Cross-Examination Presented by: Mr. Anderson, M.Ed., J.D. & Brandon Camhi
 2 What is Cross-Examination? Conducted by an attorney against an opposing witness Ex: Prosecution cross examines Ryan Occurs After Direct Examination Ex: Defense Directs Ryan then Prosecution cross examines Ryan Objective: Discredit the witness and draw out facts that hurts other side Cross is far more spontaneous than direct
 Direct v. Cross Direct Examination Your Witness No leading questions Very friendly Attempt to tell story Highlight witness' best aspects Cross-Examination Your opponents Witness ONLY leading questions (Yes or no) Firm yet not argumentative Do not give witness leeway to give long answer Discredit Witness
 An Example of Cross-Examination (Part 1) Need to establish four things: (Assuming Jake is defendant) Jake was at the club Jake spoke with the victim Jake took victim outside Jake washed hands ten minutes later

5 🔲 An Example of Cross-Examination (Part 2)

- O How do I get this information out?
 - Bad Question: Where were you on the night of November 17th ?
 - OWhy is it bad?
 - Too open-ended: gives witness too much leeway, need to control witness on cross
 - O Good Question: Isn't it true that you were at the club on the night of November 17th?
 - OWhy is it good?
 - OLeads the witness by giving the answer
 - OWitness is forced to respond with a yes or no
 - ONo leeway to go off with an explanation

6 D An Example of Cross-Examination (Part 3)

- Questions:
 - Isn't it true that you were at the club on the night of November 17th ?
 - Isn't it also true that, at the club, you spoke with the victim?
 - You didn't remain inside with the victim the whole night did you?
 - So isn't it correct that for a period of time, you deliberately took the victim outside?
 - After taking the victim outside, didn't you run to the bathroom and wash your hands a mere ten minutes later?

7 An Example of Cross-Examination (Part 4)

• How were those guestions effective? Hint: Consider the goal

of cross-examination.

Class Input:

8 Some Tips for Writing Cross-Examination

- O Build suspense
- O Use quotes and exhibits when necessary
- O Do not be too argumentative:
 - Ex: Isn't it crazy that she ran all the way here?
 - O Can be objected to if too argumentative
- O ONLY USE LEADING QUESTIONS THAT HAVE THE ANSWER IN THE QUESTION

9 What am I supposed to do if I am a witness?

- For foundational questions, you may have to answer with yes or no
- For important questions, try to explain your answer and make the opposing attorney stop you
- O Experts have more leeway
- O Be mindful of the judge; some are more permissive than others
- Do not go overboard answering, limit your explanations to be effective

10 How to control an "Uncooperative Witness?"

- Depends on Judge: If judge is strict, follow instructions on next slide
- Key phrases:
 - Nevertheless
 - O Despite this, you still _____
 - However, you still
- O Example:
 - O Question: Isn't it true that you did not file a police report?
 - Answer: Yes but I did not think it was necessary because I know I left my car door open.
 - Control: Nevertheless, you did not file a police report, correct?

OThis control forces witness to respond with a yes or no
 If a control is tried 3 or more times without success, then follow instructions on next slide

11 How to control an "Uncooperative Witness?" (2)

- If judge is strict or if methods on previous slide don't work, use this approach:
- Objection Your Honor: This witness is being non-responsive
 Judge will either instruct witness to answer with a yes/no or allow the witness to answer the question as he/she pleases
 OJudges are usually more permissive on experts
- O Unless judge is very strict, use approach on first slide first to show you do not need help to control witness
- If judge sustains objections say: "I move to strike everything after the word yes/no"

12 Expert Witnesses

O Question qualifications

- Defense expert is paid to testify in case. If you are prosecuting attorney, make sure you bring this up in crossexamination in order to damage credibility.
 - Two strategies:
 - O1. Bring up at beginning to question whole thing
 - O2. Bring up at end to end with a "bombshell"
- Experts can testify to each other's statements (Shartsis & Schwartz)

13 Impeachment

- One of most powerful tools in cross, but only use if necessary, because much time is needed (Remember we only have 10 minutes to do 4 cross examinations)!
- O Impeachment can be used if:
 - 1. Witness says something wrong on direct (Better than objecting to creating material fact)
 - O 2. Witness says something wrong on cross-examination

Only use if extremely important fact is in question

14 🔲 Impeachment (con't.)

- Nothing happens when impeached, simply damages credibility and can be used in closing
- If you are a witness, you do not want to be impeached. This can completely destroy your testimony. Make sure everything you say, even if it hurts you, is directly supported by the witness statement.

15 Impeachment (con't.)

- On direct, isn't it true that you said _____. (Only ask if disproving something said on direct)
- O Do you recall making a statement to the police?
- O In this statement, were you as accurate as possible?
- Your Honor, may I please hand the witness a copy of his/her witness statement?
- Please look on as I read out loud: (Read the line with the contradiction and emphasize contradiction)
- O Did I read that correctly?
- O Thank you.
- O (Continue Questions)
- 16 Two More Things...
 - O Unlike direct examination, it is very difficult to develop a script for cross examination. Much depends on how the trial is going. If the witness says something on direct that you can attack on cross examination, emphasize it. Be prepared to be flexible. If you have to impeach a witness, be ready to cut some other stuff out. If the fact is important enough, impeaching is essential.
 - After cross examination, attorneys have the opportunity to conduct re-direct examination. Only do this if absolutely necessary to save your witness. The same rules of direct examination apply. However, only issues raised on cross can be questioned. Keep it to 1-2 questions maximum.

17 Due Dates (on Zangle)

1 Varsity

2 O November 22:

ORevised Directs

○ Cross-Examinations

ONeed to do chunk list again

O November 29:

Opening Statements

- Closing Statements
- Junior Varsity
- ⁴ O November 29:
 - **O**Revised Directs
 - **O**Cross-Examinations

O December 6:

- Opening Statements
- **O** Closing Statements