

THE ART OF CROSS-EXAMINATION:
An Essential Skill for Debaters and Attorneys

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Undoubtedly, cross-examination is among the most difficult of all arts of the advocate. It is also one of the most valuable. Every person familiar with the courts has seen cases won almost solely because of its skillful use; and also sad to say, cases wholly lost by a bundling, indiscreet, or an over-confident cross-examination.

When legal scholar and courtroom attorney John W. Davis made this observation (Wellman, 1948, p. 15), little did he know that some thirty five years later his words would accurately describe the state of cross-examination in academic debate. Despite the existence of an organization which calls itself the Cross Examination Debate Association, cross-examination is still one of the most difficult arts for the debate student to learn. Perhaps this is because cross-examination is still relatively new as a wide spread debate practice. Or perhaps the lack of literature or instructional materials have contributed to its neglect. A comprehensive examination of current debate and argumentation texts clearly reveals that cross-examination remains a largely underdeveloped area of forensics instruction.

Thus, the purpose of this paper is to argue for increased instruction in cross-examination by offering an extensive examination of effective questioning techniques and illustrating how the acquisition of such skills is useful to the practice of courtroom law.

In the past, most analyses of cross-examination in academic debate have simply reviewed the legal literature concerning courtroom questioning and applied insights from the legal profession to the debate setting. While answers derived from such an approach have been and will continue to be useful, this article employs the opposite methodology and asks: What are the proper techniques for effective academic debate cross-examination and how can these techniques be useful in a later legal career? To this end, we present and discuss the application of cross-examination techniques in the debate setting and include brief sections entitled "Legal Analog" demonstrating the application of the same and similar techniques in courtroom cross-examination.

In order to explicate our thesis we will first offer general advice for debate participants, comment on specific advice for the questioner and respondent by reviewing purpose and objectives, general approaches, specific techniques, and strategic considerations, compare this advice with that given to trial lawyers, propose models of the communication processes, and suggest techniques and drills for teaching students effective cross-examination for academic debate.

We hope this article will be used in two ways: first, to improve the interrogation periods used in academic debate, and second, to illustrate the potential training opportunity for future attorneys. Most attorneys will find insufficient time in law school or actual practice to experiment with and develop effective cross-examination techniques. Therefore, academic debate offers prospective attorneys the ideal opportunity to master each questioning skill while experimenting with new and varied questioning techniques. With these two goals in mind, let us turn our attention to the major thrust of this article--advice for the participants in academic cross-examination debate.

GENERAL ADVICE FOR PARTICIPANTS

Building Personal Ethos

One major purpose of cross-examination is psychological in nature. The cross-examination period can be used to create a favorable impression of one's self, persuading the critic to feel you "deserve" to win the round. This is not merely a fringe benefit; rather, it is a major purpose of the exercise. Often, when a critic perceives a debater to be a "good person" in the Aristotelian sense, he or she is psychologically influenced to vote for that person. In very close rounds, a debater's ethos and image are critical to the decision (Sayer, 1980). Thus, participants should attempt to construct in the critic's mind the positive image of a courteous, ethical human being. Personal ethos can be enhanced in the following ways:

Stage Presence

Participants should view the speaking area as a theatrical stage and create a psychological presence. Each debater, during the cross-examination period, should stand comfortably, facing the critic, and should make sure no obstacles such as desks or podiums disrupt visual contact between him or herself and the critic. The use of eye-contact is extremely important in commanding attention of the critic; one can effectively guarantee critic participation in the cross-examination period by maintaining solid eye-contact, and directing all questions and answers to the critic.

Attitude

Participants should remain calm and poised throughout the questioning period. Critics appreciate attacks on arguments, not attacks on the dignity or integrity of one's opponents. There is a fine line between confidence and an attitude of superiority; critics may tend to dislike participants who appear bent on brow-beating their opponents. Therefore, debaters should appear poised and confident, but not overbearing.

Voice

Voice control can be effective in building ethos. Delivering answers in a calm, collected, and deep voice can display an image of self-confidence which a squeaky, quavering voice will destroy.

Legal Analog

Concerning personal ethos, legal writers suggest the following for the trial attorney: he or she should take psychological control of the courtroom during the cross-examination period with a commanding, yet composed presence (Lake, 1957, p. 316), and start the questioning in a helpful and courteous manner (Goldstein, 1969, p. 6). The attorney should never lose his or her temper or control of personal demeanor (Friedman, 1968, p. 71) or address witnesses in an angry or sarcastic manner (Ibid. p. 41).

Participant-Critic Interaction

Too often, debaters seem to forget that their questions and answers are being recorded by anyone other than themselves. Questions and answers can become rather complex at times, and since critics are usually less familiar with the topic area than the participants, they may not understand the presentations. The ultimate goal of each debater should be to make the critic more inclined to believe his or her point of view; one's opponent is not likely to change his or her mind about a given resolution during the middle of a debate round. Thus, participants should attempt to involve the critic, raising issues that he or she is likely to want to hear.

Involve the Critic in Questions and Answers

It is often effective to use the critic's name while asking and answering questions. This will guarantee he or she will listen attentively (this technique must not be overused--saying his or her name too many times will destroy the attention-grabbing effect). Furthermore, critics are more likely to become interested if questions and answers are phrased from his or her own point of view. For example, if a debater suggested that unemployment rarely causes personal hardship due to the availability of governmental relief programs, the opponents might be wise to ask, "How would Professor Smith feel if he lost his job and were forced to support a family of four on a monthly welfare check?" Such involvement of the critic makes the issues under discussion seem more relevant and probably influences his or her perception of the answer.

Watch for Nonverbal Responses

Many critics will make obvious nonverbal responses to specific questions or answers through facial expressions (grimaces, laughter, raised eyebrows) or by taking notes on a flowsheet or the ballot. Debaters should watch these reactions, pursuing those lines of questioning that are receiving favorable responses (Sayer, 1980).

Use Audience Analysis

Knowing the specific background of the critic, especially his or her occupation and views of the debate process, can help participants formulate lines of attack to which he or she is likely to be receptive. For example, one might assume that a career military person would have deep concerns about our national security that could be effectively capitalized upon in a debate round. In a more general sense, the debate proposition itself may trigger special concerns of the average person. Many resolutions have strong ethnocentric overtones, and participants who know the general political stance of the critic (liberal or conservative) can utilize this knowledge to probe into the reasons why an ethnocentric decisionmaking approach is or is not desirable. Participants should always tailor their questions and answers as much as possible to what they believe the critic needs to hear in order to render a favorable decision.

Legal Analog

With respect to the lawyer-witness-jury interaction the legal literature suggests that the attorney should design the questioning process to reach the jury, constantly checking to see how the jury members are receiving the desired messages (Friedman, 1968, p. 48) and should know the background and as much as possible about all jurors (Lake, 1957, p. 82). The attorney should not focus on the witness to the exclusion of the jury (Friedman, 1968, p. 48) and should not fail to focus the attention of the jurors on the major highlights of the questioning period (Lake, 1957, p. 128).

The next two major sections of this paper offer some advice for questioner and respondents on how to effectively advance their positions during the cross-examination period. We feel that most of these suggestions are applicable to all debaters most of the time. However, some of the more specific strategic considerations should only be used for specific situations and for specific critics. We therefore realize that debaters should use careful discretion when applying some of this advice to a given cross-examination period.

ADVICE FOR QUESTIONERS

Purposes and Objectives

Clarify Argumentation and Analysis

Questioners should use this time period to make sure they understand their opponents' arguments, asking about issues they did not understand or feel the critic did not understand from the previous speech. This period can be used to establish common grounds of agreement, such as what basic values are important to our society, and questioners can effectively isolate the clash of value hierarchies presented by both teams in the round (Windes and O'Neil, 1964).

Highlight Problems in Argumentation

Questioners can begin to attack arguments by isolating flaws in analysis or support and showing the critic how damaging such flaws are to the opponents' arguments. These flaws can be loosely classified into three main areas:

Uncover Hidden Assumptions

Often, a debater will present arguments which employ unexplored or hidden assumptions of causality or impact. For example, many debate teams argue on various resolutions that policies which waste money are inherently evil. Questioners should indicate to the critic that the respondent is assuming that money saved equals money well spent, without actually proving this. Isolating such unproven assertions can effectively diminish the credibility of an opponent's contentions, especially when such discoveries are developed in later counterarguments.

Explore Errors in Reasoning

Questioners knowledgeable about the rules of logic will often note that an opponent employs reasoning fallacies within his or her speeches. Questioners who are able to bring such fallacies to the critic's attention can do great damage to the opponent's case (Windes and O'Neil, 1964). When opponents employ deductive reasoning, questioners should isolate the major and minor premises to search for faulty syllogisms. If opponents utilize inductive reasoning, questioners should explore the size and representation of the "study population" to search for hasty generalizations. Debaters

drawing support from public opinion may be guilty of the fallacy of ad populum, and those resorting to name-calling, the fallacy of ad hominem. Questioners should scrutinize the mode of reasoning used by opponents, apply the rules of logic, and highlight any important discrepancies for the critic.

Explore Errors in Use of Evidence

There are two basic criteria for testing the validity of evidence used to support claims in a debate round--internal and external. Internal validity refers to the content of the evidence; i.e., does the evidence support the assertion as is claimed, is the evidence factual or inferential, are there any qualifying statements such as might, could, believe, etc. External validity refers to the applicability of the evidence and concerns the author, his or her qualifications, and the date of publication. Questioners can severely damage the credibility of their opponents' arguments by highlighting problems with the validity of key pieces of evidence for the critic (Windes and O'Neil, 1964).

Establish Premises for the Questioner's Future Arguments

The questioner should, by the end of an opponent's speech, have in mind specific arguments that he or she would like to present during the constructive speeches. The questioner should first isolate the premises of those future arguments. Then, he or she should examine the opponent's speech and look for analysis which supports or agrees with the premises of those future arguments. Finally, the questioner should get the opponent to admit adherence to these premises, such that they can be effectively used to establish a strong counterattack. If this technique is used correctly, the respondent will not know how this agreement will be used against him or her until the questioner actually uses it in arguments in later speeches. For example, an affirmative case might state that minimum wage regulations are undesirable because they cause higher levels of unemployment. A negative team might be able to prove that such regulations actually increase employment in the long run by raising income levels, thus raising productivity, thus creating the demand for new jobs. So, the questioner for the negative should make the affirmative team's respondent admit that higher employment levels are desirable. The affirmative will surely answer yes, and the stage is now set for the negative counterattack. This questioning approach enhances the credibility and reasonableness of the negative arguments to follow.

Legal Analog

Regarding the purpose and objectives of the questioning process, attorneys should remember that the primary purpose of the cross-examination period is to corroborate the questioner's case and the secondary purpose is to discredit the opposition's case (Goldstein, 1969, p. 7-9). The attorney should challenge major and minor premises of the witness' testimony to discredit its logic (Ibid. p. 31), identify and indict motives, biases, prejudices, faulty memory, inconsistent testimony, omissions,

and possible criminal records (Mauret, 1980, p. 255-85), tie down an evasive witness (Lake, 1957, p. 152-68), act as if little is known about a subject in order to keep objectives hidden (Goldstein, 1969, p. 25), clarify confusion in testimony that is essential to the case (Lake, 1957, p. 35), compare statements given during interrogatories, depositions, and courtroom testimony (Friedman, 1968, p. 10-26), highlight important answers through subtle verbal and nonverbal means (Lake, 1957, p. 221), and never fail to impeach the testimony of a known perjurer (Wellman, 1948, p. 56-60).

General Approaches

Establish a Goal and Direct the Questioning to Reach It

All too often, a questioner stumbles down a flow of the opponent's speech, asking arbitrary questions which are conceptually unrelated. Instead of merely probing what has been said in random fashion, the questioner should establish a specific goal for the entire cross-examination period. This goal should serve as a ship's rudder, giving the questions a specific direction and fulfilling the role of catalyst for developing lines of attack. Some possible goals include: damaging the intellectual credibility of the respondent; obtaining factual admissions that weaken the respondent's arguments; and obtaining factual admissions beneficial to one's own attack (Rieke and Silars, 1975). Once the goal is chosen, the questioner should choose a path of questions that will reach this goal, even using several different approaches and techniques, not stopping until the fruits of the attack are firmly planted in the critic's mind.

Choosing a specific goal for each speech is often quite difficult, especially for the novice debater. Participants should first select the important issues for consideration in the debate and focus upon them. Also, they should attempt to discern the lines of attack to which the critic seems most receptive and concentrate on these. For some critics, the goal of outlining major errors in reasoning might be optimal; for others, the goal of undercutting an opponent's credibility would be more appropriate. Obviously, the selection of cross-examination goals depends on many factors, and to be successful, questioners must approach this process carefully and thoughtfully.

Prepare a series of Generic Questions

When debaters hear a new case approach for the very first time, they sometimes have a difficult time determining which issues are likely to be the most important. To avoid not having any questions to ask, a questioner should prepare beforehand a series of questions that apply directly to the resolution in its entirety. This will allow the questioner to "feel out" how the specific affirmative case relates to the resolution and to avoid the embarrassing position of not knowing what to say.

Know and Plan for All Possible Answers

Optimally, the questioner should know all potential answers to each of his or her questions. Therefore, when he or she hears the response, the questioner can already know what follow-up question should be asked in order to best reach the cross-examination goal. Too many questioners are thrown for a loss when the respondent gives an answer for which they are unprepared; therefore, questioners must remain flexible enough to handle even unexpected answers without appearing shaken.

Do Not Allow Self to be Questioned

The questioner has the right to control the cross-examination period and demand answers. If the respondent starts asking questions in return, the questioner should politely remind the respondent (and the critic) that the former alone can ask questions, and he or she should repeat the question and ask for specific answers this time.

Legal Analog

An effective attorney should always conduct the cross-examination period with a specific objective in mind (Friedman, 1968, p. 9), preparing questions so that the answers of the witnesses help refute the facts of the case (Lake, 1957, p. 41). The questioner should scrutinize the direct testimony of each witness, isolating the most important areas upon which to focus during the questioning period (Ibid. p. 40) and asking questions that are not favorable to the witnesses' case (Goldstein, 1969, p. 64). An attorney should always know the answer to each question before he or she asks it during a trial (Lake, 1957, p. 44) and should write out all questions before the trial actually begins (Friedman, 1968, p. 20). Never should the questioner allow the witness to control the content or tempo of the cross-examination (Goldstein, 1969, p. 67) or appear shaken by an unexpected or unfavorable response, instead merely continuing as if nothing has happened (Lake, 1957, p. 82-3). Since time constraints are not present in a courtroom procedure, the attorney should allow the witness to supply run-on responses and volunteer answers, as long as the attorney feels such responses will elicit testimony favorable to his or her own case (Ibid. p. 102-4).

Specific Techniques

Primacy of Questions

It is very important for the questioner to start off strong, gaining momentum psychologically. Therefore, the first few questions are often the most important ones, as they set the tone for the remainder of the cross-examination period. We suggest using one of the following techniques:

Start on a Major Winning Issue

The questioner might want to "go for the jugular" and start on one major flaw

in the opponents' case; i.e., a value contradiction, a key piece of evidence which has been misconstrued or applied out of context, or any other potential independent voting issue.

Build a Series of Minor Winning Issues

If the questioner's goal is to damage the respondent's credibility, he or she might choose to immediately highlight several errors in reasoning or use of evidence, each of which independently is trivial, but which, when taken together in rapid combination, serve to damage the credibility of the opponent quickly.

Recency of Questions

The questioner should also leave a positive lasting impression, finishing the cross-examination period on a high note. Therefore, the questioner should probably save his or her most probing and potentially damaging questions for the end of the three minute period. Since most cross-examination periods are followed by a moment of silence while debaters prepare for future speeches, the last admissions of a respondent will linger in the critic's mind. We cannot stress enough how important the concepts of primacy and recency are to information retention; the first and last series of questions will strongly influence the critic's impressions about who gained and lost ground during the entire three minutes.

Leading the Respondent

The questioner must control the flow and direction of the questioning period to prevent the respondent from evading the crucial issues. He or she should visualize the respondent as a marionette governed by attached strings, and the questioner should pretend to be a puppeteer, whose job it is to manipulate those strings until the puppet acts as desired. Several techniques can be used to guide responses and avoid evasion:

Make Sure Each Question Contains Only One Point

The broader the field covered by each question, the greater the opportunity for evasion. Questions should be narrow enough to focus on a single point (Windes and O'Neil, 1964).

Formulate Questions Based on Previous Admissions

This technique accomplishes two things. First, using an answer to formulate the next question precludes the respondent from shifting his or her stance. Second, it encourages the questioner to avoid asking questions before the foundation for them is laid. Questions then follow a logical sequence, simultaneously making it easier for the critic to understand and harder for the respondent to evade the issue by offering non-sequiturs. The following example illustrates this issue quite well:

Q--"In this survey, did the author interview the respondents personally?"

A--"No, he talked with them on the telephone."

Q--"Oh, so he used telephone directories to isolate a sample population for his study?"

A--"Yes."

Q--"So people who do not own phones could not be included?"

A--"I guess not."

Q--"Therefore, the survey excludes all poor people who cannot afford to own phones, right?"

At this point, the respondent is trapped and cannot reexplain the study to avoid this hazardous admission.

Ask a Series of "Yes" Questions

When done well, a series of "yes-response" questions can both trap an opponent and lull him or her into a false sense of security. First, starting with premises that both participants can agree with will set a nice tone and will help diffuse any defensive feelings in the respondent, making him or her more likely to feel free to discuss the issues candidly. Second, a cleverly designed series of questions can trap an opponent into agreeing with the questioner's thesis. Although the respondent is not logically compelled to answer in the affirmative based on the previous admissions, the flow of questions places him or her in an uncomfortable position. Any explanation to avoid answering "yes" to the final, key question might be psychologically perceived by the critic as a shift, and ethos will be lost.

Avoid Open-Ended Questions

Respondents will usually attempt to deliver the longest possible answer to each question, thus minimizing the number of potential questions they must answer. To avoid this, the questioner should not ask open-ended questions, which merely invite long replies. A question which begins "Why do you feel that..." or "Would you please explain how..." simply encourages the respondent, quite legitimately, to discuss all possibly relevant reasons for his or her conclusion. However, the respondent can be easily controlled by phrasing questions in close-ended terms. Three variations of the close-ended question exist-- identification, selection, and yes/no (Klopf and Cambra, 1979). Identification questions require a one-or-two word answer about a person, place, or event (instead of "Please tell me how this study was conducted," ask "Please list the economic variables controlled for by this study.").

Selection questions force the respondent to choose from several fixed alternatives (ask "Was the survey conducted by personal interview, mail, or phone?"). Yes/no questions can be answered simply by a yes or no (ask "Does the study control for the income level of the participants?"). These three variations of close-ended questions effectively restrict the respondent's ability to ramble and evade the issues.

Restrict the Length of Responses.

Even when asked simple, close-ended questions, some debaters will attempt to evade the issue by delivering a long, drawn-out answer. The questioner must not infringe upon the respondent's right to give a reasonable answer, but must also be prepared to cut off a respondent in mid-answer if the filibustering gets out of hand. A courteous, but firm, comment, such as "Thank you, that's sufficient, I'd like to move on to a different question." will usually suffice.

Attainment of Goals

Once the questioner has established a goal, he or she should avoid questions which allow the respondent to present answers resupported the speech just finished.

Do Not Allow the Respondent to Restate Contentions

Asking questions like "Where did you ever prove that..." or "Which studies concluded that..." often allows the respondent to reestablish his or her major arguments. Although sometimes questions of this type cannot be avoided, they should be used carefully, for they can often cause more damage to the questioner than the respondent. Also, the questioner should never ask an opponent to reread a piece of evidence unless he or she is absolutely positive that its repetition will only do damage to the opponent's position. If the questioner is not positive that the evidence damages the respondent's case, he or she should ask to see it and read it silently first. Then, the questioner can point to a sentence in the evidence and say, "The evidence says 'maybe', right?" This allows the questioner to make his or her point without allowing the respondent any advancement.

Refrain from Seeking Self-Incriminating Conclusions

A climax occurs during a cross-examination when the greatest amount of valuable admissions has been obtained by a series of questions. The successful questioner must know when to terminate this series. Proceeding too far along a given sequence can permit the respondent to think of a way of explaining away all the harm that has been done to him or her. Although it is often difficult to know when the climax has been reached, one rule is certain--the questioner should never ask the respondent to offer a self-

incriminating conclusion. Being defensive, the respondent will never incriminate him- or herself, and will view the question as an opening for reexplaining his or her position. For example, after a series of questions by which the questioner demonstrates the opponent's arguments to be unsound, the questioner should not ask, "So you will admit then that your argument is untrue?" Of course, the respondent will object and say no, and the argument is effectively opened up again for more discussion (Behl, 1953). The critic will conclude that the opponent's argument is unsound from the original series of questions; asking the respondent to self-incriminate can only wipe out the positive gains from the cross-examination period.

Legal Analog

Legal writers offer similar recommendations to attorneys regarding specific questioning techniques. Attorneys should make the strongest advances at the beginning and at the end of the cross-examination period (Mauet, 1980, p. 241), closing the questioning period on a winning point (Goldstein, 1969, p. 29) and covering the important subjects early enough such that jurors do not become bored with the procedure (Ibid. p. 33). Questions should be asked in a purposeful sequence: questions should be built off of previous answers (Lake, 1957, p. 109); each question should contain only one central subject (Mauet, 1980, p. 248); attorneys should attempt to elicit short, precise answers, perhaps by prefacing questions with, "Isn't it a fact . . .," etc., (Goldstein, 1969, p. 66) and should avoid asking open-ended questions starting with "why" or "what" (Friedman, 1968, p. 77-84); and questioners should not insist upon answers to non-critical questions (Goldstein, 1969, p. 1970). Attorneys might wish to ask an apparently "after-the-thought" question to catch the witness off-guard (Ibid. p. 54).

Strategic Considerations

Questioners might want to resort to special strategies at certain times to reach their goals. We advise all questioners to consider these strategies, but we also urge them to use the techniques judiciously; some critics may disapprove of them, and their improper use may actually damage the ethos and credibility of the questioner.

Ask Questions From Your Seat Without Delay

Debaters can (and should) deliver a persuasive summary of their position at the end of each constructive speech. To minimize the psychological impact of an opponent's persuasive conclusions, the person conducting the next cross-examination period may choose to start asking questions immediately, even before reaching the center of the stage. This

tactic helps break the last speaker's momentum and may cause him or her to become flustered. In addition, it also nonverbally communicates to the critic that the questioner is confident and unshaken by the opposing arguments. Remember, however, some critics may find this tactic rude and/or offensive.

Command a Strategic Presence

The questioner should stand (a) between the two members of the opposing team and (b) slightly in front of the respondent. The former position places psychological stress on the respondent by isolating him or her from his or her partner and precludes verbal interaction between the two, and the latter position, by creating a more physically imposing figure for the questioner, commands more of the critic's attention.

Preface Questions with Previous Arguments

One legitimate way of repeating arguments in cross-examination is for the questioner to refer to his or her own arguments while directing questions about them. For example, one might ask, "The studies read in the first affirmative constructive proving that minimum wage regulations cause unemployment were all conducted on a national level. Weren't all of your first negative counterstudies conducted in Baltimore only?" This type of question seems quite reasonable and it allows the questioner to repeat key arguments for the critic.

Do Not Follow the Opponent's Order of Presentation

Many speakers understand their arguments more clearly in the logical order they presented them. If asked to skip around on the issues, they may become slightly confused or disoriented. Following an opponent's structure from top to bottom inherently gives him or her an unnecessary advantage. This strategy especially applies to first affirmative constructives. Many first affirmatives do not understand their case very well --they may understand the arguments as presented, but may not understand some of the complex relationships between different areas of the case presentation. If a questioner perceives that the speaker doesn't seem to know the first affirmative very thoroughly, he or she should not deal with the issues as chronologically presented, but should skip around to prevent the first affirmative speaker from merely reading the case manuscript in response to all questions.

Force the Respondent to Adopt an Undesirable Value Stance

An example will demonstrate the effectiveness of this approach. Suppose an affirmative case cites the high incidence of child abuse around the country and wishes to create rehabilitation centers to help parents learn how to discipline their children without resorting to physical abuse. The negative might suggest that the problem is not significant enough to warrant the expenditure of enough money to fund this program. The affirmative team should ask in cross-examination, "Do you believe that the existence of child abuse in this country is desirable or undesirable?" The negative speaker

might be so afraid of agreeing with the affirmative's value stance that he or she might suggest that it is desirable, or perhaps hedge on the question enough to create a doubt in the critic's mind. Even if he or she answers that child abuse is undesirable, he or she is now granting adherence to the entire case philosophy, a position that the second affirmative speaker should note to the critic. While this example is somewhat simplified, it does illustrate that this type of value-clash question can often damage the ethos of a first-negative speaker.

Partial Waiver of the Cross-Examination Period (Specific to examination of the second negative speaker)

If the affirmative team notices that the first negative rebuttalist is not yet prepared to speak by the time that the second negative constructive is over, the affirmative may wish to ask only one or two short-answer questions and then waive the rest of the three-minute time period. This will force the first negative rebuttalist to either speak before being fully prepared or use up valuable preparation time. The questioner could waive the entire period, but some critics may react very unfavorably to this quite blatant adoption of games-theory.

Legal Analog

The legal literature enumerates several strategic considerations for trial lawyers. The attorney should speak in an alert and confident manner (Lake, 1957, p. 309), using his or her physical presence to take psychological command of the courtroom (Mauet, 1980, p. 250; Goldstein, 1969, p. 19:5). The questioner should construct short but damaging cross-examination periods (Friedman, 1968, p. 118) and purposefully waive the questioning period unless his or her objectives can be achieved (Ibid. p. 6-8; 69). Attorneys should jumble the order of questions in relation to the logical sequence in order to test the veracity and consistency of the witness (Mauet, 1980, p. 242), possibly forcing the witness into making unbelievable statements or omissions (Lake, 1957, p. 61).

ADVICE FOR RESPONDENTS

General Approaches

Remain Poised at All Times

Respondents should remain calm and confident at all times. If the respondent appears intimidated, his or her actions will undermine the credibility of his or her verbal testimony. Retreating from the center of the stage, crossing arms, shuffling feet, and using a soft, quavering voice are all non-verbal signs of insecurity and apprehension. Thus, debaters who have just finished their speeches should attempt to maintain their poise throughout the questioning period. This is especially true when the questioner has a tendency to become overbearing and obnoxious; if the respondent fails to be drawn into this style and remains calm and courteous, he or she will clearly win the battle of ethos.

Know Reply to All Generic Questions

The key to handling a cross-examination period without granting damaging admissions is to be prepared for all possible questions. Debaters should study their own arguments and figure out in advance what questions their opponents are most likely to ask. Respondents should know how to answer these questions to best further their own case; in fact, all debate teams should conduct practice cross-examinations of all of their arguments to prepare for actual tournament competition.

Answer Questions Honestly

A respondent does psychological damage to his or her own credibility by purposefully evading questions. Debaters probably help themselves more by answering honestly at all times, even if the answer is "I don't know," than by refusing to give straightforward responses (Sayer, 1980).

Understand How Your Speech Ties in with your Partner's Arguments and Overall Philosophy

Respondents will be better able to answer questions to further their own arguments if they know their partner's approach and their opponents' approach to the resolution. With this knowledge, they will better be able to support their partner's case and attack the opponents' case while fielding questions about their specific speeches.

Know and Stress the Expertise and Credibility of Sources

All sources of evidence are not created equal. Respondents should know the qualifications of their sources and methodologies of their studies and should know how their evidence compares with that cited by the other team. When asked questions dealing with their speeches, respondents should refer to key studies and expert testimony to reinforce their importance in the critic's mind.

Legal Analog

Lawyers representing the witness must prepare him or her to be an effective respondent. Attorneys should prepare them for all possible questions (Friedman, 1968, p. 19: 56), reworking and rewording poor answers before the trial (Cusumano, 1943, p. 106-120). The attorney should make certain that the respondent understands the case theory and how his or her testimony fits into that theory (Ibid. p. 120-4). He or she should be instructed to remain calm at all times (Lake, 1957, p. 49) and to respond to questions with "I don't know," if necessary (Friedman, 1968, p. 57). Lawyers should not instruct their witnesses to memorize responses to expected questions (Cusumano, 1943, p. 124-40). Finally, attorneys should remind them to stress their own expert qualifications whenever possible or relevant (Lake, 1957, p. 230-300).

Specific Techniques

Do Not Allow the Questioner to Advance Arguments

Some questioners will take twenty or thirty seconds to make a point and then ask, "Do you agree?" Respondents should prevent this occurrence by politely interrupting, asking "Is this a question?" If done correctly and calmly, such a response can help boost the respondent's ethos at the expense of that of his or her opponent.

Ask Questions to be Rephrased if Necessary

If a question is truly vague, the respondent should clarify the question before he or she hazards a reply. If asked, "Do all nations want to receive foreign aid from the U.S.?", the respondent might wish first to have the questioner specify what type of aid is being discussed. However, the respondent should not demand rephrasing merely to avoid answering or to waste time.

Qualify Before Answering Trick Questions

If a question involves a hidden assumption or a hypothetical situation, the respondent has the right to point this out before he or she posits an answer. If confronted with the question, "Do you feel we should give food aid to nations who merely let it rot on the ground?", the respondent should state, "You have not yet proven that any nations actually waste the food we ship abroad." before actually answering the question as stated (Windes and O'Neil, 1964).

If Necessary, Qualify Answers Before Stating "Yes" or "No"

If the respondent wishes to clarify a yes or no answer, he or she should state the qualification before giving the direct response; otherwise, the questioner may cut off the reply after "Yes, but..." For example, if asked "Do you believe in the sanctity of free speech?", the respondent should state "Unless such speech poses a danger to national security, then yes." The respondent's answer is likely to be distorted by an alert questioner if he or she attempts to qualify the answer after the fact. It is important to remember, however, that most questions probably require no qualifications-- the respondent who attempts to present qualifiers when they are obviously unnecessary may reduce his or her own credibility.

Strategic Considerations

Preface Answers with Previous Arguments

Respondents can refer to their own arguments and evidence before actually answering questions as posed. This allows them to reinforce their positions for the critic. When asked, "What effect would higher minimum wage standards have on

employment levels?", the respondent can advance his own case by saying, "The Harvard and Brookings studies and the analysis on partial equilibrium theory under the second contention all suggest unequivocally that total unemployment levels would rise drastically."

Provide "Shot-gun" Answers

Questioners may only be prepared to ask one or two introductory questions at the beginning of the cross-examination period, assuming that detailed responses will give them enough time to think of further questions. If a respondent believes this to be the case, he or she can purposefully begin the period by answering all questions with a concise, one- or two-word response. Often the questioner will run out of questions and will fumble around for something to say. The respondent can win a quick battle of ethos, hopefully setting the tone for the rest of the questioning period.

Legal Analog

The following specific techniques and strategic considerations are discussed by legal scholars as useful for respondents: a witness should ask for a question to be restated or rephrased if it is not originally understood (Lake, 1957, p. 211); the respondent should remain respectful and modest (Cusumano, 1943, p. 220); the respondent should never volunteer information that is not specifically requested, always answering quickly and then stopping (Lake, 1957, p. 102; Cusumano, 1943, p. 220); the respondent should qualify "yes" or "no" answers prior to giving the answer--if no explanation is required, the respondent should simply state "yes" or "no" (Cusumano, 1943, p. 235).

MODELS OF CROSS-EXAMINATION

We have just described many effective cross-examination techniques. Perhaps the next useful step is to develop a model or analogy of how the process operates. Pictorial representation of the procedure allows us to see how the major variables interact with each other. Our models do not represent the "truths" of the cross-examination process; rather, they serve as aids to understanding the system as we have conceptualized it. Thus we posit the following models as means of analyzing the flow of information during cross-examination. (See next page)

STRATEGIES FOR TEACHING EFFECTIVE CROSS-EXAMINATION

One reason why many of the previously suggested questioning and answering techniques have only rarely been applied during debate rounds is that specific instruction methods to teach these techniques to debaters have not been adequately developed. These strategies cannot be digested, learned, and understood by students merely from their reading about them on a printed page. Rather, they must be explained and heavily practiced before they will actually be understood and internalized. We urge forensics educators and debate participants to use their imagination and creativity to break down these principles and learn them in such a way that they will effectively be used during actual debate rounds.

We suggest examining each of the following two instructional methods, which should be molded and adapted as coaches and participants see fit:

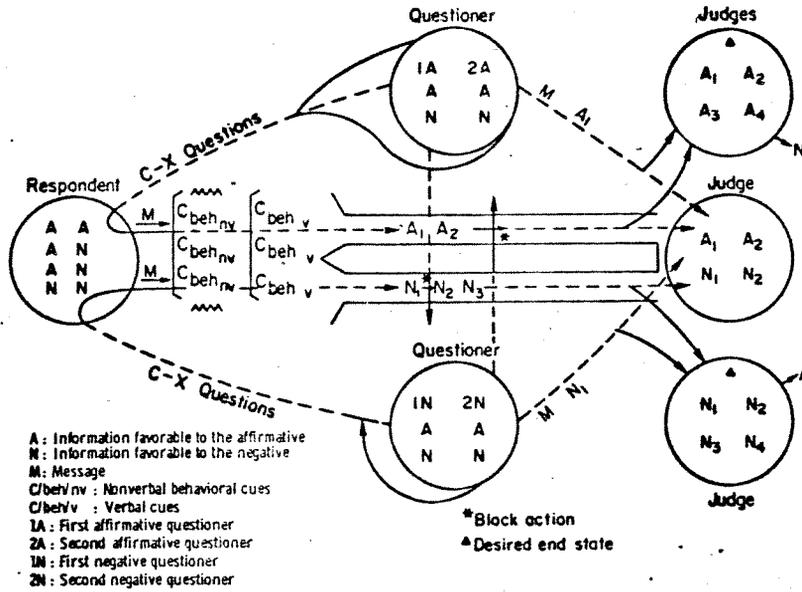
Preparation of Questions

Coaches should ask a specific debater to prepare a flowsheet of a recent debate round and distribute copies to all students. Then, the debater should prepare a list of questions for this specific case (along with a case of expected answers). The entire class can then critique the student's selection of questions in light of the specific goals and objectives the student outlines. This type of class discussion can synthesize the optimal approach in cross-examination to a specific case, as well as help the students understand the process of selecting goals and reaching them during the questioning process.

Practice Debate Checklist

Students and coaches should copy the Checklist for Practice Cross-Examinations which is printed two pages hence. While listening to a practice debate round coaches should check each relevant box as each individual speaker applies the techniques discussed in this paper. The use of this recording format allows for immediate feedback to the participant and also allows easy comparisons of current practice debates with previous ones so that participants can note their rate of progress and isolate areas where more work and practice is needed.

MODEL OF CROSS-EXAMINATION IN ACADEMIC DEBATE

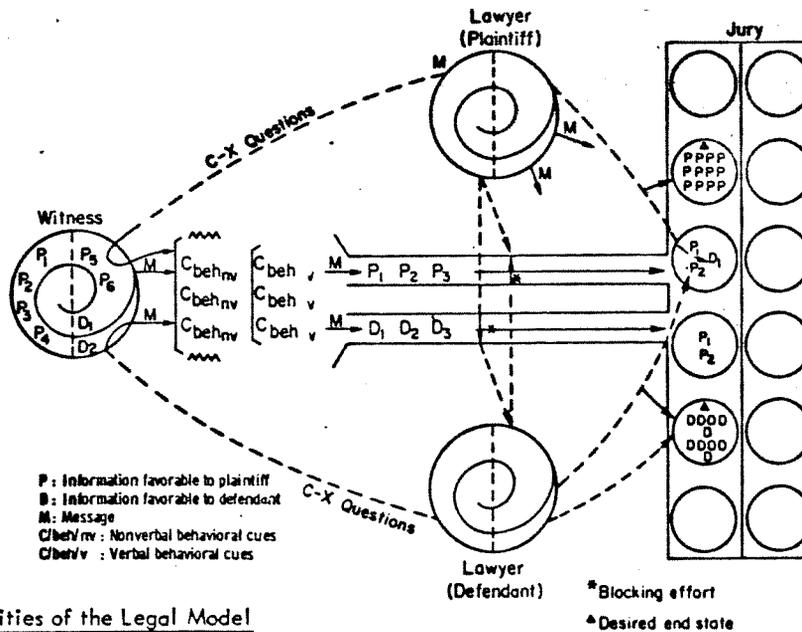


Major Qualities of the Debate Model

Selection and Direction of Information-- the cross-examiner should attempt to carefully direct the content and flow of the message from the respondent to the critic. The arrows clearly indicate that both the affirmative and negative questioners seek to elicit and direct only the information favorable to their side AND to prevent unfavorable information about their case from reaching the critic.

Desired End State--each questioner wants to instill in each critic as much positive information about his or her case as possible and dislodge or neutralize the negative information as well.

MODEL OF LEGAL CROSS-EXAMINATION



Major Qualities of the Legal Model

Selection and Direction of Information--the cross-examiner should attempt to carefully direct the content and flow of the message from the witness to the jury. The arrows clearly indicate that both lawyers seek to elicit and direct only the information favorable to their side AND to prevent unfavorable information about their case from reaching the jury.

Desired End State--each lawyer wants to instill as much positive information about his or her case as possible and dislodge or neutralize the negative information as well.

CHECKLIST FOR PRACTICE CROSS-EXAMINATIONS

QUESTIONER

1AC

1NC

2AC

2NC

Do's

1. Stage presence; poise; voice				
2. Involve critic; audience analysis				
3. Highlight problems in reasoning				
4. Examine use of evidence				
5. Premises for future arguments				
6. Establish, attain goal				
7. Primacy of attack with questions				
8. Recency of attack with questions				
9. Only one point per question				
10. Use answers in next questions				
11. Series of "yes" questions				
12. Command strategic presence				
13. Ask questions from seat				
14. Preface questions with contentions				
15. Short cross-examination period				
16. Force undesirable value stance				

Don'ts

1. Allow self to be questioned				
2. Ask open-ended questions				
3. Allow respondent to ramble				
4. Allow respondent to restate contentions				
5. Ask for incriminating conclusions				
6. Follow order of presentation				

RESPONDENT

Do's

1. Stage presence; poise; voice				
2. Involve critic; audience analysis				
3. Know answers to generic questions				
4. Answer questions honestly				
5. Stress credibility of sources				
6. Sidestep trick questions				
7. Preface yes/no answers with qualifications				
8. Preface answers with contentions				
9. Provide shot-gun answers				

Don'ts

1. Allow questioner to argue				
2. Lose poise for any reason				

CONCLUSION

This paper has offered general advice for debaters participating in cross-examination periods, suggested specific strategies and techniques for both questioners and respondents, compared these techniques with those widely used by attorneys in courtroom settings, proposed models of the cross-examination communications process, and outlined techniques and drills that can be used to teach students how to effectively ask and answer questions. Realizing that our presentation does not exhaust all of the potential analysis and discussion on this broad topic, we nevertheless feel that we have crystallized the most important conceptual and practical aspects of the art of cross-examination as it applies to both the debate and legal worlds.

Almost all participants, forensics coaches, and critics involved with academic debate have experienced debate rounds whose outcome hinged on a key question or answer delivered during the question period. However, we sadly note that many, if not most participants, perceive cross-examination more as a time-filler than as a communicative process that can effectively be used for establishing and advancing argumentation. It is our hope that this article, by explicating effective questioning techniques and by demonstrating the relevance of these techniques to the legal profession, will spur more debaters and coaches to concentrate on learning, experimenting with, and further developing the art of effective cross-examination.

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