross-examiner at the centre of attention, is the most effective.¹⁰⁶

The tone adopted can have significant effects on the witnesses’ testimony. For instance, it is unlikely that a cross-examiner will elicit favourable evidence from a witness if their credibility is attacked at the start.¹⁰⁷ Hence, if there is an intention to discredit the witness, favourable evidence should be elicited first. This can be achieved by being polite, respectful, and developing a rapport with the witness. A witness who feels comfortable under cross-examination may be more likely to agree with propositions put to them.¹⁰⁸ The common

⁹⁹ Mauet & McCrimmon, above n 6, 201.

¹⁰⁰ Howard, above n 2, 17.

¹⁰¹ Mauet & McCrimmon, above n 6, 201.

¹⁰² Howard, above n 2, 17; Owen-Conway, above n 9, 7.

¹⁰³ Owen-Conway, above n 9, 11.

¹⁰⁴ Howard, above n 2, 17.

¹⁰⁵ Huestis, above n 5, 80; Mauet & McCrimmon, above n 6, 203.

¹⁰⁶ Mauet & McCrimmon, above n 6, 203.

¹⁰⁷ Huestis, above n 5, 79; Selby, above n 46, 145.

¹⁰⁸ Owen-Conway, above n 9, 7.

sentiment is that one catches “more flies with honey than vinegar”.¹⁰⁹ If the cross-examiner determines that their tone needs to become more robust or confrontational, the witness should still be treated with respect and courtesy.¹¹⁰ Courtesy is not a sign of weakness, but a sign of strength.¹¹¹ Remaining calm and composed demonstrates that the cross-examiner is thoroughly prepared, confident, and competent.¹¹²

Remaining calm and composed is particularly important if the witness is argumentative. Cross-examiners should never argue with the witness, and should refrain from answering their questions.¹¹³ Arguing with the witness is unprofessional, indicates a lack of preparation, and affects the credibility of the cross-examiner.¹¹⁴

The elements of effective cross-examination, namely, content, control and tone, apply to all witnesses. There are additional rules and principles which apply to cross-examining experts, children, and vulnerable or special witnesses. These are discussed next.

4. Cross-examining expert witnesses

Practitioners must be familiar with the procedural rules in their particular jurisdiction pertaining to expert witnesses.¹¹⁵ Again, preparation is essential. The cross-examiner must be familiar with the area of expertise, the report, and the issues the expert is asked to give an opinion on. They must master the expert’s opinion.¹¹⁶ A shadow expert could be consulted to assist in identifying the strengths and weaknesses of the opposing expert’s opinion, and to suggest questions to be asked of the expert to expose those weaknesses or to clarify their opinion.¹¹⁷

First, practitioners needs to determine whether the expert is qualified to give the evidence, and whether their area of expertise is a sufficiently recognised field as specialist knowledge.¹¹⁸ If these are not in issue, then cross-examination of the expert needs to focus on the:

¹⁰⁹ Bates et al, above n 6, 361; Selby, above n 46, 145.

¹¹⁰ Huestis, above n 5, 80; Glissan, above n 25, 104.

¹¹¹ Glissan, above n 25, 106.

¹¹² Howard, above n 2, 17; Glissan, above n 25, 105 & 106.

¹¹³ Huestis, above n 5, 80; Howard, above n 2, 17; Mauet & McCrimmon, above n 6, 197; Stuesser, above n 25, 131; Perry & Hampel, above n 32, 58.

¹¹⁴ Mauet & McCrimmon, above n 6, 197-198.

¹¹⁵ Ibid, 231.

¹¹⁶ Nolan, above n 87, 64.

¹¹⁷ Perry & Hampel, above n 32, 13; Howard, above n 2, 18.

¹¹⁸ Owen-Conway, above n 9, 19-20.

- a) Correctness of the facts upon which the opinion is based;
- b) Validity and accuracy of the methodology used and its appropriateness to the circumstances;
- c) Defects or omissions in tests or investigations conducted;
- d) Extent to which any assumptions made were reasonable at the time they were made and the correctness of the assumptions;
- e) Validity of the reasoning process leading to the expert's opinion;
- f) Comparison between their opinion and other experts opinions; and
- g) Bias or lack of independence or objectivity".¹¹⁹

Discrediting expert witnesses is generally not recommended. Experts are unlikely to agree that their opinion is wrong. A more effective tactic is to obtain concessions from the expert. Experts work on assumptions and are likely to concede that if the facts, or their assumptions were different, their opinion could change.¹²⁰ Questions can be formulated as follows:

Lawyer: *"Doctor, your opinion is that ... (state opinion from report). Is that correct?"*

Doctor: *"Yes".*

Lawyer: *"That opinion is based on your assumption of the truth of the facts that my learned friend related to you?"*

Doctor: *"Yes".*

Lawyer: *"And those facts are ... (state each underlying assumption allowing for a response after each question) ...*

Lawyer: *Is it fair to say that if one of those factual assumptions is not correct, then your opinion might be different?"¹²¹*

Then, in closing submissions, the cross-examiner needs to persuade the court that the alternative facts or assumptions should be accepted, and therefore, the alternative opinion is the correct one.

In preparation for cross-examination of the expert, a practitioner may also confer with colleagues to ascertain if the expert has a reputation for being rigid in their opinions, theory bound, or open minded.¹²² This will aid in planning the questions to be posed to the expert.

¹¹⁹ Owen-Conway, above n 9, 19-20.

¹²⁰ Howard, above n 2, 18.

¹²¹ Salhany, above n 16, 137.

¹²² Howard, above n 2, 18.

When formulating questions for the expert, it is best to avoid complex terminology. Studies indicate that expert witnesses often complain about lawyers asking long, multi-part questions with double negatives, or repeated questions with slight rephrasing, which they find confusing and difficult to answer.¹²³

5. Cross-examining children, vulnerable and special witnesses

The law, rules and principles governing this area is extensive and beyond the scope of this paper. Therefore, only a brief overview of the issues in this area is provided, focusing on the tone and language used by the cross-examiner.

Children and vulnerable witnesses' credibility is questioned because poor development, intellect, or trauma can lead to unreliable evidence.¹²⁴ When they are asked questions about an incident that has caused them significant trauma, they feel anxious, and their memory of the incident can be affected.¹²⁵ Creating a supportive and non-intimidating atmosphere reduces such anxiety and can lead to more accurate responses.¹²⁶ It is also essential that simple, clear and concise language is used, appropriate to the age and development of the witness.¹²⁷ This is particularly important because children and persons with intellectual disabilities may agree with statements they do not actually understand, without asking for clarification.¹²⁸ A similar fact applies to Indigenous Aboriginal witnesses, whose tendency is to use "gratuitous concurrence," that is, to say "yes" in answer to a question (or "no" to a negative question), regardless of actual agreement, or even understanding of the question".¹²⁹ Additional measures need to be taken when cross-examining such witnesses.

6. Objections in cross-examinations

There are various grounds on which questions can be objected to during a trial. For instance, an objection to a leading question is only made in examination-in-chief. However,

¹²³ Henderson, above n 72, 85.

¹²⁴ Bowden et al, above n 2, 540, 550 & 552.

¹²⁵ Bettenay, C., Ridley, A. M., Henry, L. A. & Crane, L., "Changed Responses Under Cross-examination: The Role of Anxiety and Individual Differences in Child Witnesses" (2015) 29 *Applied Cognitive Psychology* 491; Loughman, J., "Protecting vulnerable witnesses in family law" (2016) 19 *Law Society of NSW Journal* 26; Anstie, L., "Cross-examination of victims of family and domestic violence by self-represented perpetrators in family law proceedings" (2016) 43(4) *Brief* 38.

¹²⁶ Bowden et al, above n 2, 556.

¹²⁷ Henderson, above n 12, 189-190.

¹²⁸ Bowden et al, above n 2, 553, 556, 563-564.

¹²⁹ Eades, above n 2, 478.

volunteered answers given by the witness can be objected to by either side at any time.¹³⁰ Objections in cross-examination are generally as to the form or the content of the questions.

6.1 Objections as to form

The grounds on which objections are made as to form are:

- a) That it is too general or non-specific. For example:

“Please describe your childhood to the court”.

These type of questions call for a long narrative response, invite uncontrolled testimony, fail to clearly direct the witness’s mind to an issue, and elicit potentially inadmissible evidence from the witness.¹³¹ These questions should be rephrased so that the witness’s mind is clearly directed to an issue.

- b) That it is confusing, misleading, vague or ambiguous. For example:

“That is not what the doctor said in the witness box because when the doctor was asked about your prognosis he said that based on his reading of your file, examination of your back, and reading of your other medical reports and historical documents from medicate and from WorkCover there is evidence of you being able to do other work in the future if you undertake the medical treatment and take the medications prescribed for you by the doctors you are seeing and if that is what is ordered by a doctor, isn’t that correct?”

These type of questions are generally long and convoluted leaving the witness and the court uncertain of what is actually being asked.¹³² They should be rephrased so that the witness can give a clear, precise answer.

- c) That it is duplicitous/compound. For example:

¹³⁰ Glissan, above n 25, 175.

¹³¹ Ibid, 172 &173; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185 & 188; Huestis, above n 5, 80-81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Mauet & McCrimmon, above n 6, 275; Tilmouth, above n 16, 42.

¹³² Glissan, above n 25, 173; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185 & 188; Huestis, above n 5, 80-81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Mauet & McCrimmon, above n 6, 275; Tilmouth, above n 16, 42.

“Did you not see the shopper spill the water on the floor and the employee mop it up immediately and erect a warning sign?”

These type of questions refer to more than one issue at once. A “yes” or a “no” answer will be partially inaccurate if only one of those facts is correct.¹³³ Such questions should be rephrased.

- d) That it is argumentative. For example:

“So you are a criminal!”

“So you are a thief and a liar!”

These type of questions invite the witness to argue rather than provide information and should be withdrawn.¹³⁴

- e) That it is calling for a conclusion or opinion of a lay witness. For example:

“What caused your car to spin and hit the truck?”

“What do you think caused the disease you are suffering from?”

“So the design of the chair was faulty?”

These type of questions ask the lay witness to give an opinion or to draw a conclusion from the facts they observed, which they are not qualified to do. A lay witness should only testify as to what they observed.¹³⁵

- f) That it is an unfounded attack on the witnesses’ credit for which there is no proper basis. For example:

“So really then, you are an alcoholic and a gambler”.

These type of questions are oppressive and often designed to be offensive or embarrassing.¹³⁶ They should be withdrawn.

¹³³ Glissan, above n 25, 173; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185 & 188; Huestis, above n 5, 80 & 81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Mauet & McCrimmon, above n 6, 275; Tilmouth, above n 16, 42.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

6.2 Objections as to content

The grounds on which objections are made as to the content of the questions are:

- a) That it is irrelevant. For example, asking a witness about their medical history when they are giving evidence about a robbery. Questions must be relevant to the issues, or to a fact relevant to the issues.¹³⁷ Irrelevant questions should be withdrawn.
- b) That it is assuming facts not in existence, not proved, and unable of being proved. If the cross-examiner cannot provide an undertaking that those facts will be proved, the question should be withdrawn.¹³⁸
- c) That it is misstating the evidence or misquoting the witness. For example:

Lawyer: *“You hit my client, didn’t you?”*

Witness: *“Yes”.*

Lawyer: *“After attacking him, you then ran away?”*¹³⁹

Questions which misstate or distort the evidence given, or are an inaccurate repetition of a witness’ previous evidence, are erroneous and should be withdrawn.¹⁴⁰ To avoid an objection on this ground, it is crucial that practitioners note in detail what the witness actually says.

- d) That it is speculative. For example:

“If the car was further away, you would not have crashed into its rear, isn’t that correct?”

Speculative questions are improper because they ask the witness speculate or guess, which they are not permitted to do. What a witness is permitted to do, is

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Mauet & McCrimmon, above n 6, 289; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185 & 188; Huestis, above n 5, 80-81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Glissan, above n 25, 171-171; Tilmouth, above n 16, 42.

¹⁴⁰ Glissan, above n 25, 174; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185 & 188; Huestis, above n 5, 80-81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Mauet & McCrimmon, above n 6, 275; Tilmouth, above n 16, 42.

estimate or proximate things such as distance, time, and speed.¹⁴¹ Speculative questions should be withdrawn.

e) That it is an improper question. For example:

“Do you know that ...?”

“Would it surprise you to learn that ...?”

These type of questions suggest to the witness the existence of facts or evidence which they do not possess. They are designed to elicit a compliant response and are prejudicial.¹⁴² They include imputations of suspicion and are often based on hearsay.¹⁴³ Such questions should be withdrawn.

Although it is a practitioner’s duty to object,¹⁴⁴ it is still necessary to decide whether to object.¹⁴⁵ Objecting to trivial matters without forethought will frustrate the judge and the jury. Objecting to unsettle an opponent or a witness will damage the practitioner’s reputation and end up causing embarrassment and self-defeat.¹⁴⁶ Practitioners should only object if the answer is likely to hurt their case and they have a strong basis for the objection.¹⁴⁷ Once a decision to object is made, it should be made instantly. An objection to the question must be made before the answer is given. An objection to the answer must be done as soon as the answer is given.¹⁴⁸

6.3 Objections on other grounds

In addition to objections as to form and content of the question, objections can be made when the question or proposition may lead to inadmissible evidence. For example, the practitioner may claim public interest immunity or that the information is privileged

¹⁴¹ Mauet & McCrimmon, above n 6, 289; Glissan, above n 25, 175; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185 & 188; Huestis, above n 5, 80-81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Tilmouth, above n 16, 42.

¹⁴² Glissan, above n 25, 101-102; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185 & 188; Huestis, above n 5, 80-81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Mauet & McCrimmon, above n 6, 275; Tilmouth, above n 16, 42; See also relevant provisions in the Uniform Evidence Acts and Procedural Rules such as the UCPR.

¹⁴³ Gibbs, CJ in *Alister v R* (1984) 154 CLR 404, in Glissan, above n 25, 102; Owen-Conway, above n 9, 2-13; Henderson, above n 12, 185-188; Huestis, above n 5, 80-81; Bowden et al, above n 2, 554; Johnson, above n 24, 30-35; Mauet & McCrimmon, above n 6, 275; Tilmouth, above n 16, 42.

¹⁴⁴ Johnson, above n 24, 33.

¹⁴⁵ Perry & Hampel, above n 32, 45.

¹⁴⁶ Tilmouth, above n 16, 41.

¹⁴⁷ Glissan, above n 25, 170-172; Tilmouth, above n 16, 41.

¹⁴⁸ Ibid.

communication, and a witness many claim privilege against self-incrimination.¹⁴⁹ These objections are generally lengthy and may form part of a separate interlocutory hearing.

Objections to hearsay testimony are subject to complex rules of evidence. This discussion is beyond the scope of this paper. It is recommended that practitioners become familiar with the rules pertaining to hearsay evidence in their jurisdiction prior to embarking on cross-examination.

Finally, questions can be objected to if the answer, although admissible and relevant, is prejudicial. In other words, its probative value may be so minimal that it is outweighed by its unfair prejudice.¹⁵⁰ If objections are not taken, judges can, and in some instances must, intervene to control unreasonable cross-examination in both civil and criminal trials.¹⁵¹

7. Conclusion

The purpose of cross-examination, among other things, is to elicit evidence favourable to the client's case, and to weaken the evidence of the opponent. This evidence forms part of the closing address to the judge or jury. The closing address essentially argues the case. Its purpose is to persuade the judge or jury that the client's version of events, in line with the case theory developed before the trial, is correct.¹⁵²

As shown throughout this paper, the evidence adduced in cross-examination either helps the client's case, or harms it. The way cross-examination is conducted plays a large part in this outcome. Consequently, preparation for cross-examination, the technique followed, and the style adopted, must be given very careful consideration. This paper made a number of recommendations that practitioners could adopt. Other recommendations are made by experienced counsel from time to time, and practitioners will, with practice, find the technique and style that they feel most comfortable with in representing their clients with vigour and determination. Thus, they will master the art of cross-examination, and ultimately, the art of persuasion.

¹⁴⁹ Glissan, 2015, above n 25, 175.

¹⁵⁰ *Ibid*, 176.

¹⁵¹ Johnson, above n 24, 31-32; Owen-Conway, above n 9, 13; Eades, above n 2, 487; see also section 41 of the Uniform Evidence Acts and section 21 of the *Evidence Act 1977* (Qld).

¹⁵² Tilmouth, above n 16, 45; Salhany, above n 16, 20.

References

Anstie, L., "Cross-examination of victims of family and domestic violence by self-represented perpetrators in family law proceedings" (2016) 43(4) *Brief* 38-39.

Bates, W., Huntley, R. & Starnes, W., "Ten tips for direct examination and cross-examination" (2015) 39(2) *American Journal of Trial Advocacy* 339-363.

Bettenay, C., Ridley, A. M., Henry, L. A. & Crane, L., "Changed Responses Under Cross-examination: The Role of Anxiety and Individual Differences in Child Witnesses" (2015) 29 *Applied Cognitive Psychology* 485–491.

Bowden, P., Henning, P. & Plater, D., "Balancing fairness to victims, society and defendants in the cross-examination of vulnerable witnesses: an impossible triangulation" (2013) 37(3) *Melbourne University Law Review* 539-584.

Eades, D., "The social consequences of language ideologies in courtroom cross-examination" (2012) 41 *Language in Society* 471–497.

Glissan. J. L., *Advocacy in Practice* (LexisNexis Butterworths, 6th ed., 2015).

Henderson, E., "Bigger fish to fry: Should the reform of cross-examination be expanded beyond vulnerable witnesses?" (2015) 19(2) *The International Journal of Evidence & Proof* 83–99.

Henderson, E., "Best evidence or best interests? What does the case law say about the function of cross-examination?" (2016) 20(3) *The International Journal of Evidence & Proof* 183–199.

Howard, D., "Reflections on the art and technique of cross-examination" (2015) 126 *Precedent* 14-18.

Huestis, B. J., "Cross-examination by the Numbers" (2007) *The Army Lawyer*, October: 76-84.

Johnson, P., "Controlling unreasonable cross-examination" (2009) 21(4) *Judicial Officers Bulletin* 29-32, 35.

Loughman, J., "Protecting vulnerable witnesses in family law" (2016) 19 *Law Society of NSW Journal* 26-27.

McKechnie, J., "Basic trial advocacy: preparation for cross-examination" (2015) 42(5) *Brief* 20-24.

Melilli, K. J., "Risk Management in Cross-Examination" (2014) 38(2) *American Journal of Trial Advocacy* 317-334.

Mauet, T. A. & McCrimmon, L. A., *Fundamentals of Trial Technique* (Thomson Reuters, 3rd ed., 2011).

Nolan, K., "Cross-examination" (2011) 37(2) *Chicago* 63-66.

Owen-Conway, S., "How to Cross-Examine a Witness in an Australian Court" (2014) *Gordon and Jackson*, accessed at http://www.gordonandjackson.com.au/resources_uploads/how_to_crossexamine_a_witness_in_an_australian_court_sample.pdf

Perry, M. G. & Hampel, G., *Hampel on Advocacy: A Practical Guide to Basics* (Leo Cussen Institute, revised ed., 2005).

Salhany, R. E., *Cross-Examination: The Art of Advocate* (Butterworths, 1991).

Selby, H., *Advocacy: Preparation and Performance*" (The Federation Press, 2009).

Stuesser, L., *An Introduction to Advocacy* (Thomson Reuters, 2nd ed., 2011).

Tilmouth, S., "Courtroom advocacy: reflections of a trial judge" (2012) 36(1) *Australian Bar Review* 31-53.

Wheatcroft, J. M. & Ellison, L. E., "Evidence in Court: Witness Preparation and Cross-Examination Style Effects on Adult Witness Accuracy" (2012) 30 *Behavioural Sciences and the Law* 821-840.