

Anatomy of Cross Examination

Jennifer Willis

Assistant Federal Defender
Federal Defenders of New York

Objectives

1. Learn how to structure each cross question / statement using control techniques such as leading and one fact per statement.
2. Learn how to organize your entire cross using the Chapter Method and statement charts.
3. Learn advanced techniques to be more persuasive and hold the jury's attention.

How to structure each cross question

A. Why do we cross?

In order to structure an effective cross, we have to know what we're trying to accomplish. Every single thing that we do during a trial should further our story of innocence. We cross examine **only** if it furthers our theory. If it doesn't further our theory, we don't do it.

For example – a little old lady, with bad vision is robbed in an alley. The robbery takes place at night, there are few lights in the alley and the lady is not wearing her glasses at the time. But, the lady gives a detailed description that does not match our client. We would not cross on her poor vision or poor lighting.

We can further our theory through cross examination in two ways:

- 1) by building up our own story by getting the witness to acknowledge facts that support our theory, or
- 2) by attacking and undermining the government's evidence by demonstrating that a witness is confused, mistaken or lying.

B. How do we cross?

Because this is cross, it's the Government's witness. The witness may be actively hostile, the prosecutor has prepped them and they are unlikely to want to help us. In order to get them to say things that will further our theory, we will have to make them give us the answers **through control**.

We get and maintain control by following the Rules of Cross Examination.

The rules of cross examination

1. Never ask a question that doesn't further your theory of innocence
2. Never ask an open-ended question / Always Lead

Open ended questions are who, what, when, where, why and explain. These questions give all the power to the witness because they can decide to say whatever they want and to tell whatever version of event they want, instead of the one we want.

3. Never ask a question at all / Make Statements

Phrasing it as a question implies that the witness has a choice about the answer. Instead make statements and get the witness to agree with them.

4. Never ask a question you don't know the answer too / Always be able to prove up any question you ask
5. Never ask the One Question Too Many / Know when to quit

One-Question-Too-Many is

- A conclusion
- Something that you don't know the answer to
- Something that you cannot prove up through impeachment
- Something that invites comment – But, And, So, Therefore

6. Never get greedy
7. Never let the witness explain
8. Never give up control

Specific control techniques

1. Never, ever use open ended questions
2. Statements
3. Short
4. Unambiguous
5. Facts, not conclusions
6. Avoid modifiers and generalizations
7. Only One new fact per statement
8. Lose the tag
 - Didn't you, correct, isn't that right
9. Yes

Why you want a Yes

When you cross, you have to be right. The witness is merely a mouthpiece, but you are the one telling the story. You want the witness just saying yes, yes, yes. Try to organize wording of questions so that the answers are “Yes” rather than “No”. At the very least group yes answers with other yeses and noes with noes.

- This trains the witness. Every word you’re saying is true and if the witness tries to disagree you’re prepared to slap him back into place with impeachment.
- Lulls the witness into not paying as much attention. Witness doesn’t need to think about what the answer is – it’s always Yes.
- It also lets the jury know that you’re correct. You can be trusted.

Why one question too many is fatal

When you get sloppy or greedy and the witness makes you pay:

1. The point you were just trying to make is destroyed.
2. You’ve lost control of the witness – they will definitely try to fight more, or at least talk more, on the next areas of cross.
3. The jury may no longer have confidence that you, and therefore your version of events, is correct.

Reminder – this is the wrong way

- When you came outside what color car did you see?
 - Open-ended, non-leading – the witness can give any answer they want.
- When you came outside did you see a car?
 - This is still a question. For maximum control, make it a statement.
- When you came outside you saw a white car with black top.
 - Too many facts. You only want one new fact per statement. So, break this down into several statements.
- You could hear loud music coming from the car.
 - Modifier or conclusion– loud is a comparison; it only means something in relation to something else. The witness could honestly answer No with the explanation that they didn’t consider it loud.

So that’s how you formulate the actual question, by following the rules – short, unambiguous statements with only one new fact per question.

Want to see someone else's take?

- Irv Younger – 10 Commandments of Cross Examination
<https://www.youtube.com/watch?v=dBP2if0l-a8>
- Terry MacCarthy on Cross Examination – multipart series
<https://www.youtube.com/watch?v=QcOkG9-TpEo>

<https://nyn.fد.org/sites/nyn.fد.org/files/pdfs/Look%20Good%20Cross%20by%20TM.pdf>
- *Dynamic Cross Examination* is a method coined by James McComas. Rather than maintaining strict control of the witness, the attorney asks strategic open-ended questions, which further the theory of the case by allowing the witness to reveal to the jury their true motives. The lawyer still controls the witness by carefully planning the topics of cross and by utilizing control techniques in concert with dynamic techniques. In order to use dynamic cross, you must have complete mastery of the facts of your case, a clear understanding of your theory and you must have a command of the control method.
 - WARNING - Do not try to fly, before you can walk and run.
<https://www.amazon.com/Dynamic-Cross-Examination-James-H-McComas/dp/1941007708>

How to organize your entire cross

Most attorneys who stumble into fatal answers aren't trying out dynamic techniques, instead they are most often asking sloppy questions because of a lack of preparation. An effective cross must be thoroughly prepared, in advance. No matter how good you are on your feet, your cross won't succeed unless you prepare in advance.

A. Chapter Method overview

1. You start with a well thought out theory of innocence.
2. Outline your ideal closing - imagine everything that you would say in your ideal closing. It helps to actually write a draft closing or at least outline it.
3. Identify what specific witness will give you each point you want to argue in closing.

- Everything you hope to say in closing has to come from a witness, a piece of evidence or a logical inference from the witnesses and evidence.
 - To figure out the potential sources for your points, you need to consider each potential witness in the trial and what information they can give you. That's going to require looking through every piece of discovery separately while focusing on that witness and then looking at it again focusing on a different witness.
4. For each witness make a list of points.
 - Points should be broken down into the narrowest concept.
 5. Convert each point for a particular witness into a chapter.
 - Build chapters by writing down every question you can think of that supports that point. The questions should have a logical progression starting with the general and getting more specific. The final point or conclusion should feel inevitable by the time the witness says it.
 6. Place your chapters in the order that is most persuasive.
 7. Create transitions / headlines for every chapter.

B. More detail on the steps in the Chapter Method

Statement Charts

It can be helpful to use statement charts to keep track of what information is in each document in discovery and also to track what information each witness has to offer. The process of creating the charts will also help you learn and remember all of your discovery.

Examples attached as **Exhibits A** and **B**.

- **Ex. A** was a working document I used to summarize everything two main officers said in prior reports and interviews. An X appears in the column on the left next to statements I considered important.
- **Ex. B** is the actual chart I used at trial to keep track of any inconsistencies between prior statements and trial testimony.

What's a point?

A point is something that furthers your story of innocence. It may either weaken part of the State's theory or affirmatively support your theory. It may be something that the State already conceded on direct, but you want to highlight because it supports your theory. This is why you need to work out your story of innocence at the very beginning, because if the point doesn't fit in with your theory, you are not going to cross on it.

A point is a narrow fact.

- For example, in a mis-ID case, "the witness had a poor opportunity to observe" is too big to be one point – it should be broken down into smaller parts. The witness didn't get a good look at the robber because 1)it was dark, 2)the robbery was quick and 3) the robber had a mask. Each of these is a point, which gets turned into a chapter.

Forming Chapters

Points are not Chapters. If a point matters to your case, if it's important to you and you want to say it in closing, you don't want just one or two questions on the point. You want to build to it.

Put each point at the bottom of a separate sheet of paper. And then develop a series of questions that build to the final point. All the facts that support each point are grouped together within a chapter for maximum persuasiveness and maximum emphasis.

- NOTE - embed impeachment in each chapter. Include the source for each fact within the chapter, so that if you have to impeach you don't have to scramble searching for the prior statement.

Order of examination

You want to think about the order of your chapters in advance. What chapter will you start with? What will be the next chapter after that?

- Probably not chronological.
Chronological is boring and often just a retread of the direct.
- Take advantage of **primacy** and **recency**.
People remember best the first and last things that they heard. Therefore, you want your strongest chapters to be first and last and for less crucial chapters to be buried in the middle.

Give thought to which chapters are connected to each other and which have similar emotions. Also think about whether you are primarily planning to discredit the witness or whether they also have useful things to say which furthers your theory. If they have useful things to say, you may want to cover those chapters before you discredit them rather than the other way around.

Separate each chapter onto a separate sheet of paper

- This allows you to easily switch around the order of the cross until you find the most effective structure.
- It also allows you to change the order during trial if unexpected answers make certain chapters unnecessary or changes the importance of other chapters.

Transitions / Headlines

Since your cross will not be chronological and you will hop around to different topics, you need transitions. Some people worry about tipping the witness off as to your strategy and think it's better to keep them confused, but the main goal is to make sure the jury is not confused. Transitions make sure they are able to follow from one topic to the next.

You want the transitions to be very specific – this is another way of maintaining control

Examples:

- I want to ask you some questions about... where you went ... after the shooting
- I want to ask you about what you saw after you left your store on December 3rd
- Let's talk about the first person you spoke to after the robbery

Plan your dismount

Always plan your sit-down chapter in advance

- Check in with partner before sit down chapter
- Add in any chapters your forgot
- Then end with power and authority with one of your strongest chapters

Sources for cross statements

Everything provided in discovery and anything learned through investigation can be a source for chapters. But don't forget about verisimilitude. These are things with the appearance of being true or real.

For example, if a witness speaks to police after a robbery and gives a description that we want to be accurate, we need to set the scene for that conversation.

- A description of the interaction with police is unlikely to be written in the discovery, but based on your knowledge of the world, you can assume certain things about the interaction.
- The witness knew the police were there to help. The police took their time. They didn't rush the witness. The witness was honest with the police. Told them everything they could remember. Wanted the perpetrator to be caught. Knew the details were important.

Sources for verisimilitude

- Training manuals and Patrol guides
<http://directives.chicagopolice.org/directives/>
<https://www1.nyc.gov/site/nypd/about/about-nypd/patrol-guide.page>
- Hospital regulations
- School codes of conduct
- National institute of Standards and Technology provides links to the Scientific Working Groups for various industries.
<https://www.nist.gov/oles/scientific-working-groups>

Style Points – Advance Techniques to Persuade and Hold Attention

A. Looping

Taking a useful word or phrase from the previous question and repeating it in the question or series of questions.

- Allows you to emphasize good facts – the street was dark, you parked your car on that dark street
- Allows you to vary the length of your statements and makes your cross sound more natural

B. Word choice

example– you were able to hear, could hear well enough to tell

C. Vocal Techniques

Volume : how loudly or softly you speak

- Speaking loudly adds energy and excitement to your delivery, while speaking softly increases intimacy.

Pace : how quickly or slowly you speak

- Fast pace can make the action in the chapter seem like it happened quickly.
- Makes a particular section seem more exciting
- Slow pace can allow for emphasis of a particular point

Pitch : how high or low your voice is

- Your voice will have a natural pitch and attempting to go too far outside that normal range will likely sound unnatural. But you can still use a little variation sparingly.
- In general voices tend to go higher than their natural pitch when you're nervous or excited and lower when you're relaxed

Tone and Emphasis

- I never said she stole my money

Silence – silence in the courtroom is powerful

- Highlights a key point if used immediately before or after
- Captures jury's attention
- Increases suspense or drama

More resources

- There are thousands of articles on effective public speaking, effective communication and linguistics
- <https://www.opencolleges.edu.au/informed/features/30-tricks-for-capturing-students-attention/>

- Article that discussed the linguistics study using “I never said she stole my money”
<https://www.wired.com/story/one-sentence-with-7-meanings-unlocks-a-mystery-of-human-speech/>
- Communication video
https://www.youtube.com/watch?v=5hvVjOqk_4o

D. Labels – give things a name and stick to it

The jury is just hearing about the case for the first time. They don’t know it as well as you and can easily forget details or get confused. Use labels and shortcuts to help them understand key details.

- Unless a date is crucial don’t use it or use it sparingly. You can say “on the night of the robbery” or “two weeks after the robbery” instead of bogging them down with “on September 12th” then on “September 21st.”
- If fine detail like that is crucial, then use aids to help them remember – a map with the address **and** its significance
1113 Odgen
Johnny’s House
- Think of what name you want to call each character and be consistent so that the jury remembers
Ms. Bridges
The robber
Carla
The man in the hat
Orville Wright
The detective
The store clerk
- Don’t forget about the client. Will he be Johnny, John Smith, Mr. Smith or something else? Think the impact of each choice. For example, maybe you want the client to empathize with your young client, so you call him Johnny.

E. Physical Space

Don’t forget that your body can be used as an aid to communication and so can the courtroom. Use gestures purposefully to emphasis a point or to help explain or describe. When using space in the courtroom, it can be helpful to be consistent. For

example, if you point to the back wall when discussing the street corner where the crime occurred, point to the same wall each time you mention it.

F. Don't argue with the witness

If you use the techniques discussed above, you will be able to control the witness and get the answers that you want. But this only works if you are following the rules. If you ask a witness a convoluted question or ask them to agree to a conclusion, it doesn't matter how many times you repeat the question or how much you argue, they will not agree with you. Arguing won't get you the answers you want and it's likely to alienate the jury.

Instead of arguing stay calm and focused and above all be disciplined.

EXHIBIT A

PO Minier Statements

| | | | |
|---------|--|---------|------|
| 3501-20 | Memo book | 7-24-15 | |
| 3501-02 | Arrest Report | 7-25-15 | |
| 3501-03 | Complaints report | | |
| 3501-04 | Firearm invoice | 7-25-15 | 2:31 |
| 3501-08 | GJ | 7-28-15 | |
| 3501-09 | GJ | 7-30-15 | |
| 3501-10 | I-view with Serrat, Abramowicz Det Falette | 8-17-15 | |
| 3501-11 | Federal complaint Det based on i-view with Minier | 8-27-15 | |
| 3501-21 | Fed GJ Det based on i-view with Minier | 9-21-15 | |
| 3501-12 | I-view with Serrat, Ab and Joey R | 2-2-16 | |
| 3501-13 | meeting with AUSA | 2-9-16 | |
| 3501-14 | Go to impound lot and scene with AUSA | 2-19-16 | |
| 3501-23 | meeting with AUSA | 2-26-16 | |

NOTE – where is State complaint?

Need to decode memo book

PO Minier chart

| | | |
|---|---|-------------|
| | DOA – 7-24-15 TOA – 21:47 | 3501-02 |
| | Occurrence time – 21:20 | 3501-02 |
| | Home address – 2323 Walton | 3501-02 |
| X | Time occurrence – 21:20 thru 21:47 | 3501-03 |
| | Witnesses – 0 | 3501-03 |
| X | Joseph Robertson, age, DOB | 3501-03 |
| | Physical description of Robertson – white t-shirt only No pants, shoes unk, hat unk, characteristics unk, body marks unk | 3501-03 |
| | Complaint does not mention stopping 3 rd man | 3501-03 |
| | Is complaint report related to a stop and frisk report – No | 3501-03 |
| | Minier invoicing officer for firearm | 3501-04 |
| | Direct your attention to 9:47 pm | 3501-08 3 |
| | At 179 and Daly when first noticed | 3501-08 4 |
| | See wheel well guy first | 3501-08 4 |
| X | “[WWG] didn’t see us. By the time he realized we were there, he walks over to the D and gave him the object” | 3501-08 4 |
| | Dark | 3501-08 4 |
| | Lights by police and lights by car | 3501-08 5 |
| | Object is passed to D | 3501-08 5 |
| | Can’t tell it’s a firearm until passed to D | 3501-08 5 |
| | D opens door after receiving firearm | 3501-08 5 |
| | D throws firearm into van | 3501-08 5 |
| | Can see firearm through window on drivers seat | 3501-08 6 |
| | Windows shut | 3501-08 6 |
| | One car length away when gun put in car | 3501-08 7 |
| | Drew gun on D | 3501-08 6 |
| X | After D cuffed, Minier “I went back to the van I was able to secure the weapon” | 3501-08 7 |
| | D stmt – “you saw what happened, he handed it to me and then he walked away” D gives info on “WWG” | 3501-08 7 |
| X | Q – after you apprehended the defendant, how did you ultimately retrieve the weapon? A – I was able to open the door and take the firearm out of the car | 3501-08 11 |
| | Car unlocked | 3501-08 11 |
| | GJ testimony 7-28-15 doesn’t mention 3 rd man | 3501-08 |
| | GJ 7-28-15 doesn’t mention D trying to get in building | 3501-08 |
| | “WWG” didn’t know the police were there | 3501-09 2 |
| X | Once “WWG” sees police, he walks towards D and gave object | 3501-09 2-3 |
| | Doesn’t realize it’s a firearm until exchange | 3501-09 3 |

| | | |
|---|---|------------|
| | 3 car lengths away during exchange | 3501-09 3 |
| | D tosses gun into car. Throws gun into car. | 3501-09 3 |
| | Q – Did he open the door A – the door was open | 3501-09 3 |
| | Slammed door and went towards building. Tried to open door, but couldn't open the door | 3501-09 3 |
| | D cuffed and was under arrest at that time | 3501-09 4 |
| | Drew firearm and pointed it at D | 3501-09 4 |
| | Minier took photo of gun on seat | 3501-09 6 |
| | WWG keeps walking. He loses sight of him | 3501-09 8 |
| | D daughter comes out of bodega | 3501-09 8 |
| | Wheel well object on driver's side | 3501-09 10 |
| | Pointed gun at D. Pointed at his chest | 3501-09 10 |
| | Dark by first car. Van right in front of building – light bulb | 3501-09 11 |
| | “everything happened within 2 to 5 seconds. It was real quick” | 3501-09 11 |
| | NYPD 2 years | 3501-10 1 |
| | Shift on 7-24 was 19:30 to 4:05 – impact hours | 3501-10 1 |
| | Shooting the week before | 3501-10 1 |
| | Minier at corner of 179 and Daly. D and WWG on 179 – across the street | 3501-10 1 |
| X | Sees guy on other side of street, behind car reach into wheel well | 3501-10 1 |
| | Believes it was back wheel | 3501-10 1 |
| X | Couldn't see WWG face | 3501-10 1 |
| | Saw someone bend over and reach toward wheel well | 3501-10 1 |
| | Wheel well is common hiding place | 3501-10 1 |
| | While walking across sees D take something from WWG | 3501-10 1 |
| | Could see D face over van | 3501-10 1 |
| X | Saw D reach out arm for object | 3501-10 1 |
| | After exchange, WWG walks along 179th | 3501-10 1 |
| | Sees D throw object in van | 3501-10 1 |
| | At time of throw “appeared to be a firearm, although at that moment I wasn't completely sure” | 3501-10 1 |
| | At time of throw, area in front of building was well lit | 3501-10 1 |
| | After throw, D shut car door | 3501-10 1 |
| | When WWG retrieved object from wheel well, D saw officers | 3501-10 1 |
| X | When WWG retrieved object and D saw police, D seemed to say something to WWG | 3501-10 1 |
| | Not sure what D “said” to WWG | 3501-10 1 |
| | D took object quickly and threw in car – matter of seconds | 3501-10 1 |
| | After throwing object, D goes straight to building | 3501-10 1 |
| | Minier reaches van when D at building. Looks through window and sees gun | 3501-10 1 |
| | Minier draws his gun | 3501-10 1 |

| | | |
|---|--|-------------|
| | D tries to go to other door | 3501-10 1 |
| | Tells D to get on ground | 3501-10 1 |
| | D gets on ground, then tries to get up | 3501-10 1 |
| | D – “you saw what happened” (intrepreted that to mean WWG handed him gum), D volunteers info about lotto. Info on WWG | 3501-10 1-2 |
| X | Minier told Mejia to go safeguard gun | 3501-10 2 |
| | Called for sgt after D handcuffed | 3501-10 2 |
| | Other officers transported D to station | 3501-10 2 |
| | Minier, Mejia and sgt went in building to look for WWG | 3501-10 2 |
| | WWG wife was in building, says he wasn’t home | 3501-10 2 |
| | Minier never seen D before | 3501-10 2 |
| | PO Dmitrev handled gun. Took out cylinder and rounds | 3501-10 2 |
| | Dmitrev sealed gun | 3501-10 2 |
| X | ECT handled gun after Dmitrev brought it to station <i>(was Minier with Dmitrev. If not chain of custody issue)</i> | 3501-10 2 |
| | Minier vouchered gun | 3501-10 2 |
| | Minier searched van. Didn’t find anything else notable in van | 3501-10 2 |
| | Canvassed for video that night and next day – found none | 3501-10 2 |
| | Testified in 4 GJ (including 2 for this case) | 3501-10 2 |
| | Testified in court 1X in DWI case | 3501-10 3 |
| | POs saw D standing near open driver’s door of van | 3501-11 3b |
| | D van, directly behind car | 3501-11 3b |
| | Whole incident 30 to 40 seconds | 3501-12 |
| X | Whole incident 30-40 seconds at approximately 9:30pm | 3501-12 |
| | POs headind south bound on Daly | 3501-12 |
| | Vehicles facing westbound | 3501-12 |
| | WWG sees officers | 3501-12 |
| | D may have said something to WWG | 3501-12 |
| X | D reaches out hand to take object | 3501-12 |
| | Guy keeps going EB – walks fast | 3501-12 |
| | D had gun very briefly | 3501-12 |
| | D goes up ramp to building – can’t get in | 3501-12 |
| | PO confines gun in van – windows up, door locked | 3501-12 |
| | D turns to go down stairs | 3501-12 |
| | PO tells D to get down – pulls gun | 3501-12 |
| X | 3 rd guy cuffed for safety (first mention 2-2) | 3501-12 |
| | Mejia pulled down 3 rd guy | 3501-12 |
| | Let 3 rd guy go after 5 minutes | 3501-12 |
| | Calls sgt | 3501-12 |
| | PO Vargas in photo | 3501-12 |
| X | Keys on D, PO took keys and locked gun in van for the moment | 3501-12 |
| | After hand off (Minier) walked between parked car and van | 3501-14 |
| | Saw gun through driver’s side window | 3501-14 |

| | | |
|---|--|---------|
| X | After arrest got keys from D. Told Mejia to safeguard D | 3501-14 |
| X | Drove van to precinct | 3501-14 |
| | Believes windows don't work – tried to chat up person on street and couldn't work window | 3501-14 |
| X | 3 rd guy leaning on car parked behind van – on phone | 3501-14 |
| | Minutes after arrest D daughter came out of store | 3501-14 |
| X | One male stop - 2120 | 3501-20 |
| | Firearm recovered by Mejia and Dmitru | 3501-20 |
| | | |
| | | |

Object was hidden in wheel well – wouldn't have seen if left there

PO Mejia Statements

| | | |
|---------|---|---------|
| 3504-12 | memo book | 7-24-15 |
| 3504-01 | GJ | 7-30-15 |
| 3504-02 | i-view with Abramowicz, Guzman + Det | 8-4-15 |
| 3504-03 | Fed complaint Det based on i-view with Mejia | 8-27-15 |
| 3504-13 | Fed GJ – Det based on i-view with Mejia | 9-21-15 |
| 3504-04 | I-view with Dave, Serrat and Joey | 2-2-16 |
| 3504-05 | meeting with AUSA | 2-9-16 |
| 3504-11 | go to impound lot and scene with AUSA Dave, Joey Rosenberg and Det | 2-19-16 |
| 3504-14 | i-view with AUSA | 2-23-16 |
| 3404-15 | met with AUSA + Det | 2-26-16 |

PO Mejia Chart

| | | |
|---|--|-------------|
| | 9:47 pm | 3504-01 3 |
| | We turned the corner on East 179 th and we saw | 3504-01 4 |
| X | WWG “sees us” and passes what looks like firearm to D | 3504-01 4 |
| | At that time D had door open to van | 3504-01 4 |
| | D had “driver’s door open. He throws a black firearm on the passenger seat.” | 3504-01 4 |
| | WWG speed walking away | 3504-01 4 |
| | D proceeds to go up the stairs (<i>in contrast doesn’t describe as speed walking</i>) | 3504-01 4 |
| | Partner takes weapon out | 3504-01 4-5 |
| | Another person there | 3504-01 5 |
| | Mejia apprehends 3 rd man for safety | 3504-01 5 |
| | After D cuffed, Mejia grabs him and Minier goes to secure weapon | 3504-01 5 |
| | 3 rd man in front of car behind van | 3504-01 5 |
| | Went up to him to make sure he didn’t have anything | 3504-01 5 |
| | D did not approach WWG | 3504-01 7 |
| X | Mejia points his gun at 3 rd man | 3504-01 7 |
| | Partner points gun at D | 3504-01 7 |
| | Minier points gun at D’s chest | 3504-01 8 |
| X | Q – did you observe the first man exchange any words with the defendant A- I didn’t Q – you didn’t observe them speaking A – No, I didn’t observe them speaking | 3504-01 8 |
| | NYPD 2 years | 3504-02 1 |
| X | Didn’t searched 3 rd man | 3504-02 1 |
| X | Did cuff 3 rd man | 3504-02 1 |
| | Guns drawn, get on ground, D got on ground (<i>nothing about trying to get up from ground</i>) | 3504-02 1 |
| | D says “what did I do?” | 3504-02 1 |
| | Spoke to wife of WWG | 3504-02 2 |
| | Got name, DOB of WWG. Phone number and name of wife | 3504-02 2 |
| | Left gun in van | 3504-02 1 |
| | Recovered gun with gloves | 3504-02 2 |
| | Other officer made gun safe without gloves | 3504-02 2 |
| X | Drove van back to precinct | 3504-02 2 |
| | D toss gun after sees cops, looked in their direction | 3504-02 2 |
| | Mejia testified 3x at GJ. No trial testimony | 3504-02 3 |
| | Southbound on Daly | 3504-04 |
| | Turn corner on 179 – see WWG | 3504-04 |
| X | PO patted down 3 rd man | 3504-04 |
| X | Mejia drove van to station | 3504-04 |
| | Mejia picked up gun with gloves to voucher | 3504-04 |
| | Demitri touched without gloves to make safe | 3504-04 |
| | 45 arrests – witnesses others | 3504-04 |
| | After hand off Mejia walked around front of wheel well car | 3504-11 |
| | 3 rd man not in area of hand off | 3504-11 |
| | Front of van at the edge of building | 3504-11 |

| | | |
|---|--|---------|
| X | 2147 – one under arrest by officer Minier | 3504-12 |
| | After D came down stairs of building, tried to go down alley (first time) | 3504-14 |
| | | |

EXHIBIT B

| | SOURCE | PRIOR STATEMENT | AT TRIAL |
|--------|---------------|---|-----------------|
| Cop | 3501-10 1 | NYPD 2 years | |
| Cop | 3501-10 1 | Shift on 7-24 was 19:30 to 4:05 – impact hours | |
| Cop | 3501-10 2 | Testified in 4 GJ (including 2 for this case) | |
| Cop | 3501-10 3 | Testified in court 1X in DWI case | |
| Time | 3501-02 | Occurrence time – 21:20 | |
| | 3501-02 | Home address – 2323 Walton | |
| Time | 3501-03 | Time occurrence – 21:20 thru 21:47 | |
| Time | 3501-20 | One male stop - 2120 | |
| | 3501-10 1 | Shooting the week before | |
| | 3501-03 | Witnesses – 0 | |
| | 3501-03 | Joseph Robertson, age, DOB | |
| | 3501-03 | Physical description of Robertson – white t-shirt only No pants, shoes unk, hat unk, characteristics unk, body marks unk | |
| Layout | 3501-08 3 | Direct your attention to 9:47 pm | |
| Layout | 3501-08 4 | At 179 and Daly when first noticed | |
| Layout | 3501-08 4 | See wheel well guy first | |
| Layout | 3501-08 4 | Dark | |
| Layout | 3501-08 5 | Lights by police and lights by car | |
| Layout | 3501-09 11 | Dark by first car. Van right in front of building – light bulb | |
| Layout | 3501-10 1 | Minier at corner of 179 and Daly. D and WWG on 179 – across the street | |
| Layout | 3501-10 1 | Sees guy on other side of street, behind car reach into wheel well | |
| Layout | 3501-10 1 | Believes it was back wheel | |
| Layout | 3501-10 1 | Couldn't see WWG face | |
| Layout | 3501-10 1 | Saw someone bend over and reach toward wheel well | |
| Layout | 3501-10 1 | Wheel well is common hiding place | |
| Layout | 3501-10 2 | Minier never seen D before | |
| Layout | 3501-11 3b | POs saw D standing near open driver's door of van | |
| Layout | 3501-11 3b | D van, directly behind car | |

| | | | |
|---------|-------------|---|--|
| Layout | 3501-12 | POs heading south bound on Daly | |
| Layout | 3501-12 | Vehicles facing westbound | |
| Handoff | 3501-08 7 | One car length away when gun put in car | |
| Handoff | 3501-09 2 | “WWG” didn’t know the police were there | |
| Handoff | 3501-09 2-3 | Once “WWG” sees police, he walks towards D and gave object | |
| Handoff | 3501-09 3 | Doesn’t realize it’s a firearm until exchange | |
| Handoff | 3501-09 3 | 3 car lengths away during exchange | |
| Handoff | 3501-09 3 | D tosses gun into car. Throws gun into car. | |
| Handoff | 3501-09 3 | Q – Did he open the door A – the door was open | |
| Handoff | 3501-09 3 | Slammed door and went towards building. Tried to open door, but couldn’t open the door | |
| Handoff | 3501-09 10 | Wheel well object on driver’s side | |
| Handoff | 3501-09 11 | “everything happened within 2 to 5 seconds. It was real quick” | |
| Handoff | 3501-10 1 | While walking across sees D take something from WWG | |
| Handoff | 3501-10 1 | Could see D face over van | |
| Handoff | 3501-10 1 | Saw D reach out arm for object | |
| Handoff | 3501-10 1 | After exchange, WWG walks along 179th | |
| Handoff | 3501-10 1 | Sees D throw object in van | |
| Handoff | 3501-10 1 | At time of throw “appeared to be a firearm, although at that moment I wasn’t completely sure” | |
| Handoff | 3501-10 1 | At time of throw, area in front of building was well lit | |
| Handoff | 3501-10 1 | After throw, D shut car door | |
| Handoff | 3501-10 1 | When WWG retrieved object from wheel well, D saw officers | |
| Handoff | 3501-10 1 | When WWG retrieved object and D saw police, D seemed to say something to WWG | |
| Handoff | 3501-10 1 | Not sure what D “said” to WWG | |
| Handoff | 3501-10 1 | D took object quickly and threw in car – matter of seconds | |
| Handoff | 3501-10 1 | After throwing object, D goes straight to building | |

| | | | |
|-------------|------------|--|--|
| Handoff | 3501-12 | Whole incident 30 to 40 seconds | |
| Handoff | 3501-12 | Whole incident 30-40 seconds at approximately 9:30pm | |
| Handoff | 3501-12 | WWG sees officers | |
| Handoff | 3501-12 | D may have said something to WWG | |
| Handoff | 3501-12 | D reaches out hand to take object | |
| Handoff | 3501-12 | Guy keeps going EB – walks fast | |
| Handoff | 3501-12 | D had gun very briefly | |
| Arrest | 3501-08 6 | Drew gun on D | |
| Arrest | 3501-12 | D goes up ramp to building – can't get in | |
| Arrest | 3501-12 | D turns to go down stairs | |
| Arrest | 3501-12 | PO tells D to get down – pulls gun | |
| Arrest | 3501-14 | After hand off (Minier) walked between parked car and van | |
| Arrest | 3501-14 | Saw gun (on seat) through driver's side window | |
| Post-arrest | 3501-08 11 | Car unlocked | |
| Post-arrest | 3501-09 6 | Minier took photo of gun on seat | |
| Post-arrest | 3501-09 8 | D daughter comes out of bodega | |
| Post-arrest | 3501-10 2 | Other officers transported D to station | |
| Post-arrest | 3501-10 2 | Minier, Mejia and sgt went in building to look for WWG | |
| Post-arrest | 3501-10 2 | WWG wife was in building, says he wasn't home | |
| | | | |
| Post-arrest | 3501-10 2 | PO Dmitrev handled gun. Took out cylinder and rounds | |
| Post-arrest | 3501-10 2 | Dmitrev sealed gun | |
| Post-arrest | 3501-10 2 | ECT handled gun after Dmitrev brought it to station <i>(was Minier with Dmitrev. If not chain of custody issue)</i> | |
| Post-arrest | 3501-10 2 | Minier vouchered gun | |
| Post-arrest | 3501-10 2 | Minier searched van. Didn't find anything else notable in van | |
| Post-arrest | 3501-10 2 | Canvassed for video that night and next day – found none | |

| | | | |
|---------------------|---------|--|--|
| Post-arrest | 3501-12 | PO confines gun in van – windows up, door locked | |
| Post-arrest | 3501-12 | Calls sgt | |
| Post-arrest | 3501-12 | PO Vargas in photo | |
| Post-arrest | 3501-12 | Keys on D, PO took keys and locked gun in van for the moment | |
| Post-arrest | 3501-14 | After arrest got keys from D. Told Mejia to safeguard D | |
| Post-arrest | 3501-14 | Drove van to precinct | |
| Post-arrest | 3501-14 | Believes windows don't work – tried to chat up person on street and couldn't work window | |
| Post-arrest | 3501-14 | Minutes after arrest D daughter came out of store | |
| | | | |
| Post-arrest | 3501-20 | Firearm recovered by Mejia and Dmitru | |
| 3 rd Man | 3501-03 | Is complaint report related to a stop and frisk report – No | |
| 3 rd man | 3501-08 | GJ testimony 7-28-15 doesn't mention 3 rd man | |
| 3 rd man | 3501-12 | 3 rd guy cuffed for safety (first mention 2-2) | |
| 3 rd man | 3501-12 | Mejia pulled down 3 rd guy | |
| 3 rd man | 3501-12 | Let 3 rd guy go after 5 minutes | |
| 3 rd man | 3501-14 | 3 rd guy leaning on car parked behind van – on phone | |