

You Took Depositions, Now What?

Using Deposition at Trial



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1. Decide trial cross-examination topics

- Consider the *purpose* of this witness
 - Tell story
 - Prove an essential element
 - Piñata
 - Increase damages
 - Explain difficult concepts
 - Damage control
- Write down the *most important points* to get from this witness
 - 1 excellent point is usually better than 5 pretty good points
 - Consider the witness' strengths and weaknesses
 - Consider your strengths and weaknesses
- *Read the transcript*, then read it again, and again, and again
- Reevaluate the *most important points*

2. Formulate cross-examination questions

Background: 3 types of cross-examination answers

- Helpful
- Common-sense
- Lies

Helpful answers

- If you plan to impeach witness, then best to get these answers early in the cross—before witness loses his credibility
- If helpful answer will contradict other testimony, you may want to remind the jury of the previous witness' testimony

Common-sense answers

- All jurors would have to agree on the answer
- If witness does not agree, so what!
- Keep your credibility

Lies

- A lie is only a lie where you can immediately prove the truth
- Be prepared for the lie
- You must be perfect in proving the truth
- You must prove the truth efficiently

- A little drama is a good thing
- Delayed lies (set-up questions) – violate the immediacy rule
 - Difficult to execute because you are not disproving the lie immediately
 - Dangerous if you cannot connect dots
 - Sometimes necessary
 - Can be used to create drama (not reason enough to use them)

How to:

- Focus on 1 specific topic at a time
- Draft questions word-for-word only when:
 - you must ask with specific and necessary language
 - good chance of impeachment
- Table of answers
 - Purpose of questions at top
 - Give line and page numbers of answers
 - Example:

People hung out; problem because it was dangerous

- People are not allowed to loiter or hang out at the gas station (67:23-68:3)
- It is a problem for people to hang around at a gas station (45:2-5)
- It is up to Shawn Noorani to determine how long people can hang out (but you think an hour-plus) (68:4-8)
- You knew there was a problem with people hanging around the gas station (45:12-17)
- Police wanted you to stop people from hanging out (82:10-12)
- Police officers came and told you it had to stop (81:16-82:9)*
- Even city council member told you it had to stop (81:16-82:9)*
- Police told you to install new signs (81:16-82:9)*
- You agree it is dangerous to have someone on your property hanging out for 40 minutes (with a gun) (78:19-24)

- Practice it over and over and over with different scenarios

- Prepare and practice using impeachment materials
 - Example:

Drugs at barbershop; lied about why shop left

- A customer of yours told you that they believed the barbershop was selling drugs (52:11-4; 56:2-10)
- Barbershop and carwash owned by same person (53:1-3)
- You didn't tell the police (53:6-8)
- You asked the barbershop and they said, no, they were not selling drugs (52:15-17)
- The reason the barbershop was no longer at the shopping center was because it could not afford rent (52:18-20; 53:1-5)
- You never demanded the barbershop leave so illegal activity would stop (69:21-24)
- It had nothing to do with the allegations of selling drugs (52:21-23)
- *Impeach with ROG response*

- Prepare folder
- Practice using folder

3. Impeachments

Background: 2 types of impeachments

- Contradiction
- Omission: you should be able to turn this into an impeachment by *contradiction*

How to impeach by contradiction (with video deposition)

- Get the lie
- Do not confirm the lie
- You remember when you were at your lawyer's office, and I came and asked you questions
- It was on [date]
- You were there; your lawyer was there; I was there

- Also had a court reporter who wrote down everything you said
- And a videographer who was recording what you said
- You were under oath
- You were supposed to tell the truth the whole truth and nothing but the truth
- Just like you are supposed to do here today
- Here is me asking you this same question and how you answered back then
- Play video
- MOVE ON!

How to impeach by contradiction (with transcript projection)

- Get the lie
- Do not confirm the lie
- You remember when you were at your lawyer's office, and I came and asked you questions
- It was on [date]
- You were under oath
- You were supposed to tell the truth the whole truth and nothing but the truth
- Just like you are supposed to do here today
- There was a court reporter there
- And the court reporter wrote down everything we all said – you, your lawyer, and me
- I am handing you a copy of the transcript from [date]
- This has all the questions I asked you and answers you gave on [date]
- After this transcript was written, you had 30 days to review it and make any changes you wanted
- You did not make any changes
- Let's display page A, line B
- I asked you this: [read question]
- Your answer was this: [read answer]
- MOVE ON!

How to impeach by contradiction (with transcript only)

- Get the lie
- Do not confirm the lie

- You remember when you were at your lawyer's office, and I came and asked you questions
- It was on [date]
- You were under oath
- You were supposed to tell the truth the whole truth and nothing but the truth
- Just like you are supposed to do here today
- There was a court reporter there
- And the court reporter wrote down everything we all said – you, your lawyer, and me
- I am handing you a copy of the transcript from [date]
- This has all the questions I asked you and answers you gave on [date]
- After this transcript was written, you had 30 days to review it and make any changes you wanted
- You did not make any changes
- I want you to turn to page A, line B
- *I am going to read page A, line B until page X, line Y out loud*
- *I want you to read it silently, then when I am done, I am going to ask you whether I read it correctly*
- [Read transcript]
- Did I read it correctly?
- MOVE ON!

4. Other tips

- Cross-examination is a show
- You are the show
- The more prepared you are, the more you can listen and detour if necessary
- Preparation will mask itself as impressive “on your feet” maneuvering
- Cross-examination is *not* the time to connect the dots