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# Conversational Cross-Examination

*Susan Rutberg*<sup>†</sup>

## Abstract

*This Article discusses the benefits of the more subtle, conversational style of cross-examination as an alternative to the stereotypical gladiator style of cross-examination.*

## I. Introduction

What does the cross-examiner look like? What images come to mind when one thinks of a trial lawyer about to cross-examine a witness? Tall, silver-haired, and majestic, the gladiator strides toward the witness. The witness cowers. The gladiator wields his sword, piercing the witness and his story with one strong thrust after another. When he is finished, both the story and the witness's dignity lie in shreds on the floor. The gladiator stands, sword aloft, and with a barely perceptible nod of his head, acknowledges the cheers of the crowd.

Given that most people have neither consulted a lawyer nor participated in an actual trial, why is this image so pervasive in the collective imagination? From where do opinions about how trial lawyers behave come?<sup>1</sup> Lawyers play a prominent role in television and movie media

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<sup>1</sup> According to one opinion,

[s]ince [ninety-nine] percent of the population has access to television, and watches it for many hours daily, its impact on public perceptions is profound. . . . “[T]he majority of the public has never consulted a lawyer, nor experienced the legal system firsthand.” The public’s information, then, is secondhand, depending predominantly on television, which is far more pervasive and profound than movies. . . . Perry Mason, based on the Earle Stanley Gardner novels, was a series of movies first (1934-37), then a radio series on CBS (1944-55), then a series on television (1957-66), then a series of made-for-television movies (1985-94). Its formula was old-

today, from *L.A. Law*<sup>2</sup> and *Law & Order*<sup>3</sup> to *The Firm*<sup>4</sup> and *Legally Blonde*.<sup>5</sup> These programs and films offer conflicting images of lawyers to mass audiences who, due to a lack of actual courtroom experience, are not always aware that the portrayals are fictional and glamorized.

Furthermore, legal fiction thrillers, such as books by John Grisham, continue to fascinate American audiences while perpetuating the “gladiator-lawyer” image. Think of Tom Cruise cross-examining Jack Nicholson in *A Few Good Men*,<sup>6</sup> or Joe Pesci running the courtroom in *My Cousin Vinny*.<sup>7</sup> Think about the defense attorney in just about any episode of the omnipresent television show *Law & Order*.<sup>8</sup> The gladiator is telegenic. The gladiator is theatric. The gladiator always gets the answer he wants.

So, what is wrong with this picture? Nothing . . . if it works. In real courtrooms with real witnesses, however, a cross-examiner who skewers each witness with the same swashbuckling sword is likely to appear arrogant and heartless.<sup>9</sup> When cross-examining most witnesses—innocent

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fashioned: the cagey defense lawyer solves the riddle of each case and in a “surprise” ending elicits a confession, often in open court, that frees his unjustly accused client. The hapless DA is left with a shocked and incompetent look on his face.

Ronald Goldfarb, *Lawyers on Television*, DC BAR, June 2004, at [http://www.dcbbar.org/for\\_lawyers/washington\\_lawyer/june\\_2004/tvlawyer.cfm](http://www.dcbbar.org/for_lawyers/washington_lawyer/june_2004/tvlawyer.cfm) (citation omitted).

<sup>2</sup> *L.A. Law* (NBC television broadcast 1986-94).

<sup>3</sup> *Law & Order* (NBC television broadcast 1990-present).

<sup>4</sup> *THE FIRM* (Paramount Pictures 1993).

<sup>5</sup> *LEGALLY BLONDE* (MGM Studios 1992).

<sup>6</sup> *A FEW GOOD MEN* (Sony Pictures 1992).

<sup>7</sup> *MY COUSIN VINNY* (20th Century Fox 1992).

<sup>8</sup> *Law & Order*, *supra* note 3.

<sup>9</sup> “[I]t is a crude way of doing what generally can be done more effectively through other means. Long before cross-examination you have ample opportunity to present your theory of the case . . . when you are examining the jury panel, reading your pleadings, or making an opening statement.” ROBERT E. KEETON, *TRIAL TACTICS AND METHODS* 141 (2d ed. 1973); *see also* Saul M. Kassin et al., *Dirty Tricks of Cross-Examination: The Influence of Conjectural Evidence on the Jury*, 14 *LAW & HUM. BEHAV.* 373 (1990). *But see* F. LEE BAILEY & HENRY B. ROTHBLATT, *SUCCESSFUL TECHNIQUES FOR CRIMINAL TRIALS* § 193 (1971). Authors Bailey and Rothblatt state, on the other hand, that “[o]ther litigators believe you should directly confront a major witness for the other side with your own theory of the case, and ask the witness to agree to it, even when you know the witness will not. For example: ‘Isn’t it true that what really happened was that my client acted in self-defense after you pulled a knife on him?’

bystander percipient witnesses in particular—dignity-shredding is not the model to which attorneys should aspire. The “gladiator” style of cross-examination should be limited to those relatively rare situations when the cross-examiner has a good faith belief that the witness is lying.

As a result of media focus and public fascination with crime stories both real and fictional, trial lawyers are widely perceived as bullies who play fast and loose with the truth.<sup>10</sup> Every trial lawyer must thus be conscious of the need to present him or herself in such a way as to dislodge that stereotype from the minds of the jurors. Treating everyone in the courtroom, including the witnesses, with respect and civility is the first step toward accomplishing that goal.

Although jurors, pre-programmed by their overexposure to television and movie lawyers, may expect a real trial lawyer to skewer every witness on cross-examination, in practice, humiliating witnesses is rarely an effective technique. Why? The main reason to avoid striving to destroy the witness’s dignity in every cross-examination is that jurors tend to identify with the witness in the jury box, rather than the lawyer in the suit.<sup>11</sup> When the person enduring the cross-examination is a store clerk traumatized by an armed robbery, a passerby who sees a street altercation, or a mail carrier who discovers a corpse, jurors are likely to

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Those who support this as a legitimate purpose point out that it gives you the opportunity to preview your closing argument.” *Id.* § 193.

<sup>10</sup> Some lawyers occasionally employ deliberately argumentative cross-examination in which they insinuate a set of facts that does not exist. This kind of cross-examination by innuendo has become infamous because of the offensive “Isn’t it true you really enjoyed it?” kind of question posited to rape victims. One attorney proudly claims that he won an acquittal for the renowned blues singer Billie Holiday because the jury believed her to have been framed based on questions he asked a prosecution witness, which either obtained an objection or were stricken from the record. See J.W. EHRLICH, *THE LOST ART OF CROSS EXAMINATION* 142-47 (1970).

<sup>11</sup> In one practitioner’s opinion,

the most effective cross-examination is usually conducted in a courteous and conciliatory manner. The witness is more likely to admit error to the courteous examiner with a friendly approach than to the hard-driving examiner who firms up the witness’s opposition. Further, as the jurors look on cross-examination as an unequal contest—with the advantage on the side of the lawyer—the aggressive cross-examiner risks having the jurors disregard an admission because they feel that the examiner violated the rules of fair play in securing it.

Howard L. Nations, *Cross-Examination*, § III(E)(4), at [http://www.howardnations.com/crossexamination/cross\\_ex.html](http://www.howardnations.com/crossexamination/cross_ex.html) (last visited Feb. 21, 2006).

feel empathy, thinking, “Hey, that witness is just a regular person who has no particular reason to lie. That could be me up there!” Because most jurors will identify with the witness rather than the lawyer, they will not react favorably if the cross-examiner humiliates their courtroom alter ego. Nor will a client react favorably when the folks deciding his fate turn against his lawyer.

## II. An Alternative Model

Is there another way to cross-examine? Visualize the conversational cross-examiner, a charming disarmer, in place of the attack dog. Picture a lawyer building trust with the witness through the tone and content of the initial questions. Watch the lawyer first establish trust, then see the witness let down his guard and answer the cross-examination questions more responsively.<sup>12</sup> A lawyer who treats the witness respectfully and who asks controlled, leading questions without projecting hostility succeeds in more effectively communicating the client’s position than does the swashbuckling gladiator.

These images are not new insights. Francis Wellman, known as the father of modern cross-examination, explained why a more subtle approach to cross-examination is warranted in his seminal early twentieth century publication, *The Art of Cross Examination*:

[Witnesses] come to court, . . . prepared to tell what they think they know; and in the beginning they resent an attack upon their story as they would one upon their integrity.

If . . . counsel’s manner is courteous and conciliatory, the witness will soon lose the fear all witnesses have of the cross-examiner and can almost imperceptibly be induced to enter into a discussion of his testimony in a fair minded spirit, which, if the cross-examiner is clever, will soon disclose the weak points in the testimony. The sympathies of the jury are invariably on the side of the witness, and they are quick to resent any discourtesy toward him. They are willing to admit his *mistakes*, if you can make them apparent, but are slow to believe him *guilty of perjury*.<sup>13</sup>

Wellman also provided instruction for trial lawyers on how *not* to behave during cross-examination:

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<sup>12</sup> See 3 FRANCIS X. BUSCH, LAW AND TACTICS IN JURY TRIALS § 372 (1960).

<sup>13</sup> FRANCIS L. WELLMAN, THE ART OF CROSS-EXAMINATION 30 (4th ed. 1962).

On the other hand, the lawyer who wearies the court and the jury with endless and pointless cross-examinations; who is constantly losing his temper and showing his teeth to the witnesses; who wears a sour, anxious expression; who possesses a monotonous, rasping, penetrating voice; who presents a slovenly, unkempt personal appearance; who is prone to take unfair advantage of witness or counsel, and seems determined to win at all hazards—soon prejudices a jury against himself and the client he represents, entirely irrespective of the sworn testimony in the case.<sup>14</sup>

These words of advice are even more relevant today.

### III. Gladiator or Disarmer: How to Choose

Choosing how to approach a witness during cross-examination is perhaps one of the hardest tactical decisions a lawyer must make during litigation. However, in making that decision, it is best remembered that a “lawyer must never show greater scorn for the witness than the jury is currently feeling. The jury must set the high water mark for scorn of the witness.”<sup>15</sup> Choosing which persona to adopt when cross-examining a witness depends in large part on the character and demeanor of the witness. With witnesses such as the police inspector caught hiding exculpatory evidence or the defendant who denies being at the scene—but whose DNA proves him a liar—bring on the gladiator! Those witnesses can best be characterized as “lying dogs” or, as Francis Wellman might have said, “willful perjurers.”<sup>16</sup>

But, when one prepares to cross-examine a witness who has no particular interest or bias in the outcome of the trial, such as a person who is honestly trying to describe what she saw, but from the client’s perspective has just gotten it wrong, a scornful approach will not be effective. In those circumstances, take off the gladiator suit, put on the charming disarming persona,<sup>17</sup> and launch a conversational cross-examination. And

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<sup>14</sup> *Id.* at 34.

<sup>15</sup> Roger J. Dodd & Larry S. Pozner, *Controlling the Runaway Witness*, 20(3) CACJ FORUM 33, 34 (Sept. 1993).

<sup>16</sup> See WELLMAN, *supra* note 13, at 66.

<sup>17</sup> Just because lawyers are aggressive, hostile, arrogant, and sarcastic on television does not mean one should try to adopt such a style. The style of an advocate’s cross-examination will necessarily depend to a greater or lesser extent upon the natural

if, during the course of the conversational examination, the witness reveals that he or she does not deserve the jury's trust and respect, then one can switch gears and become a gladiator, and the jurors will be right there for the ride.

## IV. Steps Toward Effective Cross-Examination

### A. Step One, Know Yourself

Preparation for any cross-examination requires a realistic appraisal of one's own courtroom persona. How will you come across to others in the courtroom setting? How would you describe your personality if you were to be honest and objective? Are you fearless? Are you the natural center of attention in any gathering? Or, would you more accurately be described as low key and self-deprecating?

Whatever your personality, you can work with it and be a successful cross-examiner. Authenticity is persuasive, and dishonesty is generally transparent. Jurors will see through any hasty attempt to don a new personality for the courtroom. It is better to focus on projecting your best

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disposition of the examiner. The trained advocate, however, will cultivate and employ the style that he thinks is best calculated to produce effective results. Speaking generally, there are the following two prevailing styles: the savage, slashing, "hammer-and-tongs" method of "going after a witness to make him tell the truth," and the smiling, soft-spoken, ingratiating method directed at lulling the witness into a sense of security and gaining his confidence. Neither style can be adopted to the exclusion of the other for every situation that may be presented. There are many situations where a vigorous, rapid-fire examination is likely to produce the best results, just as there are many situations where a quiet, easy, friendly examination will elicit a more favorable outcome. The experienced advocate, like the seasoned baseball pitcher, relies upon his ability to change the pace to suit the varying conditions in the game. It is submitted that in most cases, the gentler approach is better calculated to elicit the concessions the advocate desires. The savage, vehement style of cross-examination ordinarily makes the hostile witness more hostile. In some cases, such an examination angers the witness to the point of impelling him to make vicious answers.

Although a tough approach may weaken the effect of the witness's direct testimony by emphasizing his partisanship and hostility, the content of the answer may be that which leads the jury to believe that the witness is beating the examiner at his own game. Only the complete success of such an examination will keep the examiner in the jury's good graces. The repeated failure of such examinations is incalculably prejudicial. The witness is the "underdog," and the jury's sympathies are ordinarily with him. *See* BUSCH, *supra* note 12, § 372.

real self, rather than trying cosmetic alterations. If you have a more forceful personality, you may have to rein yourself in a bit to accomplish a conversational cross-examination. It is useful to remind yourself that you can be assertive without projecting hostility.

## **B. Step Two, Know Your Case**

Preparation for every cross-examination requires knowing one's case well. Know everything the witness said on previous occasions. Know when and to whom the witness spoke. Know everything other witnesses have said about the same subjects. Know everything about the witness's background. There is simply no substitution for preparation, reviewing all the known facts, and investigating the unknown prior to cross-examination.<sup>18</sup> Part of knowing the case is analyzing the role each witness plays in the opposition case and determining the most effective attitude to project toward the witness. Is this witness one of those "lying dogs" or just someone who got it wrong? The answer to that question will invariably affect the decision as to how to cross-examine the witness.

To begin preparation for cross-examination, list the elements of the crimes charged or the causes of action alleged and see where this witness's likely testimony on direct fits into the opposition case. Look at all the discovery gathered concerning this witness and the witness's story. Check to see what fits and what does not. Make sure discovery includes information about the witness's criminal history. Investigate other aspects of the witness's background thoroughly. Why is the other side calling this witness? What will this testimony prove? What is your theory of the witness? How does the witness fit into your overarching theory of the case? Do you think the witness is lying and deliberately out to frame your client? If not, yet the witness makes damaging statements against your client, what is the explanation? Has the witness been deliberately misled? Or is the witness simply mistaken or confused? Answers to these questions will help form your choice of questioning style: the gladiator for the liars and the conversational cross-examiner for everyone else.

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<sup>18</sup> All trial advocacy textbooks agree that preparation is the key to courtroom success. See THOMAS A. MAUET, *TRIALS: STRATEGY, SKILLS, AND THE NEW POWER OF PERSUASION* (2005); L. TIMOTHY PERRIN ET AL., *THE ART & SCIENCE OF TRIAL ADVOCACY* (2003).



## V. Cross-Examination: What to Ask

The toughest question for new lawyers is: “About what should I cross-examine?” Avoid the temptation to repeat the substance of the direct examination on cross-examination, hoping the witness will give different answers. Instead, comb through the witness’s prior statements looking for points that corroborate your theory of the case. Focus on statements the witness has made in the past that both support your case theory and simultaneously translate to a failure of proof for the other side. These are likely to be points that one’s opponent either does not need or want to bring out on direct. Work this area up into a set of questions. Conversational cross-examination best begins by asking questions to which the witness readily acquiesces. These areas of agreement are a good place to begin one’s cross-examination. One can develop rapport with the witness by asking these questions in a non-threatening tone of voice and in a form to which the witness can easily agree.<sup>19</sup>

Look for omissions or holes in the witness’s stories. Think about pieces of the witness’s story that do not ring true or that do not pass the “common sense” test. These are points one should surely raise during cross-examination in order to weaken one’s opponent’s case. Flesh out inconsistencies by checking the witness’s prior statements, other witnesses’ statements, and conflicts with ordinary common sense. Develop a theory of the witness by thinking simultaneously about how best to use your opponent’s witness to support *your* case.

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<sup>19</sup> Some examples include:

You are the chief financial officer of the corporation?  
You oversee all the financial operations for the corporation?  
That is a big job, is it not?  
I mean, your work carries with it enormous responsibility?  
You certainly have to rely on support from others?  
Ms. Abrams, my client, worked for you since the year 2000, is that right?  
She was your personal assistant?  
She held that position for a year?  
You were her direct supervisor?  
You wrote an evaluation of her work?  
That was in August of 2001?  
You wrote the evaluation yourself?  
You did not delegate that task to anyone else?  
And you wrote it based on your own observations of Ms. Abrams’ work?  
Her work was “outstanding” (quoting verbatim from the evaluation), is that not right?

Cross-examination is the opportunity for the trial lawyer to lay the foundation for summation. In planning for cross-examination, one must think ahead to the closing argument. How are you going to describe this witness to the jury? What are you going to argue about the witness's contribution to the case? How are you going to characterize the significance of this testimony? Ask questions that will provide the foundation for summarizing the witness's testimony in such a way that it would appear that the witness actually testified favorably for your client.

Once you have determined both the witness's place in your case theory and what to say to the jury about this witness, make sure that you have established the necessary points during cross-examination. An elegant closing argument pulls the case together for the jury. If you have conducted a well-designed cross-examination, you will have established each of the points needed to get your theory of the witness across to the jury. Then, when you stand to deliver your summation, you will simply be "connecting the dots" established on cross-examination. It is through this process that you put an effective "theory of the case" spin on each witness's testimony.

## **VI. Empathize With the Witness**

In order to effectively connect with a witness during cross-examination, start by standing in the witness's shoes. If you, as the cross-examiner, have a good faith belief that the witness's testimony on direct is inaccurate, then view it as your task to help the jury understand how the witness managed to get it wrong. Think about the witness's experience in this case. Try to understand how and why the witness misunderstood or misinterpreted the facts. Review the evidence to deduce the series of events that led the witness to erroneous conclusions. Everything that occurred between the witness's original observations and the appearance in court to testify is a potential area of inquiry and, therefore, fair game for cross-examination. Plan a series of questions designed to explain to the jury just how the witness arrived at those "wrongheaded" conclusions.

When preparing your cross-examination questions, incorporate what is known about memory. A large body of social science research over the last thirty-five years has determined that witnesses can "get it wrong"

for a variety of reasons. Experts, such as psychologists Elizabeth Loftus<sup>20</sup> and Gary Wells,<sup>21</sup> have concluded that memory is fallible. Pitfalls to accurate recollection occur at the following three different stages in the process: acquisition, storage, and retrieval. Many inhibitors, such as inattention, shock, focus on a weapon, et cetera, prevent witnesses from perceiving events accurately from the start. Other factors can result in contamination of stored memories and interfere with accurate retrieval of those memories. Viewing memory as vulnerable—analogue to other forms of physical evidence—the effective cross-examiner should explore the witness’s memory of a traumatic event carefully. “Like physical evidence, memory trace evidence can be contaminated, lost, destroyed, or otherwise made to produce results that can lead to an incorrect reconstruction of the event in question. Like physical trace evidence, the manner in which memory trace evidence is collected can have important consequences for the accuracy of the results.”<sup>22</sup>

When creating a list of possible areas of cross-examination, review any available information regarding the witness, the circumstances under which the initial observations were made, and the circumstances under which the witness’s statements to others were taken. By putting one’s self in the witness’s shoes, one will be able to determine a theory

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<sup>20</sup> Professor Elizabeth Loftus, University of California at Irvine, has conducted studies of human memory for more than thirty years. Her body of work dates back to a book she co-authored in 1976, *HUMAN MEMORY: THE PROCESSING OF INFORMATION*. Professor Loftus makes the case that eyewitness testimony is often unreliable and that false memories may be triggered by post-event suggestion. GEOFFREY R. LOFTUS & ELIZABETH F. LOFTUS, *HUMAN MEMORY: THE PROCESSING OF INFORMATION* 159-63 (1976). Many of her publications are available at <http://www.seweb.uci.edu/faculty/loftus>.

<sup>21</sup> Professor Gary Wells, Iowa State University, is a scientific psychology scholar. His studies of the fallibility of eyewitness memory are widely cited. He has researched social and cognitive psychology related to the interface of psychology and the law. Much of his work has been directed at eyewitness testimony, with an emphasis on how to improve the accuracy of such testimony. In addition, his work examines judgment and decision-making processes in such domains as perceived likelihood, perceived causality, and judgments of regret. For more information on Professor Wells or on “eyewitness memory issues,” see <http://www.psychology.iastate.edu/faculty/gwells/homepage.htm>.

<sup>22</sup> Gary L. Wells & Elizabeth F. Loftus, *Eyewitness Memory for People and Events*, in 11 *COMPREHENSIVE HANDBOOK OF PSYCHOLOGY (FORENSIC PSYCHOLOGY)* 149, 149 (A.M. Goldstein et al., eds. 2003), available at <http://www.reporterx.net/en/default.asp?id=2&mnu=2>).

concerning the testimony. Is the witness simply mistaken? Or, is the witness filling in details, perhaps unconsciously, with information that has altered the original perceptions? Was the witness confused by the number of events competing for attention during the witness's initial observation? Has the witness been misled by investigators or others connected with one's opponent's case?

## VII. Honing Your Scope

Renowned evidence professor, the late Irving Younger, said it best when he said, "You should never try to make more than three points on cross-examination. Two points are better than three and one point is better than two."<sup>23</sup> After gathering all the information described above, in keeping with Professor Younger's first commandment of brevity, take the list of potential cross-examination points and narrow it down. Identify the strongest and the safest points. Put the rest aside.

When contemplating the most sensible cross-examination approach, use the following guiding principles:

1. Each cross-examination point must not only be consistent with, but should also advance your case theory and theme. (For example, when the defense to a sexual assault charge is alibi, do not cross-examine on the issue of consent.)
2. Avoid points that are too subtle or too vague; stick with points you can make understandable to the jury. In other words, limit your cross-examination points to those likely to make a strong impact on the jury.
3. Ask yourself whether you should cross-examine at all. Did the witness hurt your case? Will the jury be disappointed and reach a negative conclusion if you do not cross-examine? Can you argue your witness theory without cross-examining? Will your cross-

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<sup>23</sup> Professor Irving Younger authored the original *Ten Commandments of Cross-Examination*: (1) be brief, (2) use plain words, (3) use only leading questions, (4) be prepared, (5) listen, (6) do not quarrel, (7) avoid repetition, (8) disallow witness explanation, (9) limit questioning, and (10) save the ultimate point for summation. Irving Younger, *The Art of Cross-Examination*, 1976 A.B.A. SEC. ON LITIG. MONOGRAPH SERIES NO. 1, available at <http://www.nebarfnd.org/PDFS/10commandments.pdf>; see also Timothy A. Pratt, *The Ten Commandments of Cross-Examination*, available at <http://www.thefederation.org/documents/Pratt-SP03.htm>.

examination advance your case theory? Evaluate the risk that any cross-examination might alienate the jurors.

4. Limit the number of points you set out to make. Judges and juries have limited attention spans. In order to maximize your audience's focus, remember the following mantra: get in, get out, sit down. This does not mean that you must make that one point quickly. In fact, in order to make sure the jury understands where you are going, take your time, and ask several short, one topic questions to make sure you clearly establish each point.

### **VIII. Organizing**

Order the points you wish to make. Use logic but do not repeat the logic of the direct, which is generally chronological. If the witness has information helpful to your case, start there. Always elicit all helpful facts before attempting to impeach the witness, even if you are doing it conversationally. End with a strong but totally safe point.

### **IX. Implementing Conversational Cross-Examination**

Following are some techniques for maintaining witness control without browbeating, and some ideas regarding ways to discredit witness testimony without (necessarily) discrediting the witness.

*Present yourself professionally but without arrogance.* Remember, "all the world's a stage,"<sup>24</sup> and this premise is magnified in the courtroom. The line "[e]very move you make, every step you take, [someone is] watching you"<sup>25</sup> is doubly true in the courtroom. When deciding how they feel about you and by extension, your client's case, jurors take everything into consideration. So, greet the clerk and bailiff with a smile and friendly word; treat everyone, including your client, with respect. Convey an attitude that is respectful and genial but one that indicates awareness of the seriousness of the case. Strive to communicate your

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<sup>24</sup> WILLIAM SHAKESPEARE, AS YOU LIKE IT act 2, sc. 2.

<sup>25</sup> THE POLICE, *Every Breath You Take*, on SYNCHRONICITY (A&M 1983).

theory of the witness with a unified approach; use attitude, tone, and the content of your questions to establish your point of view regarding the witness.

*Present yourself respectfully.* If you have a tattoo on your midsection, no one in the courtroom should be aware of it. However you dress, it should not distract from your presentation. Give thought to what you wear, your tone of voice, your attitude, the way you phrase your questions, and your word choice, in light of the following five factors: (1) Who are you and what is your own range of styles? (2) Who is the witness and how does he or she present? (3) Who are your jurors? (4) Who is the judge? and (5) Who is opposing counsel?

*Stand when you cross-examine.* Standing demonstrates respect for the witness, for the jurors, and for the process. It also makes you look bigger, which for most trial lawyers, at least those who could not be described as tall, silver-haired, and majestic, is an important advantage. Standing also communicates “the focus is on me now.” And, on those rare occasions when your initial conversational cross-examination has convinced the jury that a witness should be moved from the “mistaken” to the “lying dog” category, you can indicate your disdain for the witness by sitting down and resuming questioning from your seat, further diminishing the witness in the jury’s eyes.

*Lead, lead, lead.* All cross-examination questions should be leading, but leading is not synonymous with hostility. Be firm and assertive, but save hostility for those times when the witness clearly invites it. Do not ask questions that cede control to the witness; never ask an open-ended question. Avoid characterizations with which the witness might not agree, such as, “Wouldn’t you agree that it was dumb to do what you did?” Do not ask for explanations; do not ask that “ultimate” question. Save that for closing argument.

*Relax the witness.* Get the witness in the habit of agreeing with you. Start with simple questions that you know will get you easy “yes” or “no” answers.

*Formulate short, concise, one-fact questions.* The shorter the question, the greater the cross-examiner’s control over the witness. A short, one-topic question helps focus the witness on one point and avoids argument. Formulate questions by making brief declarative statements, and use your voice to indicate that you are asking the witness to ratify his agreement. Signify that your “statement” is a question by raising your voice at the

end. If you take the witness through a point one tiny, ultra-brief question at a time, you will provide the jurors with enough time to fully absorb the point you are making.

Consider the following example: The witness identified your client in a physical lineup ten days after the crime. This witness may not be lying, but, according to your theory of the case, he is simply wrong. During cross-examination, your goal is to establish that he did not actually see the perpetrator's face at the time of the crime. Doing so, you will prove what you need in order to argue in summation that there is no factual basis for the identification.

Q: It was December 24th?

A: It was.

Q: It was raining?

A: Yes.

Q: You were on your way to a party?

A: Yes, a birthday party.

Q: It was about 10:00 p.m.?

A: Yes.

Q: It was dark?

A: Yes.

Q: You were riding your bike?

A: Yes.

Q: You rode through the park?

A: Yes.

Q: Forgive me for asking, but no helmet?

A: Yes, no helmet.

Q: And no lights on your bike?

A: That is right.

Q: And no overhead lighting either?

A: Correct.

Q: You heard a shot?

A: Yes, I did.

Q: You were startled?

A: Of course.

Q: Scared?

A: Yes, I would say so.

Q: You fell off your bike?

A: Yes.

Q: You hit your head?

A: Yes.

Q: You saw someone running?

A: Yes.

Q: Running away from you?

A: Yes.

Q: And you watched him run away?

A: Yes.

Q: He did not turn around?

A: No.

Q: You only saw him from the back?

A: Yes.

The cross-examiner has not attacked the witness's integrity but instead has led the witness to implicitly undermine the validity of the original testimony. By reorganizing and restating certain facts, the cross-examination succeeds in calling the identification into question. This example permits one to argue in closing argument that the witness's identification of the client on direct examination is simply wrong. The cross-examination showed that the witness never saw the perpetrator's face, so his identification of the client could not have been based on personal knowledge of the facts.

*Avoid asking questions when you do not know the answer.* Do not ask if you do not know. Protect yourself by relying on certain information. Index every statement to its source. Whenever possible, use the witness's verbatim language from prior statements in your questions.

*Maintain constant eye contact with the witness.* Why? Because if you do not, the witness (or the jury) will notice. Strong eye contact is a non-verbal signal that the examiner will not allow deviations from the question and answer approach. The jurors are watching the cross-examiner. They will notice sustained eye contact, and they will understand that you have "locked in" the witness. "Locking in" a witness reflects confidence in the cross-examination, and eye contact keeps the jury's attention on your confidence.

*Maintain control by listening to the answers.* Unlike lawyers on television, cross-examiners should have written notes—though they should not be wed to them. If you cannot let go of your notes, you will find it impossible to maintain control through eye contact, and you will not be able to "go with the flow." So, do have a written plan but be flexible. The conversational cross-examiner prepares *to* cross-examine, but does



not prepare the actual cross-examination word for word. Listening to the answers also helps the examiner prevent evasion and can aid in accurate impeachment.

*Repeat the question.* When the witness is not following the program, maintain your cool. Say, “Thank you for that answer, but my question was . . .” and repeat the question. Maintain eye contact, take your time, lean forward slightly, and using exactly the same words and tone, repeat the question, only more slowly. This technique alerts the jury to the fact that the witness was being evasive.

*Reversal I: Ask, Reverse, Ask.*

Q: The car was blue?

A: The car zoomed through the red light so fast I did not even see brake lights . . .

Q: The car was NOT blue?

A: No, I did not say that.

Q: The car was blue?

A: Yes.

*Reversal II: Ask, Repeat, Reverse.*

Q: The car was blue?

A: The car zoomed through the red light . . .

Q: The car was blue?

A: (Mumble, mumble, mumble.)

Q: The car was NOT blue?

A: No, I did not say that.

Q: The car was blue?

*Use the witness’s full name.*

Q: The car was blue?

A: The car zoomed through the red light . . .

Q: John Jacob Jingleheimer Schmitt, the car was blue, was it not?

A: Yes, it was.

*Turn to the Court Reporter.* Ask the court reporter, “Will you please read the last question back to the witness?” It takes time for the reporter to find the correct testimony. Jurors treat court reporters as part of the official power structure in the courtroom. The wait, the silence, and finally the official voice rereading the question all may help intimidate the witness into responsiveness.

*Be the Traffic Cop.* Step forward with your right hand raised. Say, “Excuse me, but I do not think you understood my question. What I was asking was . . . (repeat question).” If opposing counsel objects for

interrupting, apologize to the court, jury, et cetera. This technique is likely to serve the purpose of throwing witnesses intent on *not* answering the questions off their stride. Then ask the question again, making it tighter if possible.

*So, your answer is “yes?”* During a long, non-responsive answer, maintain eye contact with the witness and smile slightly. Then, when the witness has finished, lean forward, still smiling, and say, “So, your answer is “yes?””

*Spontaneous Loop Using Witness’s Own Language.* This technique is best described by the following example of cross-examination after the officer testifies on direct: “I stopped [your client] because he matched the description I was given.”

Q: The description you had was a black man driving a green Porsche?

A: Yes.

Q: My client, Mr. X, is a black man?

A: That is right.

Q: But the car he was driving was white, was it not?

A: Yes.

Q: Not green?

A: That is right, it was white.

Q: And the car you were looking for was a Porsche, correct?

A: Yes.

Q: My client was driving a Toyota?

A: He was.

Q: So you were looking for a Black man in a green Porsche?

A: Yes.

Q: And you stopped a Black man in a white Toyota?

A: Yes.

Q: And for you, Officer, that was a match?

A: Close enough for government work.

Q: So, what you are telling us, Officer, is that as long as it was a Black man driving a car, that is “close enough for government work”?

A: [Whatever he says, it does not matter.]

*Last resort approaches.* Eye contact, attentive listening, and patient repetition may be more effective than other techniques used to maintain witness control, such as asking for the judge to intervene.<sup>26</sup> When a

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<sup>26</sup> See generally Dodd & Pozner, *supra* note 15, at 33-37.

witness persists in obstreperous behavior, however, one can politely ask the judge to “please instruct the witness to answer the question.” This is a last resort, because calling upon the judge for help may weaken the examiner’s position, making it look as if one has lost control of the situation. Sometimes, however, asking for the judge’s intervention is the only thing one can do to protect the record and avoid waiving the error.

Another last resort technique is to cut the witness off. “Excuse me, Mr. Witness, but my question was . . .” This may seem rude and signal to the jury that you do not want it to hear something the witness has to say, but it also highlights the fact that the witness was dodging the question. Be careful; a clever opponent may portray your technique as rudeness by objecting and asking the judge to permit the witness to finish his answer. Such an objection will suggest to the jury that you lost control of the witness.

When you must protect the record against the rantings of a very unruly witness, make the objection “non-responsive,” and ask that everything after “yes” be stricken and the jury instructed to disregard the witness’s answer. Again, proceed with caution. Objecting to a witness during your own cross-examination clearly demonstrates loss of witness control.

## **X. Conclusion**

When questioning each witness, the cross-examiner’s goals are simple: communicate one’s theory of the case and make the points needed to set up an effective closing argument regarding the witness. The conversational approach feels more natural to many trial lawyers than does the gladiator approach. A trial lawyer who feels more natural in the courtroom comes across as more authentic and believable to jurors. By projecting respect and understanding, the cross-examiner will be more likely to win jurors’ trust. Once jurors accept the fact that the trial lawyer is a human being rather than a television actor, they may be willing to let go of those negative lawyer stereotypes that abound in popular culture. They may even open their minds and listen. It is always wise to remember that, even in this high-tech world of media saturation, bells, whistles, and pyrotechnics, lawyers do not render verdicts. Jurors do.

## Appendix

### Law of Cross-Examination<sup>27</sup>

#### ALABAMA

**General Purpose:** *Madden v. State*, 112 So. 2d 796, 799 (Ala. Ct. App. 1959) (“It is the clear right of the cross-examining party to elicit facts which weaken or qualify the case of the party examining in chief, or support the case of the cross-examining party. One of its chief functions is to test the credibility of the deposing witness.”).

**Scope of Cross-Examination:** *Hart v. State*, 852 So. 2d 839, 844 (Ala. Crim. App. 2002) (“[A] party should be given ‘wide latitude on cross-examination to test a witness’s partiality, bias, intent, credibility, or prejudice, or to impeach, illustrate, or test the accuracy of the witness’s testimony or recollection as well as the extent of his knowledge.’” (citation omitted)). *But see* *Brooks v. State*, 418 So. 2d 195, 197 (Ala. Crim. App. 1982) (“Although it is permissible to interrogate a witness on cross-examination about irrelevant matters in order to test his memory or power of observation, the latitude of the questioning rests ‘largely, if not exclusively within the sound discretion of the trial court.’” (citation omitted)).

**Scope in Criminal Cases:** *Smith v. State*, No. CR-97-1258, 2000 WL 1868419, at \*53 (Ala. Crim. App. Dec. 22, 2000) (“An accused in a criminal prosecution cannot be required to take the stand as a witness, but if he elects to do so, . . . he is subject to cross-examination-just like any other witness. An accused who takes the stand in his own defense may be fully cross-examined as to any inconsistency or implausibility of his testimony-in-chief, and as to matters directed to testing his recollection, motive, and credibility.” (citations omitted)), *aff’d in part, rev’d in part, Ex Parte Smith*, No. 1010267, 2003 WL 1145475 (Ala. Mar. 14, 2003).

**Valuable Right:** *Akin v. State*, 698 So. 2d 228, 236 (Ala. Crim. App. 1996) (“The right of cross-examination, thorough and sifting, belongs to every party as to the witnesses called against him.” (citation omitted)).

**Impeachment:** *Gober v. Khalaf*, 628 So. 2d 416, 417 (Ala. 1993) (“[T]he general rule is that a witness may not be impeached on a collateral matter. A fact is collateral if it is ‘admissible neither upon an issue under the pleadings of the case nor for the purpose of impeaching the witness’ credibility in some means other than inconsistency.” (citations omitted)); *Williams v. Lide*, 628 So. 2d 531, 538 (Ala. 1993) (“[I]mpeaching testimony’ is ‘designed to discredit a witness’ by showing ‘why faith should not be accorded to his testimony’ and that it consists of evidence ‘attacking the character, motives, integrity or veracity of the witness.’” (citation omitted)); *Pope & Quint, Inc. v. Davis*, 485 So. 2d 1134, 1137 (Ala. 1986) (concluding that impeachment of a witness by deposition should be allowed provided that “a proper foundation was laid and that proffered evidence was related to a material issue”).

#### ALASKA

**Valuable Right:** *Alaska Airlines, Inc. v. Sweat*, 568 P.2d 916, 931 (Alaska 1977) (“[I]t is generally recognized that cross-examination is a basic right and should be given considerable leeway.”).

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<sup>27</sup> This appendix provides general case law from all fifty states regarding cross-examination. The research does not address state rules, statutory or otherwise, governing cross-examination but merely provides case law that interprets those rules.

## ARIZONA

**General Purpose:** *State v. Perez*, 442 P.2d 125, 128 (Ariz. Ct. App. 1968) (“Cross examination only goes to indicate the truthfulness of testimony by indicating honesty and integrity of witnesses, their ability to observe accurately at the time an event occurred, and the accuracy of recollection of past events.” (citation omitted)).

**Scope in Criminal Cases:** *State v. Woody*, 496 P.2d 584, 587 (Ariz. 1972) (“A defendant in a criminal action cannot be required to be a witness, but if he elects to testify he may be cross-examined to the same extent and is subject to the same rules as any other witness.” (citations omitted)).

**Scope of Cross:** *State v. Torres*, 400 P.2d 843, 845 (Ariz. 1965) (“[A] cross-examiner should be given great latitude in his questions which seek to impeach an adverse witness being examined . . . .” (citation omitted)).

**Valuable Right:** *State v. Taggart*, 925 P.2d 710, 712 (Ariz. Ct. App. 1996) (“The right to cross-examine a witness is a vital part of confrontation. However, cross-examination may be restricted based on concerns for harassment, prejudice, or marginal relevance. The balance between these competing interests hinges on whether the defendant was denied the opportunity to present information bearing on the issues in the case or on the credibility of a witness.” (citations omitted)), *vacated sub nom. State v. Riggs*, 942 P.2d 1159 (Ariz. 1997).

**Impeachment:** *State v. Jeffers*, 661 P.2d 1105, 1118 (Ariz. 1983) (“Evidence which tests, sustains, or impeaches the credibility or character of a witness is generally admissible.” (citation omitted)); *State v. Munguia*, 668 P.2d 912, 914 (Ariz. Ct. App. 1983) (“[A] party is not allowed to impeach a witness on collateral matters. The right to confront witnesses . . . does not, however, confer the right to impeach a witness as to specific events that are not relevant to the issues at trial.” (citations omitted)).

## ARKANSAS

**General Purpose:** *Farr v. Henson*, 84 S.W.3d 871, 876 (Ark. Ct. App. 2002) (“Cross-examination serves to sift, modify, or explain what has been said in order to develop facts in a view favorable to the cross-examiner. Its objects include weakening or disproving his adversary’s case, breaking down his testimony in chief, testing his veracity, accuracy, and honesty, and exhibiting the improbabilities of his testimony.” (citations omitted)).

**Scope of Cross:** *Klimas v. State*, 534 S.W.2d 202, 204-05 (Ark. 1976) (“An accused should be accorded a wide latitude in cross-examination to impeach the credibility of a witness against him. The latitude of this right of cross-examination is even broader and that of the court’s discretion to limit it is somewhat narrower than in other instances. This is particularly so when the witness is, or may be found to be, an accomplice.” (citations omitted)).

**Scope in Criminal Cases:** *James v. State*, 658 S.W.2d 382, 387 (Ark. 1983) (“Where an accused takes the stand in his own behalf he subjects himself to the same rules of cross-examination as any other witness.” (citation omitted)).

**Impeachment:** *Echols v. State*, 936 S.W.2d 509, 540 (Ark. 1996) (“A witness always puts his credibility at issue when he takes the stand.” (citation omitted)); *Hoback v. State*, 689 S.W.2d 569, 572 (Ark. 1985) (“The scope of cross-examination to impeach is not generally limited to matters brought out on direct examination. Cross-examination should be limited to material and relevant matters before the court.” (citations omitted)).

## CALIFORNIA

**General Purpose:** *Fost v. Super. Ct.*, 80 Cal. App. 4th 724, 733 (Ct. App. 2000) (stating that the two purposes of cross-examination are “to test the credibility, knowledge and recollection of the witness” and “to elicit additional evidence” (citations omitted)).

**Scope of Cross:** *Kovacs v. Sturgeon*, 274 Cal. App. 2d 478, 486 (Ct. App. 1969) (“[W]ide latitude is permitted on cross-examination to determine the facts and the truth of testimony given on direct examination.” (citations omitted)).

**Scope in Criminal Cases:** *People v. Zambrano*, 124 Cal. App. 4th 228, 240 (Ct. App. 2004) (“When a defendant voluntarily testifies, the prosecutor ‘may fully amplify his testimony by inquiring into the *facts and circumstances* surrounding his assertions, or by introducing evidence through cross-examination which explains or refutes his statements or the inferences which may necessarily be drawn from them.” (citation omitted)).

**Valuable Right:** *People v. Zammora*, 152 P.2d 180, 225-26 (Cal. Ct. App. 1944) (“[C]ross-examination has long been regarded as a powerful weapon for ascertaining the truth, and should be extended liberally. . . . To deny a fair latitude in cross-examination is to impair one of the essential safeguards to a fair trial.”).

**Impeachment:** *People v. Harrison*, 106 P.3d 895, 909 (Cal. 2005) (“In determining the credibility of a witness, the jury may consider, among other things, ‘[t]he extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies,’ ‘[t]he existence or nonexistence of a bias, interest, or other motive,’ and the witness’s ‘attitude toward the action in which he testifies or toward the giving of testimony.’” (citations omitted)); *Zambrano*, 124 Cal. App. 4th at 240 (“Unless precluded by statute, any *evidence* is admissible to attack the credibility of a witness if it will establish a *fact* that has a tendency in reason to disprove the truthfulness of the witness’s testimony. . . .” (citation omitted)).

#### COLORADO

**General Purpose:** *People v. Liggett*, 114 P.3d 85, 87 (Colo. Ct. App. 2005) (“Cross-examination is the principal means by which the believability of a witness and the truth of his or her testimony are tested, and it should be liberally extended to permit a thorough inquiry into the motives of the witnesses.” (citation omitted)), *cert. granted in part by* No. 05SC142, 2005 WL 1323283 (Colo. June 6, 2005).

**Scope of Cross:** *People v. Sallis*, 857 P.2d 572, 574 (Colo. Ct. App. 1993) (“[C]ross-examination should be limited to subject matter of the direct examination and matters affecting the credibility of the witness.” (citation omitted)). *But see* *Combined Commc’ns Corp. v. Pub. Serv. Co. of Colo.*, 865 P.2d 893, 899 (Colo. Ct. App. 1993) (“There is no right . . . to cross-examine on a collateral matter for impeachment or for any other purpose.” (citation omitted)).

**Scope in Criminal Cases:** *People v. Garcia*, 981 P.2d 214, 216 (Colo. Ct. App. 1998) (“When a criminal defendant testifies as a witness in his or her own behalf, he or she is subject to the general rules of examination applicable to other witnesses, including examination on matters that bear on credibility.” (citation omitted)).

**Valuable Right:** *Huggins v. Campbell*, 274 P.2d 324, 328 (Colo. 1954) (remarking that the “right of cross-examination unquestionably is a valuable right”).

**Impeachment:** *People v. Wilkinson*, 555 P.2d 1167, 1170 (Colo. Ct. App. 1976) (“Unless the relevancy of impeaching evidence is plain, it should not be admitted, and evidence tending to raise collateral questions and to divert the attention of the jury should be excluded.” (citations omitted)). *But see* *Lawrence v. Taylor*, 8 P.3d 607, 611 (Colo. Ct. App. 2000) (“The relevancy of impeaching evidence must be clear, must not raise collateral issues, and must be directed only at the witness’ credibility, and not at the witness’ moral character.” (citation omitted)).

#### CONNECTICUT

**General Purpose:** *State v. Christian*, 841 A.2d 1158, 1183 (Conn. 2004) (“[C]ross-examination is the principal means by which the credibility of witnesses and the truth of their testimony is tested.” (citations omitted)).

**Scope of Cross:** *State v. Palladino*, 796 A.2d 577, 582 (Conn. App. Ct. 2002) (“The ‘cross-examiner is not only permitted to delve into the witness’ story to test the witness’ perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness.” (citation omitted)); *see also* *State v. Crosby*, 654 A.2d 371, 377 (Conn. App. Ct. 1995) (“Cross-examination to elicit facts tending to show lack of veracity is a matter of right and may not be unduly restricted. That right is not absolute and is subject to reasonable limitation.” (citations omitted)).

**Scope in Criminal Cases:** *State v. Denson*, 789 A.2d 1075, 1085 (Conn. App. Ct. 2002) (“[A] defendant who elects to testify in his own behalf is subject to cross-examination and impeachment just as is any witness . . . .” (citations omitted in original)); *see also* *State v. Cassidy*, 672 A.2d 899, 908 (Conn. 1996) (“[W]hen the defendant elected to testify, he placed his credibility in issue, thereby subjecting himself to cross-examination under ‘the same rules and tests which could by law be applied to other witnesses.’” (citation omitted)).

**Valuable Right:** *Gordon v. Indusco Mgmt. Corp.*, 320 A.2d 811, 818 (Conn. 1973) (“The right of cross-examination is not a privilege but is an absolute right and if one is deprived of a complete cross-examination he has a right to have the direct testimony stricken.” (citation omitted)).

**Impeachment:** *State v. Abernathy*, 806 A.2d 1139, 1149 (Conn. App. Ct. 2002) (“The offering party must establish the relevancy of impeachment evidence by laying a proper foundation . . . which may be established in one of three ways: (1) by making an offer of proof; (2) the record independently may establish the relevance of the proffered evidence; or (3) stating a good faith belief that there is an adequate factual basis for [the] inquiry.” (citations omitted in original)); *see also* *State v. Webb*, 817 A.2d 122, 131 (Conn. App. Ct. 2003) (“The capacity of a witness to observe, recollect and narrate an occurrence is a proper subject of inquiry on cross-examination.” (citation omitted)).

#### DELAWARE

**General Purpose:** *Walker v. State*, 790 A.2d 1214, 1218-19 (Del. 2002) (“It is the essence of a fair trial that reasonable latitude be given the cross-examiner’ in putting the weight of the witnesses’ testimony and credibility to a test so that the jury can fairly appraise them.” (citation omitted)).

**Scope of Cross:** *Martin v. State*, 346 A.2d 158, 160 (Del. 1975) (“[T]here is a wide discretion given to counsel during cross-examination as he tests, among other things, the credibility of a witness as well as his ability to observe, remember and relate.”).

**Scope in Criminal Cases:** *MacDonald v. State*, 816 A.2d 750, 753 (Del. 2003) (“[W]here a defendant decides to ‘cast aside the cloak of immunity’ and ‘take the stand in his own behalf, he does so as any other witness, and within the limits of appropriate rules, he may be cross-examined as to the facts in issue.” (citation omitted)).

**Valuable Right:** *Jackson v. State*, 770 A.2d 506, 515 (Del. 2001) (“Effective cross-examination is essential to a defendant’s right to a fair trial.” (citations omitted)).

**Impeachment:** *Jackson*, 770 A.2d at 515 (“Under Delaware law, ‘the jury is the sole trier of fact, responsible for determining witness credibility and resolving conflicts in testimony.’ Jurors should have every opportunity to hear impeachment evidence that may undermine a witness’ credibility.” (citations omitted)). *But see* *Trump v. State*, 753 A.2d 963, 972 (Del. 2000) (“[W]hen evaluating the admissibility of evidence for impeachment, the trial judge should consider, among other things, the risk of ‘harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or marginally relevant.’” (citations omitted)).

#### FLORIDA

**General Purpose:** *Bordelon v. State*, 908 So. 2d 543, 546 (Fla. Dist. Ct. App. 2005) (“Cross-examination is the principal means by which the believability of a witness and

the truth of his testimony are tested.” (citation omitted)); *see also* *Steinhorst v. State*, 412 So. 2d 332, 337 (Fla. 1982) (“The proper purposes of cross-examination are: (1) to weaken, test, or demonstrate the impossibility of the testimony of the witness on direct examination and, (2) to impeach the credibility of the witness, which may involve, among other things, showing his possible interest in the outcome of the case.” (citations omitted)).

**Scope of Cross:** *Chandler v. State*, 702 So. 2d 186, 195 (Fla. 1997) (“All witnesses who testify during a trial place their credibility in issue. Regardless of subject matter of witness’ testimony, a party on cross-examination may inquire into matters that affect the truthfulness of the witness’ testimony.” (citation omitted)).

**Scope in Criminal Cases:** *Johnson v. State*, 380 So. 2d 1024, 1026 (Fla. 1979) (“A criminal defendant is privileged to testify in his own behalf or to refuse to testify. Once he becomes a witness, however, he may be examined the same as other witnesses on matters which illuminate the quality of his testimony.” (citation omitted)).

**Valuable Right:** *Mendez v. State*, 412 So. 2d 965, 966 (Fla. Dist. Ct. App. 1982) (“The right of full cross-examination is absolute, and the denial of that right may easily constitute reversible error.” (citation omitted)).

**Impeachment:** *Del Monte Banana Co. v. Chacon*, 466 So. 2d 1167, 1171 (Fla. Dist. Ct. App. 1985) (“[A] party is given wide latitude in attacking the credibility of the opposing party’s witnesses . . . .”); *see also* *Tacy v. Kellner*, 697 So. 2d 932, 933 (Fla. Dist. Ct. App. 1997) (“A witness’ credibility may always be impeached.” (citation omitted)); *Williams v. State*, 443 So. 2d 1053, 1054 (Fla. Dist. Ct. App. 1984) (“[A] wide range of cross-examination is permitted to impeach the credibility of a witness.” (citation omitted)). *But see* *Johnson v. State*, 178 So. 2d 724, 729 (Fla. Dist. Ct. App. 1965) (“Where it is sought to impeach a witness on the basis of testimony given on cross-examination, the testimony must, of course, be relevant and material, and the test of relevancy and materiality is whether the cross-examining party could have, for any purpose other than impeachment, introduced evidence on the subject in chief.” (citations omitted)).

#### GEORGIA

**General Purpose:** *Bowen v. State*, 556 S.E.2d 252, 253 (Ga. Ct. App. 2001) (“Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.” (citation omitted)).

**Scope of Cross:** *James v. State*, 580 S.E.2d 334, 335 (Ga. Ct. App. 2003) (“[I]t is better that cross-examination should be too free than too much restricted.” (citation omitted)).

**Scope in Criminal Cases:** *Sammons v. State*, 612 S.E.2d 785, 789 (Ga. 2005) (“A defendant who testifies is subject to cross-examination just as any other witness. Accordingly, a defendant may be impeached by proof of contradictory statements.” (citations omitted)); *see also* *Blevins v. State*, 606 S.E.2d 624, 629 (Ga. Ct. App. 2004) (“The State, like any other party, has the right to conduct a thorough and sifting cross-examination and to pursue the specifics of a topic [the defendant] introduced.” (citation omitted in original)).

**Valuable Right:** *Craft v. State*, 618 S.E.2d 104, 107 (Ga. Ct. App. 2005) (“The right of cross-examination is a substantial right, the preservation of which is essential to the proper administration of justice and extends to all matters within the knowledge of the witness, the disclosure of which is material to the controversy.” (citation omitted)).

**Impeachment:** *W. Marietta Hardware v. Chandler*, 489 S.E.2d 584, 587 (Ga. Ct. App. 1997) (“[A] party may show anything which in the slightest degree affects the credit of an opposing witness. A witness may be impeached on a collateral issue which is indirectly material to the issue in the case.” (citations omitted in original)); *see also* *Snelling v. State*, 450 S.E.2d 299, 301 (Ga. Ct. App. 1994) (“Wherever the purpose



is to impeach or discredit the witness, great latitude should be allowed by the court in cross examinations.” (citation omitted)).

#### HAWAII

**Scope of Cross:** *State v. Corella*, 900 P.2d 1322, 1327 (Haw. Ct. App. 1995) (“The scope of cross-examination is generally within the sound discretion of the trial court. . . . However, a witness may be cross-examined on matters bearing upon the witness’ credibility, biases, prejudices, or ulterior motives.” (citations omitted)).

**Scope in Criminal Cases:** *State v. McElroy*, 97 P.3d 1004, 1009 (Haw. 2004) (“[A]n accused may be cross-examined as to all matters which he himself has brought up on direct examination.” (citation omitted)); *see also* *State v. Culkin*, 35 P.3d 233, 247-48 (Haw. 2001) (“A defendant who elects to testify in his own defense is subject to cross-examination as to any matter pertinent to, or having a logical connection with the specific offense for which he is being tried.” (citation omitted)).

**Valuable Right:** *Kekua v. Kaiser Found. Hosp.*, 601 P.2d 364, 372 (Haw. 1979) (“The right to cross-examine a witness, although subject to waiver, is a fundamental right that is basic to our judicial system.” (citations omitted)).

**Impeachment:** *State v. Jones*, 617 P.2d 1214, 1219 (Haw. 1980) (“A witness may be cross-examined, and testimony elicited, upon matters bearing upon his credibility. But the testimonial evidence sought to be adduced must fairly bear upon his capacity for truth and veracity.”); *see also* *Asato v. Furtado*, 474 P.2d 288, 294 (Haw. 1970) (“In every instance where a witness is sought to be impeached, the only issue that arises is whether the witness is telling the truth. . . . Therefore, any evidence adduced on this issue, in order to be relevant at all, must go to the issue of truth and veracity.”).

#### IDAHO

**General Purpose:** *State v. Mundell*, 158 P.2d 818, 822 (Idaho 1945) (“The purpose of all cross-examination is to weaken or show the untruthfulness of the testimony of the party examined or the party’s bias or prejudice.” (citation omitted)).

**Scope of Cross:** *State v. Hairston*, 988 P.2d 1170, 1177 (Idaho 1999) (“Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness, but control of the scope of cross-examination is left to the discretion of the trial court.” (citations omitted)).

**Scope in Criminal Cases:** *State v. Fee*, 857 P.2d 649, 653 (Idaho Ct. App. 1993) (“[A] defendant who takes the stand to testify on his own behalf is subject to cross-examination, just as is any other witness, subject to certain constitutional protections and constraints.” (citations omitted)).

**Valuable Right:** *Clark v. Klein*, 45 P.3d 810, 816 (Idaho 2002) (“Although vested with broad discretion, a trial court cannot completely deny a party the right of cross-examination.” (citations omitted)).

#### ILLINOIS

**General Purpose:** *People v. Plummer*, 801 N.E.2d 1045, 1051 (Ill. App. Ct. 2003) (“[C]ross-examination may concern any matter that goes to explain, modify, discredit, or destroy the testimony of the witness.” (citation omitted)).

**Scope of Cross:** *People v. Salgado*, 818 N.E.2d 381, 386 (Ill. App. Ct. 2004) (“[T]he scope of cross-examination is liberally construed ‘to allow inquiry into whatever subject tends to explain, discredit, or destroy the witness’ direct testimony.” (quoting *People v. Terrell*, 708 N.E.2d 309, 325 (Ill. 1998))); *see also* *Chapman v. Hubbard Woods Motors, Inc.*, 812 N.E.2d 389, 395 (Ill. App. Ct. 2004) (“One of the purposes of cross-examination is to test the credibility of the witness. Subject to the court’s discretion in determining the relative value for such purpose, it is proper to allow inquiry into collateral matters revealing the past conduct of a witness which tends to impeach the witness’ credibility.” (citations omitted)).

**Scope in Criminal Cases:** *People v. Sutton*, 739 N.E.2d 543, 557 (Ill. App. Ct. 2000) (“A defendant who takes the stand on his own behalf offers himself as a witness, but also subjects himself to legitimate cross-examination.” (citation omitted)).

**Valuable Right:** *Kurrack v. Am. Dist. Tel. Co.*, 625 N.E.2d 675, 686 (Ill. App. Ct. 1993) (“[C]ross-examination is a matter of right and an important aspect of due process.” (citation omitted)).

**Impeachment:** *People v. Makiel*, 830 N.E.2d 731, 744 (Ill. App. Ct. 2005) (“[C]ross-examination for the purpose of impeaching credibility . . . may concern any matter that goes to explain, modify, discredit, or destroy the testimony of the witness.” (citations omitted)); *see also* *People v. Hayes*, 819 N.E.2d 341, 347 (Ill. App. Ct. 2004) (“[A] cross-examiner may impeach a witness if a proper foundation for the impeachment is laid; however, he may not impeach a witness on collateral matters.” (citation omitted)).

#### INDIANA

**General Purpose:** *Rapier v. State*, 435 N.E.2d 31, 33 (Ind. 1982) (“An integral part of this confrontation is the right to cross-examine the witness and test his recollection and his credibility before the trier of fact.”).

**Scope of Cross:** *Mitchell v. State*, 730 N.E.2d 197, 200 (Ind. Ct. App. 2000) (“A trial court also has broad discretion in determining the permissible scope of cross-examination to test the credibility of a witness.” (citation omitted)); *see, e.g.*, *Taylor v. State*, 358 N.E.2d 167, 169 (Ind. Ct. App. 1976) (holding that the defendant is “entitled to probe the credibility of a witness, and that in so doing he is not limited to facts testified to on direct examination” (citation omitted)); *see also* *Guise v. State*, 359 N.E.2d 269, 270 (Ind. Ct. App. 1977) (“[A] party has right to cross-examine an opposing party’s witness on matters which tend to impair the witness’ credibility or to show his or her interest, bias or motives.” (citation omitted)).

**Scope in Criminal Cases:** *Eldridge v. State*, 580 N.E.2d 726, 728 (Ind. Ct. App. 1991) (“When the defendant chooses to take the stand to testify, he is subject to cross-examination like any other witness.” (citations omitted)).

**Valuable Right:** *Lowry v. Lanning*, 712 N.E.2d 1000, 1001 (Ind. Ct. App. 1999) (“The right to cross-examine witnesses under oath is a fundamental right. This right ‘cannot, unless waived, be denied by any trier of fact, any court or administrative tribunal.’” (quoting *Armes v. Pierce Governor Co.*, 101 N.E.2d 199, 203-04 (Ind. Ct. App. 1951))).

**Impeachment:** *Sanders v. State*, 823 N.E.2d 313, 319 (Ind. Ct. App. 2005) (“The credibility of a witness may be attacked by showing a defect in the capacity of a witness to observe, remember or recount the incident about which she is testifying.” (citation omitted)). *But see* *Hightower v. State*, 735 N.E.2d 1209, 1215 (Ind. Ct. App. 2000) (“Extrinsic evidence may be used to impeach a witness only if the evidence is in a form that makes it otherwise admissible.” (citation omitted)).

#### IOWA

**General Purpose:** *State v. Shepard*, 73 N.W.2d 69, 74 (Iowa 1955) (“[T]he general purpose of cross-examination [is] to weaken the testimony of the witness or the case of the party by whom he is called.”).

**Scope of Cross:** *State v. Damme*, 522 N.W.2d 321, 324 (Iowa. Ct. App. 1994) (“A reasonable latitude must be accorded the person cross-examining but the scope of the subject of the inquiry rests generally in trial court’s discretion.” (citations omitted)).

**Scope in Criminal Cases:** *State v. Holmes*, 325 N.W.2d 114, 117 (Iowa 1982) (“When the defendant is the witness, the prosecutor is strictly confined to matters testified to in the examination in chief. This does not mean, however, that the ‘prosecutor can only parrot the questions propounded on direct.’” (quoting *State v. Jackson*, 259 N.W.2d 796, 800-01 (Iowa 1977))).

**Valuable Right:** *Wheatley v. Heideman*, 102 N.W.2d 343, 353 (Iowa 1960) (“[P]ertinent cross-examination is a valuable right essential to a fair trial and [is] to be jealously guarded.”).

**Impeachment:** *State v. Halstead*, 362 N.W.2d 504, 506 (Iowa 1985) (“[A] party is entitled to try to impeach a witness’ credibility as it is reflected in his ability to observe, remember, or recount.” (citation omitted)); *see also* *State v. Roth*, 403 N.W.2d 762, 767 (Iowa 1987) (“To be admissible, impeachment evidence must have been admissible for some proper purpose independent of the contradiction.” (citation omitted)).

#### KANSAS

**Scope of Cross:** *Lewis v. Montgomery Ward & Co.*, 62 P.2d 875, 875 (Kan. 1936) (“Although cross-examination should be confined to subjects testified to in direct examination, [the] court may, within its discretion, permit questioning of [a] witness, for [the] purpose of testing his sincerity and memory, as to matters wholly irrelevant and collateral to [the] issue.”).

**Scope in Criminal Cases:** *State v. Murdock*, 689 P.2d 814, 821 (Kan. 1984) (“When the defendant takes the stand in a criminal case, he or she is subject to detailed cross-examination.” (citation omitted)); *see also* *State v. Burnett*, 558 P.2d 1087, 1090 (Kan. 1976) (“[C]ross-examination of an accused in a criminal case is subject to same rules which apply to any other witness.” (citation omitted)).

**Impeachment:** *State v. Barnes*, 190 P.2d 193, 195 (Kan. 1948) (“To impeach a witness means to call into question the veracity of the witness by means of evidence offered for that purpose, or by showing that the witness is unworthy of belief. Extrinsic evidence is required for impeachment. . . .”); *see also* *Sanders v. Sitton*, 292 P.2d 1099, 1102 (Kan. 1956) (“[W]hen a party is a witness in his own behalf, and where the issues of fact must largely turn on credence which the triers of fact will give to his testimony, the fullest inquiry should be permitted on cross-examination to discover not only the accuracy of his understanding but his memory and credibility as well.”).

#### KENTUCKY

**General Purpose:** *Louisville & Nashville R.R. Co. v. Gregory*, 144 S.W.2d 519, 521 (Ky. Ct. App. 1940) (“The purpose of cross-examination is by no means limited to bringing out a falsehood, although it is the most efficient means devised by the law for the discovery of truth, but it is to test the accuracy of the knowledge of the witness, his source of information, his motives, interest and memory.”).

**Scope of Cross:** *Commonwealth v. Maddox*, 955 S.W.2d 718, 721 (Ky. 1997) (“[W]hen the cross-examination is of one other than the defendant, one who is not accused of having committed a crime and whose liberty is not at stake, greater latitude is generally allowed. . . . Nevertheless, a connection must be established between a cross-examination proposed to be undertaken and the facts in evidence.” (citations omitted)).

**Scope in Criminal Cases:** *Hayton v. Commonwealth*, 332 S.W.2d 537, 538 (Ky. 1960) (“When a defendant in a criminal prosecution takes the stand as a witness in his own behalf, he may be cross-examined as fully and freely as any other witness.” (citations omitted)).

**Valuable Right:** *Rolli v. Commonwealth*, 678 S.W.2d 800, 802 (Ky. Ct. App. 1984) (“[T]he right to cross-examine a witness to impeach his credibility or show motive or prejudice is fundamental to a fair trial.” (citation omitted)).

**Impeachment:** *Commonwealth v. Barroso*, 122 S.W.3d 554, 562 (Ky. 2003) (“The capacity of a witness to observe, recollect and narrate an occurrence is a proper subject of inquiry on cross-examination. If as a result of a mental condition such capacity has been substantially diminished, evidence of that condition before, at and after the occurrence and at the time of trial is ordinarily admissible for use by the trier in passing on the credibility of the witness.” (citation omitted)).

## LOUISIANA

**General Purpose:** *State v. Rochon*, 733 So. 2d 624, 632-33 (La. Ct. App. 1999) (“The three main functions of cross-examination are: (1) to shed light on the credibility of the direct testimony; (2) to bring out additional facts related to those elicited on direct; and (3) to bring out additional facts which tend to elucidate any issue in the case.” (citation omitted)).

**Scope of Cross:** *State v. Nguyen*, 888 So. 2d 900, 911 (La. Ct. App. 2004) (“The cross-examiner is not only permitted to delve into the witness’s story to test his perceptions and memory, but has traditionally been allowed to impeach the witness.” (citations omitted)); *see also* *State v. Zeringue*, 862 So. 2d 186, 195 (La. Ct. App. 2003) (“As a general rule, a party may attack the credibility of a witness by examining him or her concerning any matter having a reasonable tendency to disprove the truthfulness of his or her testimony.” (citation omitted)).

**Scope in Criminal Cases:** *Rochon*, 733 So. 2d at 633 (“When a defendant takes the stand in his own behalf, he waives his protection against self-incrimination and is subject to cross-examination just as any other witness.” (citation omitted)).

**Valuable Right:** *State v. Armstrong*, 683 So. 2d 1261, 1269 (La. Ct. App. 1996) (“Although the constitutional right to cross-examination lies with defendants, the jurisprudence holds the state also ‘has undoubted right to cross-examine defense witnesses.’” (quoting *State v. St. Amand*, 274 So. 2d 179, 192 (La. 1973))). *But see* *Harry Bourg Corp. v. Punch*, 625 So. 2d 735, 737 (La. Ct. App. 1993) (“An adverse party should not be denied the opportunity to cross-examine the witness unless counsel waives his right or loses this right because of abusive or improper questioning.” (citation omitted)).

**Impeachment:** *State v. Galliano*, 696 So. 2d 1043, 1050 (La. Ct. App. 1997) (“[D]efects of capacity, sensory or mental, which lessen the ability to perceive the facts which the witness purports to have observed, are provable to attack the credibility of the witness, either upon cross-examination or by producing other witnesses to prove the fact.” (citations omitted)); *see also* *Cain v. Cain*, 903 So. 2d 590, 597 (La. Ct. App. 2005) (“Evidence that is otherwise irrelevant may be admissible to impeach a witness.” (citation omitted)).

## MAINE

**Scope in Criminal Cases:** *State v. Taylor*, 163 A. 777, 778 (Me. 1933) (“When the accused volunteers to testify in his own behalf at all, upon the issue whether the alleged crime has been committed or not, he volunteers to testify in full.”).

## MARYLAND

**General Purpose, Valuable Right:** *Waldron v. State*, 491 A.2d 595, 599 (Md. Ct. Spec. App. 1985) (“Cross-examination is the vehicle by which the right of confrontation is given substance. Thus, it is a matter of right, not a privilege. . . . As such, cross-examination may be directed at generally attacking credibility of witnesses or examining the presence or absence of bias or motivation for testifying.” (citations omitted)).

**Scope of Cross:** *Jackson v. State*, 752 A.2d 1227, 1234-35 (Md. Ct. Spec. App. 2000) (“Maryland follows the prevailing American practice of generally limiting cross-examination to the subject matter of the direct examination and matters affecting the credibility of the witness. Under this rule, counsel always may cross-examine an opponent’s witness in order to impeach the witness, but is entitled to ask substantive questions on cross only in the course of further inquiry into the points brought up on that witness’ direct examination.” (citation omitted)).

**Scope in Criminal Cases:** *Davis v. State*, 205 A.2d 254, 259 (Md. 1964) (“A defendant in a criminal case who voluntarily takes the witness stand in his own behalf thereby subjects himself to the same rules of cross-examination that govern other witnesses. He may properly be cross-examined as to his prior criminal record.” (citations omitted)).

**Impeachment:** *Mutyambizi v. State*, 363 A.2d 511, 516 (Md. Ct. Spec. App. 1976) (“[C]ross-examination to impeach, diminish, or impair credit of [a] witness is not confined to matters brought out on direct examination; it may include collateral matters not embraced in the direct examination to test credibility and veracity, it being proper to allow any question which reasonably tends to explain, contradict, or discredit any testimony given by the witness in chief or which tends to test his accuracy, memory, veracity, character, or credibility.” (citations omitted)).

MASSACHUSETTS

**General Purpose, Valuable Right:** *Commonwealth v. Gagnon*, 557 N.E.2d 728, 733 (Mass. 1990) (“Parties to litigation are entitled as a matter of right to the reasonable cross-examination of witnesses against them for the purpose of attempting to impeach or discredit their testimony.” (quoting *Commonwealth v. Underwood*, 265 N.E.2d 577, 582 (Mass. 1970))).

**Scope of Cross:** *Commonwealth v. Lloyd*, 702 N.E.2d 395, 397 (Mass. App. Ct. 1998) (“The scope of cross-examination, including to what extent the accuracy, veracity, and credibility of a witness may be tested, rests largely in the sound discretion of the judge, not subject to revision unless prejudice is shown.” (quoting *Commonwealth v. Williams*, 517 N.E.2d 176, 181 (Mass. 1987))).

**Scope in Criminal Cases:** *Commonwealth v. Sleeper*, 760 N.E.2d 693, 703 (Mass. 2002) (“When a defendant testifies he subjects himself to cross-examination, and the scope of that examination lies within the sound discretion of the trial judge.” (citation omitted)).

**Impeachment:** *Commonwealth v. Daley*, 789 N.E.2d 1070, 1076 (Mass. 2003) (“In addition to impeachment by evidence of an untruthful character, a witness may also be impeached by evidence challenging his testimonial faculties (e.g., the ability to perceive the events or remember them accurately), and by evidence of a motive to prevaricate, even though such evidence reveals an otherwise inadmissible fact, such as the witness’s criminal activity.” (citations omitted)).

MICHIGAN

**General Purpose:** *Schwartz v. Triff*, 139 N.W.2d 907, 909 (Mich. Ct. App. 1966) (“[T]he party having the right to cross-examine has a right to draw out from the witness and lay before the jury anything tending or which may tend to contradict, weaken, modify, or explain the testimony of the witness on direct examination or which tends or may tend to elucidate the testimony or affect the credibility of the witness.” (quoting *Malicke v. Milan*, 30 N.W.2d 440, 442 (Mich. 1948))).

**Scope of Cross:** *People v. Reid*, 592 N.W.2d 767, 777 (Mich. Ct. App. 1999) (“[A] witness is subject to cross-examination concerning any issue in a case, including credibility.” (citation omitted)).

**Scope in Criminal Cases:** *People v. Lloyd*, 147 N.W.2d 740, 743 (Mich. Ct. App. 1967) (“The defendant voluntarily took the witness stand on his own behalf and it is well settled that once a defendant takes the stand he then becomes subject to cross-examination as any other witness.” (citations omitted)); *see also* *People v. Williams*, 182 N.W.2d 347, 352 (Mich. Ct. App. 1970) (“[O]n cross-examination of a defendant is [sic] a criminal case, he may be questioned concerning (1) any statement that, during his direct examination, he claims he made, and (2) any statement any other witness, during the people’s case in chief, claims he made.”).

**Valuable Right:** *People v. Baker*, 288 N.W.2d 430, 432 (Mich. Ct. App. 1979) (“The rights of confrontation in cross-examination are fundamental requirements of a fair trial.” (citations omitted)).

**Impeachment:** *People v. Shugar*, 185 N.W.2d 178, 180 (Mich. Ct. App. 1970) (“The scope of the cross-examination when an attempt is made to impeach a witness is within

the sound discretion of the trial court.”); *see also* *Hall v. Iosco County Bd. of Road Comm’rs*, 140 N.W.2d 761, 763 (Mich. Ct. App. 1966) (“A witness may not be impeached on a collateral issue. Whether a matter is collateral or not depends upon whether direct evidence to establish it could be introduced.” (citations omitted)).

#### MINNESOTA

**Scope of Cross:** *State v. Thornton*, 219 N.W. 176, 179 (Minn. 1928) (“Where the defendant takes the stand as a witness in his own behalf, he thereby waives his privilege, and the cross-examination is not limited to matters brought out on the direct examination, but may be extended to any matters pertinent to the issue.” (citation omitted)).

**Valuable Right:** *Hunt v. Regents of Univ. of Minn.*, 446 N.W.2d 400, 408 (Minn. Ct. App. 1989) (“Cross-examination of an adverse witness is an inviolate right. It is basic to our judicial system and is an essential element of a fair trial.” (citations omitted)), *rev’d on other grounds*, 460 N.W.2d 28 (Minn. 1990).

**Impeachment:** *Greene v. Mathiowetz*, 3 N.W.2d 97, 98 (Minn. 1942) (“As to matters collateral to the main issue, for the purpose of testing his credibility, [a witness] cannot be interrogated merely for the purpose of contradicting him . . . since, if it were not enforced, the issues in many cases might be multiplied indefinitely so that the jury would be likely to lose sight of the real controversy.” (citation omitted)); *see also* *State v. King*, 92 N.W. 965, 965 (Minn. 1903) (“The extent to which the cross-examination of a witness may go for the purpose of testing his credibility, or showing his bias, prejudice, or hostility, rests in the sound discretion of the trial court.”).

#### MISSISSIPPI

**Scope of Cross:** *Hawkins v. State*, 80 So. 2d 1, 11 (Miss. 1955) (“A defendant who takes the witness stand in his own behalf waives his constitutional privilege of silence, and the prosecution has the right to cross-examine him upon his evidence in chief as to the circumstances connected with the crime with the same latitude as would be exercised in the case of an ordinary witness.”).

**Scope in Criminal Cases:** *Boyce v. State*, 97 So. 2d 222, 226 (Miss. 1957) (“[C]onsiderable latitude should be allowed in the cross-examination of the accused . . .”). *But see* *Hosford v. State*, 525 So. 2d 789, 791 (Miss. 1988) (“[T]he State [i]s obligated to present all relevant evidence bearing upon [defendant’s] guilt as part of its case in chief, not initially through cross-examination of the defendant and his witnesses, and then offering evidence of such conduct in rebuttal.”).

**Valuable Right:** *Murphy v. State*, 453 So. 2d 1290, 1292 (Miss. 1984) (“The right to confront and cross-examine the witnesses for the state is fundamental and cannot be substantially restricted. However, the accused can decline to cross-examine the witness and no abridgement of his rights takes place.” (citations omitted)).

**Impeachment:** *Feazell v. State*, 750 So. 2d 1286, 1290 (Miss. Ct. App. 2000) (“The credibility of witnesses may be attacked by cross-examination and by opinion and reputation evidence, but not by an attempt to prove with extrinsic evidence that an answer given by the witness to an extraneous matter was incorrect.” (citation omitted)). *But see* *Bush v. State*, 895 So. 2d 836, 848 (Miss. 2005) (“[I]mpeachment evidence is admissible only for the purpose of impeaching credibility and may not be used for the purpose of establishing its truth.” (citation omitted)).

#### MISSOURI

**General Purpose:** *State v. DeClue*, 128 S.W.3d 864, 872 (Mo. Ct. App. 2004) (“Cross-examination is used to test the accuracy, veracity, and credibility of a witness, and therefore, cross-examination is not necessarily limited to those issues that tend to prove the issues at trial.” (citing *State v. Gardner*, 8 S.W.3d 66, 72 (Mo. 1999))).

**Scope of Cross:** *Long v. St. John’s Reg’l Health Ctr., Inc.*, 98 S.W.3d 601, 606 (Mo. Ct. App. 2003) (“As a general rule, a witness may be asked any questions on cross-

examination that tend to test accuracy, veracity, or credibility, or shake the witness' credit by injuring his or her character." (citing *Reno v. Wakeman*, 869 S.W.2d 219, 223 (Mo. Ct. App. 1993))). *But see* *State v. Franklin*, 16 S.W.3d 692 (Mo. Ct. App. 2000) ("Scope of cross-examination and determinations regarding witness credibility are matters largely within the discretion of the trial court." (citing *State v. Taylor*, 944 S.W.2d 925, 935 (Mo. 1997))).

**Scope in Criminal Cases:** *State v. Chaney*, 967 S.W.2d 47, 56 (Mo. 1998) ("When a defendant testifies in his own behalf, he may be cross-examined, contradicted or impeached the same as any other witness." (citing *State v. Davison*, 457 S.W.2d 674, 676 (Mo. 1970))).

**Valuable Right:** *State v. Jaynes*, 949 S.W.2d 633, 635 (Mo. Ct. App. 1997) ("The right to cross-examination is essential and indispensable." (citing *State v. Kirkland*, 471 S.W.2d 191, 193 (Mo. 1971))).

**Impeachment:** *State v. Russell*, 602 S.W.2d 465, 466 (Mo. Ct. App. 1980) ("[A]ny evidence which tends to elucidate the credibility of a witness, including the circumstances surrounding the event about which he is testifying, is admissible for impeachment purposes." (citations omitted)); *see also* *Kuehne v. State*, 107 S.W.3d 285, 294 (Mo. Ct. App. 2003) ("[E]vidence that is otherwise inadmissible may be admissible to impeach a witness's testimony."); *State v. Simmons*, 559 S.W.2d 557, (Mo. Ct. App. 1977) ("A party [may] impeach the testimony of an opponent's witness, provided such impeachment does not concern immaterial or collateral matters." (citations omitted)). *But see* *Collins v. Hertenstein*, 90 S.W.3d 87, 102 (Mo. Ct. App. 2002) ("Immaterial and incompetent evidence may not be got before the jury under the guise that it impeaches or discredits the witness." (quoting *Hungate v. Hudson*, 185 S.W.2d 646, 649 (Mo. 1945))).

#### MONTANA

**Scope in Criminal Cases:** *State v. Coloff*, 231 P.2d 343, 345 (Mont. 1951) ("A defendant in a criminal case, if he is sworn and testifies, is subject to same rules of cross-examination and impeachment as any other witness." (citing *State v. Schnepel*, 59 P. 927, 928 (Mont. 1900))).

**Valuable Right:** *State v. McKnight*, 281 P.2d 816, 822 (Mont. 1955) ("The right of cross-examination . . . is a valuable and substantial right, and the courts should incline to extend, rather than to restrict it." (quoting *State v. Ritz*, 211 P. 298, 300 (Mont. 1922))), *overruled in part by* *State v. Wirtanen*, 406 P.2d 376 (Mont. 1965).

**Impeachment:** *State v. Deeds*, 243 P.2d 314, 316 (Mont. 1952) ("A witness may not be impeached by contradicting him on collateral matters." (quoting *State v. Collett*, 167 P.2d 584, 586 (Mont. 1946))); *see also* *Green v. Hagele*, 595 P.2d 1159, 1161 (Mont. 1979) ("Inquiry on cross-examination should be allowed as wide a range as may be reasonably necessary to test the skill and reliability of the witness."); *State Highway Comm'n v. Bennett*, 513 P.2d 5, 8 (Mont. 1973) (noting that a witness may be cross-examined "to bring out facts illustrative of his motives, bias and interest of the witness or as a reflection upon his capacity and memory" (citations omitted)).

#### NEBRASKA

**General Purpose:** *State v. Lewis*, 488 N.W.2d 518, 526 (Neb. 1992) ("Cross-examination is proper as to anything tending to affect the accuracy, veracity, or credibility of the witness." (quoting *State v. Thaden*, 316 N.W.2d 317, 321 (Neb. 1982))).

**Scope of Cross:** *State v. McLemore*, 623 N.W.2d 315, 329 (Neb. 2001) ("[C]ourts limit cross-examination of witnesses to the subject matter of the direct examination and matters affecting the credibility of the witness." (citation omitted)). *But see* *Lewis*, 488 N.W.2d at 526.

**Scope in Criminal Cases:** *State v. Ballard*, 467 N.W.2d 662, 664 (Neb. 1991) (“When a defendant in a criminal case testifies in his own behalf, he is subject to the same rules of cross-examination as any other witness and may be required to testify on his cross-examination as to any matter brought out or suggested by him on his direct examination.” (citing *State v. Pitts*, 322 N.W.2d 443, 444 (Neb. 1982))).

**Valuable Right:** *State v. Johnson*, 609 N.W.2d 48, 56 (Neb. Ct. App. 2000) (“The right of a defendant to engage in a searching and wide-ranging cross-examination is an essential requirement for a fair trial.” (quoting *State v. Thaden*, 316 N.W.2d 317, 321 (Neb. 1982))).

**Impeachment:** *Sleezer v. Lang*, 102 N.W.2d 435, 446 (Neb. 1960) (“Impeaching evidence is that which is directed to the question of the credibility of the witness.” (quoting *Drews v. State*, 56 N.W.2d 113, 114 (Neb. 1952))); *see also Lewis*, 488 N.W.2d at 526 (“When the object of the cross-examination is to collaterally ascertain the accuracy or credibility of the witness, some latitude should be permitted, and the scope of such latitude is ordinarily subject to the discretion of the trial judge . . . .” (citing *Ballard*, 467 N.W.2d at 664)).

#### NEVADA

**Scope of Cross:** *Bushnell v. State*, 599 P.2d 1038, 1039 (Nev. 1979) (“[T]he permissible extent of cross-examination is largely within the sound discretion of the trial court.”).

**Scope in Criminal Cases:** *Bushnell*, 599 P.2d at 1039-40 (noting that the scope of cross-examination is within discretion of trial court, with the broadest discretion allowed for attacks on general credibility and more narrow discretion where bias is the basis for the cross-examination).

**Valuable Right:** *Summitt v. State*, 697 P.2d 1374, 1376 (Nev. 1985) (Although “[a] defendant’s rights to present witnesses in his own behalf, to confront and to cross-examine the witnesses against him are fundamental rights, secured by the Sixth Amendment, and applicable to the states through the Fourteenth Amendment[,] . . . the right to confront and cross-examine witnesses may, in appropriate cases, bow to ‘accommodate other legitimate interests in the criminal trial process.’” (quoting *Chambers v. Miss.*, 410 U.S. 284, 295 (1973))).

**Impeachment:** *Collman v. State*, 7 P.3d 426, 440 (Nev. 2000) (“One may be impeached with respect to such matters as perception, memory, communication, sincerity, or bias.” (citation omitted)); *see also Lobato v. State*, 96 P.3d 765, 770 (Nev. 2004) (“There are nine basic modes of impeachment. The first four involve attacks upon the competence of a witness to testify, *i.e.*, attacks based upon defects of perception, memory, communication and ability to understand the oath to testify truthfully. The second four modes of impeachment involve the use of evidence of prior convictions, prior inconsistent statements, specific incidents of conduct and ulterior motives for testifying. The ninth mode of impeachment . . . permits attack upon a witness’s reputation for truthfulness and necessarily involves the use of extrinsic evidence.” (citation omitted)).

#### NEW HAMPSHIRE

**Scope of Cross, Impeachment:** *State v. Brooks*, 495 A.2d 1258, 1262 (N.H. 1985) (“[The state] allow[s] inquiry into collateral issues by cross-examination for impeachment purposes; however, the cross-examiner must take the answer and may not call other witnesses to rebut it.” (citation omitted)).

**Scope in Criminal Cases:** *State v. Grierson*, 69 A.2d 851, 853-54 (N.H. 1949) (noting that when a criminal defendant voluntarily testifies, he subjects himself to the general cross-examination rules and accordingly can be examined “regarding any relevant matter . . . [tending] ‘to discredit him as a witness’” (citation omitted)).



**Valuable Right:** *Kennedy v. Ricker*, 409 A.2d 778, 781 (N.H. 1979) (“[C]ross-examination of a witness is a matter of right.” (citing *Alford v. United States*, 282 U.S. 687, 691 (1931))).

NEW JERSEY

**General Purpose:** *State v. Castagna*, 870 A.2d 653, 672 (N.J. Super. Ct. App. Div. 2005) (“[C]ross-examination is often used to probe a witness’s testimony in order to: (1) identify inconsistencies; (2) bring to the jury’s attention any plausible grounds for bias in favor of the witness’s proponent or against the cross-examiner’s client; and (3) develop and exploit, within the framework of the lawyer’s ethical obligations, any other avenue that undermines the witness’s credibility.”).

**Scope of Cross:** *State v. Gaikwad*, 793 A.2d 39, 53 (N.J. Super. Ct. App. Div. 2002) (“While . . . “a paramount purpose of cross-examination is the impeachment of the credibility of the witness, a cross-examiner does not have a license to roam at will under the guise of impeaching credibility.” (citations omitted)). *But see* *State v. Wormley*, 701 A.2d 944, 950 (N.J. Super. Ct. App. Div. 1997) (noting that the cross-examiner is not only permitted to inquire into the witness’s story to test his perception and memory, but he is also allowed to discredit the witness, even if the witness’s story is more reliable than the client’s).

**Scope in Criminal Cases:** *State v. Bonet*, 333 A.2d 267, 269 (N.J. Super. App. Div. 1975) (“[T]he scope of cross-examination of a defendant who testifies on his own behalf is not limited solely to matters brought out on his direct examination but may, in the trial court’s discretion, cover other relevant matters.” (citations omitted)).

**Valuable Right:** *State v. Williams*, 571 A.2d 1358, 1366 (N.J. Super. Ct. App. Div. 1990) (“The right to confront and cross-examine adverse witnesses is a fundamental aspect of a fair trial.” (citing *Pointer v. Texas*, 380 U.S. 400, 403 (1965))).

**Impeachment:** *State v. O’Brien*, 873 A.2d 554, 566 (N.J. Super. Ct. App. Div. 2004) (“[A]ny fact which bears against the credibility of a witness is relevant to the issue being tried, and the party against whom the witness is called has a right to have that fact presented to the jury to aid them in determining credibility.” (quoting *State v. Pontery*, 117 A.2d 473, 480 (1955))), *aff’d in part, rev’d in part*, 873 A.2d 1268 (N.J. 2004).

NEW MEXICO

**Scope of Cross:** *State v. Curtis*, 529 P.2d 1249, 1250 (N.M. Ct. App. 1974) (“While the extent to which cross-examination may be allowed is largely within the discretion of the trial court, the right to cross-examine cannot be so restricted as to wholly deprive a party of the opportunity to test the credibility of a witness.” (citing *State v. Martin*, 209 P.2d 525 (1949); *State v. Talamante*, 165 P.2d 812 (1946))); *see also* *State v. Wilcoxson*, 188 P.2d 611, 613 (N.M. 1948) (“[T]he cross examination of a witness should be limited to those facts and circumstances connected with the matters inquired of in the direct examination, *except as to those tending to discredit or impeach the witness, or to show his bias or prejudice, or the like.*” (quoting *Krametbauer v. McDonald*, 104 P.2d 900, 904 (N.M. 1940))).

**Scope in Criminal Cases:** *State v. Wildgrube*, 75 P.3d 862, 872-73 (N.M. Ct. App. 2003) (“If [the defendant in a criminal case] takes the stand and testifies in his own defense, his credibility may be impeached and his testimony assailed like that of any other witness . . . [H]e has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts.” (quoting *Brown v. United States*, 356 U.S. 148, 154-55 (1958))).

**Student Materials Editor Valuable Right:** *Empire W. Cos., Inc. v. Albuquerque Testing Labs., Inc.*, 800 P.2d 725, 728 (N.M. 1990) (“The right to cross-examine is valuable and may not be restricted so as to deprive a party of the right to test the credibility of a witness or to preclude elucidation of the testimony.” (citations omitted)).

**Impeachment:** *Mac Tyres, Inc. v. Vigil*, 589 P.2d 1037, 1039 (N.M. 1979) (“The right to impeach a witness is basic to a fair trial.”). *But see Kiker v. Bank Sav. Life Ins. Co.*, 23 P.2d 366, 369 (N.M. 1933) (“[I]mpeachment is not proper on immaterial matters.” (citing *State v. Kile*, 218 P. 347, 352 (N.M. 1923))).

NEW YORK

**General Purpose:** *People v. Terry*, 618 N.Y.S.2d 712, 714 (N.Y. App. Div. 1994) (“One of the purposes of cross-examination is to bring out inconsistencies among various witnesses to the same event, thereby demonstrating a lack of credibility.”).

**Scope of Cross:** *People v. Rhodes*, 782 N.Y.S.2d 788, 789 (N.Y. App. Div. 2004) (“The scope of cross-examination of a witness concerning collateral matters designed to attack credibility rests largely within the discretion of the trial court.” (citations omitted)); *see also People v. Stroman*, 730 N.Y.S.2d 612, 616 (N.Y. App. Div. 2001) (“[I]t is within the court’s discretion to limit questioning ‘not relevant to the issues, but bearing on the credibility of a witness.’” (quoting *People v. Duffy*, 326 N.E.2d 804, 807 (N.Y. 1975))).

**Scope in Criminal Cases:** *People v. Overlee*, 666 N.Y.S.2d 572, 575 (N.Y. App. Div. 1997) (“Once a defendant testifies and places his credibility in issue, a prosecutor need not tread lightly in cross-examining him or arguing his case to the jury. The prosecutor must not, of course, stray from the record evidence or relevant issues.” (citation omitted)).

**Valuable Right:** *Murov v. Celentano*, 776 N.Y.S.2d 430, 432 (N.Y. App. Term 2003) (“[C]ross-examination of adverse witnesses is a matter of right in any trial of a disputed issue of fact, . . .” (citation omitted)).

**Impeachment:** *People v. Walker*, 498 N.Y.S.2d 521, 525 (N.Y. App. Div. 1986) (“A party has the right to impeach or discredit the testimony of an opponent, and such evidence is always competent.” (citations omitted)); *see, e.g., People v. Carrier*, 706 N.Y.S.2d 276, 278 (N.Y. App. Div. 2000) (“A defect that substantially affects the witness’s testimonial capacity may be shown by cross-examination or extrinsic evidence to affect the credibility of the witness.” (citations omitted)).

NORTH CAROLINA

**General Purpose:** *State v. Sanchez*, 621 S.E.2d 630, 632 (N.C. Ct. App. 2005) (“Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.” (citing *Davis v. State*, 415 U.S. 308, 316 (1974))).

**Scope of Cross:** *State v. Lee*, 439 S.E.2d 547, 560 (N.C. 1994) (“Cross-examination of a witness as to any matter relevant to any issue, including credibility, is proper.” (citations omitted)); *see also State v. Scott*, 471 S.E.2d 605, 620 (N.C. 1996) (“Cross-examination may ordinarily be made to serve three purposes: (1) to elicit further details of the story related on direct, in the hope of presenting a complete picture less unfavorable to the cross-examiner’s case; (2) to bring out new and different facts relevant to the whole case; and (3) to impeach the witness, or cast doubt upon her credibility.” (citation omitted)).

**Scope in Criminal Cases:** *State v. Boekenoogen*, 554 S.E.2d 848, 851 (N.C. Ct. App. 2001) (“[W]hen a criminal defendant takes the stand to testify on his own behalf, he is subject to cross-examination to the same extent as any other witness.” (citing *State v. Faison*, 411 S.E.2d 143, 151 (N.C. 1991))); *see also State v. Rush*, 456 S.E.2d 819, 826 (N.C. 1995) (“Counsel is given wide latitude and has the right and duty to cross-examine vigorously a defendant who takes the stand in his own defense.”).

**Valuable Right:** *Jones (Griffin) v. Rochelle*, 479 S.E.2d 231, 233 (N.C. Ct. App. 1997) (“A party has the right to an opportunity to fairly and fully cross-examine a witness who has testified for the adverse party. This right, with respect to the *subject of his examination-in-chief*, is absolute and not merely a privilege.” (quoting *Citizens Bank & Trust Co. v. Reid Motor Co.*, 5 S.E.2d 318, 320 (N.C. 1939))).

**Impeachment:** *London v. Turnmire*, 328 S.E.2d 847, 848 (N.C. Ct. App. 1985) (“[C]redibility may be attacked on cross-examination by showing *inter alia* prior bad acts, a bad moral character, a mental or physical condition affecting her memory, perception or veracity, or by evidence that the witness has made other statements inconsistent with her testimony at trial.” (citation omitted)); *see also* *State v. Alston*, 195 S.E.2d 314, 315 (N.C. Ct. App. 1973) (“Much latitude is allowed in showing the bias, hostility or other interest of a witness with respect to the case or other facts tending to prove that the testimony of the witness is unworthy of credit.” (citing *State v. Roberson*, 3 S.E.2d 277, 279 (N.C. 1939))); *State v. Parker*, 262 S.E.2d 686, 688 (N.C. Ct. App. 1980) (“[A] witness may be impeached by questions as to his mental state.” (citations omitted)).

#### NORTH DAKOTA

**Scope of Cross:** *Langness v. Fencil Urethane Sys., Inc.*, 667 N.W.2d 596, 609 (N.D. 2003) (“The scope of cross-examination for impeachment purposes is within the trial court’s discretion.” (citation omitted)); *see also* *State v. Apley*, 141 N.W. 740, 744 (N.D. 1913) (holding that it is proper to ask a witness questions the answers to which tend to discredit, disgrace, or incriminate him, where the purpose for cross-examination is to impeach the witness’s credibility).

**Scope in Criminal Cases:** *State v. Manning*, 134 N.W.2d 91, 100 (N.D. 1965) (“A defendant in a criminal case who voluntarily takes the stand is subject to the same rules of cross-examination as any other witness. He is required to answer any relevant and proper question on cross-examination, the answer to which will tend to convict him of the crime for which he is being tried, even though such answer may also incriminate him of a collateral crime.” (citations omitted)).

**Valuable Right:** *State v. Hilling*, 219 N.W.2d 164, 171 (N.D. 1974) (“The right [of cross-examination] is absolute and the denial of the right as to material evidence is prejudicial error requiring a new trial.” (citing *Knoepfle v. Suko*, 108 N.W.2d 456, 463 (N.D. 1961))).

**Impeachment:** *State v. Hanson*, 73 N.W.2d 135, 138 (N.D. 1955) (“Evidence impeaches a witness when it assails his general credibility or otherwise weakens the force of his testimony and detracts from the weight to be given it.”); *see also* *State v. Klein*, 593 N.W.2d 325, 328 (N.D. 1999) (“Any party may attack the credibility of a witness by impeachment.” (citations omitted)); *State v. Dinger*, 260 N.W. 251, 251 (N.D. 1935) (“A witness may be interrogated on cross-examination for the purpose of testing the accuracy of his recollection.”).

#### OHIO

**General Purpose:** *Baird v. Cincinnati Transit Co.*, 168 N.E.2d 413, 417 (Ohio Ct. App. 1959) (“[T]he primary purpose of cross-examination is to test the accuracy, truthfulness, soundness, and thereby the credibility, of testimony given by a witness on direct examination.” (citation omitted)).

**Scope of Cross:** *State v. Debo*, 222 N.E.2d 656, 659 (Ohio. Ct. App. 1966) (“[M]ore latitude is usually given on cross-examination than on direct.”); *see also* *Fawick Airflex Co. v. United Elec., Radio & Mach. Workers of Am., Local 735, C.I.O.*, 92 N.E.2d 436, 445 (Ohio. Ct. App. 1950) (“Cross-examination is permitted first to test the accuracy of a witness’s testimony given in chief and second to test his credibility.”).

**Scope in Criminal Cases:** *State v. Roten*, 776 N.E.2d 551, 553 (Ohio. Ct. App. 2002) (“A criminal defendant who voluntarily takes the stand in his own defense voluntarily subjects himself to proper cross-examination.” (citing *State v. Jacocks*, 582 N.E.2d 1079, 1082 (Ohio Ct. App. 1990))).

**Valuable Right:** *State v. Brinkley*, 824 N.E.2d 959, 979 (Ohio 2005) (“Cross-examination of a witness is a matter of right, but the ‘extent of cross-examination with

respect to an appropriate subject of inquiry is within the sound discretion of the trial court.” (quoting *State v. Green*, 609 N.E.2d 1253, 1259 (Ohio 1993)).

**Impeachment:** *Rumora v. Board of Ed. of Ashtabula Area City Sch. Dist.*, 335 N.E.2d 378, 391 (Ohio Ct. Com. Pleas 1973) (“[I]ndependent evidence on collateral issues for the purpose of impeachment of a witness [is] ordinarily not admissible.”).

#### OKLAHOMA

**General Purpose:** *Ark. La. Gas Co. v. Bass*, 698 P.2d 947, 949 (Okla. Civ. App. 1985) (“[C]ross-examination is available to achieve two things: (1) develop relevant truth related to matters covered on direct examination; and (2) impeach the veracity or credibility of a witness.”).

**Scope of Cross:** *In re Adoption of M.C.D.*, 42 P.3d 873, 883 (Okla. Civ. App. 2001) (“Cross-examination is available to develop relevant truth related to matters covered on direct examination and to impeach the veracity or credibility of a witness.” (citation omitted)); *see also In re D.J.L.*, 964 P.2d 983, 986 (Okla. Civ. App. 1998) (“Cross examination should be liberally allowed for its purposes of explaining, contradicting or discrediting testimony or testing the accuracy, memory, veracity or credibility of a witness.” (citing *Harris v. State*, 777 P.2d 1359, 1362 (Okla. Crim. App. 1989))); *Charm v. State*, 924 P.2d 754, 769 (Okla. Crim. App. 1996) (“Cross-examination may exceed the scope of direct in order to effect impeachment of a witness’s accuracy, memory, veracity or credibility.” (citing *Hall v. State*, 698 P.2d 33, 36 (Okla. Crim. App. 1985))).

**Scope in Criminal Cases:** *Shultz v. State*, 811 P.2d 1322, 1328 (Okla. Crim. App. 1991) (“[W]hen the defendant takes the stand to testify in his own behalf, he is subject to all the rules applicable to other witnesses on cross-examination.” (citing *Coleman v. State*, 600 P.2d 351, 353 (Okla. Crim. App. 1979); *Brown v. State*, 487 P.2d 963, 966 (Okla. Crim. App. 1971))).

**Valuable Right:** *Flo-Bend, Inc. v. Pullam*, 570 P.2d 1165, 1166 (Okla. 1977) (“The right of cross-examination is a valuable right given by law. Cross-examination is a safeguard to truthfulness and accuracy and may be used to discredit a witness or develop facts favorable to the cross-examining party.” (citing *Frierson v. Hines*, 426 P.2d 362, 364 (Okla. 1967))).

**Impeachment:** *Charm*, 924 P.2d at 769 (“Cross-examination may exceed the scope of direct in order to effect impeachment of a witness’s accuracy, memory, veracity or credibility.” (citing *Hall*, 698 P.2d at 36)). *But see White v. State*, 458 P.2d 322, 325 (Okla. Crim. App. 1969) (“While it is permissible for counsel to impeach a witness, he cannot do so through hearsay or immaterial matters.”); *see also Hammons v. State*, 254 P.2d 793, 796-97 (Okla. Crim. App. 1953) (“[A] witness cannot be impeached on collateral matters.” (citation omitted)).

#### OREGON

**Scope of Cross:** *State v. Hubbard*, 688 P.2d 1311, 1319 (Or. 1984) (“It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop. Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury can’t fairly appraise them.” (quoting *Alford*, 282 U.S. at 692)).

**Scope in Criminal Cases:** *State v. Cook*, 59 P.2d 249, 253 (Or. 1936) (stating that when an accused takes the witness stand to testify, he is subject to the same rules in regard to cross-examination as any other witness).

**Valuable Right:** *State v. Hoover*, 433 P.2d 244, 246 (Or. 1967) (“[W]here an adverse witness gives testimony bearing upon a question directly in issue, cross-examination with respect to such testimony is a matter of right . . . .” (citing *Mannix v. Portland Telegram*, 284 P. 837, 837 (Or. 1930))).

**Impeachment:** *State v. Longoria*, 520 P.2d 912, 921 (Or. Ct. App. 1974) (“Great latitude should be given to the cross-examiner to test the memory and competency of the witness, but there are bounds to that latitude. While the drawing of the bounds is largely within the discretion of the trial judge, the considerations are different for attacks upon veracity or credibility, and attacks upon competency or memory.” (citation omitted)); *see also* *State v. Johanesen*, 873 P.2d 1065, 1071 (Or. 1994) (observing that the law of impeachment distinguishes between “intrinsic evidence,” and “extrinsic evidence,” in that “intrinsic evidence” is evidence elicited from a witness whose credibility is drawn into question and “extrinsic evidence” is evidence produced from some other source, other than testimony given at instant proceeding by witness in question); *Flande v. Brazel*, 386 P.2d 920, 922 (Or. 1963) (“[Although] one cannot impeach on a collateral matter[,] . . . the matter should be one for the trial court’s discretion.” (citing *Coles v. Harsch*, 276 P. 248, 251 (Or. 1929))).

## PENNSYLVANIA

**General Purpose:** *Commonwealth v. Thomas*, 783 A.2d 328, 334 (Pa Super. Ct. 2001) (“[C]ross-examination may be used to test a witness’ story, to impeach credibility, or to establish the witness’ motive for lying.” (citation omitted)).

**Scope of Cross:** *Commonwealth v. Robinson*, 877 A.2d 433, 449 (Pa. 2005) (“On cross-examination, counsel may question the witness concerning subjects raised during direct examination, may refute inferences raised during direct testimony, and may attempt to discredit a witness through questions about acts or omissions inconsistent with his testimony.” (citation omitted)).

**Scope in Criminal Cases:** *Commonwealth v. Dobrolenski*, 334 A.2d 268, 273 (Pa. 1975) (“If he takes the stand and testifies in his own defense, his credibility may be impeached and his testimony assailed like that of any other witness, and the breadth of his waiver is determined by the scope of relevant cross-examination.” (quoting *Brown*, 356 U.S. at 154-55)).

**Valuable Right:** *Commonwealth v. Fox*, 619 A.2d 327, 235 (Pa. Super. Ct. 1993) (“[T]he right to cross-examination is essential to the protections granted under the Sixth Amendment Confrontation Clause of the United States Constitution and Article 1, Section 9 of the Pennsylvania Constitution.” (citations omitted)).

**Impeachment:** *Feingold v. S.E. Pa. Transp. Auth.*, 488 A.2d 284, 290 (Pa. Super. Ct. 1985) (“A witness may be impeached with respect to prior inconsistent statements, *contradiction of facts*, bias or character.” (citation omitted)). *But see* *Zubrod v. Kuhn*, 53 A.2d 604, 605 (Pa. 1947) (holding that a witness may not be impeached on a collateral matter).

## RHODE ISLAND

**General Purpose:** *State v. Cianci*, 430 A.2d 756, 762 (R.I. 1981) (“A basic purpose of cross-examination is to impeach the credibility of an adversary witness, and a trial justice may within his sound judicial discretion permit interrogation designed to accomplish that purpose.” (citations omitted)).

**Scope of Cross:** *State v. Jimenez*, 882 A.2d 549, 553 (R.I. 2005) (“Questions that are calculated to explain, contradict, or discredit a witness’s direct examination testimony are permitted on cross-examination, as are questions designed to test the accuracy, memory, veracity, or credibility of the witness.” (citation omitted)).

**Scope in Criminal Cases:** *State v. Mattatall*, 603 A.2d 1098, 1111 (R.I. 1992) (“A defendant who testifies on his own behalf is a witness and is subject, therefore, ‘to a searching cross-examination to rebut not only the facts stated but also the inferences and conclusions that might be drawn from such testimony.’” (quoting *State v. Dowell*, 512 A.2d 121, 124 (R.I. 1986))); *see also* *State v. Filuminia*, 668 A.2d 336, 338 (R.I. 1995) (“A defendant may be cross-examined not only on the basis of what he

specifically states by way of factual information but also in respect to inferences and conclusions that would naturally and probably be drawn from such testimony.” (citation omitted)).

**Valuable Right:** *State v. Eckhart*, 367 A.2d 1073, 1075 (R.I. 1977) (holding that the right to an effective cross-examination is secured by the sixth amendment, the fourteenth amendment in state criminal trials, and Article 1, Section 10 of the Rhode Island Constitution).

**Impeachment:** *State v. Gordon*, 880 A.2d 825, 838 (R.I. 2005) (“Although cross-examination is generally limited to the scope of direct examination, questions calculated to explain, contradict or discredit a witness’s testimony or designed to test the witness’s accuracy, memory, veracity, credibility or bias are often permissible.” (citation omitted)); *see also State v. Fillion*, 785 A.2d 536, 539 (R.I. 2001) (“The scope of cross-examination for the purpose of impeaching a witness’s credibility is not unlimited, however, and it is permissible for a trial justice to reject evidence that is either not relevant or ‘not probative of any bias or motive.’” (citing *State v. Texter*, 594 A.2d 376, 377 (R.I. 1991))).

#### SOUTH CAROLINA

**General Purpose:** *Hansson v. Gen. Insulation & Acoustics*, 107 S.E.2d 41, 42 (S.C. 1959) (“The general range and extent of cross-examination is within the discretion of the trial Judge subject, of course, to the limitations that it must relate to matters pertinent to the issue or to specific acts which tend to discredit the witness or impeach his moral character . . . .” (citations omitted)).

**Scope of Cross:** *State v. Sierra*, 523 S.E.2d 187, 190 (S.C. Ct. App. 1999) (“Considerable latitude is allowed in the cross-examination of a witness (always within the control and direction of the presiding judge) to test the accuracy of his memory, his bias, prejudice, interest, or credibility. In doing so the witness may be asked questions in reference to irrelevant matter, or in reference to prior statements contradictory of his testimony, or in reference to statements as to relevant matter not contradictory of his testimony.” (citing *McMillan v. Ridges*, 91 S.E.2d 883, 885 (1956))).

**Scope in Criminal Cases:** *State v. Young*, 409 S.E.2d 352, 354 (S.C. 1991) (“A defendant who testifies may be cross-examined on evidence which fairly tends to affect his credibility.” (citation omitted)).

**Valuable Right:** *State v. Jenkins*, 474 S.E.2d 812, 814 (S.C. Ct. App. 1996) (“Generally, the right to cross-examine a prosecuting witness is of constitutional dimensions, being essential to a fair trial as guaranteed by the Sixth Amendment and the due process clause of the Fourteenth Amendment.” (citations omitted)).

**Impeachment:** *State v. Carson*, 126 S.E. 755, 757 (S.C. 1925) (“[A] witness can be impeached only as to matters within the legitimate scope of cross-examination . . . .” (citation omitted)); *see also State v. Bigham*, 131 S.E. 603, 606 (S.C. 1926) (noting that the truth and veracity of an accused may be impeached). *But see Crowder v. Carroll*, 161 S.E.2d 235, 239 (S.C. 1968) (“Generally a foundation has to be laid for impeachment . . . .” (citation omitted)).

#### SOUTH DAKOTA

**Scope of Cross:** *State v. McCord*, 505 N.W.2d 388, 394 (S.D. 1993) (“It is the responsibility of counsel during cross-examination to inquire into a witness’ opportunity for observation, capacity for observation, attention and intent and distraction or division of attention.” (citation omitted)); *see also State v. Chamley*, 568 N.W.2d 607, 616 (S.D. 1997) (“The issue of credibility is a matter which may be inquired into on cross examination.” (citation omitted)).

**Student Materials EditorScope in Criminal Cases:** *State v. Phelps*, 59 N.W. 471, 475 (S.D. 1894) (“A person accused of a crime, who testifies in his own behalf, may be, in the discretion of the court, subjected to a cross-examination on the whole case,

including facts which tend to impeach his moral character or affect his credibility as a witness, or for the purpose of laying the foundation for impeachment.” (citations omitted)).

**Impeachment:** *State v. Wieggers*, 373 N.W.2d 1, 10 (S.D. 1985) (“[I]mpeachment evidence must . . . satisfy the general test of admissibility.”).

#### TENNESSEE

**General Purpose:** *State v. Wyrick*, 62 S.W.3d 751, 782 (Tenn. Crim. App. 2001) (“Cross-examination tests not only the witness’s perception and recollection of the account given but also the witness’s credibility.” (citation omitted)); *see also* *Buchanan v. Harris*, 902 S.W.2d 941, 943 (Tenn. Ct. App. 1995) (“A witness may be cross-examined, not only to show his lack of disposition to tell the truth, but also to show want of capacity to tell the truth.” (citation omitted)).

**Scope of Cross:** *State v. Gosnell*, 62 S.W.3d 740, 749 (Tenn. Crim. App. 2001) (“[L]awyers should be accorded wide latitude in cross-examining witnesses.” (citation omitted)).

**Scope in Criminal Cases:** *Gray v. State*, 250 S.W.2d 86, 92 (Tenn. 1952) (“[W]hen a defendant takes the witness stand in his own behalf he is subject to same methods of cross-examination as an ordinary witness.” (citations omitted)).

**Valuable Right:** *State v. Butler*, 626 S.W.2d 6, 9 (Tenn. 1981) (“[T]he right of cross-examination is essential to a fair trial.” (citation omitted)).

**Impeachment:** *State v. Carroll*, 36 S.W.3d 854, 866 (Tenn. Crim. App. 1999) (“[A] party may attempt to impeach a witness by demonstrating his impaired capacity either at the time of the occurrence which is the subject of his testimony or at the time of his testimony.” (citations omitted)). *But see* *State v. Jones*, 15 S.W.3d 880, 892 (Tenn. Crim. App. 1999) (“Impeachment cannot be a ‘mere ruse’ to present to the jury prejudicial or improper testimony.” (citation omitted)).

#### TEXAS

**General Purpose:** *Callahan v. State*, 937 S.W.2d 553, 556 (Tex. Ct. App. 1996) (“Cross-examination serves three purposes: to identify the witness with his community so that independent testimony may be sought and offered concerning the witness’s reputation for veracity in that community; to allow the jury to assess the credibility of the witness; and to bring facts forward that tend to discredit the witness by showing that his testimony was untrue or biased.” (citation omitted)).

**Scope of Cross:** *Pope v. State*, 161 S.W.3d 114, 123 (Tex. Ct. App. 2004) (“The trial judge should allow the accused great latitude to show any relevant fact that might tend to affect the witness’s credibility.” (citations omitted)); *see also* *Surreddin v. State*, 165 S.W.3d 751, 754 (Tex. Ct. App. 2005) (“Only general questions can be asked during cross-examination in an effort to discredit a witness, and the witness cannot be asked questions regarding a collateral fact merely with a view to contradict him afterwards by calling another witness.” (citation omitted)); *Saglimbeni v. State*, 100 S.W.3d 429, 435 (Tex. Ct. App. 2002) (“The right to cross-examination includes ‘the right to impeach the witness with relevant evidence that might reflect bias, interest, prejudice, inconsistent statements, traits of character affecting credibility, or evidence that might go to any impairment or disability affecting the witness’s credibility.’” (quoting *Virts v. State*, 739 S.W.2d 25, 29 (Tex. Crim. App. 1987))).

**Scope in Criminal Cases:** *Polk v. State*, 170 S.W.3d 661, 665 (Tex. Ct. App. 2005) (“A criminal defendant who chooses to testify may be impeached, contradicted, cross-examined on new matters, and treated in every respect as any other witness, as long as any overriding constitutional or statutory prohibitions for the defendant’s protection are honored.” (quoting *Sanchez v. State*, 707 S.W.2d 575, 577 (Tex. Crim. App. 1986))); *see also* *Caron v. State*, 162 S.W.3d 614, 617 (Tex. Ct. App. 2005) (“[T]he scope of

cross-examination is wide open, and once the defendant testifies at trial, he opens himself up to questioning by the prosecutor on any subject matter that is relevant.” (citation omitted)).

**Valuable Right:** *Russell Stover Candies, Inc. v. Elmore*, 58 S.W.3d 154, 157-58 (Tex. Ct. App. 2001) (“Cross-examination is a safeguard essential to a fair trial and a cornerstone in the quest for truth. Longstanding principles of jurisprudence recognize the right and necessity of full and complete cross-examination . . . .” (quoting *Davidson v. Great Nat. Life Ins. Co.*, 737 S.W.2d 312, 313 (Tex. 1987))).

**Impeachment:** *Cannady v. State*, 11 S.W.3d 205, 211 (Tex. Crim. App. 2000) (“[A] defendant may be contradicted, impeached, discredited, attacked, sustained, bolstered, made to give evidence against himself, cross-examined as to new matters, and treated in every respect as any other witness.” (citation omitted)); *see also* *Scott v. State*, 162 S.W.3d 397, 401 (Tex. Ct. App. 2005) (“[T]he right to cross-examination includes the right to impeach the witness with evidence that might go to any impairment or disability affecting the witness’s credibility.” (citations omitted)); *Roberts v. State*, 963 S.W.2d 894, 900 (Tex. Ct. App. 1998) (“The right of an accused to cross-examine a testifying State’s witness includes the right to impeach the witness with relevant evidence that might reflect bias, interest, prejudice, inconsistent statements, traits of character affecting credibility, or evidence that might go to any impairment or disability affecting the witness’ credibility.” (citations omitted)). *But see* *Garza v. State*, 18 S.W.3d 813, 822 (Tex. Ct. App. 2000) (“It is improper to impeach a witness on an immaterial or collateral matter.” (citations omitted)).

#### UTAH

**Scope of Cross, Impeachment:** *Jennings v. Stoker*, 652 P.2d 912, 914 (Utah 1982) (“To the extent that a witness may be cross-examined on matters that affect his credibility, . . . the witness has a privilege not to answer questions that tend to disgrace or degrade him or his family.” (citation omitted)).

**Scope in Criminal Cases:** *State v. Benson*, 712 P.2d 256, 259-60 (Utah 1985) (“When the accused takes the stand, he opens himself to cross-examination like any other witness. That includes cross-examination on matters that would tend to contradict, explain, or cast doubt upon the credibility of his testimony.” (citations omitted)).

**Valuable Right:** *Hunter v. Michaelis*, 198 P.2d 245, 254 (Utah 1948) (“The right to cross-examine a witness is a valuable right, which must not be curtailed by withdrawal of the witness so that such right is in effect denied.”).

#### VERMONT

**Scope of Cross:** *State v. Voorheis*, 844 A.2d 794, 801-02 (Vt. 2004) (“Wide latitude should be allowed on cross-examination for the purpose of showing who and what the witness is, and that he is unreliable, prejudiced, or biased.” (quoting *State v. Berard*, 315 A.2d 501, 508 (Vt. 1974))). *But see* *Barrett v. Adirondack Bottled Gas Corp. of Vt.*, 487 A.2d 1074, 1075 (Vt. 1984) (“Although the credibility of a witness is always open to attack and wide latitude should be allowed in cross-examination for this purpose, the scope of this latitude is not unlimited, particularly on collateral issues.” (citation omitted)).

**Valuable Right:** *West-Nesbitt, Inc. v. Randall*, 236 A.2d 676, 679 (Vt. 1967) (“[C]ross-examination is a right, yet the court may control the exercise of it to any extent that does not infringe the right itself.” (citation omitted)).

**Impeachment:** *State v. Raymond*, 538 A.2d 164, 165-66 (Vt. 1987) (“Cross-examination is vitally important for a defendant ‘to establish the identity of the witness so that the jury can place the witness in his environment, know who he is, and weigh his evidence.’ This is particularly true where ‘the evidence consists of the testimony of individuals . . . [who might be] motivated by malice, vindictiveness, intolerance,



prejudice, or jealousy.” (citations omitted)). *But see* State v. Beshaw, 359 A.2d 654, 656 (Vt. 1976) (“The manner, extent and scope of impeachment testimony lies within the limits of judicial discretion.” (citation omitted)).

VIRGINIA

**Scope of Cross:** Denis v. Commonwealth, 131 S.E. 131, 135 (Va. 1926) (“The admissibility of the testimony on cross-examination, in which great latitude is allowed, rested largely in the discretion of the trial court, and we do not think its discretion has been abused.”); *see also* Spruill v. Commonwealth, 271 S.E.2d 419, 425 (Va. 1980) (“[D]etermination of the scope of cross-examination in general, and of the extent of testimonial impeachment in particular, should be ‘left largely to the sound discretion of the trial court; and the rule is well established that an appellate court will not interfere, unless that discretion has been plainly abused.’” (quoting Worrell v. Kinnear Co., 49 S.E. 988, 990 (Va. 1905))).

**Scope in Criminal Cases:** Wells v. Commonwealth, 531 S.E.2d 16, 21 (Va. Ct. App. 2000) (“[A]n accused who takes the stand waives his right against self-incrimination *in its entirety*, not just selectively, and may be cross-examined on any subject related to the offenses for which he is on trial.” (citation omitted)).

**Valuable Right:** Food Lion, Inc. v. Cox, 513 S.E.2d 860, 861 (Va. 1999) (“[C]ross-examination of a witness ‘is not a privilege but an absolute right.’” (quoting Basham v. Terry, 102 S.E.2d 285, 290 (Va. 1958))).

**Impeachment:** McCarter v. Commonwealth, 566 S.E.2d 868, 869 (Va. Ct. App. 2002) (“When a witness takes the stand, she puts her credibility at issue in the case.” (citation omitted)); *see also* Va. & N.C. Wheel Co. v. Chalkley, 34 S.E. 976, 977 (Va. 1900) (“[U]pon cross-examination [the lawyer] had the right to ask any question which tended to test the witness’ accuracy, veracity, or credibility, as the questions complained of clearly did.” (citation omitted)).

WASHINGTON

**General Purpose:** State v. Darden, 41 P.3d 1189, 1193 (Wash. 2002) (“The purpose [of cross-examination] is to test the perception, memory, and credibility of witnesses.” (citations omitted)).

**Scope of Cross:** State v. Lord, 822 P.2d 177, 201 (Wash. 1991) (“[C]ross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.”).

**Scope in Criminal Cases:** State v. Graham, 798 P.2d 314, 319 (Wash. Ct. App. 1990) (“A defendant may be vigorously cross-examined in the same manner as any other witness if he voluntarily asserts his right to testify. The scope of cross-examination is within the discretion of the trial court and may be conducted so as to explain, qualify and rebut defendant’s direct testimony, including examination on issues he or she introduced to the jury.” (citations omitted)).

**Valuable Right:** State v. Kalamarski, 620 P.2d 1017, 1019 (Wash. Ct. App. 1980) (“Although the right to cross-examine is basic, it is not absolute.”). *But see* State v. Knapp, 540 P.2d 898, 902 (Wash. Ct. App. 1975) (“[T]he right to cross-examination in a criminal case is fundamental and zealously guarded by our courts.” (citation omitted)).

**Impeachment:** State v. Allen S., 989 P.2d 1222, 1226 (Wash. Ct. App. 1999) (“Evidence offered to impeach is relevant only if: (1) it tends to cast doubt on the credibility of the person being impeached, and (2) the credibility of the person being impeached is a fact of consequence to the action.”); *see also* State v. Froehlich, 635 P.2d 127, 129 (Wash. 1981) (“Cross-examination as to a mental state or condition, to impeach a witness, is permissible.” (citation omitted)). *But see* State v. Hubbard, 693 P.2d 718, 721 (Wash. 1985) (“To be admissible, such extrinsic evidence [that attacks the

credibility of a witness] must be independently competent and must be admissible for a purpose other than that of attacking the credibility of the witness.” (citation omitted)).

WEST VIRGINIA

**Scope of Cross:** *State v. Ladd*, 557 S.E.2d 820, 844 (W. Va. 2001) (“Several basic rules exist as to cross-examination of a witness. The first is that the scope of cross-examination is coextensive with, and limited by, the material evidence given on direct examination. The second is that a witness may also be cross-examined about matters affecting his credibility. The term ‘credibility’ includes the interest and bias of the witness, inconsistent statements made by the witness and to a certain extent the witness’ character. The third rule is that the trial judge has discretion as to the extent of cross-examination.” (citation omitted)).

**Scope in Criminal Cases:** *State v. Bradshaw*, 457 S.E.2d 456, 478 (W. Va. 1995) (“[A] defendant who voluntarily offers himself as a witness and testifies in his own behalf subjects himself to legitimate and pertinent cross-examination to test his veracity and credibility.”).

**Valuable Right:** *State v. Graham*, 541 S.E.2d 341, 345 (W. Va. 2000) (“[A] defendant on trial has the right to be accorded a full and fair opportunity to fully examine and cross-examine the witnesses. However, this right is not unbridled.” (quoting *State v. Crockett*, 265 S.E.2d 268, 269 (W. Va. 1979))).

**Impeachment:** *McDougal v. McCammon*, 455 S.E.2d 788, 795 (W. Va. 1995) (“Our prior cases have permitted the attacking party to admit evidence that, if credited by the jury, would raise doubts about a prior witness’s testimony.”).

WISCONSIN

**Scope of Cross:** *Desjarlais v. State*, 243 N.W.2d 453, 464 (Wis. 1976) (“Although this state follows the ‘wide open cross-examination rule,’ . . . that theory deals only with the scope of cross-examination as not being bound by the subjects touched upon in direct examination. It does not permit the admission of prejudicial, irrelevant or other objectionable matters.” (citation omitted)).

**Scope in Criminal Cases:** *State v. Patino*, 502 N.W.2d 601, 613 (Wis. Ct. App. 1993) (holding that when a defendant voluntarily takes the stand on his own behalf, he waives his right to remain silent and allows the prosecution “to cross-examine him with the same latitude as would be exercised in the case of an ordinary witness”).

**Valuable Right:** *Neider v. Spoehr*, 165 N.W.2d 171, 175 (Wis. 1969) (“[A] party has the right to cross-examine witnesses who testify against him.” (citation omitted)).

**Impeachment:** *State v. Ross*, 659 N.W.2d 122, 133-34 (Wis. Ct. App. 2003) (“The extent and scope of cross-examination allowed for impeachment purposes is a matter within the sound discretion of the trial court.” (citation omitted)).

WYOMING

**Scope of Cross:** *Hannon v. State*, 84 P.3d 320, 329 (Wyo. 2004) (“Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness’ story to test the witness’ perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, *i.e.*, discredit, the witness. One way of discrediting the witness is to introduce evidence of a prior criminal conviction of that witness.”). *But see* *Law v. State*, 98 P.3d 181, 189 (Wyo. 2004) (“The general rule is that a cross-examiner cannot *contradict* a witness’ answers concerning collateral matters by producing extrinsic evidence for the *sole purpose* of impeaching credibility. However, an exception to this rule exists where the evidence sought to be introduced is relevant to some issue in the case *other than* credibility or if independently admissible to impeach the witness.”).

**Scope in Criminal Cases:** *Trusky v. State*, 7 P.3d 5, 12 (Wyo. 2000) (“A defendant who has voluntarily testified may be cross-examined the same as any other witness and

the latitude of cross-examination is largely within the discretion of the court . . . .” (citation omitted)).

**Valuable Right:** *Jensen v. State*, 116 P.3d 1088, 1092 (Wyo. 2005) (“A defendant’s right to cross-examine a witness . . . is not unfettered. The right is subject to the trial court’s ‘discretion to . . . prevent . . . questioning that is repetitive or of marginal relevance.’” (citations omitted)).

**Impeachment:** *Law*, 98 P.3d at 189 (“[A]ny permissible kind of impeaching matter may be developed on cross-examination, since one of the purposes of cross-examination is to test the credibility of the witness. However, the cross-examiner may not impeach a witness on a collateral matter.” (citation omitted)).