

Advocacy Roles in Criminal Hearings

Advocacy CPD Seminar, October 2014

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Structure

- **Have a structure for everything**
 - What will my structure be?
 - Sometimes it is useful to tell the listener, or the witness you are questioning, what the structure is
 - Stick to the structure

Ensure you have a case theory

- What is a case theory?
- Practical example: identification or consent
- It is best to have only one

Prepare for your appearance

- Think about actually standing up in court.
- What that means is that when you stand up you don't just read out the pieces of paper you have written on as part of your preparation.

The Hearing

Look and Listen:

- It is a good thing to look at the Bench.
- It is a good thing to listen to the Bench.
- It is okay to pause.
- It is okay to ask for a moment.

Openings

Open and admit matters:

- You define what the hearing will really concentrate on.
- One sentence is sometimes enough: “the issue in this case is identification”.
- Simple and clear.
- Admit matters, and tender statements, that are not in dispute.

Cross-Examination and Evidence in Chief

- Non-leading questions in evidence in chief
- Leading questions in cross-examination.
- Again – always have a structure.

Chronological approach:

- Lead or cross-examine in time order (e.g. 3.pm and then 4pm or 19 February and then 20 February).

Category approach:

- Lead or cross-examine on distinct areas.
- Tell the witness what category “I’m going to ask you questions about”.

Cross Examination: A technique

Identify an area. Isolate it. Question on it.

Do all of that again on the other areas.

- Cross-examining a hearing as to **identification**:
 - Identify factors relied on- time, place, position, obstruction, lighting and movement.
- Cross-examining on a **prior inconsistent statement**:
 - Representation made, no doubt and the prior inconsistent statement.

Submissions/Closing

- Submissions should not rehearse the evidence.
- Use the word because “because”.
- A category approach can often be very useful.
- Deal with weaknesses.
- Should be structured (e.g. 5 points).

Legal Argument

A way you might think about legal arguments:

- What do you want? Tell the Magistrate/Judge clearly.
- Give the Bench the material to decide the point.
 - A combination of statements, oral evidence and concessions.
 - Picture a folder of information.
 - Structure your argument: arguing for or against the admissibility of the evidence.

Taking Objections

A way you might think about objections – use the structure from the Evidence Act:

- Relevance
- Admissibility
- Exclusions
- Limited use
- Warnings and Directions

Two important points to take away:

1. Structure
2. Prepare AND prepare your performance

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