

Initial Review of Case

Part I – Impeachment of Witnesses: read the following and apply it to the trial review later.

Impeachment is the process of attacking the credibility of the witness. It is usually done on cross examination but under some circumstances the judge may allow other witnesses to be called for this purpose.

- Every person who takes the witness stand is subject to impeachment by showing both conscious and unconscious reasons to distort the truth.
- The jury is instructed that it is their duty to evaluate all the testimony and decide the credibility of each witness.

Ways to Impeach the Witness

Inability to observe

Physical limitations of witness — poor sighted; hearing impairment

View obstructed — something was in the way; poor lighting at scene

- Prior inconsistent statements by witness
- Prior convictions -
Usually restricted to prior felony convictions
- Motive, bias or prejudice **for or against** the defendant, victim, police, etc.
- Friendship, family ties
- Hatred or dislike
- Prejudice due to race, religion, ethnicity, gender or sexual orientation
- Financial interest — beneficiary of insurance policy; could be fired for testifying against the boss, etc.
- Witness was paid to testify — expert witness fees, etc.
- Special treatment by police and prosecutors — granted immunity, plea bargain, threat to file charges, paid informant
- Attempts to intimidate witness
- Reputation for dishonesty

Rehabilitation is process of trying to convince the jury that the witness is credible even though the witness was impeached by the opposing side. It is usually done during re-direct examination by asking questions that give the witness a chance to explain or put previous statements in context.

Part II - Make OBJECTIVE review of BOTH sides of case: ACTION – complete this evaluation on a separate sheet of paper for your case.

- I. Strengths and weaknesses of prosecution's case
- II. Evidence needed to establish elements of crime
- III. Strengths and weaknesses of **each** witness
 - a. What can witness testify about?
 - b. Does witness have good memory?
 - c. Is witness easily confused?
 - d. Can witness be impeached?
 - e. How can witness be rehabilitated?
 - f. Are there problems with Hearsay Rule or other rules of evidence?
- IV. Physical evidence
 - a. What can **each** item be used to establish?
 - b. How was item obtained?
 - c. What testimony is needed to establish chain of possession?
 - d. Is there a chance the evidence was tampered with either before or after police seized it?
 - e. What are results of laboratory tests?
 - f. Will expert witness be needed?
 - g. Are there likely to be any Fourth Amendment challenges to the seizure of this item?
- V. Strengths and weaknesses of defense case
 - a. Assess anticipated testimony of each witness.
 - b. Review physical evidence defense is likely to introduce.
 - c. Consider the testimony defense experts will probably give.
 - d. Anticipate how defense will cross examine prosecution witnesses.
 - e. Consider ways to impeach defense witnesses.
 - f. Plan strategy to focus jury's attention of strengths of prosecution's case and weaknesses of defense case.
 - g. Be ready for defense claims that the investigation was not conducted properly.
 - h. Anticipate defense objections and alternate strategies that can be used.