

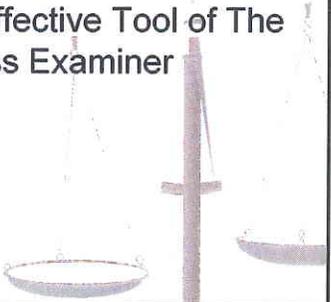
Taking A Witness Statement

By:
Kevin W. McClain C.C.D.I.
Kevin W. McClain Investigations, Ltd.
Centralia, IL
E-mail: mcclainpi@gmail.com
Website: www.mcclaininvestigations.com
1-877-532-1152
©copyright of Kevin W. McClain Investigations, Ltd



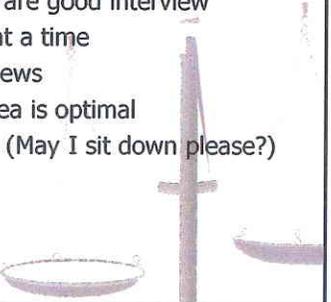
Prior Inconsistent Statements

The Most Effective Tool of The Cross Examiner



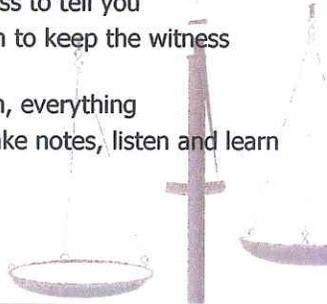
Getting Started

- Privacy facilities are good interview
- Only 1 witness at a time
- No group interviews
- Quiet well let area is optimal
- Get comfortable (May I sit down please?)



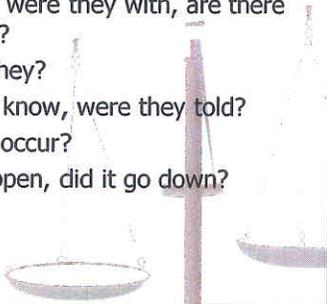
Ask The Witnesses What They Know

- Allow the witness to tell you
- Ask just enough to keep the witness talking
- Listen and learn, everything
- At first do not take notes, listen and learn



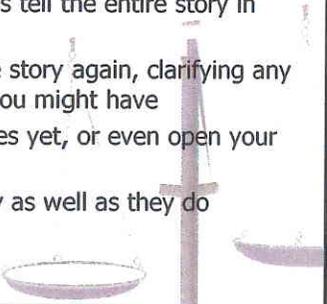
Questions To Ask (Open Ended)

- WHO: are they, were they with, are there other witnesses?
- WHERE: were they?
- WHAT: do they know, were they told?
- WHEN: did this occur?
- HOW: did it happen, did it go down?



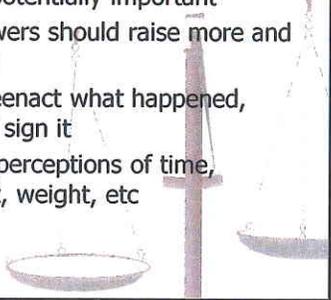
Go Over The Story

- Have the witness tell the entire story in their words
- Then review the story again, clarifying any questions that you might have
- Do not take notes yet, or even open your notebook
- Learn their story as well as they do



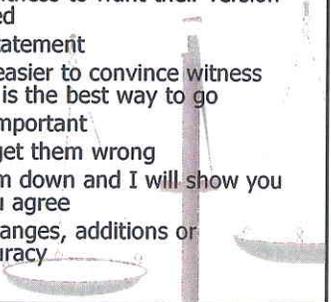
Details, Details, Details

- Every detail is potentially important
- Witnesses' answers should raise more and more questions
- Have witness reenact what happened, draw maps and sign it
- Test witnesses perceptions of time, distance, height, weight, etc



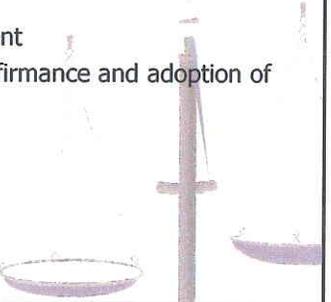
Transition To Statement

- Must empower witness to want their version written and signed
- Cannot force a statement
- Rather it will be easier to convince witness that a statement is the best way to go
- Your words are important
- I do not want to get them wrong
- Let me write them down and I will show you each word so you agree
- You can make changes, additions or deletions for accuracy



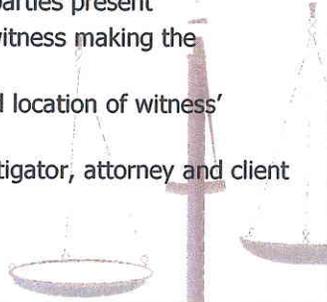
3 Parts Of A Statement

- Introduction
- Body of statement
- Conclusion = Affirmance and adoption of statement



Introduction

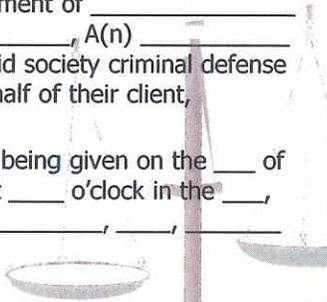
- Introduces all parties present
- Identifies the witness making the statement
- Time, date, and location of witness' statement
- Identifies investigator, attorney and client as such



Introduction

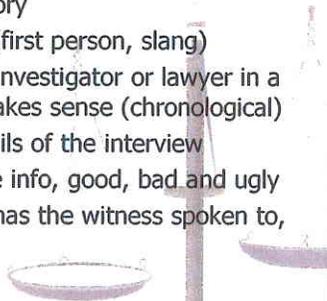
This is the statement of _____
given to: _____, A(n) _____
with the legal aid society criminal defense
practice, on behalf of their client,
_____.

This statement is being given on the ___ of
_____, 20___, at ___ o'clock in the ____,
at _____, _____, _____



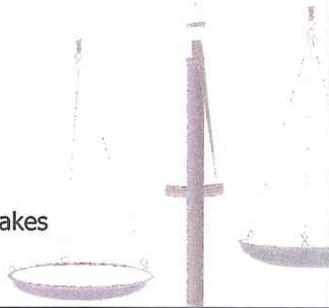
Body Of Statement

- The witness' story
- In their words (first person, slang)
- Written by the investigator or lawyer in a manner that makes sense (chronological)
- Has all the details of the interview
- Do not filter the info, good, bad and ugly
- Rosario – who has the witness spoken to, notes, etc



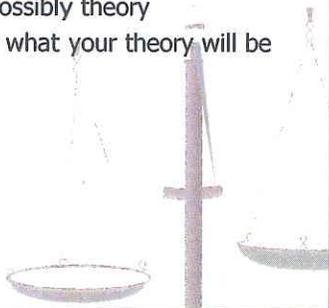
Mechanics Of The Statement

- Skip lines
- Cross outs
- Initials
- Page numbers
- Signatures
- Colored pens
- Purposeful mistakes



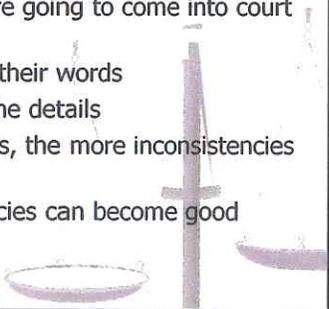
Don't Focus On Just One Defense Theory

- Explore every possibly theory
- You don't know what your theory will be at the trial



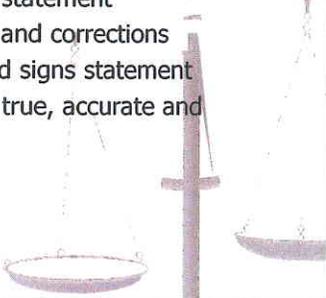
Why Write Down Bad Stuff?

- Because they are going to come into court with bad stuff
- Cannot change their words
- The devil is in the details
- The more details, the more inconsistencies at trial
- Bad inconsistencies can become good facts
- Ring of truth



Conclusion

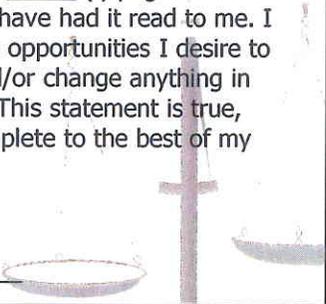
- Witness adopts statement
- Makes changes and corrections
- Initials them and signs statement
- Swears that it's true, accurate and complete



Conclusion

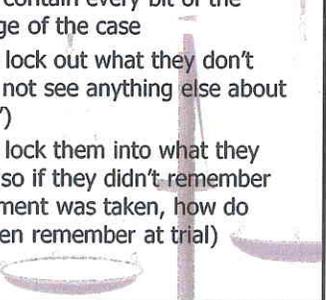
I have read this _____ () page statement, and have had it read to me. I have had all the opportunities I desire to add, delete, and/or change anything in this statement. This statement is true, correct and complete to the best of my knowledge.

(signature)



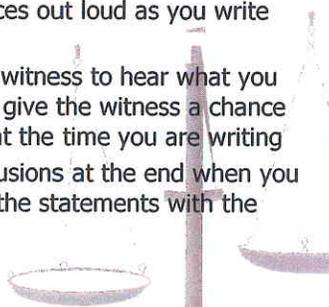
Good Or Great Statements

- Good statements contain every bit of the witness' knowledge of the case
- Great statements lock out what they don't know (e.g. "I did not see anything else about the robber's face")
- Great statements lock them into what they don't remember (so if they didn't remember the day the statement was taken, how do they all of a sudden remember at trial)



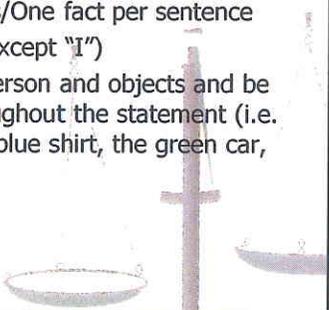
Tips For Writing The Statement

- Say the sentences out loud as you write them
- This allows the witness to hear what you are writing and give the witness a chance to correct you at the time you are writing
- This avoid confusions at the end when you are going over the statements with the witness



Write The Statement So That It Is "Trial Friendly"

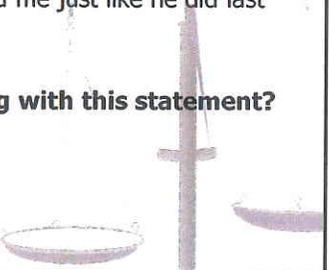
- Short sentences/One fact per sentence
- No pronouns (Except "I")
- Identify each person and objects and be consistent throughout the statement (i.e. the man in the blue shirt, the green car, Susie, etc.)



What's Wrong With This Statement

- STATEMENT: I pushed John (client) and then he punched me just like he did last year.

What's wrong with this statement?

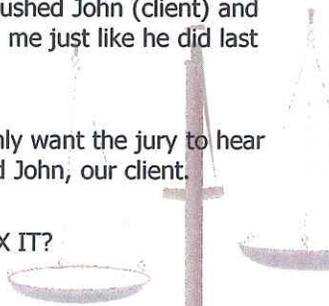


What's Wrong With This Statement

STATEMENT: I pushed John (client) and the he punched me just like he did last year.

PROBLEM: we only want the jury to hear that c/w pushed John, our client.

HOW DO WE FIX IT?



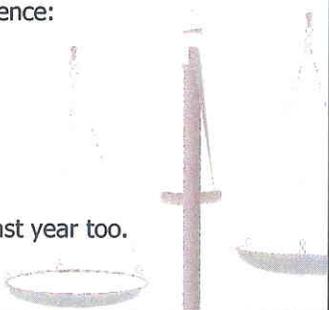
How To Fix It...

One fact per sentence:

I pushed John.

He punched me.

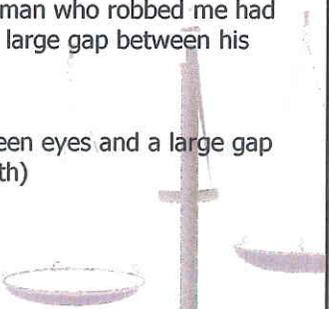
He punched me last year too.



What's Wrong With This Statement?

STATEMENT: the man who robbed me had brown eyes and large gap between his teeth

(Our client has green eyes and a large gap between his teeth)



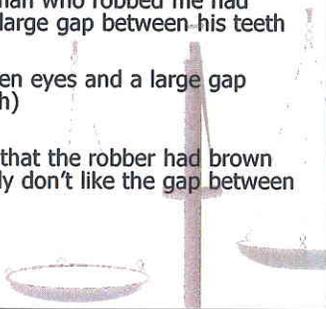
What's Wrong With This Statement?

STATEMENT: the man who robbed me had brown eyes and large gap between-his teeth

(Our client has green eyes and a large gap between his teeth)

PROBLEM: we like that the robber had brown eyes but definitely don't like the gap between his teeth

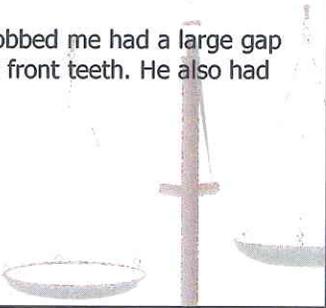
How do we fix it?



How To Fix It?

How about?:

The man who robbed me had a large gap between his top front teeth. He also had brown eyes.

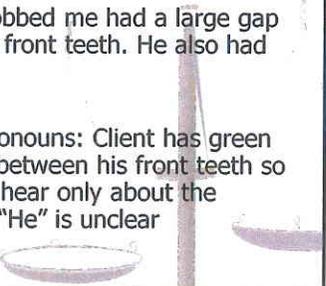


How To Fix It?

How about?

The man who robbed me had a large gap between his top front teeth. He also had brown eyes.

New problem – Pronouns: Client has green eyes and a gap between his front teeth so we want jury to hear only about the brown eyes but "He" is unclear



How To Fix It?

Solution:

The man that robbed me had a large gap
between his front teeth

The man that robbed me had brown eyes

