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Leveraging Impeachment to Damage Your Opponent's Credibility

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Impeachment is a valuable tool during cross-examination, yet it is underutilized and often mishandled. In this video, Proskauer partner Colin Cabral discusses how he effectively employs impeachment to control witnesses and secure victories in high-stakes trials.

Transcript

Colin Cabral: Impeachment can turn a good examination into a great one, and it can turn a great examination into a game changer. So I use impeachment for control – to control a witness and to control the courtroom during a cross-examination.

"Impeach early and send a clear message that you have the receipts."

Colin Cabral, Partner, Litigation

When you impeach a witness early in an examination, and if you do it multiple times, you are sending a message to that witness that you have the receipts and that they cannot just get up there on the stand and say whatever it is they want to say.

If you keep doing it – if you impeach two times, three times, four times – you start to see a visible change in their body language. You start to see that they don't have control over their testimony anymore and they start to fall in line and start to say yes to your questions over and over again. And for those witnesses that don't catch on, that continue to fight you by the end of their examination after you've impeached them multiple times, their credibility is shot with the jury and hopefully the jury doesn't like them anymore.

"There are three C's of impeachment: Commit, Credit, Confront."

So, during trial advocacy, you are taught the basics. You're taught what's called the three C's. You get the witness to commit to the statement that they've made on the stand. You then credit their prior inconsistent statements and then you confront them with that statement. Those are the basics. When I am impeaching with deposition testimony, for example, the way I do it is, I say: “You were, at your deposition, asked the following question and you gave the following answer.” Question. You then read the question. Answer. You then read the answer and conclude by saying: “That was your testimony, correct?” And you stop right there.

You do not ask any follow-up questions because those could get you into trouble. Just because you can impeach doesn't mean you should. The way you impeach can vary greatly depending on the court you're in and the judge you're in front of.

"Preparation is key: Review previous trial transcripts to understand the judge's approach."

Colin Cabral, Partner, Litigation

Before any case, I always pull transcripts from prior jury trials and from prior bench trials to see how judges conduct themselves and run their courtroom. Judges are really consistent so if you see them doing things a certain way in one case, odds are they'll do it that way for your case as well. There are some judges who will not allow you to show deposition testimony or impeachment material that hasn't been admitted into evidence on screen. Some judges will. Some judges will allow you to show video for impeachment. Some will not. There was one case I had where a witness came into the deposition and didn't know anything about anything. The witness showed up at trial and suddenly knew all the facts. And that judge allowed us to play 2.5 minutes of video impeachment, showing that witness saying, “I don't know” to all of the questions he had just been asked. And it was devastating.

Some judges don't allow you to impeach with a deposition transcript at all and just allow you to refresh that witness's recollection. No matter what the situation, you have to know how that judge works, how that judge thinks about impeachment and adapt accordingly to make your examination as effective as possible.

Related Professionals

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