

IMPEACHMENT SAMPLE

There are a number of ways to “impeach” or attack a witness’s credibility. For example, an attorney may ask questions to show that the witness is unreliable (e.g., the witness’s memory is vague as to important details, the witness was far away from the action, it was dark, etc.), or that the witness is biased (e.g., the witness previously expressed negative or positive feelings concerning the person about whom s/he is testifying). An attorney may also point out prior statements the witness made that are inconsistent with the testimony given from the stand (“prior inconsistent statements”), or statements that the witness omitted either from his/her affidavit or from his/her testimony on the stand (“omissions”).

When impeaching a witness based on prior inconsistent statements, it is important to keep in mind the reason for doing so. Are you trying to show that a prior statement was correct and the statement from the stand is not? Or are you simply trying to show that the witness makes inconsistent statements and his/her testimony as a whole should not be believed? The goal may dictate your line of questioning.

Following is an example of impeaching a witness based on a prior inconsistent statement:

Q: You just said you saw Mr. Jones outside the store on the day of the incident. Is that right?

A: Yes.

Q: Are you sure you saw him?

[Note: Sometimes it is good to give the witness a chance to waffle and change his/her answer. It gets the point across without having to formally impeach, which takes more time and can be cumbersome. If the witness backtracks and says maybe s/he did not see Mr. Jones, you can toy with them a little about whether they saw Mr. Jones or not, e.g. “Okay, now you did not see him. Are you sure this time?” If the witness does not back off the inconsistent statement and says yes, s/he saw Mr. Jones, continue:]

Q: Do you recall giving a sworn affidavit in this case?

A: Yes.

Q: Do you have the affidavit in front of you?

A: Yes.

Q: Is this the affidavit you previously gave in this case?

A: Yes.

Q: This is your sworn statement given under oath, correct?

A: Yes.

Q: And, that is your signature on the last page?

A: Yes.

Q: I would like to turn your attention to page __, lines __. Please read quietly along while I read aloud. You stated, “I did not see anyone outside the store.” Did I read that correctly?

A: Yes.

[Note: Depending on the witness, the facts, and what you are trying to accomplish, you can stop here, with the last statement being that the witness did not see anyone outside the store. Alternatively, you may press forward at your own risk to try to get the witness to admit they did not see Mr. Jones outside the store (if that is what you are trying to accomplish) or that the two statements are inconsistent (if that is your goal). Be careful not to give the witness an opportunity to reconcile the inconsistent statements (for example, the witness may say something like “That statement was referring to later in the day, after the incident had occurred.”)]