

# PREVIOUS INCONSISTENT STATEMENTS (P.I.S.) – A GUIDE

- **Establish the present testimony:** *‘Is it your evidence that ...’* It must be clear to the witness (‘ws’) that reference is being made to the examination-in-chief.
  
- **Identify P.I.S. & Outline specific circumstances in which made.** ‘Did you not previously say that ...’ **Answer.** Depending on answer other qns follow e.g. ‘concerning this matter did you not give evidence in the Half-way-tree RM court in around June of this year (2005) that ...’



# ADMISSION OR DENIAL

- PROVIDE AN OPPORTUNITY FOR WS TO ADMIT OR DENY MAKING PREVIOUS STATEMENT. Do not rush, you must allow ws to answer. The answer to this question is very important. It determines what happens next in a decisive way. If ws does not '...distinctly admit ...' Then
- WITH LEAVE OF COURT HAVE PREVIOUS ORIGINAL STATEMENT SHOWN TO WS. WS to identify document. Usually done through identification of signature.
- REFER WS WITH PRECISION TO PORTION OF STATEMENT SAID TO BE INCONSISTENT WITH PRESENT TESTIMONY. WS TO READ TO SELF.

# TYING IN WHAT WS HAS READ WITH P.I.S

- WS TO BE ALLOWED TO ADMIT OR DENY AGAIN. 'Do you still say that ...'. **If ws does not** '...distinctly admit...' then move to next step. If ws admits then stop as the damage has been done. The Object has been achieved. **Stop. The ws has been discredited.**

## Next Step

- TENDER PORTION OF STATEMENT THAT SETS OUT THE PREVIOUS INCONSISTENT STATEMENT. This is to be done with precision and must coincide with the portion that had earlier been pointed out for ws to read.

# MATERIAL OMISSIONS

- MATERIAL OMISSIONS SERVE TO DISCREDIT THE WITNESS. THEY GO TO CREDIT. THE OMISSIONS ARE TO BE MATERIAL.
- APPROACH THEM IN THE SAME WAY EXCEPT THAT IT IS THE OMISSION THAT IS PUT TO WS. 'You had not told the police that you saw [deft] there that night did you'. If ws does not distinctly admit then...
- WITH LEAVE OF COURT HAVE WS READ STATEMENT IN ITS ENTIRETY TO SELF. THEN PROVIDE OPPORTUNITY FOR WS ADMIT OR DENY OMISSION.

# MATERIAL OMISSIONS – NOTES

- There are potential problems if the witness continues not to 'distinctly admit' even after reading statement.
- Putting in the entire statement to prove the material omission may not be prudent as the statement may have damaging portions. You must read and know the statement.
- What you do here must be carefully considered. Remain calm, keep your composure. You may decide to move on and try again later. I have formed the opinion that the intervention of the judge may be sought – see s.17, evidence act (JCA). Appeal to his discretion.
- This particular situation is deserving of research and discussion. S. 17, evidence act (JCA) provides a good starting point as the judge at any time can require the production of the writing and make such use of it for the purpose of the trial as he shall think fit.