



SACRAMENTO COUNTY BAR ASSOCIATION • TRIAL ADVOCACY CONFERENCE

Cross-Examination That Controls the Room

Control Techniques and Impeachment Mechanics Under California Law

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What We'll Cover

ROADMAP

1 Part One — Control Techniques

- The California scope-of-cross and leading-question rules
- Pozner & Dodd's three rules for controlling a witness
- Looping, the double loop, and commitment sequencing
- Field-tested rules from Brian Panish

2 Part Two — Impeachment Mechanics

- Evid. Code § 780 — the statutory menu of credibility factors
- Foundation for prior inconsistent statements (§§ 770, 1235)
- Depositions, bias/motive, and the guardrails of § 787
- Malone's framework for cross-examining expert witnesses

Self Control—Guenard's Do's and Don'ts

1 Stay Polite.

2 Don't Get Mad!

3 Keep tone and volume even.

4 Stay Genuine.

5 Listen to the answer or the non-answer.

6 Don't accuse the witness of lying, let the jury have the evidence.

7 You can start nice and finish mean, but don't start mean and finish nice.

General Rules of Cross-Examination

- 1 Thorough preparation is non-negotiable. The 5 P's!
- 2 Set one clear objective — and do not deviate.
- 3 Take your time; move slowly.
- 4 Usually lead the witness, unless the open answer doesn't matter.
- 5 Keep your own style — don't change it for cross.
- 6 Know when to stop. Shorter is better.
- 7 Decide in advance what you can realistically get from this witness.
- 8 Never forget the bias inquiry.
- 9 Know the rules of evidence; anticipate where objections will land.
- 10 Know your judge, and what that judge allows.

Brian Panish, Ten Rules of Cross-Examination

SPONSORSHIP THEORY

- The goal is for the lawyer to be the source of the facts, not the witness.
- Leading questions are really statements of fact.
- Only assert what you can back up.

The Death Box

All the Dirt You Have

- Bias
- Impeachment
- Lack of Credentials (invalidate the testimony)

MAKE THE WITNESS THE VILLAIN

The Goal Isn't Discovery — It's Control

FRAMING

On cross, you already know the answer to every question you ask. The witness's only job is to say yes.

Testify, don't ask.

Every question is a leading statement of fact the jury needs to hear from your mouth.

Build toward argument.

You are assembling the sentences of your closing, one admission at a time.

Never open a door you can't close.

If you don't know the answer, it isn't a cross-examination question.

*You control the witness, or
the witness controls you.*

Scope of Cross-Examination

THE CALIFORNIA FRAMEWORK

EVID. CODE § 773(a)

“A witness examined by one party may be cross-examined upon any matter within the scope of the direct examination by each other party...”

Practice points

- Cross is tied to the scope of direct — plan your cross from the direct you expect, not the whole case file. (Of course, there are some exceptions to the rule!)
- Credibility is always fair game: bias, capacity to perceive, and prior statements go to the weight of any testimony given.

Leading Questions Are the Rule, Not the Exception

THE CALIFORNIA FRAMEWORK

EVID. CODE § 767(a)

“A leading question may be asked of a witness on cross-examination or recross-examination.”

Direct examination bars leading questions to keep the witness's words the witness's own. Cross-examination flips that rule — and that reversal is the legal foundation for every control technique in this section.

Working rule for this seminar:

If your sentence isn't a statement of fact ending in “correct?” or “right?” — it isn't a cross-examination question yet.

Rules That Keep You in Control

CONTROL TECHNIQUE

1

Leading questions only

Make statements, not inquiries. Avoid the seven words — who, what, when, where, how, why, explain — that hand the floor back to the witness. Unless it doesn't matter!

2

One new fact per question

Compound questions confuse the record and give a hostile witness room to answer the easy half. Isolate a single fact and move on.

3

General to specific, one chapter at a time

Organize cross into short factual chapters, each with one goal, before moving to the next.

Adapted from Larry Pozner & Roger Dodd, Cross-Examination: Science and Techniques — the standard trial-advocacy reference for this method.

Turn Every Question Into a Statement

CONTROL TECHNIQUE — RULE ONE

AVOID

“What did you see when you reached the intersection?”

Open-ended — hands the witness the floor and invites a narrative answer you don't control.

USE

“You saw the light was red, correct?”

A leading statement the witness can only confirm or contradict — you own the sentence.

If opposing counsel objects “that's not a question” — add “correct?” or “right?” and move on. You've already complied.

One New Fact Per Question

CONTROL TECHNIQUE — RULE TWO

A compound question lets a hostile witness answer only the easy half. Break every compound idea into a short sequence of single-fact leading questions.

COMPOUND (AVOID)

“You were speeding, ran the light, and never touched the brakes, correct?”

SEQUENCED (USE)

- You were traveling above the posted limit, correct?
- The light had turned red before you entered the intersection, correct?
- You did not apply the brakes before impact, correct?

Plant a Fact, Then Make It Follow the Witness

CONTROL TECHNIQUE — LOOPING

A loop repeats a fact the witness already conceded inside the wording of your next question — free repetition, without argument, that the jury absorbs as established.

SIMPLE LOOP

1

Establish the fact

2

Carry it into the next question

3

Anchor it to an undisputed fact

Example: after the witness agrees “the boy was quivering,” the next question becomes — “The quivering boy said, ‘Where’s John?’ correct?”

Commit the Witness Before You Confront

CONTROL TECHNIQUE — BRIDGE TO IMPEACHMENT

Impeachment fails when a witness has room to wiggle. Before you introduce the inconsistency, lock in the witness's current position with narrow, friendly-sounding leading questions.

1

Commit

Pin down the exact words of today's testimony — restate it, get agreement, leave no ambiguity.

2

Credit

Establish the source that contradicts it — the deposition, the medical record, the prior statement — and its reliability.

3

Confront

Introduce the inconsistency and stop talking. Let the document do the work.



"Your Honor, he's badgering the witness!"

PART TWO

Impeachment Mechanics

The Evidence Code foundations that turn a good question into an admissible attack on credibility

The Statutory Menu of Credibility Factors

IMPEACHMENT MECHANICS

EVID. CODE § 780

- (a) Demeanor and manner while testifying
- (c)(d) Capacity and opportunity to perceive
- (f) Existence or nonexistence of bias, interest, or motive
- (h) A statement inconsistent with any part of the testimony
- (i) Existence or nonexistence of a fact testified to

NOTE

Section 780 lists eleven illustrative factors — this is a working shortlist, not the full statute. The five shown here account for most cross-examination impeachment in a civil trial.

Impeaching With a Prior Inconsistent Statement

IMPEACHMENT MECHANICS

EVID. CODE §§ 770, 1235

Extrinsic evidence of a prior inconsistent statement is excluded unless the witness was given the chance to explain or deny it — or remains available to be recalled and questioned about it.

Practice points

- Section 1235 admits the prior statement for its truth, not just to impeach — it is not barred as hearsay when offered against the declarant.
- Section 770's foundation is satisfied either by confronting the witness on the stand, or simply by the witness remaining available for recall — commit first, impeach second.
- Courts retain discretion to admit even without this foundation where the interests of justice require it.

The Deposition Is Your Best Impeachment Tool

CCP § 2025.620

Any party may use a deposition to contradict or impeach the deponent's trial testimony, provided:

- The testimony would be admissible if the deponent were testifying live, and
- The adverse party was present or represented at the deposition, or was duly noticed and did not object.

TRIAL PREP TIP

Mark the exact page and line before trial, not during it. Have the reporter or your AV operator ready to display deposition and live testimony side by side — the visual contrast does half your argument for you.

Cross-Examining the Expert Witness

IMPEACHMENT MECHANICS

Even seasoned experts are vulnerable:

1

Defection

It's more important for an expert to be honest than to agree with his own side when that side is wrong.

2

Lack of Fit

An expert must have deep experience and knowledge about what's actually important in this case.

3

Expose Bias

An expert must be objective, fair, and impartial — the deep dive on the next slide.

4

Ignorance or Mistakes

An expert must know the important facts of the case.

5

Contradiction

An expert should be consistent and reliable, and should not contradict witnesses better situated to know the facts.

Patrick Malone, The Fearless Cross-Examiner: Win the Witness, Win the Case (Trial Guides).

Bias, Interest & Motive

IMPEACHMENT MECHANICS

EVID. CODE §§ 780(f), 722(b)

Malone's third stone — expose bias — does the most work in auto collision and catastrophic injury trials, usually aimed at the defense's own witnesses.

IME / defense medical examiners

Volume of defense referrals, percentage of income from defense work, and the specific carrier relationship.

Retained experts generally

§ 722(b) makes an expert's compensation — paid or to be paid — fair game as relevant to credibility and weight.

Adjusters and reconstructionists

Reporting relationship to the carrier and any prior working history with defense counsel.

Guardrails — What the Code Keeps Out

IMPEACHMENT MECHANICS

EVID. CODE § 787

Evidence of specific instances of a witness's conduct is generally inadmissible to attack or support credibility — subject to narrow statutory exceptions (e.g., felony convictions under § 788).

In practice, this means:

- Don't reach for an unrelated bad act to discredit a witness — it's inadmissible and it costs you credibility with the court.
- Stay inside the lanes that work: bias/interest/motive, capacity to perceive, and prior inconsistent statements.
- If you're unsure whether a fact is a 'specific instance of conduct' or a permissible bias fact, brief it before trial — don't find out in front of the jury.

Before You Sit Down: The Three C's

PUTTING IT TOGETHER

1

Commit

Restate today's testimony in narrow leading questions until the witness has no room left to wiggle.

Evid. Code § 767

2

Credit

Establish the source that contradicts it — name the deposition, the record, the date — before you reveal the contradiction.

CCP § 2025.620

3

Confront

Introduce the inconsistency, let the document speak, and stop talking.

Evid. Code §§ 770, 1235

Bottom Line

SUMMARY

- 1 Good examinations are deadly for Opponent's case. Tell your story.
- 2 Preparation starts long before trial.
- 3 Mamba Mentality.
- 4 Fill your Box of Death
- 5 Ask Plan and simple questions that require plain and simple answers.
- 6 The 5 P's!

Additional References—Hollywood

My Cousin Vinny

[Watch clip on YouTube](#)

Legally Blonde

[Watch clip on YouTube](#)

Suits

[Watch clip on YouTube](#)

Additional References

The Art of Cross-Examination Francis L. Wellman. Macmillan, 1903.

Attacking Adverse Experts Stephen D. Easton. 1st ed., American Bar Association, 2008.

The Domino Theory Edward P. Capozzi. 2nd ed., Trial Guides, 2021.

Don't Eat the Bruises: How to Foil Their Plans to Spoil Your Case Keith Mitnik. Trial Guides, 2015.

Dynamic Cross-Examination: A Whole New Way to Create Opportunities to Win James H. McComas. Trial Guides, 2011.

The Fearless Cross-Examiner: Win the Witness, Win the Case Patrick Malone. Trial Guides, 2016.

Luvera on Advocacy Paul Luvera and Lita Barnett Luvera. Trial Guides, 2020.

Exposing Deceptive Defense Doctors Dorothy Clay Simms, James Publishing, Rev. 7, 2023

Moe Levine on Advocacy Moe Levine. Trial Guides, 2009.

Polarizing the Case: Exposing & Defeating the Malingering Myth Rick Friedman. Trial Guides, 2007.

Rules of the Road: A Plaintiff Lawyer's Guide to Proving Liability Rick Friedman and Patrick Malone. 2nd ed., Trial Guides, 2010.

Sharpening Your Trial Skills: What to Say, How to Say It Robert J. Perry, ed. Laura E. Perry. Rutter Group, 2009.

Trial by Human Nicholas Rowley and Steven Halteman. Trial Guides, 2013.

The Trial Lawyer: What It Takes to Win David Berg. 2nd ed., American Bar Association, 2018.

Trials & Triumphs: Lessons from Legal Giants Ed. Christopher M. Placitella and Lisa Blue. AAJ Press, 2024.

Trying Disc Injury Cases: Defeating the Degeneration Defense Robert Simon. Trial Guides, 2025.

Winning at Cross-Examination: A Modern Approach for Depositions and Trials D. Shane Read. Westway Publishing, 2020.

Cross-Examination: Science and Techniques Larry Pozner and Roger Dodd, NACDL Press, Fourth Edition 2025.

Cross-Examination: Skills for Law Students Larry Pozner and Roger Dodd, LexisNexis 2009

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Questions?

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