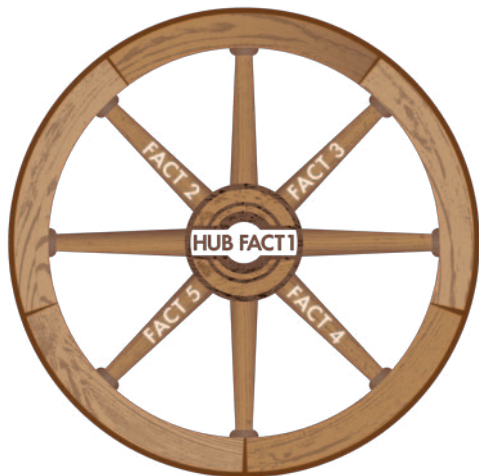




## Wheeling the Factual Assertion

Wheeling is a cross-examination technique designed to expand the importance of an admitted fact or to undermine its believability. We wheel a “hub fact” by discussing it in combination with other logically related “spoke facts.”



As a method of constructive cross, we wheel a hub fact with which we agree with spoke facts the witness must also admit. The unchallenged hub fact grows in importance as we link it to other factual admissions.

As a destructive cross technique, our goal is to undermine belief in the hub fact. The hub fact is testimony that we assert lacks credibility. We then cause the witness to discuss spoke facts that are logically inconsistent with the hub fact.

Step 1: Establish the hub fact we will wheel. The hub is always testimony the witness will admit, even if our theory is that this assertion is untrue.

Step 2: Develop spoke facts that logically link to the hub fact. The spoke facts either reinforce the importance of the hub fact or undermine its believability.

Example 1: This is a **constructive cross** built on admissions with which we agree. Bank fraud: The defendant was a loan officer. Violating the bank’s written procedures, he gives himself a loan to buy property. When he later defaults, his loan is discovered. Defense: Defendant was unaware that it was forbidden to make a loan to himself. He listed his loan on a bank form.

Our hub fact is the weekly loan generation report that should list all loans made by that officer. (See the abbreviated cross chapter below.)

- Q:** Your bank requires a weekly loan generation report.
- Q:** (1) Every loan made by that loan officer must be shown on his or her weekly loan generation report.
- Q:** Here is defendant’s loan generation report for the week ending December 14, 2018. (ex. 17)

To give greater importance to the loan generation report, we wheel it with facts that amplify its contents.

- Q:** (1) His loan should be listed on the weekly loan generation report.
- Q:** (2) He listed his loan on the weekly loan generation report.
- Q:** (1) The loan report should show the name of the borrower.
- Q:** (3) His loan report listed himself as borrower.
- Q:** (1) The loan report should show the amount of the loan.
- Q:** (4) His loan report accurately showed the loan amount.
- Q:** (1) The loan report should show the security for the loan.
- Q:** (5) His loan report properly listed the condo that he bought with the loan.

Example 2: This is a **destructive cross** in which our hub is a witness’s assertion we wish to undermine. Sex assault: Victim unable to appraise nature of the conduct due to alcohol. Defense: Valid consent.

Complainant, a college student, asserts that she drank a substantial amount by 8 p.m. Friday night, took a walk with friends and defendant, came back to the dorm, and had nothing more to drink. She felt the room begin to spin. Before that night she never drank so much that the room began to spin. She fell asleep. She recalls “coming

to” around midnight and finding defendant having sex with her. Complainant explains to investigators, “**I do not drink that often and I do not know my limits.**” She felt hungover the next morning but had never before felt hungover.

Facts that undermine her assertion:

Thursday night: Went to several parties with friends. “Got wasted.”

Friday: Missed her classes. Stayed in bed until 1 p.m. Snapchat shows she then made plans to smoke weed with friends. In a separate statement, claims she joined friends in smoking marijuana and drinking.

Friday night: In dorm with friends, drinking vodka directly from bottle and Red Bull.

Saturday night: Drank with friends. Drank so much she was vomiting.

Snapchat records: Likes to get “high as f\*\*k.”

We first cause her to repeat the hub fact (1) “I do not drink that often and I do not know my limits.” We wheel the hub (1); with spokes (2) Thursday night “got wasted”; (3) Friday daytime, skip school, drinking and smoking dope with friends; (4) Friday nighttime drinking from bottle of vodka and Red Bull; (5) Saturday night got so drunk that you were vomiting; and (6) “Snapchat” you like to get “high as f\*\*k.”

We undermine her assertion/our hub by developing chapters on her admitted drinking. This cross is carried out in a quiet voice with no accompanying facial expressions or other demonstrations of disbelief. The story’s facts will generate the desired skepticism.

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### About the Author

**NACDL LIFE MEMBER** Larry Pozner is recognized as America’s authority on modern cross-examination. His book is *Cross-Examination: Science and Techniques* (Lexis, 3d edition, by Pozner and Dodd.) Pozner’s lecture schedule can be found at <https://store.lexisnexis.com/site/poznerdodd#pozner>.

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