

DIRECT / CROSS / REDIRECT EXAMINATION

DIRECT EXAMINATION

FORM OF QUESTIONS

- Non Leading
- Required by 12 OS § 2611(d), FRE 611(c)
- Open Ended
- Conversational

What is leading Q – suggests answer

Open ended: more than a “Yes” or “No”,

["W's"] – Who, What, When, Where, Why, Describe and How

WHY? Puts focus on witness because they have to say more than yes or no

Conversational: Don't talk like a lawyer, easier to listen to and understand

LANGUAGE

- ▶ OBSERVE
- ▶ VEHICLE
- ▶ OCCUR
- ▶ PREVIOUSLY
- ▶ PRIOR
- ▶ SUBSEQUENT
- ▶ DETERMINED
- ▶ SEE
- ▶ CAR
- ▶ HAPPEN
- ▶ BEFORE
- ▶ BEFORE
- ▶ AFTER
- ▶ FOUND

Example:

Bad - What did you determine prior to the arrest but subsequent to entering the store?

Good - What did you see before making the arrest but after going into the store?

ORGANIZATION

- Personalization
- Purpose
- Chronological Order
- Topic
- End on a Strong Point

Personalization: want jury to identify with the witness (name, occupation)

Purpose w is testifying: jury to understand the relevance of the witness, do quickly
EX – Officer Campbell

Who he/she is; There day of the assault and robbery; Why there; Then go back

Chronological order: jury can follow with ease

Officer Campbell – 5:03 PM responded to a possible robbery at Deerwood Drive—
Moments later dispatched to assault one block away at 3329 Welcome Lane—while
responding stopped suspects on Garden Valley Road—investigated incident at
Welcome Lane—took photos—talked to witnesses—collected evidence.

OR Topic: Baxter – Who is Wayne Henkel - confrontation October 10th, incident on
October 3rd, etc.

End on a strong point: not on a sustained objection

CONTROL

Interrupt



Interrupt: "Stop there. Let's talk about that"

AVOID

➤ **Did/Was**

Why:

Focus on the Witness

Credibility

➤ **Do you recall? Can you tell us?**

Why:

Sends a Misleading Message

Did/Was: Prevents the witness from telling the fact

EX Long – Did you see Felson before he hit Fordyce? VS. When did you see Felson?

Why:

Focus on witness, witness is star—not you, want jury to focus on the witness—let her tell the story

Credibility, jury must determine credibility from the way the witness testifies

Do you recall / can you tell us: Why-sends a misleading message to the witness AND answer is “yes” or “no”

AVOID

Objectionable Questions

- ✓ Leading
- ✓ Speculation/Conclusions
- ✓ Compound
- ✓ Asked and Answered
- ✓ Hearsay

Leading: W asked “Anderson told you that Henkel attacked him?” OBJECTION SUSTAINED leading; Rephrase: “What did Anderson say?”

W asked “Harris told you that Felson had gotten in a fight at a bar?” OBJECTION SUSTAINED leading; Rephrase “What did Harris tell you?”

Speculation/Conclusions: W replied to question "He did not say anything?" Follow-up: "Why didn't he say anything?" OBJECTION SUSTAINED speculation (unless you lay a predicate to show that he knows why person did not say anything such as “he was unconscious”)

Compound: "Where were you and what did you see?" OBJECTION SUSTAINED compound. Rephrase: “Where were you?” Answer. “What did you see?” Answer.

Asked and Answered: “Tell the jury again.” OBJECTION SUSTAINED asked and answered.

Hearsay: Officer, what did Eva Long say? She said... OBJECTION sustained or “What did he say?” OBJECTION sustained. (exceptions, non-hearsay)

REDIRECT EXAMINATION

SCOPE

- Rehabilitate
- Answer New Matter

Rehabilitate: Explain answers given on cross

EX Witness to car wreck, issue of whether sun affected witness' view

Cross: The sun was in the southwest, correct? Answer: "Yes"

Redirect – How did the sun affect your view? (Explain or rehabilitate)

Answer New Matter brought out on cross – Sun not mentioned on direct.

Cross established sun in southwest.

Why didn't you (tell where the sun was in your statement)? ANSWER "It did not affect my view of the intersection."

FORM

- Non Leading
- Length -- Short

Non-leading: “Why” questions

Short: Watch length



Use transitions!

Move from area to area with transitions/headlines

"Let's move to..." or "I want to direct your attention to..." or "Let's talk about what you did after talking to the witness."

OBJECTIONS

- Leading
- Repetition

Leading

Repetition – don't let redirect examiner repeat direct

CALLING THE ADVERSE PARTY

FORMS OF QUESTIONS

❖ Direct

Leading

12 OS § 2611 (b) allows

12 OS § 2611 (d) allows

❖ Cross

No rule but probably can't since it is
your witness

Three M Investments, Inc. v. Ahrend Co.,
1992 OK 33

Direct

12 OS 2611(b): "...adverse party shall be deemed a hostile witness and may be cross-examined by the party calling the witness to the same extent as any opposition witness."

12 OS 2611(d): "when a party calls... an adverse party leading questions may be used on direct examination."

Cross

No rule but since your witness probably not. In *Three M Investments v. Ahrend*, 1992 OK 33, π called Δ in its case-in-chief, court allowed leading questions by π . Trial court would not allow Δ to lead on cross. Δ alleged this was error. Supreme Court found no merit, "not intent of 2611 to allow counsel for one litigant to use leading questions to steer that litigant in the direction counsel wants them to go."

PURPOSE OF CALLING

- ◇ Establish Essential Element of Your Case
- ◇ Bring up an Admission

Establish essential element of your case – Must call unless have an admission before resting. How do you avoid – Request for admissions, interrogatories or depositions

Bring up an admission of fault – To avoid, save for your cross in their Case in Chief

CROSS EXAMINATION

SCOPE

12 OS §2611(c) allows:

- Direct Examination Areas
- Test Credibility
- Court has Discretion

Go into areas brought out on direct examination

Test credibility – interest, etc.

Court has discretion to allow inquiry into matters not brought up on direct

FORM

- Leading
- **Facts NOT Conclusions**
- Short
- One Fact
- Positive Statement

Leading – control the witness – you state the fact – get jury to focus on you – hear the fact from you

Get facts not conclusions:

Argue conclusion in closing from facts you brought out – Instead of saying "You don't like your brother, do you?" bring out facts to support conclusion:

1) brother and he had fight; 2) brother dated his girlfriend; 3) have not talked to him in 2 years

Short bite size

One fact: "You told your classmate to stop dating your girlfriend and to move out isn't that correct?" Break into 2 questions (1) Stop dating (2) Move out

Make positive statement – not "did he fall?" but "he didn't fall did he?"

ORGANIZATION

Area by Area:

- First → Positive Facts
- Second → Attack Credibility

Area by area – use transitions so jury can go from subject to subject

First - Bring out positive facts for your case

Last - Attack credibility

AREAS

- Favorable facts
- Lack of knowledge
- Credibility

Favorable facts to your case

Lack of knowledge – Ofcr Campbell – You don't know why Anderson hit Henkel do you?

Credibility

OKLAHOMA UNIFORM JURY INSTRUCTION (OUJI) 1.4

- ◇ Knowledge...how do they know?
- ◇ Memory...prior statement
- ◇ Observation...where person located
- ◇ Reasonableness
- ◇ Consistency or Inconsistency
- ◇ Bias, Prejudice or Interest...friend or enemy
- ◇ Other Circumstances...appearance on stand

DEMEANOR

Play off witness

Don't be an ass

CONTROL TECHNIQUES

- Interrupt
- Instruct
- Repeat
- Judge's Help...very last resort

QUESTION AND ANSWERS

Q: What is your date of birth?

A: July fifteenth.

Q: What year?

A: Every year.

Q: What gear were you in at moment of the impact?

A: Gucci sweats and Reeboks.

Q: This myasthenia gravis, does it affect your memory at all?

A: Yes.

Q: And in what ways does it affect your memory?

A: I forget.

Q: You forget. Can you give us an example of something you've forgotten?

Q: What was the first thing your husband said to you when he woke up that morning?

A: He said, "Where am I, Cathy?"

Q: And why did that upset you?

A: My name is Susan.

Q: Where was the location of the accident?

A: Approximately milepost 499.

Q: Where is milepost 499?

A: Probably between milepost 498 and 500.

Q: Sir, what is your IQ?

A: Well, I can see pretty well.

Q: Did you blow your horn or anything?

A: After the accident?

Q: Before the accident.

A: Sure, I played for 10 years. I even went to school for it.

Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

Q: So the date of conception of (the baby) was August 8th?

A: Yes.

Q: What were you doing at that time?

Q: She had three children, right?

A: Yes.

Q: How many were boys?

A: None.

Q: Were there any girls?

Q: You say the stairs went down to the basement?

A: Yes.

Q: And these stairs, did they go up also?

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

Q: All your responses must be oral, OK? What school did you go to?

A: Oral.

Q: Are you qualified to give a urine sample?

Q: Do you recall the time that you examined the body?

A: The autopsy started around 8:30 p.m.

Q: Was Mr. Dennington was dead at the time?

A: No, he was sitting on the table wondering why I was doing an autopsy.

Q: Doctor, before you performed the autopsy, did you check for a pulse?

A: No.

Q: Did you check for blood pressure?

A: No.

Q: Did you check for breathing?

A: No.

Q: So, then it is possible that the patient was alive when you began the autopsy?

A: No.

Q: How can you be so sure, Doctor?

A: Because his brain was sitting on my desk in a jar.

Q: But could the patient have still been alive nevertheless?

A: Yes, it is possible that he could have been alive and practicing law somewhere.