

# APPENDIX F

IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT  
THE "TEMPO" TECHNIQUE

Example:

Q: Officer, there are occasions when you call your dispatcher to find out more about a 911 call?

A: No, not really.

The witness has just said something inconsistent with a prior statement. You must trap the witness, by leaving no doubt (note the "not really") about the inconsistency.

Q: You never call dispatch to find out about a 911 call?

A: No.

Q: Never?

A: No, never.

Ok, now the witness is trapped. Time to set the stage for the prior statement, and emphasize its importance.

Q: Do you recall giving a deposition in this case?

A: Yes.

Q: That was about one year ago?

A: Yes.

Q: You were asked questions at the office of the County Attorney?

A: Yes.

Q: You prepared carefully for that deposition?

A: Yes.

Q: You knew the deposition was important?

A: Yes.

Q: You prepared with the County Attorney?

A: Yes.

Q: You read over your manuals before testifying?

A: The one manual.

Q: You thought about the issues that might come up?

A: Yes, I guess.

Q: You knew the deposition was an important event, so you fully prepared yourself?

A: Yes.

Q: When you gave this deposition testimony, you were under oath?

A: Yes.

Q: You swore to tell the truth?

A: Yes.

Q: The same oath you took today?

A: Yes.

Now the importance of the statement is emphasized. Take deposition to stenographer and ask him or her to please mark it exhibit \_\_ for identification. Show to opposing counsel and state "I'm showing exhibit \_\_ for identification to opposing counsel."

Q: Your Honor, may I approach the witness?

Q: Officer, you've given testimony under oath before about this accident, haven't you?

A: Yes.

Q: Showing you what has been marked defense \_ for identification, this is a transcript of your prior testimony, correct?

A: Yes.

If the prior answer is substantively good for your case, and is not just being offered to show he's a liar, add:

Q: You told the truth when you answered these questions on [date of earlier testimony], didn't you?

A: Yes.

Now comes the "pounding." Point out the inconsistency.

Q: Directing your attention to page \_\_, line \_\_, were you asked this question and did you give this answer: "Question: There are occasions when you call your dispatcher to find out more about a 911 call? Answer: Yes."

A: Yes, I guess I did.

[NOTE: Press the issue. If the witness appears to hesitate after you read the question and answer, or if they're squirrely, ask: "Did I read that correctly?"]

You can let it end there and move on, or you can go a bit farther to wrap things up if you are confident the witness won't fight you:

Q: So, in fact, there are occasions when you call your dispatcher to find out more about a 911 call?

A: Yes.

Q: And your earlier answer, that you never do was wrong?

A: Yes.

Now, if you wish, you can offer the inconsistent statement into evidence. This will allow you to show it to the jury (just the lines that show the inconsistency), now or in summation.