

IMPEACHMENT

Rules

Methods

Techniques

GOAL OF IMPEACHMENT

- Discredit the witness or his/her testimony;
 - Show Inconsistency
- Lock in prior inconsistent statement
- Challenge credibility and credentials

Purpose Of Impeachment

- Purpose of impeachment is “to reduce or discount the credibility of a witness for the purpose of inducing the jury to give less weight to her testimony in arriving at the ultimate facts in the case.” Thus, impeachment may include attempts to show that a person has lied, cannot remember, cannot articulate, is biased, is inept, unqualified or is uncertain.

METHODS OF IMPEACHMENT

- PROVE OR USE:
 - BIAS, MOTIVE, OR INTEREST
 - PRIOR INCONSISTENT STATEMENT OR CONDUCT
 - MENTAL OR PHYSICAL IMPAIRMENT
 - CHARACTER FOR UNTRUTHFULNESS
 - CONTRADICTION
 - CRIMINAL CONVICTIONS

F.R.E Rule 608. A Witnesses Character for Truthfulness or Untruthfulness

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witnesses reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

F.R.E. 613. Witness's Prior Statement

(a) Showing or Disclosing the Statement During Examination.

When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

Rule 613 (Cont.)

(b) Extrinsic Evidence of a Prior Inconsistent Statement.

Extrinsic evidence of a witness's prior or inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires.

IMPEACHMENT TIPS

- Determine purpose – does it advance your case?
- Know your case and your record; organize it well;
 - Have a system
- Anticipate potential areas for impeachment
- Be selective on impeachment
 - Don't impeach in a minor area or with an irrelevant inconsistency

Page	Line	Date/ Description	Summary	Notes/Importance	Suggested Questions	Exhibit
284	5	1993	Greenberger looking to find partner to develop technology	states "the rules have changed" Greenberger wants money	<ul style="list-style-type: none"> • looking to find partner to fund program • spoke to 3 vendors, including Varian • vendors were trying to sell to his hospitals • told them "that we would not be simply purchasing equipment, that the rules had changed" • if they wanted sales, had to fund his research • he was in charge of purchasing radiotherapy equipment 	
285	16					
285	16					
286	10					
288	3					
??	??					
		Jan. 10, 1994	Varian letter sending NDA to Greenberger	shows that Varian wanting NDA	• Varian wrote to Greenberger requesting that Pitt sign NDA	D 78

Impeaching an Expert's Credentials

- Examine CV
- Research experts articles (or those of others)
- Depo? (not in my state courts)
- Witness work experience
- Witness bias
- Relationship to counsel
- Quality of report

Impeachment to Prove Inconsistency

- New Expert adopted 100% of earlier expert's lengthy report;
- Report written by claims person with LHD experience;
- New Expert is Lawyer (no LHD experience);
- He wasn't careful in reading report;
- I was impeaching AND building an appellate record.

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For most of his professional life, John W. McCandless has represented injured victims of automobile, truck, boating and motorcycle accidents, dangerous products, dangerous roads and highways, work place accidents, dangerous premises and professional negligence. Due to his background with a national property and casualty insurance company, he also has a special interest in representing people who are the victims of insurance "bad faith." His practice also includes commercial, contract and subrogation litigation, medical malpractice defense, and other, general

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Deloit College, Deloit, Wisconsin, 1974
B.A.
Honors: Magna Cum Laude
Honors: Phi Beta Kappa
Major: Theatre Arts

Representative Cases:

Anderson v. Nationalist Ins. Enterprise, 1978, 2011, 2012, 2013, 2014



D57-001

Areas of Practice:

50% Personal Injury - Plaintiff
20% Commercial Litigation
10% Dangerous Products - Plaintiff
5% Insurance Bad Faith- Plaintiff
10% Other Civil Litigation
5% Medical Malpractice Defense

Summary

Over 32 years as a practicing attorney, admitted in all the Courts in Pennsylvania, as well as Federal Courts in Pennsylvania and New York. I have handled personal injury cases for many victims of automobile, truck, boat and motorcycle accidents, dangerous products, dangerous premises. I have brought claims on behalf of victims of "bad faith" insurance company practices. I have been qualified to serve as a mediator in the U.S. District Court for the Western Pennsylvania Mediation Program, and served as a mediator in the Erie County Court of Common Pleas.

Specialties: automobile accident cases, truck accident cases, motorcycle accident cases, boating accident cases, slip and fall cases, "bad faith" insurance practices

Shareholder

Quinn, Buseck, Leemhuis, Toohey & Kroto
September 2002 – Present (10 years 9 months)

For over 22 years, I have represented people in northwestern Pennsylvania who suffered personal injuries caused by automobile, truck, motorcycle, and boating accidents, dangerous products, dangerous premises (slip and fall). I have also represented people whose insurance companies committed "bad faith" in handling their claims.

President
Northwest Pa. American Ins of Court
2011 – 2011 (less than a year)

Member
Pennsylvania Association for Justice
1987 – 2010 (23 years)

Member

Pennsylvania Association for Justice
1987 – 2010 (23 years)

DEMONSTRATE THE INCONSISTENCY

- 1st → Lock in the prior testimony (or report)

–Box the witness in

- 2nd → Build the moment
- 3rd → Confront the witness
- 4th → Show the inconsistency

Lock in the prior testimony

Q. Isn't it true that you testified on direct examination that the traffic light was red for my client's direction of travel?

A. Yes I did.

Q. You have no doubt that the light was red?

A. Correct.

Q. So - As you sit here today you have a specific recollection of what color that light was?

A. Yes. *

**Inflection is key for jury effect*

Build the moment if Inconsistent

Q. You came to my office for a deposition in this case?

A. Yes.

Q. It was only 9 months after the accident?

A. Yes.

Q. That is much closer in time to the accident than today?

A. Yes.

Q. Your attorney was present at the deposition?

A. Yes.

Q. And a court reporter was present in the room at your deposition?

A. Yes.

Q. The court reporter was writing down the questions asked and the answers given?

A. Yes.

Q. When you testified at the deposition, you held your right hand up and took an oath to tell the truth?

A. Yes.

Q. And you did tell the truth, didn't you?

A. Of course.

Confront the Witness/Show the Inconsistency

Q. On page 15, line 3 of that deposition, you were asked the question “did you see what color the light was for my client’s direction of travel?”
And your answer was?

A. “No.”

Q. That was the testimony you first gave under oath in this case?

A. Yes. *

** Now you have a choice – continue or quit?*

The Adopted Expert Report

4-Conseco failed to administer and approve the Waiver of Premium benefit for the insured, LeAnn Rancosky, after clear liability was established from the time that the insured, LeAnn Rancosky, first signed her original and initial claim forms on May 6, 2003, and submitted these claim forms with 2 Physicians signing off on the Health Insurance Claim Forms as well. One of the Physician's being a Doctor Singh, and the other being a Doctor Comerci, both of which confirm and state the date of February 4, 2003 as the date that LeAnn Rancosky was unable to work in her current occupation due to her current condition, and 2/4/03 as the date she first became ill due to her condition, **and stating her condition** was in fact cancer. Both of these claims show dates of

Example of Impeachment Using Documentary Evidence

Q. The report you adopted also states that “two physicians signed off on the health insurance claim forms.” Do you agree with that?

A. Yes, I agree with that.

Q. You adopted that and the entire report 100% as your opinion, you carved nothing out - correct?

A. Yeah.

Q. Let’s look at the May, 2003 claim forms that are being referred to as having been signed off on by a physician. Can you tell me where the physician signed off on Page 1?

A. No.

Q. Page 2, can you tell me where a physician signed off here?

A. I don’t see a physician signature here.

Q. So we don’t see where any doctor signed off on this form; do we?

A. I don’t see anything by way of a physician’s statement or signoff on this. *

*I might have said here: “So indeed there is no such signature here is there Mr. McCandless”

Get the Admission!

Q. Let's go to exhibit D8-3. This would be the second of the two May 5, 2003 claim forms. Do you see a physician sign off on either page of this form?

A. I do not see a physician's signature on this page.

Q. So the report you adopted is wrong where it says a physician signed off on these two claim forms; isn't it?

A. I would agree with that based on what you're telling me, yes. I would argue that makes no difference.

Q. It may not make a difference to you. But maybe it makes a difference to the jury, I don't know.

Q. So this whole notion in your report - of two doctors signing off, in May 2003, is absolutely incorrect; isn't it?

A. It is incorrect.

