

XLVI. Impeachment Overview

Format: Plenary Presentation

Time: 30 minutes

Materials:

Read, *Impeaching With Prior Statements*

Handout on Impeachment

Room Setup:

Session Overview:

Participants will learn the important skill of impeaching a witness using inconsistent statements. They will learn to make the determination of whether or not to impeach—that just because a witness says something different on the stand does not mean that the lawyer should impeach them with their inconsistent statement. Participants will not only learn how to impeach but also, that impeaching the witness should only be done when it furthers the defense theory.

Learning Objectives & Key Lecture Points:

- ✓ Participants will learn and be able to perform the 4 steps to impeaching a witness with inconsistent statements.
 - ✓ COMMIT→
 - ✓ ACCREDIT (or CREDIT)
 - ✓ CONFRONT
 - ✓ COMPLETE
- ✓ Participants will learn how to “close the escape hatch” (how/when to accredit)
- ✓ Before the lecture even begins and for the workshops, be sure to write “Commit, Accredit, Confront, and Complete” on a piece of flip chart paper in a place where participants can see it.
- ✓ Understand that the decision to impeach is strategic. A lawyer must decide whether:
 - ✓ Impeaching the witness advances the defense theory
 - ✓ Whether the goal of the impeachment is to have the fact-finder believe the prior statement or show that the witness is contradicting him/herself.

XLVII. Impeachment Exercises

Format: Small group exercises, the ideal group size is no more than 6-8 participants per group.

Time: 2 hours, 15 minutes

Materials:

Handouts

- ✓ Basic Impeachment Sheet. "Impeachment Step (Prior Inconsistent Statements)
- ✓ Physical / Demonstrative / Photographic Evidence
- ✓ Oct. 16th Commonville College Incident Report
- ✓ Commonville Police Department, Complainant / Witness Statement from Wilma Peterson
- ✓ Investigator Statement of Wilma Peterson
- ✓ ~~Commonville Police Department Complainant / Witness Statement from Shelby Settles~~ → *Kelly Monroe Statement*
- ✓ Commonville Police Department Complainant / Witness Statement from Julius Telly
- ✓ Commonville Police Department Investigative Summary
- ✓ Map showing where the decedent's body and the gun was found
- ✓ Derek Cash statement

Room Setup:

Courtroom setup.

Session Overview:

In small groups we will use the impeachment exercises to practice the fundamentals of impeaching with documents.

Learning Objectives:

- ✓ Four steps of Impeachment:
 - ✓ Commit = today you claim (believe, said, etc.)
 - ✓ Credit = build up the circumstances under which the prior statement was made (if you want the prior statement to be more credible). Close escape hatches.
 - ✓ Confront with what was said in the earlier statement (be clear on how witness fits into the theory). If the witness agrees that they made the earlier statement, you are done. If not the lawyer will need to move to the next step.
 - ✓ Complete = prove the witness did make the inconsistent statement by moving the document into evidence or later calling a witness.

- ✓ MOPS- do what is necessary to impeach; Mark, Show to opposing counsel, Present to the witness, Submit into evidence

Session Activities:

Two parts to this workshop:

- ✓ Step 1- before turning to the Mitchell Redd case, start with the simple statement example and walk them through the four steps. We have a red light / green light example.
 - ✓ Write the steps out on the flip chart paper.
 - ✓ First, get them to walk through the 4 steps, ask three accredit questions, work them on getting up for a minute with a simple impeachment; the light was red, the light was green
 - ✓ Then, think about what the accrediting looks like?
- ✓ Step 2- turn to Mitchell Redd hypotheticals included below.

The following hypos will be used during the impeachment workshops. Participants have the hypotheticals in their exercise manual. Faculty will play the role of the witness in order to help participants work on impeachment skills. Participants should use the documents they received through the course of the program to impeach the witness.

Hypo #1

The state calls Joseph Barton as a witness. Mr. Barton testifies that he was working the 4 p.m. to midnight shift on October 16th. At around 9:30 p.m. he was standing at the front door when he saw Mitchell Redd pull out a gun and shoot Tay Tavares three times (he doesn't know Mitchell Redd but identifies him in court as the person he saw shoot Tay Tavares. Use Mr. Barton's incident report to impeach him on this point.

Hypo #2

Your theory at trial is that Mitchell never had the gun but that after the shooting he ran in the same direction as Julius Telly who was the shooter. Your theory with respect to Wilma Peterson is that she saw Mitchell running but she isn't saying that she ever saw him with a gun. Surprise! At trial Wilma testifies that she distinctly recalls seeing a gun in the right hand of the guy with the Avirex jacket and that she saw him take the gun and put it in his waistband. Use her statement to impeach her.

Put
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Hypo #3

Same theory as number two. Assume the police found five shell casings. Wilma now says she heard five gunshots. She is certain of the number because she counted. Use BOTH her statement to the defense and her statement to the police to impeach her.

Hypo #4

Derek Cash testifies at trial that shortly before the shooting he noticed a guy with dreadlocks, wearing a black Avirex jacket, holding a gun. He identifies Mitchell in court as that guy. Use Derek's statement to the police to do an impeachment by omission.

Hypo #5

Julius Telly testifies that on October 15th he went with Mitchell and some friends to the homecoming. Telly testifies that Mitchell started the fight with Tay Tavares the night before the shooting and was getting the worst of things. He says Mitchell vowed to get Tay back for whooping him that night.

Hypo #6

Kelly Monroe testifies at trial. Kelly testifies that he had a conversation at the jail with Mitchell in which Mitchell said he was glad he shot Tay and that he would do it again if he had the chance. Kelly says that he shot Tay because they had a beef from the night before. Impeach him with his statements to Det. Mapleton.