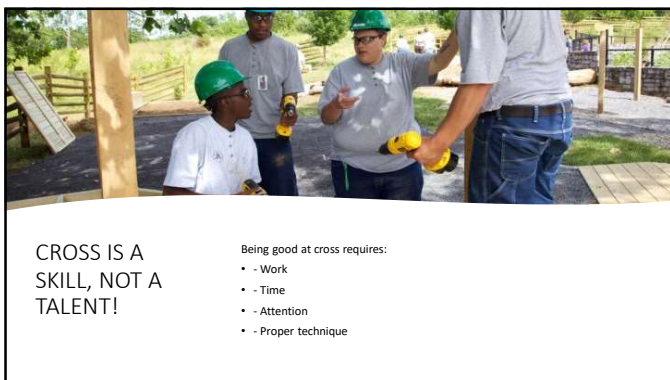
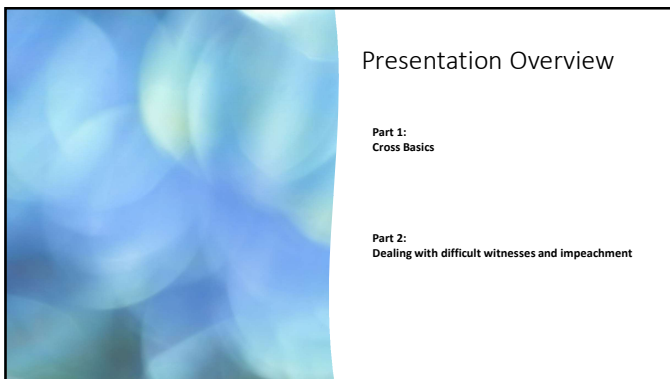


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3

Part 1: Basics of cross

Purpose is to ADVANCE the defense theory

Every piece of testimony needs to:

- ❖ Corroborate the defense theory; or
- ❖ Undermine or discredit the prosecution's evidence

You don't have to cross! Only cross if it ADVANCES YOUR THEORY!

4

A note about theory

You need a theory of innocence for your case. Make sure you can articulate it:

- Nothing happened
- Something happened but SODDI
- I did it but it wasn't a crime
- I did it, and it was a crime, but it wasn't this crime
- I did it, and it was this crime, but I have a legal/statutory defense

5

Getting your story out via cross

1. Nail down EXACTLY what your story is and EXACTLY how this witness fits into your story.
2. The more specific you can be, the better!
3. Now craft your cross within this story
 - Remember where YOUR story starts and ends
 - Don't try to fit your story into the narrative already set out in the police reports

6

THREE (MOSTLY) UNBREAKABLE RULES OF CROSS

1. Statements, not questions
2. One fact per statement
3. Always use chapters

7

The best cross is a simple cross


- Only leading questions/statements. ONLY. ONLY.
- Keep your questions very brief and simple.
- One fact per question.
- Use concrete words – this will keep the witness from quibbling with you about what a certain word or phrase means.

8

Leading questions = the answer you want

Not: You couldn't really see the shooter?

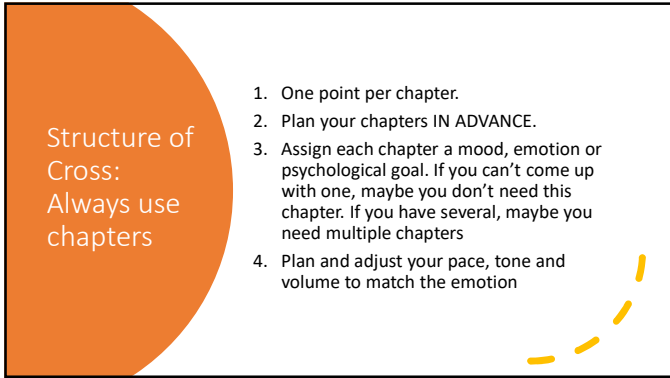
Instead:
 The shooting happened at 9 pm?
 It was dark?
 There are no streetlights on your street?
 You were in your house?
 Looking out through the window?



9

Structure of Cross: Always use chapters

1. One point per chapter.
2. Plan your chapters IN ADVANCE.
3. Assign each chapter a mood, emotion or psychological goal. If you can't come up with one, maybe you don't need this chapter. If you have several, maybe you need multiple chapters
4. Plan and adjust your pace, tone and volume to match the emotion



10


Order of Chapters

Chronological order is generally weak – only do it if absolutely necessary

Where does YOUR story start and end?

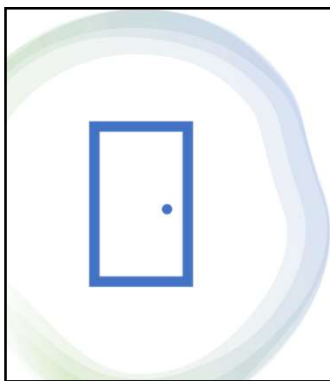
Use transition statements between chapters (“Now I want to talk to you about”)

Write out your chapters



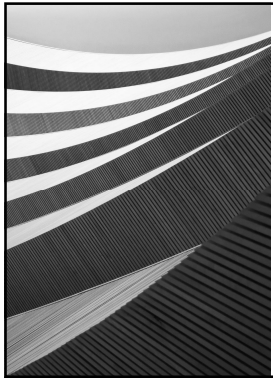
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Structure within chapters



- One idea per chapter
- Go from general to specific – funnel method
- You are going down a hallway, closing doors

12



More notes on structure

- Never forget that you're telling a story – build a narrative structure, use smells, sounds, sights, develop suspense
- Remember primacy and recency – put your strongest chapters at the beginning and the end
- Cross is about the jury hearing YOUR QUESTIONS. The answers are not the point.

13

Storytelling and the Storyteller

YOU are the storyteller – not the witness!

You must be a reliable narrator – competent, in charge and credible

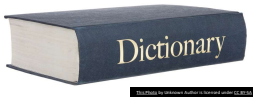
- Be natural, don't try to use a style that isn't you
- Cross is not about beating up the witness or a "gotcha" moment

This requires preparation and structure


14

WORDS MATTER

- Avoid "cop speak"
 - Vehicle vs car
 - Observed vs saw
 - Contacted vs talked to
- Use concrete language wherever possible
- Think about your word choice
 - Hit vs smacked
 - Terrified vs afraid
 - Knew vs suspected



15



Tell a story!

Q: You kicked him?

Vs.

You came from your construction job?
 You were wearing your work boots?
 Your boots have a steel toe?
 These boots protect your toes at work?
 Even a brick falling on your toes will not break them?
 You kicked Alex?
 You kicked him in the ribs?
 With your steel-toed boot?

16




Do not treat all witnesses the same

WHO IS THIS WITNESS???

- ❖ Think hard about the attitude you want to portray towards this person – treat them how you want the jury to think of them.
- ❖ Are they a liar who has harmed your client? Are they a stupid cop who can't do their job correctly? Are they the actual perpetrator of a crime here?
- ❖ Use all your tools – repetition, body language, body positioning, eye contact
- ❖ Know when you have gotten what you need and GET OUT

17



Be Prepared

1. KNOW THE ANSWER to all your questions (or know that you don't care what the answer is)
2. Anticipate objections
3. If you are going to impeach, have it ready. Not just the document – notes on the exact page number and line (or minute number if on a recording)
4. Source your cross (more on this later!)
5. Stress the importance of the source (more on this later!)

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Listen

LISTEN TO ANSWERS ON DIRECT AND CROSS.

DO NOT BE WEDDED TO AN EXACT SCRIPT.

IT IS USEFUL TO PUT EACH CHAPTER ON A SEPARATE PAGE, SO YOU CAN REARRANGE IF NECESSARY.

IF THE TESTIMONY THAT YOU EXPECTED ON DIRECT DOES NOT COME OUT, YOU HAVE YOUR STORY AS A FOUNDATION. FIT THE NEW INFORMATION INTO YOUR NARRATIVE.



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Part 2: Impeachment and Difficult Witnesses

Overview:

- Impeachment
- Exercising Control
- Handling Difficult Witnesses



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Areas to Discredit

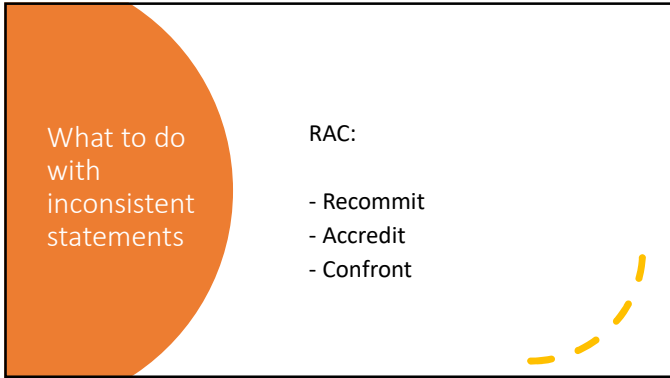
<p>Ability to perceive/recall</p> <ul style="list-style-type: none"> - drugs - drinking - shock - stress - bad lighting - noise - physical limitations 	<p>Impeaching credibility</p> <ul style="list-style-type: none"> - Prior convictions (ER 609) - Reputation for dishonesty (ER 404a) - Motive, bias, and interest are always relevant under ER 608
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What to do with inconsistent statements

RAC:

- Recommit
- Accredit
- Confront

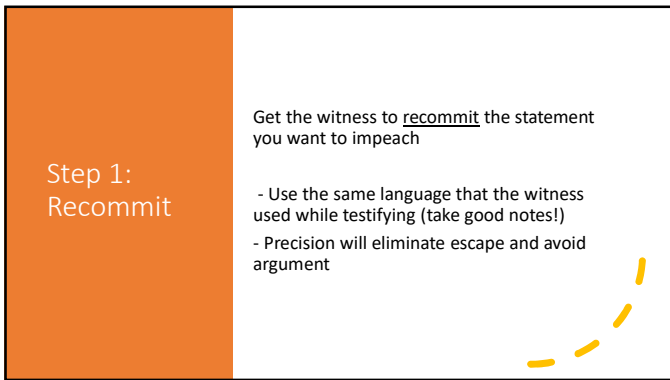


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Step 1: Recommit

Get the witness to recommit the statement you want to impeach

- Use the same language that the witness used while testifying (take good notes!)
- Precision will eliminate escape and avoid argument

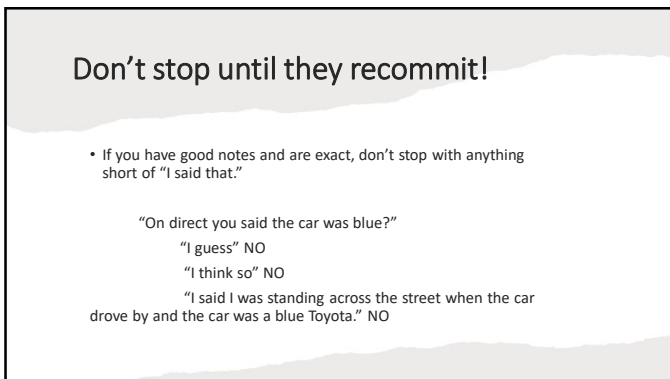


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Don't stop until they recommit!

- If you have good notes and are exact, don't stop with anything short of "I said that."

"On direct you said the car was blue?"
 "I guess" NO
 "I think so" NO
 "I said I was standing across the street when the car drove by and the car was a blue Toyota." NO



24

Step 2: Accredit



Build up the strength of the prior statements' completeness, accuracy, and reliability.



TAKE YOUR TIME here.

25

Example: Accrediting a defense interview

You did an interview with my investigator?
This is the transcript?
Vs.
We did an interview on May 4?
I was there?
My investigator was there?
This prosecutor was there?
You had a witness advocate with you?
We scheduled it at a time that worked for you?
You knew what we would be discussing?
You read your police statement before the interview?
You knew it was important to tell the truth?
You knew the interview was being recorded?

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Example: Accrediting a police report

You write reports?
You wrote a report for this case?
Vs
You were trained to write reports?
That is part of the training at the police academy?
And you were trained about it again in your department?
You right reports immediately after a call?
While your memory is fresh?
You were trained to be thorough in your reports?
Because a lot of calls are similar?
So it is important to put in the details?
You know these reports will be reviewed by prosecutors?
And defense attorneys?
And used in court?
And you sign them under the penalty of perjury?

27

Step 3: Confront


Make the witness acknowledge the substance of the prior statement.
Source your cross!




28

Don't let them off the hook!

- If you can prove they said something, don't stop until they admit they said it
 - "I guess I said that?" NO
 - "Maybe I said that." NO
 - "If it's in that transcript, I guess I said it." NO



29



Exercising Control

30

You are in control because you PREPARED

- Know the answer to your questions
- Anticipate objections and prepare responses
- Have impeachment materials ready
- Source your cross!

31

Tools for control

- Demonstrate your preparedness – use props and demonstrate your mastery of the facts
- Use verbal and non-verbal cues to show that you're in control
- Think through your tone of voice, physical presence, and body language

32

DIFFICULT WITNESSES

33

What is a difficult witness?

When a witness is out of control

A witness is out of control if any answer is not what you expect

34

Insist on one syllable answers

- Never let a witness explain
- Do not accept a rambling or non-responsive answer
- Do not be afraid to interrupt a non-responsive answer


35

General guidelines

- Repeat the question if it was carefully crafted with concrete and non-negotiable language
- Remind the witness that it was a "yes" or "no" question
- If necessary, back up to reestablish known facts and isolate the issue in dispute
- Use non-verbal communication to highlight the witness's evasiveness and hostility for the jury
- Do not argue or appear flustered
- Do not ask the court to instruct the witness to answer → this is your courtroom and you need to exercise control of it

36

Tools and Techniques



37

Politeness spectrum

Ask yourself two questions:

- Where do I want to be on the politeness spectrum
- How will the jury perceive the witness and me?

Let this guide your tone of voice and language


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Interrupt

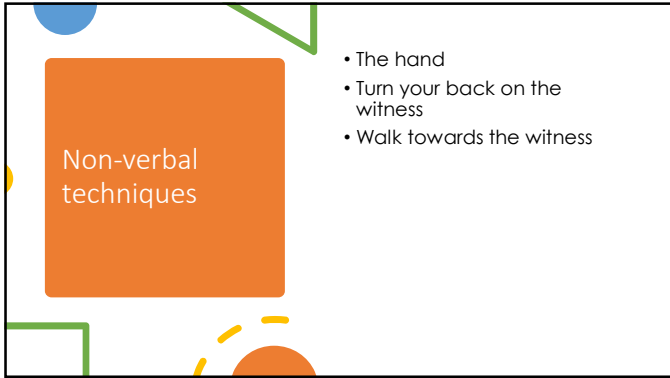
If an answer becomes non-responsive, interrupt the witness

Many ways to interrupt:

- "Thank you"
- "Stop"
- "You answered my question, now I am going to ask another"



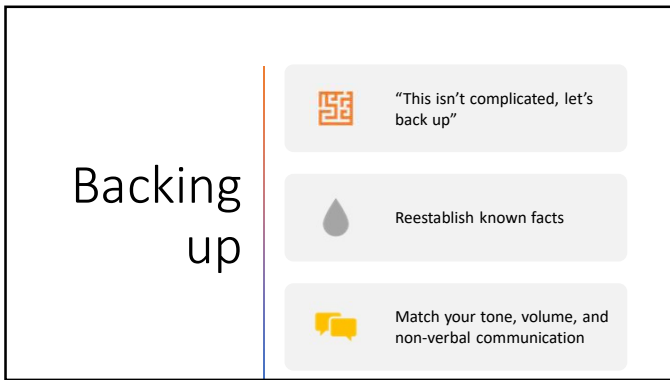
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Non-verbal techniques

- The hand
- Turn your back on the witness
- Walk towards the witness

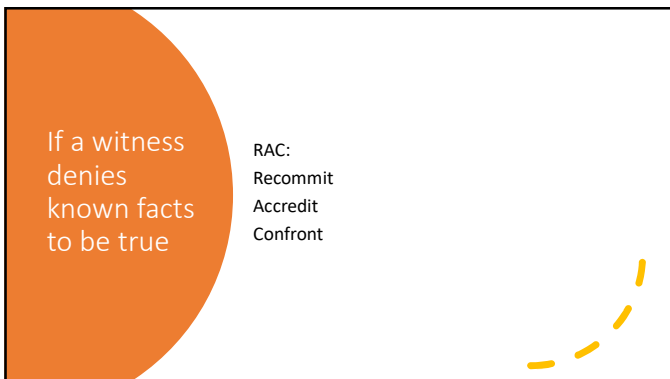
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Backing up

-  "This isn't complicated, let's back up"
-  Reestablish known facts
-  Match your tone, volume, and non-verbal communication

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If a witness denies known facts to be true

RAC:
Recommit
Accredit
Confront

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Any questions?

Email me anytime, happy to help you prep chapters or practice!
ctrueblood@snocopda.org
