 Questioning the Witnesses

**Prosecution Witness**

The following form will assist you to evaluate and prepare your defense against the statements of the prosecutor’s witnesses:

**Prosecution Witness Evaluation Form**

1. Name of Witness:

**Analysis**

1. List the reasons why witness helps the prosecutor prove the crime charged.
2. List the reasons this witness’s testimony will hurt the defense of your client.
3. List the reasons (if any) this witness will help the defense of your client.
4. List the ways (if any) in which this witness’s testimony is inconsistent with their previous statement, statements of other witnesses, the victim, accused and jointly accused persons, and the evidence presented.
5. List the ways (if any) that this witness’s testimony may be utilized to advance the defense attorney’s theory of the case.
6. Pages in the case file where this witness appears.

**Supporting Evidence:**

1. List the evidence to be used when asking this witness questions.
2. In case the prosecution witness change their previous statements, the legal aid lawyer can use the following prompts:
   1. You can ask the witness: “You previously said…,”and the witness will in all likelihood say “yes,” or argue with his or her previous statement. If the witness says “no,” or contradicts his or her previous statement you can:
      1. Refer to trial documents or other evidence.
      2. Call an already prepared defense witness to the stand to refute the prosecution witness’ claim.

**Sample Questions:**

Is this witness helping your case? If so, remember to:

1. Repeat the aspects of the witness’ testimony that are helpful to your case during your questioning.

Example: “I want to make sure I heard your testimony correctly. Did you say that [helpful statement]?”

1. First ask the witness easy, supportive questions in order to make them comfortable, then you can ask more difficult or aggressive questions. Example (of easier, introductory questions):
   1. How many years have you been doing this? (if the witness is an expert witness, teacher, policeman, etc)
   2. How well do you know the person?
   3. Are you the type of person who notices details?
   4. How good is your eyesight?
   5. How good was the lighting?

Is this witness against, or hurting, your case? If so, try to demonstrate inconsistencies and problems in their testimony. Examples:

1. Is it true that you are friends with the victim?
2. You didn’t write down any of your observations at the time of the event?
3. You did not speak with the police until many weeks after the alleged crime?

Your concluding question should be the strongest one and one that:

1. You safety know the answer to, and
2. Whose answer supports your case

Example: Isn’t it true that my client called the police, and waited for them at the scene?

**Defense Witness Evaluation**

1. Cross-examine the prosecution’s witnesses.
2. Use evidence to impeach the prosecution’s witnesses.
3. Ask a Magistrate or police officer to collect evidence on behalf of the accused. If the police or a Magistrate, discount evidence which could favor the defense, this is grounds for an appeal, and strong grounds for later nullification of the verdict.

**Witness’ Character Traits and the Scene of the Alleged Crime**

When reviewing an eyewitness testimony, focus on the following aspects listed below. An understanding of the witness’ character traits will help the lawyer narrow the range of investigation and identify the strengths and weaknesses of the witness’ testimony. The items listed below affect how the witness might have observed the facts of the case.

|  |  |
| --- | --- |
| **Witness’ Character Traits** | **Surrounding of the Scene** |
| * Gender * Intelligence * Memory capacity * Education background * Employment history * Language * Speech impediment * Age * Temperament * Mental state * State of health * Alcoholic consumption * Trauma caused by medicine or illegal substance abuse * Eyesight * Hearing * Relationship with the victim * Relationship with the accused * Relationship with the co-accused * Motive * Partiality towards the client, victim or co accused * Bias towards the victim or witness * Was threatened before, during or after the alleged crime * Lighting conditions | * Daytime or nighttime * Exact time during the day or night * Moonlight * Rain * Fog * Coldness * Heat * Number of people present * Duration of observation of the occurrence * Realistic ability to see all the people present and their activities at the scene and the crime weapon * Natural plant life * Buildings * Automobiles * Traffic conditions * Observation angle or position * Bird’s eye view * Upward view |