

Evaluating Cross-Examination in CEDA Debate:
On Getting Our Act Together

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In 1980 Don Brownlee edited an important set of essays that was destined to become the first of the CEDA yearbooks. Since then there have been five additional yearbooks that include a total of 56 essays on the "philosophy and practice of CEDA." And yet, of all these essays, only two have been concerned with the theory and practice of cross-examination -- and of these only one, a set of questions and answers by Rob Norton, is seriously concerned with the problem of how a cross-examination session should be evaluated by the judge. [1]

Aside from the Norton essay, I am aware of virtually nothing in print which offers a satisfactory discussion of evaluating cross-examination. Most debate texts offer advice on how to conduct a cross-examination session, but they remain mute as to what the speaker should do with the testimony generated and how the critic-judge should evaluate this material in making a decision. One basic text on debate goes so far as to include two complete chapters on the "criteria for evaluation" and "the judge as critic," but only mentions cross-examination in passing as a time to be wary of poor ethos and withholding information. [2] Debaters commonly are warned that every judge has his or her own ideas on the nature and significance of cross-examination, so all they can do is to give it their best shot and hope the judge agrees with their approach (and unfortunately, this is too often the best advice a coach can give). A recent survey on cross-examination has documented the tremendous lack of agreement and consistency that exists in this area among coaches. [3] What is necessary is for the Cross Examination Debate Association to put its house in order and to adopt at least informally, a set of guidelines for evaluating cross-

examination. This essay is intended as a move in that direction.

The rules governing cross-examination in debate are relatively clear and, in a nutshell, can be expressed as follows: [4]

1. The Questioner may only ask questions; the Respondent only may answer questions. Neither side may make statements, read evidence or advance arguments, except as part of questions or answers.
2. The Questioner may ask questions on any topic and the Respondent is obligated to answer (with the exception of offensive personal questions).
3. The Respondent may rely on personal privilege to avoid answering objectionable questions or to request a restatement or clarification of unclear, ambiguous, trick, or loaded questions. The Respondent may not abuse personal privilege to avoid answering legitimate questions.
4. Both Questioner and Respondent must conduct their own cross-examination and may not consult with their partners during the cross-examination period.

While these rules are clear and generally recognized, confusion arises because it is unclear what status the testimony generated during a cross-examination period has, what relationship that testimony has to the rest of the debate, and how cross-examination testimony and the arguments that are based upon it should affect a judge's evaluation. Rob Norton has asked five important questions about the nature of cross-examination which debaters and judges should be concerned with in CEDA debate: [5]

1. Should cross-examination be limited to the constructive speech it follows?
2. Are the arguments raised during cross-examination part of the constructive process?

3. Must all questions be asked during cross-examination or can a speaker also ask questions as part of a constructive speech?
4. Are speakers required to cross-examine their opponents or can they waive their opportunity for doing so?
5. Are the answers provided during cross-examination binding for the rest of the debate?

The state of confusion on evaluating cross-examination is doubly unfortunate both because of the difficulties it creates for speakers and judges and because the answers to these and similar questions ought to be clear based upon the internal logic of the rules of cross-examination. We can with relative ease develop a consistent set of guidelines governing the use and evaluation of cross-examination testimony by analyzing the rules outlined above. Consider:

- According to the rules listed above, cross-examination is a time to ask and answer questions, not a time to issue attacks.
- A question is not an attack (coaches and judges rightfully criticize debaters who ask too many questions and fail to press attacks during constructive and rebuttal speeches). [6] At the very best, a question represents a challenge to the other team -- if that team answers the question the challenge is met. For example:

- 1) During a speech a challenge has the status of a prerequisite attack or condition to be met before an argument can be accepted. It is a poor tactic unless used very sparingly (or it will lose its emotional impact) and only on issues the other team cannot meet (otherwise the other team answers the question, meets the challenge, and, thus, wins both the issue and credibility).

2) During cross-examination every question is answered immediately and, therefore, does not have the status of a formal challenge. Furthermore, questions cannot be developed into argumentative challenges during the cross-examination period since the rules state that the Questioner can only ask questions -- not issue arguments.

- Therefore, cross-examination is a process of discovery and cannot be used as a process for generating argumentative attacks to be weighed in a judge's final decision.
- On the other hand, cross-examination testimony is binding. If it weren't, there would be no logical purpose to it. One team bases its attacks on the other's cross-examination testimony. Respondents cannot be allowed to shift position simply because they don't like the attacks that result from their cross-examination responses.
- We therefore may conclude that cross-examination testimony is a form of evidence to be used in subsequent speeches. From a purely logical point of view, cross-examination is primarily a technique for holding the other team to certain positions and to provide evidence of those positions during the rest of the debate.

Based upon this understanding of the nature and function of cross-examination, the following attempts to answer the five questions posed above:

1. Cross-examination is not limited to the constructive speech if follows. Speakers can ask questions about any issue or potential issue and are not even bound by the same relevancy restrictions that govern lawyers in a court of law.
2. The arguments raised during cross-examination are part of the constructive process. The answers given by the respondent can

and should be treated as new evidence of that team's position.

3. The asking of questions need not be limited to a cross-examination period, but questions asked during a speech should be considered rhetorical challenges that do not necessarily demand direct responses.
4. Speakers may cross-examine their opponents or not as they see fit, but unused cross-examination time cannot be counted as additional prep time.
5. Answers provided during cross-examination are binding for the rest of the debate, whether or not the other team makes an issue of them. In this sense, a statement made in response to a cross-examination question should have the same status as a statement made during a constructive speech.

These guidelines are similar to those suggested by Norton except on two important points: In answer to question number three, Norton argued that cross-examination should be "exhaustive" -- that questions may only be asked during the cross-examination period. [7] I believe that, as a practical matter, judges should allow the presentation of questions as rhetorical challenges during both constructive and rebuttal speeches. Not only are such questions legitimate rhetorical devices, but they may be the only way of developing evaded questions into arguments or in covering issues that were neglected during cross-examination because of lack of time.

A second point of departure from Norton's essay concerns the point at which cross-examination responses become binding. In answer to question number five, Norton has argued that, "a cross-examination answer is binding at the point of use by the other team. . . .if 1AC gives an incorrect answer and 1NC, face-down in preparation, ignores it, 2AC should be allowed

to correct the error. [8] The theoretical guidelines developed above suggest that a response in cross-examination should have the same force as a statement made during a constructive speech. If a speaker develops a damaging position during a speech, the judge should not allow his or her partner to retract or alter that position, completely without penalty, merely because the other team missed the issue. I would think that, at the very least, such a shift in position should hurt a team's credibility. At any rate, the same standards must apply to both constructive statements and cross-examination responses. To be consistent, judges who allow speakers to correct uncontested errors in cross-examination testimony should allow speakers to correct similar uncontested errors made during constructive and rebuttal speeches; conversely, judges who penalize speakers for "shifting position" in correcting errors made during constructive speeches should apply similar penalties when the error involves the correction of a cross-examination response.

The most important implication of the theoretical guidelines developed above, however, comes in response to a question which Rob Norton did not ask but only hinted at, and which strikes at the heart of the confusion surrounding the evaluation of cross-examination: What is the evaluative force of cross-examination testimony -- how should a judge use such testimony in reaching a final decision? The general answer is the same as that suggested in response to the question of whether or not such testimony is binding: Judges should apply the same standards to cross-examination responses as they would to constructive statements. A more specific answer is that a judge's decision should depend in part on the nature of the issue in question. A somewhat problematic position probably would not count against a team unless it was developed into a significant attack by the opposition; a sufficiently ludicrous position might be enough to

cost a team the decision whether or not the other team attacked it. It is partly a matter of individual judging philosophy and partly a matter of whether an affirmative or negative position is at issue. As a general rule of thumb, however, judges should weigh cross-examination testimony as part of the decision only after it has been developed into an argument. Debaters should not, therefore, drop winning issues that crop up during cross-examination, nor assume that the cross-examination testimony speaks for itself and requires no further development. Instead, they should make it a habit, as part of their constructive speeches, to repeat favorable cross-examination testimony as a form of evidence and to develop that testimony into argumentative attacks.

As a practical coaching matter, advising debaters to follow these guidelines will not always insure victory, but it generally will insure the best chance of victory. Obviously, since a great deal of disagreement does exist about the nature and function of cross-examination, the guidelines developed in this essay will not necessarily be acceptable to every judge. However, these guidelines are consistent with the consensus opinion of the large majority of CEDA coaches.[9]

It may only be a matter of time before a clear mandate for evaluating cross-examination emerges. But such a consensus understanding will not occur without a good deal of discussion and theoretical development. The question of how to evaluate cross-examination sessions is clearly an important grey area in CEDA debate.

Notes

[1] Thomas Miller and Evan Caminker, "The Art of Cross-Examination," CEDA Yearbook, ed. Don Brownlee (Cross Examination Debate Association, 1982), pp. 4-15; and Rob Norton, "Remembering What the C.E. Stands for: Toward a Greater Role for Cross-Examination in CEDA Debate," CEDA Yearbook ed. Don Brownlee (Cross Examination Debate Association, 1983), pp. 29-31.

[2] Marvin D. Kleinau, "Criteria for Evaluation" and "The Judge as Critic," in Introduction to Debate, eds. Carolyn Keefe, Thomas Harte, and Laurence Norton (New York: MacMillan, 1982), pp. 225-267. The best discussion that I am aware of on this topic can be found in Strategic Debate by Roy Wood and Lynn Goodnight (Skokie, IL: National Textbook, 1983), pp. 151-157.

[3] Suzanne Larson and Amy Vreeland, "Evaluating of Cross-Examination in CEDA Debate," a paper presented at the Speech Communication Association Convention, Denver, 1985.

[4] James Copeland provides an extensive discussion of the "rules and strategies" of cross-examination in Chapter 5 of Cross-Examination in Debate (Skokie, IL: National Textbook, 1982), pp. 12-15.

[5] Norton, pp. 29-31.

[6] Cf. J. Vernon Jensen, Argumentation: Reasoning in Communication (New York: D. Van Nostrand, 1981), pp. 272-273.

[7] Norton, p. 30.

[8] Norton, p. 31.

[9] Larson and Vreeland.