



# CROSS EXAMINATION

Determining Witness Credibility



# Three Ways to Question

01

Witness testimony begins with **direct examination** by the advisor of the party who called the witness

02

Once direct examination is complete, the opposing party's advisor conducts **cross-examination** of the witness

03

If the original advisor would like to clarify information raised on cross, the advisor may commence **redirect**.



# What Is Direct Examination?

- In a court case, the plaintiff and the defendant are both eligible to call witnesses to support their case
  - Similarly, in the hearing process, complainants and respondents may call witnesses to provide evidentiary support
  - When a party's witness is called, the advisor for that party will begin a direct examination
  - The purpose of direct examination is to have the witness share information with the hearing panel
  - That information is shared to prove or disprove the case
- 
- Begin by establishing who the witness is and why they've been called to testify
  - In the case of expert witnesses, be prepared to establish why they are considered an expert in their field
  - Attempt to identify any objections the opposing party would have to this witness or their credibility in case they are raised at the beginning of questioning
  - Plan questions in advance and be prepared to explain why the question is relevant to the case



# Direct Examination

In direct examination, the witness does the majority of the talking. Ask open-ended questions to encourage them to share with the hearing panel the full extent of their knowledge.



# Sample Case

- Matt and Emma are both sophomores and have been dating since the beginning of freshman year
- On the night of homecoming, their mutual friends, Price and Anthony, drive out with Matt and Emma to Lake Naconiche to drink and hang out
- At the lake, Matt and Emma get into an argument over Emma's flirting with Anthony
- The four decide to leave the lake to go back to the dorms
- The next morning, Price notices bruising on Emma's wrists and files a Title IX report out of concern for Emma's safety
- Emma is reluctant to participate in an investigation, but shortly after the report is filed, she and Matt break up and she proceeds with the investigation for dating violence
- During the investigation, the investigator discovers that Emma stayed with Anthony the night of the fight and they are now dating

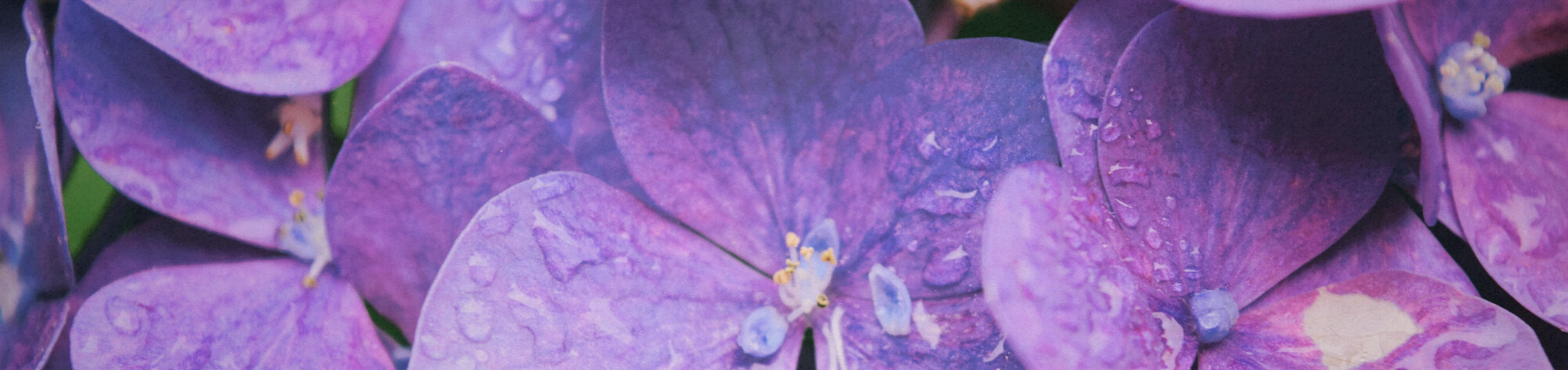






**What  
Questions  
Would You  
Ask on  
Direct?**





# Getting the facts

The goal of your questions on direct is to get as much information as possible regarding whether Max is responsible for dating violence

You are not trying to catch anyone in a lie on direct, but be aware that the answers given on direct examination will be revisited during cross-examination



# What Is Cross-Examination?

- Cross-examination is a form of questioning a witness with the aim of either draw out more information about their testimony on direct or to create doubt about their credibility or truthfulness
- This is accomplished by asking leading questions
- These questions begin with a statement like "isn't it true that..."
  - For example, if a witness testifies that she knows her friend Matt didn't hurt Emma, but this witness was not present at the time of the alleged incident, it would be your job to point this out to the hearing panel
  - "Isn't it true that you were not present at the time that Emma was allegedly injured by Matt?"
  - "You weren't present at all that night?"
  - "So you don't know for sure that Matt didn't cause the bruises?"
- Most attorneys do not ask a question on cross-examination unless they already know the answer
- Remember, the primary objective of cross-examination is not fact finding, but impeachment



# Cross-Examination

An example of an effective cross-examination



# Sample Cross-Examination

- Emma testifies that she and Matt went back to Matt's dorm room after they got back from the lake
- She states that she and Matt continued to argue once they got into his room and, at one point, he grabbed her by the elbow when she tried to leave the room
- Emma testifies that their argument continued to become more heated and that Matt started pushing her
- Emma states she left Matt's room around 11 pm and went back to her room because she was so distraught over the fight
- Video gathered from the dorm shows Matt calmly walking Emma to the elevator and the two embracing before she gets on
- Video also shows Emma sitting in the lobby of Matt's dorm and sending text messages while smiling
- Emma then goes back to the elevator and goes to Anthony's room
- Video shows Emma leaving Anthony's room around 10 am the next morning
- You are Matt's advisor
- Matt asserts that he and Emma had a serious discussion in his room that night, but that he did not grab or push Emma







**What  
Questions  
Would You  
Ask on  
Cross?**



# Tips for Success

- Plan ahead
  - Remember that you need to be prepared to explain why your question is relevant if the hearing panel chair or opposing party doesn't like the question
  - Prepare a list of direct and cross questions along with your reasoning for asking them
- Listen for inconsistencies in a witness's testimony
- Hone in on the inconsistencies in such a way that the witness has to admit to their inconsistency
  - E.g. Vinny getting the witness to testify that he doesn't make instant grits before bringing up the amount of time it takes to cook grits
  - The witness may have claimed they were instant otherwise
- DO NOT put words in their mouth or make accusations
- If the opposing party's advisor is an attorney, expect that they are going to fight you
  - Attorneys have an ethical duty to be a zealous advocate for their client
  - Many will act aggressively to achieve their goals
  - Don't let them intimidate you
- Unlike in a court of law, you are allowed to rely on hearsay evidence to make your point and cross-examine a witness
  - But expect that an attorney will try to challenge you on this

