

## ADVANCED INTERNATIONAL ADVOCACY COURSE

KEBLE COLLEGE, OXFORD, 2019

### WITNESS HANDLING

1. No witness can be viewed or approached entirely in isolation. Case preparation must always begin with a full analysis of all the evidence. Each witness must then be considered in the context of the evidence as a whole and in relation to all other witnesses. What support is available for one witness from another or from other aspects of the evidence? What apparent contradictions exist that need to be exploited or resolved?
2. Ensure that you understand any technical or medical terminology to be used and that the witness is ready and able to explain its meaning in ordinary language. Avoid pompous, archaic or patronising phrases: “I put it to you” “I suggest to you” or “Do you follow?”.
3. Remember that what is a familiar forensic exercise for you is likely to be entirely unfamiliar and unnerving for the witness. Treat each witness with consideration. Ensure that what you ask is clearly and succinctly expressed.
4. Abide by the rules. Behave courteously. Do not ask leading questions when examining in chief. Do not comment or argue with the witness. Do not look at the jury whilst asking questions or receiving answers. Do not sit down whilst the witness is still speaking.

### EXAMINATION IN CHIEF

5. What evidence do you want and need the witness to give? Identify the points you need to cover and the order in which you want to present them. Do not simply follow the witness statement. Do not include unnecessary matters.

6. Do not ask leading questions. Start all questions with words that require a specific answer, 'when', 'where', 'who', 'what', 'how', 'why', 'describe'. Deal with one fact per question. Do not ask generalised, open questions, "What happened whilst you were in Birmingham?"
7. Use signposts. These indicate to the witness, and tribunal, the subject or area you intend to cover and so reduce the risk of confusion. "I am now going to ask you about what happened in the house". "Could we now concentrate on who was present?".
8. Base the next question you ask on the preceding answer you were given.

Q. "Did you kill the deceased?"

A. "No"

Q. "Do you know who did?"

A. "Yes"

Q. "How do you know?"

A. "He told me"

Q. "Who told you

9. This 'Piggybacking' technique helps to ensure that:

- you ask about one fact per question
- you maintain the structure / chronology of the evidence
- the witness knows where you want him/her to go – this is particularly important for a nervous, stressed or frightened witness.

### CROSS EXAMINATION

10. The purpose of cross-examination is

- (i) To strengthen and support your case by bringing out facts which are favourable.

(ii) To undermine the case for the other side.

(iii) Do not ask questions which are not directed towards one or both of these purposes.

11. As with examining in chief, the witness must be seen and approached in the context of the evidence as a whole. What does he or she say that contradicts evidence relied upon by the other side? What does he say that is supportive of the case you are advancing?

12. Where the witness makes assertions with which you disagree, examine the context of what is said. Where he claims to have seen something, what were the conditions? What was his position? Is what he claims to have seen likely to have been visible in such circumstances; if so, could he have seen so much detail? Is his behavior afterwards consistent with having seen what he claims? Has he been influenced by anyone/anything after the event?

13. Having prepared meticulously, listen to what the witness says in chief. Oral evidence often differs from is written in the witness statement. Also, when spoken or explained, a very different impression can emerge from oral testimony than was created by the written word.

14. Having listened, do you need to cross-examine at all?

15. If yes, start with non-controversial matters. There will be some matters with which the witness cannot disagree or with which she will be anxious to agree. Early, non-confrontational questions offer the best chance to get agreement regarding matters on which, knowingly or otherwise, the witness might support you. You can then move on to more controversial areas.

16. Ask short leading questions. These limit the scope of the answer and so assist you in controlling the witness.

17. Have ready previous statements, comments or other evidence with which to contradict the witness if necessary.

18. Do not ask him/her to repeat or confirm a favourable comment made in chief. It is in

evidence and does not need to be repeated. If you ask the witness to repeat or confirm it, he is all too likely to take the opportunity to reduce the effect of what he has said or to contradict it, “I didn’t mean that, I meant this”. I wasn’t talking about him, I meant her”. Leave well alone.

19. Sometimes there is very little that sensibly can be done, and you need to escape with as little damage as possible. Do not cause greater damage by giving a witness a further opportunity to expand by unnecessary questioning.

20. Put your case. Do so as shortly and concisely as possible, and then leave it.

### **RE-EXAMINATION**

21. The purpose of re-examination is to correct, clarify or expand upon matters which arise out of cross-examination only. It is not a chance to repeat or evidence that a witness has already given in chief or to introduce evidence overlooked earlier.

22. You must not lead the witness. Re-examination can be difficult to control and often does more harm than good. When faced with a demolished or chaotic witness, it is usually better simply to ask nothing and move on.

23. Where a witness has given incomplete answers, has misunderstood a question or answered inadvertently in cross-examination and you are confident you can safely correct the position do so in clear, short structured questions.

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