CROSS-EXAMINATION; THE GREATEST LEGAL ENGINE FOR DISCOVERY OF THE TRUTH?

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Introduction:

This essay will argue that although cross-examination can be helpful in exposing falsehood, Wigmore’s historical assertion that cross-examination is the greatest legal engine ever invented for the discovery of truth¹ is not valid. Rather, recent developments in the presentation of evidence and conduct of criminal trials have undermined the hitherto sacrosanct reputation of cross-examination as the best legal tool to ascertain the truth in a trial.² This is because many arguments have been advanced against the reliability of cross-examination. The efficacy of cross-examination to deliver reliable evidence is in doubt, cross-examination may well be ineffective in exposing insincerity³, and it may as well be the case that cross-examination’s usefulness in exposing faulty perception may be highly overrated.⁴ In fact, aggressive questioning may actually distort the witness memory, instead of assisting their memory, when they are subjected to facts suggestion during cross-examination.⁵

Using the case law and arguments from renowned legal authors such as Roberts and Zuckerman⁶, and Keane & Fortson, the essay will highlight more limitations of cross-examination and show that cross-examination has a reputation for being used for manipulating witnesses, aiding perjury⁷, abused for encouraging deceptive testimony and deployed as a tool of witness oppression thereby misleading the jury.⁸

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¹ Jerome Frank, Courts On Trial (Princeton University Press 1950) 80 -120
⁶ Paul Roberts and A. A. S Zuckerman, Criminal Evidence (2nd edn, Oxford University Press 2012)
⁷ Frank (n 1) 80 – 102
⁸ Zuckerman (n 3) 331 -358
The all-encompassing basis of cross-examination is that it is intended to be used to test the truthfulness or veracity of a witness’s testimony. And cross-examination is fundamental to ensuring a defendant’s right to fair hearing as provided by Article 6 of the ECHR and enshrined in the UK law through the Human Rights Act 1998 (HRA 1998). However, this essay will conclude that improper application of cross-examination may lead to injustice and unfairness as it employs tactics designed to extract information which the witness is reluctant to disclose, to prompt contradictions, to undermine confidence, to cast doubt on honesty and reliability (amongst others) on the testimony which a witness has given in examination-in-chief.

Therefore caution must be exercised in the use of cross-examination to ensure the achievement of the overriding objective of Criminal Justice Act 2003 (CJA 2003) which is to ameliorate the complexity of the criminal trial system and ensure that the process of fact finding is conducted fairly, efficiently and economically to establish the truth and render a fair verdict. But what really is cross-examination?

**Cross Examination:**

Cross-examination constitutes real evidence and it is practiced in UK, Australia, Canada and South Africa jurisdictions. Cross-examination is the practice of subjecting the opponent’s witness to questioning in order to make a trial fair and rational. According to Roberts & Zuckerman, the determination of the probative value of a witness’s testimony is based on; the reliability of the witness’s initial perception; the accuracy of the witness’s memory; his...
truthfulness when testifying and the effective communication of findings to the fact-finder.\textsuperscript{16} These principles of truth/fact finding and fair trial as they relate to cross-examination are fundamental features of the UK’s adversarial trial system as endorsed by the High Court in \textit{Lee v Queen} [1998]\textsuperscript{17} when it was ruled that ‘confrontation and the opportunity for cross-examination is of central significance to the common law adversarial system of trial’\textsuperscript{18}

Fair trial connotes that the defendant must be given the chance to prove his innocence in a way that the public must be able to understand how the court arrived at the verdict.\textsuperscript{19} In other to ensure that this right is respected, Judges and Juries in each trial are expected to conduct intelligent inquiry into all practically available evidence, to ascertain - as near as possible – (through all means available to them, including cross-examination, the truth about the presented facts.\textsuperscript{20} No method is fool proof but the truth in a trial can be ascertained to an extent through an investigatory method.\textsuperscript{21} Frank contends that the success of the investigatory method may however be undermined by two factors: the first being that all important evidence may not be readily available to the Judge and the Jury during the trial and the second factor is that the competence of those conducting the investigation may be suspect.\textsuperscript{22}

Consequently, in the UK criminal trials, cross-examination is fundamentally used as a mechanism to test and communicate evidence; it can also generate new evidence through the body language of the witness.\textsuperscript{23} For example, during cross-examination witnesses’

\begin{itemize}
\item \textsuperscript{16} Zuckerman (n 3) 331-358  
\item \textsuperscript{17} 195 CLR 594  
\item \textsuperscript{18} Ibid \textit{Lee} [32]  
\item \textsuperscript{19} Zuckerman (n 3) 331 -358  
\item \textsuperscript{20} Frank (n 1) 80 – 102  
\item \textsuperscript{21} Ibid.  
\item \textsuperscript{22} Ibid.  
\item \textsuperscript{23} Zuckerman (n 3) 331 -358
\end{itemize}
demeanours and facial expressions are taken into consideration and can prove determinative in a trial.\textsuperscript{24}

This is important in the UK where, according to Frank, Court trials have always been adversarial or contentious and its origin can be traced to the use of trials as a substitute for private out of the court street brawls to settle differences.\textsuperscript{25} The adversarial system affords many lawyers the opportunity to seek to outdo each other in seeking the court’s favourable attention. The mode of arguments and methods of presentation of evidences are also aimed at ascertaining the truth.\textsuperscript{26} Some leading legal experts such as Macaulay believed that adversarial trial is beneficial and that the benefit is that it enables the fairest decision in a matter. Macaulay based his support on the belief that the argument of two men, however unfair, will ensure that no important consideration escapes the notice of the court in the trial.\textsuperscript{27}

In a trial, cross-examination follows the examination-in-chief of the witness which is the first stage of witness testimony and there may be the need for re-examination.\textsuperscript{28} The purpose of examination-in-chief is to extract favourable evidence and testimony that can support or aid the party who called the witness to win the trial.\textsuperscript{29} In examination-in-chief, counsel who called the witness will ask the witness questions that will elicit the witness’s version of events in a structured, detailed and chronological manner to ensure that key facts that will strengthen the case are elucidated before the court.\textsuperscript{30} In the case of an accused choosing to defend himself, the accused is required to testify before any other defence witnesses except the court.

\textsuperscript{24} Ibid
\textsuperscript{25} Frank (n 1) 80 – 102.
\textsuperscript{26} Ibid.
\textsuperscript{27} Frank (n 1) 80 – 102
\textsuperscript{28} Christopher W Taylor, Evidence (Pearson Education Limited 2016) page
\textsuperscript{29} Ramjohn (n 15)
\textsuperscript{30} Nicola Monaghan, Law Of Evidence (Cambridge University Press 2015) page
directs otherwise, this is to prevent him from modifying or tailoring his testimony to align with the testimonies of other witnesses.

The usefulness of cross-examination:

Macaulay and other legal luminaries endorsed cross-examination as a valuable tool in determining the truth as far back as the 17th century. Bentham argued that “it is the most perfect and effectual system for unravelling falsehood ever devised by the ingenuity of mortals”. Lord Hanworth MR also lauded the value of cross-examination in *Mechanical & General inventions* [1935] where he averred *inter-alia*:

“Cross examination is a powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story”

One of the objectives of cross-examination is that it presents the opportunity for the opposing counsel to discredit the witness testimony or in some instances discredit the witness himself particularly if the witness had prior conviction. Evans LJ noted in *Thomas v Commissioner of Police* [1997] that the court has to consider whether a previous conviction can unfairly impact on the present case before being admitted.

Cross examination also give the opposing party a chance to seek clarification or to out rightly challenge the witness testimony because if the opposing counsel does not cross-examine a witness on an issue, it will be taken as acceptance of the testimony. Consequently the counsel will not be allowed to attempt to debunk or undermine the testimony in his closing

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31 Police And Criminal Evidence Act 1984 s.79
32 Zuckerman (n 3) 331 -358
33 Anonymous, Of the Disqualification of parties as witnesses, 5 Am. L. Register 257, 263 – 264 (1857)
34 AC 346
35 Zuckerman (n 3) 331 -358
36 Taylor (n 28)
37 1 All ER 747
38 Ibid *Thomas v Commissioner of Police*
39 Ibid.
speech neither will he be allowed to attempt an explanation of any issue contained in the testimony which he did not challenge.\textsuperscript{40} This was reflected in \textit{R v Bircham} [1972]\textsuperscript{41} where the defence counsel had failed to cross-examine the prosecution witnesses and the co-defendants who had testified. The Judge refused the attempt of the counsel to refer to the issue in his closing speech.\textsuperscript{42} The need for the accused to confront his accuser to ensure a fair trial was affirmed by Lord Bingham in \textit{R v Davis} [2008]\textsuperscript{43} when he averred \textit{inter-alia} that:

\begin{quote}
\textit{It is a long-established principle of the English common law that, subject to certain exceptions and statutory qualifications, the defendant in a criminal trial should be confronted by his accusers in order that he may cross-examine them and challenge their evidence.}\textsuperscript{44}
\end{quote}

At cross-examination and in the interest of fairness, the witness must be given a chance to clarify, expatiate, defend, repudiate or refute any aspect of his testimony that the opponent may wish to challenge.\textsuperscript{45} Consequently Richard J in \textit{R v Hughes} held that the right to confront an adverse witness is ‘basic to any civilised notion of a fair trial’\textsuperscript{46} Lord Herschell had earlier cautioned in \textit{Browne v Dunne} [1894]\textsuperscript{47} that a witness’s credibility should not be tainted on an issue which he was not given a chance to offer an explanation.\textsuperscript{48}

Brutus also argued that for justice to be properly distributed, witnesses should be examined face to face with parties having the opportunity of cross-examining witness to bring out the whole truth.\textsuperscript{49} However, as will be shown below, cross-examination is plagued by many

\begin{thebibliography}
\textsuperscript{40} Ibid
\textsuperscript{41} Crim LR 430
\textsuperscript{42} Ibid \textit{R v Bircham}
\textsuperscript{43} 1 AC 1128
\textsuperscript{44} Ibid \textit{R v Davis}
\textsuperscript{45} \textit{Browne v Dunne} [1894] 6 R 67, 72 HL.
\textsuperscript{46} \textit{R v Hughes} [1986] 2 NZLR 129, 149
\textsuperscript{47} 6 R 67, 72 HL.
\textsuperscript{48} Ibid \textit{Browne v Dunne}
\textsuperscript{49} Epstein (n 2)
\end{thebibliography}
limitations which appear to overwhelm and nullify the above arguments which favour cross
examination being the best legal ever invention for the discovery of truth.

Problems associated with cross-examination:

Legal experts do not always play by the rules of cross-examination. Like many other
legal processes, cross-examination is guarded by rules. In a trial the witness takes an oath of
affirmation to tell the whole truth.\(^\text{50}\) The counsel is also bound by rule not to ask leading
questions,\(^\text{51}\) particularly when the subject or the issue is yet to be established.\(^\text{52}\) Leading
question was defined in *Maves v Grand Trunk Pacific Rail Co* [1913]\(^\text{53}\) as a question which
directly or indirectly suggests to the witness the answer to give.\(^\text{54}\) A direct question such as
“You saw the assailant face clearly, didn’t you?” is a leading question and not allowed.\(^\text{55}\)

Keane & Fortson argued that of all the rules governing the examination of witnesses, the
rules relating to leading questions rank high but yet appear to be neglected by academics and
practitioners.\(^\text{56}\) Some legal practitioners are however of the opinion that the rule is one of
practice and not of law and it applies to examination-in-chief and (arguably) to re-
examination but not to cross-examination.\(^\text{57}\) One of the rules against leading questions relates
to guarding against memory manipulation of witnesses by acquiescence to what is suggested
to the witness by the cross-examiner.\(^\text{58}\)

Normally, only non-leading questions which allow the witness to tell their story in their own
words are permitted in cross-examination and such questions will begin with interrogative

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\(^\text{50}\) Ramjohn (n 15)
\(^\text{51}\) Ibid.
\(^\text{52}\) Keane (n 50)
\(^\text{53}\) 14 DLR
\(^\text{54}\) Ibid.
\(^\text{55}\) Zuckerman (n 3) 331 -358
\(^\text{56}\) Keane (n 50)
\(^\text{57}\) Ibid.
\(^\text{58}\) Ibid.
words such as what, where, who when. Leading questions are only intended to persuade or guide the witness to return to the details in his pre-trial witness statement or to highlight inconsistencies between the witnesses version of events. They may be permitted during examination-in-chief during formal introduction of undisputed issues, or on occasions when it becomes pertinent to redirect a witness to focus his attention on a specific matter, or when an opponent had earlier consented to leading questions. A Judge may equally permit leading questions when he has found and consequently ruled a witness to be a hostile witness.

**Cross-examination is not always the best tool to assess witness demeanour.** A Judge will rule a witness as hostile after assessing the demeanour of the witness and concluding that the witness has decided not to cooperate with the side calling him, but instead appeared determined to sabotage the case of the party by withholding the truth in spite of previous assurances of cooperation. The ruling in *R v Thompson* [1976] reflected this. The case was a case of alleged incest where the daughter had earlier implicated her father but refused to answer questions put to her at cross-examination. She was subsequently declared hostile by the trial Judge. The CA upheld the declaration on appeal. Consequently *R v Greene* [2009] affirmed that the trial Judge is best placed to assess the demeanour of the witness and rule accordingly. After the witness is adjudged hostile, the party calling the witness is permitted at the discretion of the Judge to ask leading questions to reduce the impact of the witness’s testimony.

59 Keane (n 50)
60 Ramjohn (n 15)
61 Ibid.
62 Monaghan (n 30)
63 Ramjohn (n 15)
64 64 Cr App R 96
65 Ibid *R v Thompson*
66 EWCA Crim 2282
67 Ibid *R v Greene*
68 Ramjohn (n 15)
A witness may be allowed to refer to any document written or verified by him at a time when the facts of the incidence are still fresh in his mind.\(^{69}\) In *Browne* the court established that where evidence contradicts a witness testimony, the witness must be given the chance to explain or justify the contradiction.\(^{70}\)

But if the document was written by a third party, the witness would have to convince the court that he had agreed with the facts as written down when the facts of the incident was still fresh on his mind.\(^{71}\) The witness needs to affirm that he had either read the document himself when the matter was still fresh on his mind and he had agreed with the content or that the document was read back to him at the time when the facts were still fresh on his mind as was the case in *R v Kelsey* [1981]\(^{72}\) where the court allowed a witness to refresh his memory from a note he dictated to a police officer because the police officer had read it to him at the time the dictation was made.\(^{73}\) This was reaffirmed in *R v Eleftheriou and others* [1993]\(^{74}\) and also in *R v Maw* [1994]\(^{75}\)

However inconsistency in the statements by a witness is not the only consideration in declaring a witness hostile. In *R v Ugorji* [1999]\(^{76}\) the witness was ruled as hostile in spite of the fact that his evidence at trial was consistent with his evidence pre-trial.\(^{77}\)

**Some requirements of cross-examination may be too harsh** on a witness who, once he/she steps into the witness box, is obliged to answer all questions put to him especially on matters related to the trial and that examination on matter relevant to litigation and put in issue by

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69 Ibid.
70 *Browne v Dunne* (n 45)
71 Ramjohn (n 15)
72 74 Cr App R 213
73 Ibid *R v Kelsey*
74 Crim LR947 CA
75 Crim LR 841
76 EWCA Crim 1604
77 Ibid *R v Ugorji*
opposing party is absolute right. This was affirmed in Basham v Terry [1958] and reaffirmed in State Hwy. Comm’r v Cantrell [1982]. Therefore an accused in a multi-handed trial who decides to self-represent could be cross-examined by counsel for a co-accused as well as by the prosecution counsel or by every other opposing party regardless.

The importance of cross-examination is further diminished by some exceptions to the rule that a witness must answer all questions put to him at cross-examination; in some instances witnesses may be permitted not to answer the questions put across to him. Such as (i) where a witness is entitled to a privilege and thus claim the privilege, or he enjoys immunity under the public interest immunity (ii) where the information sought by the examiner constitutes inadmissible evidence or pertaining to bad character evidence not admissible under one of the gateways laid down in the CJA 2003 (iii) the Judge has the discretion to overrule a question he considers irrelevant to the issue, or related to the witnesses credit or one which he, the Judge considers oppressive.

Also a witness is statutorily exempted by s34 of the Youth Justice and Criminal Evidence Act if he is the complainant in a sexual offence case or connected with any other offence (of whatever nature) with which that defendant is charged in the proceedings.

Moreover, cross-examination may be used unethically and this may lead to the unjustifiable abuse of a witness and consequent damage of the trial process. Roberts & Zuckerman observed that allowing unethical use of cross-examination in which a truthful and

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78 Zuckerman (n 3) 331 -358
79 199 Va. 817
80 223 Va. 185
81 R v Hilton [1972] 2 QB 421 CA
82 Ramjohn (n 15)
83 Criminal Justice Act 2003
84 Ramjohn (n 15)
85 Youth Justice and Criminal Evidence Act (1999) s. 34
86 Zuckerman (n 3) 331 -358
otherwise reliable witness is allowed to be broken down and made to appear unreliable and dishonest by experienced lawyers is a breach of the state’s duty to humanity.\textsuperscript{87} Frank noted that Lawyers use tactics when cross-examining a witness to prevent the trial Judge or jury from correctly evaluating the trustworthiness of witnesses and to shut out evidence that may aid the court in determining the truth;\textsuperscript{88} this may results in truthful but nervous witnesses being misunderstood and seen as evasive or dishonest or even vulnerable.\textsuperscript{89} A good example is the case of \textit{the murder of Damilola Taylor}\textsuperscript{90} and the handling of witness “Bromley” which led to the consequent collapse of the trial. Witness “Bromley” was allegedly ripped to shreds by a succession of experienced and highly paid QCs during cross-examination.\textsuperscript{91}

Beck J observed in \textit{Maw}\textsuperscript{92} that a witness may have intended to be fair and honest in his testimony, but capitulate and agree to a wrong point in a leading question due to limitations in his education, knowledge or mental alertness.\textsuperscript{93} The body language and demeanour of the witness while responding to questions by the opposing counsel during cross-examination play a vital role in providing clues as to the reliability of the witness; therefore counsels are enjoined to do everything possible to enable an environment conducive for witnesses to reveal those crucial clues.\textsuperscript{94} But according to Wigmore the opposing counsel will aim to unsettle an otherwise confident witness by asking questions which may have no direct or beneficial testimonial value just to embarrass, cause shame, induce anger or discredit the witness.\textsuperscript{95}

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\item \textsuperscript{87} Zuckerman (n 3) 331-358
\item \textsuperscript{88} Frank (n 1) 80 – 102
\item \textsuperscript{89} Ibid
\item \textsuperscript{91} Leading Article, “Another Betrayal”, Daily Mail, 29\textsuperscript{th} April 2002
\item \textsuperscript{92} \textit{R v Maw} (n 75)
\item \textsuperscript{93} Ibid
\item \textsuperscript{94} Frank (n 1) 80 – 102
\item \textsuperscript{95} Ibid.
\end{itemize}
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Likewise, cross-examination is not always capable of exposing demeanour since lawyers have been known to coach witnesses to hide demeanour and traits which may discredit the witness and his testimony.\textsuperscript{96} Irritable witnesses are coached to hide their irritability; short tempered witnesses undergo therapy in anger management thus denying the jury and the judge the benefit of observing and assessing the witness’s actual demeanour which may prove useful in violent and anger related cases.\textsuperscript{97}

However, witness coaching or witness familiarisation can also override the effectiveness of cross-examination hence it is prohibited in the UK under Paragraph 705a of the bar council code of conduct which states that a Barrister must not rehearse, practice or coach a witness.\textsuperscript{98} But this requirement is also controversial since \textit{R v Momodou [2005]}\textsuperscript{99} reiterated that witness coaching is prohibited but endorsed “witness familiarisation” in the hope that it will prevent witnesses from being disadvantaged or taken by surprise at the way in which trial works.\textsuperscript{100} Anyway, witness coaching or witness familiarisation negates the effectiveness of cross-examination to extract the truth from the witnesses.

Witnesses may be intimidated by the adversarial system, and especially the manner questions are put across to them during cross-examination which may unsettle or ruffle them to the extent that their testimonies become incongruous with their knowledge of the subject\textsuperscript{101}. The court environment may also intimidate the witness and make him feel like a stranger in an unfamiliar terrain experiencing an inner feeling of embarrassment known only to them.\textsuperscript{102} The agitation, the cajolery, the intimidation and consequent confusion which

\textsuperscript{96} Ibid.
\textsuperscript{97} Ibid.
\textsuperscript{98} (Barstandardsboard.org.uk, 2018)\textsuperscript{<https://www.barstandardsboard.org.uk/media/1393780/handbook_3_scope.pdf>} accessed 21 April 2018.
\textsuperscript{99} EWCA Crim 177
\textsuperscript{100} Ibid \textit{R v Momodou}
\textsuperscript{101} Frank (n 1) 80 – 102
\textsuperscript{102} Ibid.
a witness may be subjected to at cross-examination may give rise to important errors and omissions of vital clues and evidences in the trial.  

Consequently, **an honest witness who answers questions pointedly**, candidly and makes a good impression **suddenly becomes a changed person at cross-examination**; he hesitates, he spars, and he loses his confidence at the crucial moment. Frank suggested that the contrast in the behaviour and attitude of the witness during direct examination - where he displays confidence - and on cross-examination – where he becomes almost vulnerable - gives an impression that he is withholding or concealing crucial information capable of misleading the Judge and the Jury.  

Interestingly, recent advancements in witness testimony via the YJCE Act designed to assist vulnerable and intimidated witnesses are likely to deprive the Judge and Jury the opportunity to observe the body language and demeanour of witnesses.  

**Cross-examination may be counterproductive if not handled with care.** Frank noted that counsels are advised to be careful of questions they ask when cross-examining witnesses in other “not to open a door that they have every reason to keep locked”. Simply put, counsels should not allow any reliable evidence which could be hurtful to their side regardless if the evidence could help the trial to arrive at the truth. Henry Taft highlighted the manipulative role of cross-examination in which counsel employ the use of cross-

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103 Frank (n 1) 80 – 102  
104 Ibid.  
105 Ibid.  
107 Ibid.  
108 Frank (n 1) 80 – 102  
109 Ibid.
examination and instruction to induce a witness to deviate for a brief period from his usual expression and thought process.\footnote{110}{Ibid.}

**Cross-examination could also be used to harass witnesses** as experienced lawyers are known to use all sorts of strategies to ameliorate the damaging effect of a testimony to his client; the lawyer will play on the weakness of a timid, shy, frightened witness to confuse the jury and render the testimony of the witness unreliable.\footnote{111}{Ibid.} Professor McEwan noted that the government recognised the need to protect vulnerable witnesses in the intimidating courtrooms and hence provided palliative measures for intimidated witnesses to provide evidences unencumbered like allowing witnesses to provide evidence behind the screen or via video link or the use of video recorded evidence.\footnote{112}{J McEwan, "In Defence Of Vulnerable Witnesses: The Youth Justice And Criminal Evidence Act 1999" [2000] 4 E & P 1 at 1}

Even the aforementioned measures may deprive the advantages of a properly conducted cross-examination like the opportunity to assess traits that may prove helpful in the trial such as the demeanour of witness when responding to vital questions during cross-examination, or the physical appearance of the witness, the confidence of the witness when answering questions etc.\footnote{113}{J McEwan, "Special Measures For Witnesses And Victims", The handbook of the Criminal Justice Process (Oxford University Press 2002) page} For example, the use of screen by witnesses was attacked by defendants in *R v DJX* [1990]\footnote{114}{91 Cr App R 36} on the ground that it was prejudicial to their case.\footnote{115}{Ibid \(R v\ DJX\)} The Judge allowed the use of a screen for witnesses to avoid the case collapsing when he was advised by the social services that the child complainants might be timid unwilling to give evidence. On appeal, the court upheld the decision of the trial Judge.\footnote{116}{Ibid.}
Equally, Birch & Leng argued against the use of special arrangements for witnesses following the earlier decision in *R v Smellie* [1920] where the Judge ordered the defendant to sit on the stairs away from the sight but within hearing of the complainant. They argued that the action was prejudicial and that it directed the attention of the Jury to the defendant as the source of the complainant’s discomfiture and thence prevented the Jury from assessing the reaction of the defendant to the witness testimony.

More so, the increasing use of technology such as CCTV, cameras, computers and recorders to process information and ascertain the facts in a trial have also undermined the prime position of cross-examination in a trial. This has become salient following the ruling of technology evidence as real evidence in *R v Woods* [1982], which was later affirmed in *R v Spiby* [1990].

**Conclusion:**

This essay has argued that while the historic importance of cross-examination in the UK adversarial trial system is not debatable, the practice and influence of cross-examination on trial may now make it as a clog rather than as a catalyst for effective forensic truth finding. Critics readily point out to the tendency of advocates to subject witnesses to abusive and hostile examination in spite of provisions of law and the Bar’s professional code of

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117 14 Cr App R 128
118 Birch and Leng, ‘Blackstone’s Guide To The Youth Justice And Criminal Evidence Act’ (Blackstone Press 2000) page
119 Ibid (n 117)
120 Ramjohn (n 15)
121 76 Cr App R 232.
122 91 Cr App R 186.
123 Zuckerman (n 3) 331 -358
conduct\textsuperscript{124} to treat witnesses with courtesy and respect.\textsuperscript{125} Abusive cross-examination has been an issue of judicial concern and public controversy for over a century.\textsuperscript{126} There is no doubt, that the defence counsel owes his/her client the obligation to further their legitimate interest which includes subjecting the prosecution’s evidence to a test for veracity.\textsuperscript{127} However in fulfilling this obligation, and against the Bar code of conduct counsels have used cross-examination to put forward unfounded allegations of impropriety against witnesses or subject witnesses to long period of aggressive, repetitive cross examination which borders on harassment.\textsuperscript{128} Counsels employ long period of aggressive and repetitive cross-examination to intimidate and harass witness into not giving the right testimony.\textsuperscript{129}

All these shortcomings have shown that the time has passed where cross-examination on its own is regarded as the greatest legal tool to determine the truth in a trial. Hence, in agreement with Lord Hanworth, cross-examination should be used with discretion and with due regard to the numerous burden it will consequently impose on the witness.\textsuperscript{130}

\textsuperscript{124} The Bar Council, Code of conduct (8\textsuperscript{th} edn., 2004) page
\textsuperscript{125} Ibid
\textsuperscript{126} Zuckerman (n 3) 331 -358
\textsuperscript{127} Ibid.
\textsuperscript{128} Ibid (n 124)
\textsuperscript{129} Monaghan (n 30)
\textsuperscript{130} Zuckerman (n 3) 331 -358
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