

Loops, Double Loops, and Spontaneous Loops

Adapted from their book

Cross-Examination: Science and Techniques 2nd Edition

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Chapter 26:

Loops, Double Loops, and Spontaneous Loops

SYNOPSIS

- § 26.01 **Loops as a Flag-Planting Device**
- § 26.02 Three Looping Techniques
- § 26.03 The Problems with Merely Repeating an Answer
- § 26.04 Advantages of the Looping Technique
- § 26.05 **Simple Loop Formula**
- § 26.06 Analysis of the Formula
- § 26.07 Simple Loop Example
- § 26.08 Looping Emotional Words
- § 26.09 Looping is a Learned Skill—Adjectives are Easiest
- § 26.10 Multiple Simple Loops
- § 26.11 Simple Loops for the Purpose of Labeling
- § 26.12 **The Technique of Looping to Label**
- § 26.13 **Loops to Label Exhibits**
- § 26.14 Loops to Label Events
- § 26.15 Loops of Undisputed Facts Critical to Theory
- § 26.16 Using Loops in the Cross-Examination of Experts
- § 26.17 Looping to Lock in a Disputed Subjective Facts
- § 26.18 Looping Subjective Emotional States
- § 26.19 Chain of Loops
- § 26.20 Saving Impeaching Facts
- § 26.21 **Double Loops Technique**
- § 26.22 **Double Loop Formula**
- § 26.23 **Double Loop for Contrast**
- § 26.24 Building the Double Loop
- § 26.25 **Use of the Double Loop to Juxtapose Inconsistent Facts**
- § 26.26 The Cross-Examiner Chooses Which Fact to Validate and Which Fact to Discredit
- § 26.27 Use of the Double Loop to Highlight Contrasting Theories
- § 26.28 Use of Double Loops in Combinations
- § 26.29 Expert Witnesses and Double Loops
- § 26.30 Creating the Double Loop for Use Against the Expert
- § 26.31 The Double Loop Technique Increases the Overall Value of the Good Facts Upon Which it is Built
- § 26.32 **Spontaneous Loops**
- § 26.33 Word Selection and Simple Loops Lead to Spontaneous Loop Opportunities
- § 26.34 Why Spontaneous Loops Happen?
- § 26.35 **Definition of Spontaneous Loop Technique**
- § 26.36 Examples of Spontaneous Loops
- § 26.37 Spontaneous Loop Opportunities Come From Witnesses who are Unresponsive
- § 26.38 **Spontaneous Loops to Silence the Witness**
- § 26.39 **Spontaneous Loops – Selecting Power Words**
- § 26.40 Spontaneous Looping of Theme Phrases
- § 26.41 Delayed Spontaneous Loops From Direct Examination and Discovery
- § 26.42 Relationship to Other Techniques

Sections in Bold are included in the handout in whole or part

SELECTED AND EDITED PORTIONS OF CHAPTER 26 – “LOOPS, DOUBLE LOOPS, AND SPONTANEOUS LOOPS”

§ 26.01 Loops as a Flag-Planting Device (Book page 26-2)

The cross-examiner needs a variety of techniques that ethically and appropriately enable the advocate to call the jury's attention to a particular fact. While it is hoped that jurors will hear all the answers, the reality is that some answers matter more than others. There are those facts of such importance that they deserve highlighting. In essence, the lawyer wishes to “plant a flag” on that fact. Any trial technique designed to highlight a particular fact, whether the technique involves voice, movement, demonstrative aid, or oratorical device, is a flag-planting device. The techniques of looping, in all its various forms, are flag-planting techniques designed to call additional attention to a fact of importance.

§ 26.05 Simple Loop Formula (Book page 26-3)

Definition:

- 1) Through a leading question establish the desired fact or phrase;
- 2) Use the fact or phrase established within the body of the next question, but without re-asking the fact; and
- 3) Connect the looped fact or phrase with a question that contains an undisputed fact. Attach the looped fact to a safe fact in the second question.

§ 26.12 The Technique of Looping to Label (Book page 26-8)

The technique of looping to label is a simple and natural way of assisting people's memory in the courtroom environment. Looping labels can be used in any case, in any cross-examination, and in any questioning. Looping assists the memory anytime there is a need to label a fact, a witness, or a particular exhibit. The technique is simple: Find a descriptive but fair label that is consistent with the cross-examiner's theory. Use that label in place of the name of the witness, or the number of the exhibit, or the date of the event. Use the label consistently throughout trial so that both jurors and witnesses can easily equate the label with the person, event, or exhibit. In a self-defense case:

Loop

- You saw several boys.
- One of the boys had a stick in his hand.
- That boy was quivering (1. Establish)
- The quivering boy said, (2. Loop) "Where's John?" (3. To Safety)
- You said, "If you are looking for trouble, you've found it."
- And the quivering boy (4. Re-Loop) looked back at you but said nothing. (5. To Safety)

§ 26.13 Loops to Label Exhibits (Book page 26-8)

Trials have become more complicated. It seems every trial has hundreds of exhibits. Particularly in commercial litigation, the exhibits frequently number in the hundreds and often in the thousands. The most conscientious judge or jury cannot keep the exhibits straight. The lawyers who have dealt with the case for months and years before trial have a most difficult time keeping up with exhibits. Why is there a reasonable expectation that judges or juries could possibly do so?

Looping helps to label exhibits and eliminates the necessity of the judge or jury to memorize the exhibit number. Everyone begins to refer to the exhibit by the label loop. It is chosen to be consistent with the cross-examiner's theory.

§ 26.21 Double Loops Technique (Book page 26-15)

Simple loops can be quickly mastered. Once they are, it takes only minimal additional effort to learn the double loop technique. Double looping is a technique that can be used for two distinct purposes. The first, and the most frequently employed purpose is its use to juxtapose two inconsistent concepts (see chapter 24, *Juxtaposition*). That is, contrasting two dissimilar or inconsistent facts in a single question to promote a desired jury reaction. Two facts are pushed together to show the lack of logic inherent in a witness trying to verify both facts.

The second common purpose of the double loop technique is to use two or more looped facts in combinations to heighten an image and produce a result that will be much more memorable and more closely linked than the two facts alone.

§ 26.22 Double Loop Formula
(Book page 26-16)

- 1) Establish first desired significant fact.
- 2) Establish second desired significant fact.
- 3) Loop both facts together in a third question and later questions.
- 4) Always tie the double loop to a “safe” undisputed fact.

§ 26.23 Double Loop for Contrast
(Book page 26-16)

**Double Loops can
Highlight Difference**

Step 1: Establish Fact 1:

- Eddie is 6' 1" .

Step 2: Establish Fact 2:

- George is 5' 7" .

Step 3: Loop both facts:

- 6' 1" Eddie was hitting 5' 7" George.

§ 26.25 Use of the Double Loop to Juxtapose Inconsistent Facts
(Book page 26-17)

In an impeaching cross-examination, assume the witness has said something that is accepted as true. However, if examined in juxtaposition to other facts, the story casts doubt upon the original assertion. The witness has told a story or fact, often in direct examination, which in isolation appears reasonable, but when examined in context with other testimony of the witness, appears to be untruthful and illogical. In such cases, it is helpful to permit the witness to establish the first fact and later in cross-examination to perform a double loop that juxtaposes the first assertion and shows it to be implausible.

The double loop technique to juxtapose inconsistent facts is at the heart of the following example from a commercial case:

Q: You have told us that you were unaware of any facts that caused you any concerns about the financial health of this company?

Q: You knew the company had twice been downgraded by the rating services?

Q: You know the company had lost money for three consecutive years?

Q: This double downgraded, money-losing company caused you no concern?

§ 26.32 Spontaneous Loops (Book page 26-23)

All of the loops shown thus far have been written and executed according to the cross-examiner's script. They were prepared pre-trial. There is nothing spontaneous about them, although simple and double loops sound spontaneous to the witness and the jury. These loops were planned; the lawyer carefully selected the words.

However, one of the most enjoyable and effective uses of looping occurs when a witness gives an unexpected answer, which has in it a wonderfully helpful fact that substantially advances the lawyer's theory of the case. The critical difference between spontaneous loops and simple or double loops is that the witness chooses the words.

In a pure spontaneous loop, it is the witness who has made that word choice in front of this jury and judge. The witness will never be able to disclaim that word choice, no matter how ill conceived or regrettable that word choice is. The spontaneous loop is based on the phrase that has escaped the lips of the witness. Forever in this trial, the witness will be charged with the responsibility of uttering it.

§ 26.35 Definition of Spontaneous Loop Technique (Book page 26-24)

- 1) Listen. Any answer other than a "yes" or "no" may offer an opportunity for the cross-examiner. Listen with the cross-examiner's theory of the case in mind.
- 2) Lift. Extract any useful word or phrase from the answer.
- 3) Loop. Use the helpful factor phrase in the body of the next question.
- 4) Tie the spontaneous loop to a safe, undisputed fact.

Compare the definition for spontaneous loop with the definition of a simple loop. There is but one difference. The cross-examiner must listen for the spontaneous loop. All other steps to the spontaneous loop are identical to the simple loop.

§ 26.38 Spontaneous Loops to Silence the Witness (Book page 26-25)

Spontaneous loops silence the unresponsive or out of control witness (see chapter 19, *Controlling the Runaway Witness*). Spontaneous loops eventually threaten the witness so much that the witness will refuse to volunteer in any matter. Through spontaneous loops, the cross-examiner exercises control over the witness by punishing the non-responsive answer.

§ 26.39 Spontaneous Loops—Selecting Power Words (Book page 26-26)

Spontaneous loops of helpful facts volunteered by the witness, or facts that can be turned to the advantage of the cross-examiner, should always be utilized.

Do not loop power words that are detrimental to the cross-examiner's theory of the case, themes, or theme phrases. As seemingly obvious as this may appear, in the heat of the battle, the cross-examiner must instantaneously differentiate between helpful and unhelpful power words in light of her theory. The cross-examiner cannot simply listen for a power word and then spontaneously loop it. It is extremely important to listen to the witness carefully in order to effectively employ the spontaneous loop technique. It is even more important to analyze the power words heard in light of the cross-examiner's theory of the case.

Spontaneous Loop

- Q: When Ed came through the door, he was silent?
- A: Yes, he just came **barreling through the door and drilled** the guy.
- Q: The guy he **drilled** was Brian?
- A: Yeah.
- Q: When Ed **barreled through the door and drilled** Brian, Brian hadn't said a word?
- A: Not that I heard.

Spontaneous Loop

- Q: You smashed into Tony on his motorcycle?
- A: I didn't know what I hit – I just heard a **thud and the sound of metal smashing metal**.
- Q: The **sound of metal smashing metal** was you crashing into something?
- A: Well, yes.

- Q: What you crashed into was a man?
- A: I thought so.
- Q: A man who now lay in the street?
- A: Yes, **apparently** so.
- Q: It was **apparent** because you saw the man spread out in the street?
- A: Yes.
- Q: It was apparent because . . .

NOTES

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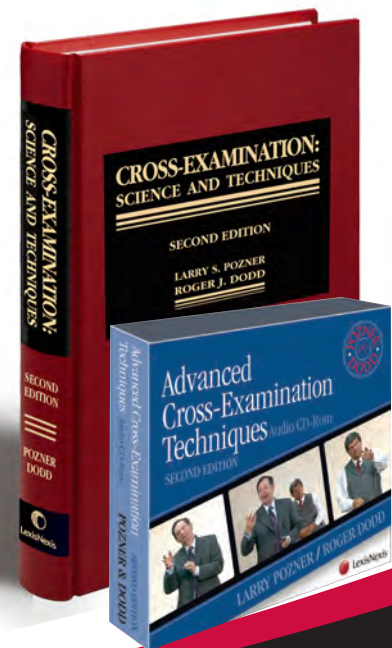
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TABLE OF CONTENTS

Foreword by Barry Scheck

I. The Science of Cross-Examination

- Ch. 1 Philosophy and Overview of the Science of Cross-Examination
- Ch. 2 Developing a Theory of the Case

II. Preparation to the Cross-Examination

- Ch. 3 The Strategy, Preparation, and Organization of Cross-Examination
- Ch. 4 Cross-Examination Focused Investigation
- Ch. 5 Cross-Examination Preparation System 1: Topic Charts
- Ch. 6 Cross-Examination Preparation System 2: Sequence of Events Charts
- Ch. 7 Cross-Examination Preparation System 3: Witness Statement Charts

III. The Modern Methods Cross-Examination

- Ch. 8 The Only Three Rules of Cross-Examination
- Ch. 9 The Chapter Method of Cross-Examination
- Ch. 10 Page Preparation of Cross-Examination
- Ch. 11 Sequences of Cross-Examination
- Ch. 12 Employing Primacy and Recency
- Ch. 13 The Relationship of Opening Statement to Cross-Examination

IV. Impeachment and Witness Control

- Ch. 14 Redirect and Recross Examination
- Ch. 15 Destroying Safe Havens
- Ch. 16 Eight Steps of Impeachment by Inconsistent Statement
- Ch. 17 Impeachment by Omission
- Ch. 18 Advanced Impeachment Techniques
- Ch. 19 Controlling the Runaway Witness
- Ch. 20 Dealing With the "I Don't Know" or "I Don't Remember" Witness

V. Advanced Cross-Examination Techniques

- Ch. 21 Creation and Uses of Silence
- Ch. 22 Voice, Movement, Body Language, and Timing
- Ch. 23 Diminishing or Building the Point
- Ch. 24 Juxtaposition
- Ch. 25 Trilogies
- Ch. 26 Loops, Double Loops, and Spontaneous Loops

VI. Special Challenges to the Cross-Examiner

- Ch. 27 Cross-Examination Without Discovery
- Ch. 28 The Crying Witness
- Ch. 29 Coping with Objections
- Ch. 30 Recognizing and Controlling Bait

VII. Cross-Examination Skills and Examples

- Ch. 31 Pre-trial Application—Use at Depositions and Pre-trial Hearings
- Ch. 32 How to Master the Techniques Without Trial Experience
- Ch. 33 Analysis of Trial Techniques in Cross-Examination

Index