

Philosophy 338A
Philosophy of Law
2017
Note Twenty-five

A QUICK LAST WORD ABOUT PREPARING/COACHING WITNESSES

This almost certainly will be the final posting of the year, but I know that you'll find it interesting. Recently one of our 338A gang, Andrew Raitt, wrote to say that he had been speaking to a North Vancouver Crown Prosecutor, who had kindly advised him of the procedures she follows in prepping witnesses. With Andrew's and her permission, I'll turn the note over to the Crown with a verbatim text of what she sent to Andrew.

“During an advance interview, I typically begin by having the witness review any prior statement(s) that he/she gave to the police (either audio / video recorded or in writing).

I then ask if there's anything they need to correct from their statements (and why). I review their evidence – asking open (non-leading) questions to understand:

- The reliability of their evidence:
 - o Such as – how far away they were when they made certain observations / anything blocking their view / lighting conditions
 - o Whether they were under the influence of alcohol at the time
 - o Whether this was something they saw directly or whether it is in fact hearsay
 - o How certain they are about their evidence (are they sure of the wording of the threat, for example)
 - o When they gave their statement (any reason for a delay before speaking to the police)

- Their credibility
 - o Their personal interest in the case
 - o Their criminal record (if any)

I remind the witness of their obligation to tell the truth and to give only their evidence (no hearsay from other people and no speculation / no guessing).

I explain the process, including cross examination.

As Crown, I can ask detailed questions about the facts at issue in the case to help the witness articulate their evidence. However, as Crown, I can NEVER suggest a particular answer, nor tell a witness the “correct” answer.

If the witness' answers during an advance interview are ‘inadequate’, Crown must assess whether there is any reason for this (ie. is the witness holding back information because they're being pressured from family who don't want the case to proceed – this happens in spousal abuse cases – or pressured by gang members not to be the ‘rat’). If not, if the witness' answers simply

reveal problems with proving the case, Crown must assess whether there is still a **substantial likelihood** of conviction. (That's the BC guidelines anyway.) If not, the case should generally not go to trial.

Each witness is different. How we interview an expert will be much different than a lay witness. A witness who is giving evidence that someone stole their bike is very different from a witness testifying about on-going domestic violence. Witnesses may have mental health issues that affect their ability to testify in court. Sometimes despite our best efforts, witnesses lie or fail to mention important information prior to trial. Finally, defence counsel is not required to tell Crown anything about their case. Sometimes, an issue comes up in court that could not be anticipated.

I hope this is helpful in addressing your question."