



The Inns of
Court College
of Advocacy

The Council of the Inns of Court

ADVOCACY TRAINING

What is the Hampel Method?

**Hampel on Hampel Lecture - Professor The Honourable
George Hampel, Mrs Justice Hampel Saul Herman, Mark
Watson, Luke Wilcox, John Lynch, Anthony Leonard QC**

(transcript of [video](#))

- A** **Professor George Hampel:** Thank you Anthony, and we are thrilled and flattered by such interest and such commitment to the idea of advocacy training; it's wonderful to see. We have a lot to do in a short time so we'll get straight onto it.
- B** I want to talk first of all about what we're trying to do tonight, we're trying to show you the way we approach the training of Pupils and the way we then approach the training of more experienced advocates.
- C** And essentially, the Method is really not something that I need to speak about to this audience; the basics of the Method itself. I'm sure that most, if not all of you, are very familiar with that. So we'll be demonstrating, particularly with the Pupils, the Method we use with Pupils.
- D** So, the teaching methodology is something that we want to show the difference in between the advanced... more advanced... and the Pupils; and I should say,
- E** should I forget later, how grateful we are that you've volunteered to participate in this and you'll see the people performing, hopefully, getting some benefit from it themselves.
- F** One of the issues that we find most challenging is reviewing without reviewing the case theory. And of course we know that the only way you can really review an advocates performance is by reference to what they're really trying to
- G** achieve. And in the normal training exercises that we do of this kind, there isn't a discussion of the case theory and so in the performance review session there just isn't time to discuss the case theory itself. So the best one can do is to ask the
- H** Pupil what their case theory is, and when we see the Pupils perform, depending on where they are and how they're going, we might say to them "what is your case theory about this? What are you trying to get to with it?"
- But, whatever they say, the important thing is not then to discuss the case theory with them. We've got to review their technique on the basis of their case theory.

A So what the instructor... the trainer has to do is say "well, you've decided to go down this road with this particular witness, what you might do to achieve that better, on your case theory, is something like this..." So we'll review on their case theory.

B

In the training that we do at home at various levels we always have sessions - full sessions of up to an hour or sometimes two - on case theory after they've performed. And what we're going to do tonight is have a little short session on case theory after the four performers have performed. So, the first two people we're dealing with will be the Pupils, there will be a short break while we change the tape and then we've got two more experienced practitioners; are you one of them?

C

D

Saul Herman: I am.

E **Professor George Hampel:** Good. Doing their performances of exactly the same cross-examination. And so, we're going to see the difference in the approach of the Pupils who are three months and six months out, to people who've been doing it for some time, we don't know how long; we'll know their level when we see them perform.

F

G So, in that more advanced aspect of teaching and advocacy reviewing, there are differences and I'll have a few minutes after we've dealt with the Pupils to discuss the differences. Essentially, as far as the Pupils stuff is concerned, many of you who are teachers have done this over and over again. You've been teacher-trained, you know the Method and all we'll be doing is picking up on it in order to contrast that with what we'll be doing later with the more experienced advocates.

H

So, case theory is the first problem that we have to deal with. And we have to work hard with our teachers to make sure that they don't get tempted to discuss

A the case theory during the ten minutes or so that they have with each Pupil during that sort of performance. The other problem we have is the demonstration. The demonstration, of course, has to be for the Pupil of what they might do with their case theory; so it's no good not discussing the case theory with them but then demonstrating something on your case theory. So it has to be done on their case theory to see... to improve their technique.

B

C And so we draw a clear distinction between technique and the conceptual thinking about a problem. So in a cross-examination, and that's all we're doing this time, we are looking at where they... how they have thought it through, helping them with the technique on the basis on which they have thought it through, and then, later on at the end of the evening when we have dealt with the more senior people as well, we will be doing the case theory. We'll be talking about the case theory - because they're both doing the same two witnesses - and we'll be, if time permits, we'll give some demonstrations about that.

D

E

F So, that's the programme for tonight. So, without further ado, the more time we spend on performance and review the better; the less talking we do the better. So, we will, on this occasion, play the witnesses for these Pupils, so I'll play the role of the witness, Mr Von Naustraum, and you're cross examining him right? And Felicity will review your performance, OK?

G

H So, we've got one minute for any questions... probably too early to ask any. Alright, thank you very much.

OK, on the Bar table please. Thanks.

Mark Watson: So Mr Von Naustraum, I just wanted to clarify some points of your evidence concerning the 9th of April if I may.

- A** **Professor George Hampel (playing Von Naustraum):** Yep.
- Mark Watson:** Now, you say that you got to your boat with your girlfriend about nine O'clock?
- B** **Professor George Hampel (playing Von Naustraum):** Round about that time, yep.
- C** **Mark Watson:** And you had some takeaway food?
- Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** And, you had a bottle of champagne?
- D** **Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** And, you're an airline pilot, so you didn't have much to drink?
- E** **Professor George Hampel (playing Von Naustraum):** No
- Mark Watson:** Now, in your job did you say it's important to be observant?
- F** **Professor George Hampel (playing Von Naustraum):** Oh yes.
- Mark Watson:** Now if I can move on a bit to eleven O'clock in the evening; you
- G** said you were out on the deck of your boat?
- Professor George Hampel (playing Von Naustraum):** That's right.
- Mark Watson:** And this is when you saw a man?
- H** **Professor George Hampel (playing Von Naustraum):** Yes.
- Mark Watson:** Now, he walked through the gates opposite your boat?

- A** **Professor George Hampel (playing Von Naustraum):** It's a gap in the fence, yes.
- B** **Mark Watson:** And he walked through?
- Professor George Hampel (playing Von Naustraum):** Yes he did.
- C** **Mark Watson:** And he, when you first saw him he was about eight metres away?
- Professor George Hampel (playing Von Naustraum):** Approximately, yes.
- Mark Watson:** And I just want to clarify the description you've given if I can.
- D** **Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** You say he had short, curly hair?
- E** **Professor George Hampel (playing Von Naustraum):** He did.
- Mark Watson:** He had a curled moustache?
- F** **Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** He was wearing glasses?
- G** **Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** He was approximately 1.8 metres tall?
- Professor George Hampel (playing Von Naustraum):** Correct
- H** **Mark Watson:** And the clothing, he was wearing dark trousers?
- Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** A dark top?

- A** **Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** Did you... was that a top or a shirt?
- B** **Professor George Hampel (playing Von Naustraum):** Well, these are impressions of course, but I think it was a top like either a t-shirt or a jumper or something along those lines.
- C** **Mark Watson:** And he was wearing black shoes?
- Professor George Hampel (playing Von Naustraum):** He was, yes.
- Mark Watson:** Now he disappeared onto another boat?
- D** **Professor George Hampel (playing Von Naustraum):** Well he went down the jetty and disappeared right at the end of the pier, yes.
- E** **Mark Watson:** Now, some 30-40 minutes later, approximately...
- Professor George Hampel (playing Von Naustraum):** Yes
- F** **Mark Watson:** You say you saw the same man again?
- Professor George Hampel (playing Von Naustraum):** That's right
- G** **Mark Watson:** Now, the description you give of him this time is that he had wavy hair?
- Professor George Hampel (playing Von Naustraum):** That's what I noticed at that time, yes.
- H** **Mark Watson:** And this was pulled back into a pony tail?
- Professor George Hampel (playing Von Naustraum):** Yes, it was sort of gathered at the back.

- A** **Mark Watson:** He was wearing dirty white runners?
- Professor George Hampel (playing Von Naustraum):** He was.
- B** **Mark Watson:** Trainers?
- Professor George Hampel (playing Von Naustraum):** Yes
- C** **Mark Watson:** He had... He wasn't wearing any glasses?
- Professor George Hampel (playing Von Naustraum):** No, he didn't have glasses on.
- D** **Mark Watson:** Now, there's no mention of a moustache, did he have one or not?
- Professor George Hampel (playing Von Naustraum):** Look, I really... at this stage it's difficult to remember whether he... whether I noticed it at that time or not.
- E** **Mark Watson:** Have you got your statement in front of you now?
- F** **Professor George Hampel (playing Von Naustraum):** I do, yes.
- Mark Watson:** And you saw that it was signed on the 14th of April last year, so that's some time ago
- G** **Professor George Hampel (playing Von Naustraum):** Yes.
- Mark Watson:** So is it fair to say that your recollection then would be better than it is now?
- H** **Professor George Hampel (playing Von Naustraum):** Probably, yes.
- Mark Watson:** And there's no mention of a moustache in there?
- Professor George Hampel (playing Von Naustraum):** Not that I can see no.

- A** **Mark Watson:** So would it be fair to say that he didn't have one then?
- Professor George Hampel (playing Von Naustraum):** Well, I wouldn't go quite as far as that, but that's... that's a reasonable position, yes...
- B**
- Mark Watson:** Now, what I'm going to do, Mr. Von Naustraum...
- Professor George Hampel (playing Von Naustraum):** -I'm sorry, I missed that.
- C**
- Mark Watson:** Beg your pardon?
- Professor George Hampel (playing Von Naustraum):** I missed your first...
- D**
- Mark Watson:** What I'm going to do now Mr. Von Naustraum...
- Professor George Hampel (playing Von Naustraum):** Yes
- E**
- Mark Watson:** Is I'm going to go through the two descriptions you've given OK?
- Professor George Hampel (playing Von Naustraum):** Two descriptions?
- F**
- Mark Watson:** When you see him the first time...
- Professor George Hampel (playing Von Naustraum):** Yes
- G**
- Mark Watson:** And when you see him the second...
- Professor George Hampel (playing Von Naustraum):** Oh, I see, yes certainly.
- Mark Watson:** Now, the first one; he was wearing glasses?
- H**
- Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** And the second time, he wasn't?
- Professor George Hampel (playing Von Naustraum):** I didn't notice the glasses the second time no.

- A** **Mark Watson:** And the first time you saw him, when you said he had short curly hair?
- B** **Professor George Hampel (playing Von Naustraum):** That's what I... That's the impression I got, yes.
- Mark Watson:** And the second it was wavy?
- C** **Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** Now, I need your help... curly and wavy, they're not the same are they?
- D** **Professor George Hampel (playing Von Naustraum):** Well... No, I suppose in theory they're not.
- E** **Mark Watson:** And the first time he was wearing black shoes?
- Professor George Hampel (playing Von Naustraum):** Yes, that's what I saw... What I noticed, yes.
- F** **Mark Watson:** And the second, he was wearing dirty white trainers?
- Professor George Hampel (playing Von Naustraum):** Well, they were dark
- G** because they were dirty.
- Mark Watson:** But you said they were dirty white trainers?
- Professor George Hampel (playing Von Naustraum):** Yes, I said that, yes.
- H** **Mark Watson:** And the first time you said you saw a curled moustache?
- Professor George Hampel (playing Von Naustraum):** Yes
- Mark Watson:** And the second, there's no mention?

- A** **Professor George Hampel (playing Von Naustraum):** None, none in my statement. That's right, yes.
- B** **Mark Watson:** Now, the first time, he had short hair?
- Professor George Hampel (playing Von Naustraum):** That's the impression I got, yes.
- C** **Mark Watson:** And the second time, he had a ponytail?
- Professor George Hampel (playing Von Naustraum):** Well, that's the way I saw it the second time.
- D** **Mark Watson:** So the first time, short hair?
- Professor George Hampel (playing Von Naustraum):** Yes.
- E** **Mark Watson:** And the second time, pony tail?
- Professor George Hampel (playing Von Naustraum):** Yes, that's what I've said in my statement and they're the impressions I got at the time, yes.
- F** **Mark Watson:** So, the second description he has longer hair than he did in the first time you saw him?
- G** **Professor George Hampel (playing Von Naustraum):** That was the impression I got when I saw him the second time, yes.
- H** **Mark Watson:** Now, Mr Von Naustraum, the two descriptions are quite different aren't they?
- Professor George Hampel (playing Von Naustraum):** Um... Do you mean they're different in the statement, on paper? Yes they are.

- A** **Mark Watson:** Well this... Let's take the length of his hair, the first time it's short, the second time it's long.
- B** **Professor George Hampel (playing Von Naustraum):** Well, look it, they're only impressions; it was a very short look and he was walking past. I had no particular reason to notice these things that carefully. They're the impressions I got, so that's why-
- C** **Mark Watson:** -You noticed the first time it was short hair?
- Professor George Hampel (playing Von Naustraum):** Well, that's what I said, yes.
- D** **Mark Watson:** And the second time it was longer hair?
- Professor George Hampel (playing Von Naustraum):** Well that was my impression when I saw him the second time, yes.
- E** **Mark Watson:** Now these two descriptions are quite different aren't they?
- F** **Professor George Hampel (playing Von Naustraum):** Well... I don't... I mean, on paper they are different; but when you look at what I've seen, I was seeing a man with... in a different position, different impressions at a different time.
- G** **Mark Watson:** But, like I said, the first time he had short hair, on your evidence, and on the second time he had long hair.
- Professor George Hampel (playing Von Naustraum):** Well that's what I said in my statement, yes.
- H** **Mark Watson:** Yes. Now, these two descriptions are very different... In fact, they are... they could almost be said to be two different people.

- A** **Professor George Hampel (playing Von Naustraum):** Well, certainly not two different people.
- B** **Mark Watson:** The first one, short hair; second time, long hair?
- Professor George Hampel (playing Von Naustraum):** Well they're the impressions I got given the position that I saw him from and... uhm... all I noticed. You don't take everything in at the same time.
- C** **Mark Watson:** But you noticed the first time he had short hair and...
- Professor George Hampel (playing Von Naustraum):** Well, I've said that three times; yes.
- D** **Mark Watson:** OK, these two descriptions aren't the same.
- E** **Professor George Hampel (playing Von Naustraum):** Well I don't agree with you; on paper they're not the same, but when you look at the impressions I had of the person, it was the same person.
- F** **Mark Watson:** Well the first one short hair, the second long?
- Professor George Hampel (playing Von Naustraum):** Well that's the fourth time I'll agree with you; on paper that's right.
- G** **Mark Watson:** I'm just going to say that they were two different people.
- Professor George Hampel (playing Von Naustraum):** They certainly weren't.
- H** **Mark Watson:** Thank you very much for your time.
- ***
- Mrs Justice Hampel:** Mark, that's probably the most challenging cross-examination you've had to do, isn't it? In front of an audience like this.

A What I want to talk to you about is the purpose of cross-examination when what you've got is, on the paper, a clear conflict between the two descriptions the witness has given and you want to make something of that. And a better... What

B I want to talk about is a safer way of trying to allow your decision maker, your judge or your jury, to think that the two descriptions are so different that it must be two different people rather than trying to get the witness to agree with you

C that the two descriptions are so different that they must be two different people.

D What happened by the end of your cross-examination was you'd repeated the whole of the evidence-in-chief by taking him through to confirm it. Then you repeated it again by getting him... taking him to the particulars of the first sighting and the second sighting. So, by that time we'd heard it three times; in evidence in chief, in your first repetition of the general evidence and then in your specific reference to the descriptions; we'd heard the descriptions three times. So

E that was well embedded in everybody's minds but they kept on thinking - I suspect - we've heard those descriptions a number of times.

F What you then did was simply say they're different and argue with him about whether they were different or not and allow him to argue back and tell you why, on paper, he thought they might sound different but in reality they were the

G same person. So at the end, I think, rather than being able to say to your jury "these two descriptions must be different people," you've given the witness the opportunity by saying "they're two different people aren't they?" to come back and say to you "no, it's not, it's one and the same." So I think you're worse off at

H the end of it than you were at the start.

So, how do we go about making the most of those two different descriptions which you've quite correctly identified are the thing that you needed to work on?

- A** First; we don't need to repeat the evidence-in-chief, do we? So when you say "I just want to confirm some of what you've said" - don't; the jury's already heard it. Let's go to the heart of exactly what you want, which is the difference in
- B** description. And let's think about doing it in a way which will enable this witness to simply have to agree that they are different but without allowing him to comment on whether he thinks they're different or not. So we can do away with
- C** any of the repetition or confirmation of the evidence-in-chief and we'll simply find an effective way of contrasting those two descriptions so that we aren't asking him to draw the conclusions; the jury or the judge will start to think they've got to be different.
- D** So what can we do apart from simply asserting the facts and description? We can look at the fact that he's a good observer, which you got; we can look at the fact that he had good lighting conditions, and so what he saw the first time under
- E** good light is likely to be correct and what he saw the second time, under good light, is likely to be correct and therefore highlight the differences and the good ability to see in those two circumstances; but not allow him to try and argue at
- F** the end that it's one and the same person and it can be explained just by an impression or different bits of lighting. So let's see if we can just cut that down by going straight to that part of the description.
- G** ***
- H** **Mrs Justice Hampel (conducting cross-examination):** Now Mr. Von Naustraum, when you first saw the man coming down he walked... you saw him at the gateway or the entrance walking down towards your boat, didn't you? About eight metres away?
- Professor George Hampel (playing Von Naustraum):** Yes.
- Mrs Justice Hampel (conducting cross-examination):** And he got closer?

- A** **Professor George Hampel (playing Von Naustraum):** A little bit closer, yes.
- Mrs Justice Hampel (conducting cross-examination):** When he first came towards you, you were looking at him full face?
- B** **Professor George Hampel (playing Von Naustraum):** For a short time, yes.
- Mrs Justice Hampel (conducting cross-examination):** And then he turned to the
- C** right, so you saw the left side of his face?
- Professor George Hampel (playing Von Naustraum):** Yes.
- Mrs Justice Hampel (conducting cross-examination):** Then he turned to the
- D** left, and so you saw the left side of his face and indeed the whole left of his body?
- Professor George Hampel (playing Von Naustraum):** Yes.
- E** **Mrs Justice Hampel (conducting cross-examination):** As he walked up towards the other boat, that is when you could see him side-on walking. Uhm, and he was
- F** even closer than that initial eight metres away?
- Professor George Hampel (playing Von Naustraum):** Well he got further away as he walked on.
- G** **Mrs Justice Hampel (conducting cross-examination):** But initially he was closer than the eight metres and then he got further away.
- Professor George Hampel (playing Von Naustraum):** That's right.
- H** **Mrs Justice Hampel (conducting cross-examination):** So, full-face, side on left, side on right, it was that that enabled you to see that short curly hair, wasn't it?
- Professor George Hampel (playing Von Naustraum):** Yes.

- A** **Mrs Justice Hampel (conducting cross-examination):** And that curly moustache?
- B** **Professor George Hampel (playing Von Naustraum):** Yes.
- C** **Mrs Justice Hampel (conducting cross-examination):** And as a pilot, with that good vision that you must have, you were obviously very clear about that.
- D** **Professor George Hampel (playing Von Naustraum):** Yes.
- E** **Mrs Justice Hampel (conducting cross-examination):** Later you saw, about 40 minutes later, a man running back towards your boat and then up into the car park didn't you?
- F** **Professor George Hampel (playing Von Naustraum):** Same... same gate, through the same gate...
- G** **Mrs Justice Hampel (conducting cross-examination):** Same gate. Now, you saw him at this stage running towards you rather than moving away from you, didn't you?
- H** **Professor George Hampel (playing Von Naustraum):** Correct
- I** **Mrs Justice Hampel (conducting cross-examination):** And, on this occasion, you were able to see... to give a quite different description of the nature of his hair; wavy rather than curly and with a ponytail.
- J** **Professor George Hampel (playing Von Naustraum):** That's what I noticed.
- K** **Mrs Justice Hampel (conducting cross-examination):** Again, and that was with the benefit of the lighting that you had over him as he ran towards you and then up towards his car.

A **Professor George Hampel (playing Von Naustraum):** Well the lighting was the same both times.

B **Mrs Justice Hampel (conducting cross-examination):** Yes.

C **Mrs Justice Hampel:** So what I've done is just talk about the lighting and the difference. So I'm saying they are different but not allowing him to tell me that they're one and the same.

D So, do you see that contrast between just the bare repetition and then asking him to comment? And I'd do that with each bit of the description in the same way, telling him about it rather than asking him whether they're the same or arguing with him about whether they're the same and I would leave my
E argument of "it couldn't possibly be the same person" to my judge and jury at the end when he's not there and he's not there to contradict me.

F **Mark Watson:** OK

G **Professor George Hampel:** Right, now we'll have cross-examination of the expert; Ms. Sledge.

H **Luke Wilcox:** Ms. Sledge, I'd like to begin if I may by asking you about the blood stains on the defendant's shirt.

Mrs Justice Hampel (playing Ms. Sledge): Yes.

Luke Wilcox: These were located on the rear of the shirt, weren't they?

Mrs Justice Hampel (playing Ms. Sledge): Yes, on the rear near the waistband area.

- A** **Luke Wilcox:** So above where the small of the back of where the shirt would be?
- Mrs Justice Hampel (playing Ms. Sledge):** Yes.
- B** **Luke Wilcox:** And your reports identified three possible indicators which a stain in that location could give rise to, hasn't it?
- Mrs Justice Hampel (playing Ms. Sledge):** Two actually.
- C** **Luke Wilcox:** May I take you to your-
- Mrs Justice Hampel (playing Ms. Sledge):** -I'm sorry, you're right; three.
- D** **Luke Wilcox:** I'm grateful Ms. Sledge.
- Mrs Justice Hampel (playing Ms. Sledge):** Yes. Being adjacent to an impact, where one of the objects is bloodied; projection or spraying of blood, or a volume of blood being projected, dropped or dripped onto the surface and impacting on that in a way that itself creates a spattering.
- E**
- F** **Luke Wilcox:** And in your evidence, Ms. Sledge, you went slightly further than that and identified the blood stains as being consistent with a particular possible force, didn't you?
- G** **Mrs Justice Hampel (playing Ms. Sledge):** I was shown the golf club and asked whether an elongated weapon such as a golf club or a bar, when it becomes bloodied, could have projected blood or blood droplets onto the rear of the shirt.
- H** **Luke Wilcox:** The technique you described as "cast-off type blood droplet deposition"?
- Mrs Justice Hampel (playing Ms. Sledge):** That's correct yes. Yes, it's a common enough occurrence when a person is struck and the object becomes bloodied and

- A** then the blood flies off the object in its arch or trajectory to produce a further blow to the person.
- B** **Luke Wilcox:** It would fly off of the object on its deceleration on the back swing in effect?
- C** **Mrs Justice Hampel (playing Ms. Sledge):** That's right, yes. Yes, as it's swung back over the head to get the force to swing it a further occasion.
- Luke Wilcox:** Back over the head, I'm grateful Ms. Sledge; we'll come back to that if I may. Now-
- D** **Mrs Justice Hampel (playing Ms. Sledge):** -Yes... it can be around the side as well, but it's more frequently over the head.
- E** **Luke Wilcox:** More frequently over the head; I'm grateful. Now, you've described how the blood droplets leave the head of the weapon...
- Mrs Justice Hampel (playing Ms. Sledge):** Yes
- F** **Luke Wilcox:** The blood droplets are leaving the head of the weapon at a certain point on an arch; it would follow, wouldn't it, that they would continue in the direction that the head was travelling at the moment they left it?
- G** **Mrs Justice Hampel (playing Ms. Sledge):** No, in fact they go off at quite a different angle. So, if it's going back like that *[miming]*, they'll fly down there *[pointing behind her head and down her back]* as the object goes out that way *[pointing back over her head]*.
- H** **Luke Wilcox:** So they would... they would leave effectively normal to the point of the arch at that time, wouldn't they?

- A** **Mrs Justice Hampel (playing Ms. Sledge):** It can be as much as 90 degrees from the end of the object where the blood is in the arch.
- B** **Luke Wilcox:** I see, and it would follow again then, Ms. Sledge, that in order for blood to be deposited on the lower back of the wearer of the shirt, the bloodied part of the weapon would have had to have passed fairly near to that area of the shirt wouldn't it?
- C** **Mrs Justice Hampel (playing Ms. Sledge):** No, no. It could have been as long as my arm, from my elbow to my hand, it could have been like that *[miming]* and sprung back down to the back...
- D** **Luke Wilcox:** And to the back in that manner...
- Mrs Justice Hampel (playing Ms. Sledge):** Yes, indeed.
- E** **Luke Wilcox:** And, once again-
- Mrs Justice Hampel (playing Ms. Sledge):** -Because it depends on the volume of the blood and the speed or the force of the arch.
- F** **Luke Wilcox:** Once again, Ms. Sledge, you've demonstrated swinging back over the head. In your opinion, that would be the most common way in which the
- G** blood would have reached that area isn't it?
- Mrs Justice Hampel (playing Ms. Sledge):** Yes, yes. And that's really because it's the most common way that people strike people doing a blow that way *[miming striking from over her head]* rather than a sideways blow. But I have seen in a
- H** number of cases a sideways blow and a swing back that way *[miming]*, but you need a very sharp angle of a very short weapon to get the blood into the centre of the back of the shirt where this was.
- Luke Wilcox:** So not possible...?

A **Mrs Justice Hampel (playing Ms. Sledge):** Or a shirt that's been twisted around the body in the force of the altercation if the shirt... the back of the shirt is twisted and is closer to the side, it's much more likely with a sideways swing that it will hit on that part there.

B

Luke Wilcox: I see, but you've described it as being necessary for the weapon to be short for such an impact to occur?

C **Mrs Justice Hampel (playing Ms. Sledge):** Yes, that's right.

Luke Wilcox: Ruling out a golf club, in effect.

D **Mrs Justice Hampel (playing Ms. Sledge):** Well, it depends where the golf club's held; how far up the shaft it's held in order to strike the blow.

E **Luke Wilcox:** But in order for the blood then to project all the way round to the back of the person, it would be more likely than not, wouldn't it, that the club would need to be held towards the full extension?

F **Mrs Justice Hampel (playing Ms. Sledge):** No, no, not at all. In fact, you could hold the club around about the centre... of the balance point at the centre, and use it as a weapon. That would actually give great force as the other part would be along the arm there [*miming along her forearm*], and so you could use your arm to add to the force of the blow with the other free part of the weapon and that way it would swing around and it would be likely to hit the back.

G

H **Luke Wilcox:** I see, now, Ms. Sledge, on the basis of all the various descriptions you have given for how the blood stain could have arrived on the back of the shirt, be that a swing over the head with a sharp pull back or a swing round the side holding the weapon near the balance point; all of those descriptions, it's fair to say, would involve sufficient space for the individual to be able to swing...

- A** **Mrs Justice Hampel (playing Ms. Sledge):** Yes indeed...
- Luke Wilcox:** The weapon in question wouldn't they?
- B** **Mrs Justice Hampel (playing Ms. Sledge):** Yes.
- Luke Wilcox:** It would follow that if the accused were a man of some height and the weapon were a weapon of some length that the necessary space would be all
- C** the greater, wouldn't it?
- Mrs Justice Hampel (playing Ms. Sledge):** Assuming he was standing up, not kneeling down.
- D** **Luke Wilcox:** I see. I'd like to move on, if I may Ms. Sledge, then to the shoes that the offender was wearing-
- E** **Professor George Hampel:** -I don't think we have time to do that unfortunately.
- OK. I'd like to talk to you about taking the expert on in a sort of a discussion in a field where they're the expert and you're not; and that's always dangerous. So,
- F** if... what were you trying to establish by this cross-examination about the nature of the drops down the back? What was your aim?
- G** **Luke Wilcox:** The aim was to show that it would have been improbable for them to have gotten there in the small bedroom in the bow of the yacht.
- Professor George Hampel:** How do you know how small the bedroom is?
- H** **Luke Wilcox:** Well, we know it's a small bedroom...
- Professor George Hampel:** Yes, but do you know the height of the ceiling?
- Luke Wilcox:** We don't, but...
- Professor George Hampel:** Do you know the size of the bedroom?

A

Luke Wilcox: No, again.

B

Professor George Hampel: So you're not able to confront the witness with a proposition which will limit the idea of the swing by a man of a golf club on top; and of course what you got was it could have happened by a swing from the side as well. So that's the problem. Unless you have material which you're going to look to lock the witness in to a position, on the certain height of the boat, height of the man, the height of the man extending the club over his head... don't forget that we have another factor here and that is that there are two parallel track bruises on top of a head-

D

Mrs Justice Hampel: -Back of the neck.

E

Professor George Hampel: Back of the neck, rather. So, there's another factor. But the thing about doing... taking this witness on on her position is a bit of a problem on the way that you're going to try and do that.

F

If you are going to go down that track, then try and use what you have, but don't give the expert an opportunity to get into an argument and produce new information for you, right? So it may be something like this:

G

Professor George Hampel (conducting cross-examination): Ms. Sledge, one scenario you were given was the possible use of a golf club as a weapon.

H

HHJ Hampel SC (playing Ms. Sledge): A club or a bar, yes.

Professor George Hampel (conducting cross-examination): Well, similar sort of object.

HHJ Hampel SC (playing Ms. Sledge): Yes.

- A** **Professor George Hampel (conducting cross-examination):** To be able to produce cast-off drops which is bloodied as a result of one strike, the bar would have to swing in a position to drop the drops on the back of the shirt?
- B** **HHJ Hampel SC (playing Ms. Sledge):** That's right.
- Professor George Hampel (conducting cross-examination):** And that could be most usually overhead?
- C** **HHJ Hampel SC (playing Ms. Sledge):** Most usually yes...
- Professor George Hampel (conducting cross-examination):** In theory, it could be some other way?
- D** **HHJ Hampel SC (playing Ms. Sledge):** Sideways.
- E** **Professor George Hampel (conducting cross-examination):** But you have no information here as to the drops giving you any... giving the court any impression as to whether they were deposited, you know, horizontal or vertical position or sideways?
- F** **HHJ Hampel SC (playing Ms. Sledge):** That's correct.
- G** ***
- Professor George Hampel** Do you need any more than that? And the question that you have to think about is whether that's the way to go, that's something we will discuss later, alright.
- H** **Mrs Justice Hampel:** Right, thank you both very much, you can sit modestly back there now or you can stay up there where everyone can watch you.
- Professor George Hampel:** OK, now we're just going to spend a couple of minutes reflecting on this. Von Naustraum; the Pupil had to learn not to keep on

A repeating the evidence and arguing with the witness. That's a fairly simple thing
to do and Felicity demonstrated a more crisp way of just bringing out the fact
that the lighting was good and that he saw the man both times very well from a
B reasonably close distance and so on, to found the argument that he couldn't
have really seen the same person with those two different descriptions. As
distinct from the Pupil arguing with me, trying to persuade me as the witness
C that it was two different people. So one of the very important lessons that Pupils
must learn early on in their careers is that you're not trying to persuade the
witness; you're trying to persuade the tribunal. Cross-examination is there only
laying the foundation for your argument, and not with the witness.

D Now, the second one was a little different in the sense that the Pupil went along
a case theory which challenged the question of... which challenged the evidence
about whether those drops could have happened in a particular way. And of
E course he got a lot of other... a lot of stuff from the witness which showed that
they could have happened all sorts of different ways depending on the angle of
the shirt, the angle of the strike and so on. There's a lot of information there
F which tended to affirm that that's how those blood drops may have got on the
back of the shirt. And that's why I had to ask him what his case theory was and
his case theory clearly was that the witness, when saying that the blood drops
G were consistent with the striking this kind [*miming a strike from over the head*],
he was going to challenge her on that and later on we'll talk about that effort
when we've seen other performers doing that.

H ***

Professor George Hampel: OK, now I want to spend a few minutes now to
introduce the second segment of our demonstrations tonight. And here we're
going to talk about advanced cross-examination because we have two people
who are held out to us as people who are more advanced than a Pupil and so

A what we want to do is show you how we approach that sort of teaching. And there's a vast difference, and I just want to identify those differences.

B The first difference is that although we played the role of the witnesses because it was convenient tonight, normally when you're teaching Pupils it's the other Pupils that play the role of the witnesses. And that's very important because

C when other Pupils play the role of the witnesses, we can also see how well they know their examples, how well they know their case studies, and it gives them the experience of being the witness; it's useful for beginners.

D However, when we get to advance cross-examination we play the role of the witnesses on purpose because we can use our giving of evidence as a teaching tool. So that if the witness gives us a wide open question in cross-examination, we can hit them for six and we probably don't have to review on that anymore as

E they get it straight away; they realise what's happened. In fact we don't usually review on that, we just say "well we needn't talk about that anymore, need we Anthony? You've seen what happened when you asked that one." And that's it,

F that's enough and if they still don't get it then they shouldn't be in the advanced group; it's very obvious.

G But there's a very different difference, if you like, or approach, and that is this; you remember that all advocacy teaching is based on the idea that the advocate must think through what they're going to be saying at the end before they can do anything in the running of the trial. A trial is a purposive exercise, everyone

H starts off with an approach, a case theory and a direction and does everything during the trial to achieve that end. We teach that right from the beginning to all the Pupils.

And for advanced cross-examination, we force them to do that. And we force them to do that by actually addressing the court first, before they cross examine,

A and argue why the court should or shouldn't accept the whole or part of the
witness's evidence. In other words, the advanced cross-examiner is forced to
articulate their case theory in great detail. And if they haven't articulated greatly,
B if they just give you a lot of generalities, well we know they're going to go wrong
in cross-examination. If they have identified their case theory well, and the
arguments that they're going to use to later to speak to the judge or jury about
C that witness, then we measure their cross-examination by the technique which
they use to achieve the support for those arguments. So it is putting into effect
the theory about preparing your final address... final submissions first.

D So that's the first difference, there are two other differences. The first is that,
again with the review of each performer, we do it on the basis of the case theory.
But we know what their case theory is now, so we're able to review them on their
case theory because they have articulated their case theory to the judge in
E effect; we know what direction they're going to take and so it's much easier to
deal with these concepts and so the review is broader. The other thing that's
different is the fact that we don't have to stick to the one point only with the
F more advanced group, we usually allow more time... we usually allow much more
in depth reviews and demonstrations. And, therefore, it's quite normal to take
one or two or sometimes even three points because these people are confident
G enough, and mature enough, and experienced enough to take that on board.
Again, the judgement has to be exercised with each particular individual as to
whether they are ready for another point, but that's the judgement of the
teacher.

H Now the next critical aspect of the advanced cross-examination training is that
the trainer must demonstrate at the end of the session the full cross-examination
on the basis of the right case theory. If the Pupil has demonstrated that they are
on the – what we say is the - correct case theory... the appropriate case theory,

A then we keep on reviewing them on that. But often they go off the case theory or have a case theory that we can later demonstrate is not the right case theory so we have a short discussion with them about case theory. Sometimes in our
B situation we can take one or two hours to discuss the case theory with the Pupils, and get them to conclude that it's not the right case theory to take.

C Here we won't have that luxury but we'll try and do a bit of that. But in the end the instructor must demonstrate the advanced cross-examination and, therefore, the only people who can teach advanced cross-examination are advanced cross-examiners, and the only people who can teach appellate advocacy... advanced
D appellate advocacy, are good appellate advocates because the quality has to be demonstrated; that's why it's advanced.

E So the advanced is not so much in the teaching, as the formula we use is much the same; the Method, the five or six step Method is the same; but it's the quality of the advocacy that's behind it which is the important thing and in our country, of the hundreds of teachers we have, there's only a few that we would choose to
F teach advanced cross-examination or advanced appellate advocacy. We select them very carefully, and we select them because we have worked with them over and over again, and have discussed each case over and over again, and know
G every twist and turn in it and therefore are able to be more or less on the same page so far as the case theory and the classical cross-examination is concerned.

H Now, I've prepared a little screeve here which was distributed. It's only a dot-point summary of course, setting out some of the things, but it really sets out what we do when we teach advanced cross-examination. You'll see some of the matters we refer to, you'll see what we expect from the Pupils or beginners and until they're comfortable with those first things, they're not ready for advanced cross-examination.

A One of the problems we've always had is self-selection; people who come along
and say "I'd like to do an advanced cross-examination workshop." Well, it doesn't
matter who they are, Junior or Silk, some of them are just nowhere near
B advanced cross-examiners. And so the selection process for people who come
along to advanced cross-examination workshop is a problem for us. There are
different ways we're trying to improve the selection process and seniority is not
C necessarily a test that always works; sometimes it does, often it does, but not
always.

So in your own time if you want to glance at this. We might have a few minutes
D to look at these things later but I think we should get on with the performances
and you'll see how different the technique becomes. How much more
demanding, how much more complex, how much more it depends not so much
on the application of the method but the quality of the advocacy.

E ***

Saul Herman: Members of the Jury, Mr Von Naustraum has agreed by the
F defence to be a truthful witness and generally an accurate witness as well. He has
only made one big mistake, he believes that he saw only one man, but he must,
you may think, have seen two.

G We don't criticise him for this in the slightest; he was enjoying a pleasant evening
with his girlfriend; hardly expecting, you may think, to become a pivotal witness
to the events surrounding this unpleasant crime. Nor was he standing guard over
H the marina; you may recall that there were various things that might have caught
his attention other than who was coming and going. Food to be eaten, a small
amount of drink to be taken, perhaps tidying away, perhaps a visit to any
bathroom facilities. Perhaps even a kiss or two exchanged with his girlfriend. His
attention, you may think, was caught when people came near *his* boat, but

- A** there's plenty of other parts of the marina where he might be that much less likely to notice what was going on.
- B** Second, of course, he's a capable witness; perhaps one of the better witnesses we could hope for, for noticing detail. He's an airline pilot so it's part of his job that he not only needs good eyesight but needs to be able to observe things at night, you may think. And he's shown a great deal of care in giving both the police and
- C** this court his recollection of the details he noticed each time a man went past him. And he's described the behaviour as well as the details he observed. Again, we don't say he's wrong on the details, we just say he's wrong to draw the
- D** conclusion that it's one man rather than two.
- Professor George Hampel:** How do... How do we come to do that? I'm playing the role of a Judge now, not a Jury. How did he come to make this mistake?
- E** **Saul Herman:** He came to make these mistakes because when the first man arrived, he's probably had a good opportunity to observe him, but when the second man came past he was moving a little quicker and the natural reaction
- F** was to put together in his own mind, when he spoke to the police afterwards your honour, the two people that he'd seen or the two sightings. Because, of course, one doesn't expect that there would be more than one man who might be a
- G** suspect for an assailant; that's the sort of logic that the Court's concerned with, the police should have been concerned with, not something we expect-
- H** **Professor George Hampel:** -But this person wasn't a suspect of any kind was he at this stage? When Von Naustraum saw him, he wasn't a suspect just a person coming onto the jetty and going over to the boat and coming back again 30 or 40 minutes later. Why would he have been a suspect?
- Saul Herman:** Well of course not at the time that he was observing, but at the time he was speaking to the police.

- A** **Professor George Hampel:** Oh I see, yes.
- Saul Herman:** What happens is that the witness naturally puts together the two sightings in his mind in describing the course of events.
- B** **Professor George Hampel:** So you say he's conflated the...
- Saul Herman:** Exactly right.
- C** **Professor George Hampel:** Yes. Alright, thank you. Yes, Mr Von Naustraum if you can imagine that.
- ***
- D** **Saul Herman:** Mr Von Naustraum, you'd brought a bottle of champagne with you that evening, were you celebrating or was this just a pleasant way to relax?
- E** **Mrs Justice Hampel (playing Mr Von Naustraum):** Both
- Saul Herman:** Both. Do you recall what it was you were celebrating?
- F** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes I do.
- Saul Herman:** And what was it?
- G** **Mrs Justice Hampel (playing Mr Von Naustraum):** It was the uhm... the 6 month anniversary of the first date Carol and I had had.
- Saul Herman:** So a romantic occasion as well?
- H** **Mrs Justice Hampel (playing Mr Von Naustraum):** You could call it that. We did.

A **Saul Herman:** It follows from that, that yourself and Ms. Keane - your girlfriend - the evening wasn't passed in some sort of recriminatory silence, you must have been speaking to each other much of the time?

B **Mrs Justice Hampel (playing Mr Von Naustraum):** We were.

C **Saul Herman:** Perhaps even a kiss or two exchanged during the course of the evening.

Mrs Justice Hampel (playing Mr Von Naustraum): No. Not on deck, I'm a private person and people walk past a bit there.

D **Saul Herman:** Well, I apologise for prying but there is a purpose behind my questions. Can you help the court with whether there was a kiss or two at some point?

E **Mrs Justice Hampel (playing Mr Von Naustraum):** When?

F **Saul Herman:** During the course of the evening, between say nine O'clock and when the evening was interrupted by the call for help.

G **Mrs Justice Hampel (playing Mr Von Naustraum):** The only kiss was when I kissed her on the forehead when she went downstairs and was feeling ill. By then I've got to tell you it wasn't a really romantic kiss because she wasn't feeling well.

H **Saul Herman:** I'm grateful, I won't pursue that line of questioning any further. Now, you've told us, and this bears no relation to the last question, but the boat includes facilities for staying overnight, is that right?

Mrs Justice Hampel (playing Mr Von Naustraum): Yes, yes I quite often sleep on it; Carol and I have often stayed there.

- A** **Saul Herman:** And so again, perhaps some toilet facilities on board?
- Mrs Justice Hampel (playing Mr Von Naustraum):** Of course.
- B** **Saul Herman:** And do you recall whether between nine O'clock when you arrived and when you heard that call for help, you left the deck of the boat to use the bathroom at all?
- C** **Mrs Justice Hampel (playing Mr Von Naustraum):** I didn't leave the deck to use the bathroom, the only time I left the deck was when I went down to see how Carol was and that was about shortly after eleven. So we were both up on deck the whole time from the time we arrived until the time she went downstairs and
- D** then I followed her down briefly.
- Saul Herman:** Shortly after eleven O'clock a man has come onto the pier, is that
- E** right?
- Mrs Justice Hampel (playing Mr Von Naustraum):** Yes.
- F** **Saul Herman:** And at that stage your girlfriend was still with you on the deck of the boat?
- Mrs Justice Hampel (playing Mr Von Naustraum):** Yes.
- G** **Saul Herman:** So the time that you went down below the deck was some....
- Mrs Justice Hampel (playing Mr Von Naustraum):** I'm sorry it was just a bit after eleven yes...
- H** **Saul Herman:** Sometime after eleven...
- Mrs Justice Hampel (playing Mr Von Naustraum):** Yes, yes.

- A** **Saul Herman:** Now a slightly different topic, but you're an airline pilot; you must need good eyesight to do that.
- B** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes
- Saul Herman:** You do some flying at night as well I expect?
- C** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes
- Saul Herman:** And a pilot, of course, needs an eye for detail, is that right?
- Mrs Justice Hampel (playing Mr Von Naustraum):** Indeed
- D** **Saul Herman:** Often detail at a distance?
- Mrs Justice Hampel (playing Mr Von Naustraum):** Yes.
- E** **Saul Herman:** And you need a good memory of what you've seen as well?
- Mrs Justice Hampel (playing Mr Von Naustraum):** You certainly need intense concentration when you're flying and that obviously carries on to other parts of
- F** your life. So you do tend to watch things intently when they're happening.
- Saul Herman:** And you have all those abilities that I've just referred to?
- G** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes
- Saul Herman:** Now you've kept yourself sober that evening for work the next day?
- H** **Mrs Justice Hampel (playing Mr Von Naustraum):** That's right.
- Saul Herman:** And when you spoke to the police about the turn of events the evening took, you knew they'd be interested in the detail of what had happened; is that right?

- A** **Mrs Justice Hampel (playing Mr Von Naustraum):** They told me they wanted me to tell them everything that I could recall whether I thought it was important or not.
- B** **Saul Herman:** And you took care to do so I imagine.
- Mrs Justice Hampel (playing Mr Von Naustraum):** Yes, indeed.
- C** **Saul Herman:** Now, the first time that you saw a man come through the gate and onto the pier, could I take you to that moment.
- Mrs Justice Hampel (playing Mr Von Naustraum):** Yes
- D** **Saul Herman:** It's right that you hadn't noticed him arriving before he passed through the gate?
- E** **Mrs Justice Hampel (playing Mr Von Naustraum):** No.
- Saul Herman:** In particular, you hadn't noticed a car pulling up for example?
- F** **Mrs Justice Hampel (playing Mr Von Naustraum):** No.
- Saul Herman:** If you had, of course, that would have been the sort of detail you would've told the police about?
- G** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes.
- Saul Herman:** Now when he came onto the pier, the man paused and you were able to get a look at him; is that right?
- H** **Mrs Justice Hampel (playing Mr Von Naustraum):** That's right.
- Saul Herman:** A good look?
- Mrs Justice Hampel (playing Mr Von Naustraum):** Yes

- A** **Saul Herman:** The pier, I understand, is about three metres wide, so would that put him about 3 metres or just over away from you?
- B** **Mrs Justice Hampel (playing Mr Von Naustraum):** No, because the pier was three metres wide and then there's a walkway beyond that that's another four metres or so. So when he was... When I first saw him coming through the gate he was eight metres away but as he came down on to the pier he got as close as
- C** three metres.
- Saul Herman:** And if I've recalled your evidence correctly it's when he came onto the pier that he paused, is that right?
- D** **Mrs Justice Hampel (playing Mr Von Naustraum):** It was really just through the gate that he paused and did the look each way, and then he came down onto the pier.
- E** **Saul Herman:** Now, you saw him looking around, is that right?
- F** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes
- Saul Herman:** And you had the clear impression he was looking to see if anyone was watching him?
- G** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes, that was the impression that I got but that's how it appeared to me.
- Saul Herman:** And you were able to watch him without him noticing you?
- H** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes, he appeared to be looking sideways along the pier but not directly towards the deck of my boat where Carol and I were.

- A** **Saul Herman:** Now as the man went along the pier he moved at a normal walking pace, is that right?
- B** **Mrs Justice Hampel (playing Mr Von Naustraum):** Yes
- Saul Herman:** Not in any hurry, as far as you could see?
- C** **Mrs Justice Hampel (playing Mr Von Naustraum):** Just normal walking pace.
- Saul Herman:** And it took a minute or so for him to walk along the pier before he disappeared?
- D** **Mrs Justice Hampel (playing Mr Von Naustraum):** Wouldn't have been a minute.
- Saul Herman:** About how long would you say?
- E** **Mrs Justice Hampel (playing Mr Von Naustraum):** He... Well he was walking at sort of normal walking pace so it probably was close... probably 10 to 15 seconds by the time he disappeared out of sight. I mean you'd say a minute as a figure of
- F** speech, meaning a short time.
- Saul Herman:** Walking along the pier, he would soon have the side of his head to
- G** you - is that right? As you looked at him.
- Mrs Justice Hampel (playing Mr Von Naustraum):** He turned almost directly in line with me so it was more the side and then the back of his head that I could
- H** see.
- Saul Herman:** And as he walked away the back of his head was in sight.
- Mrs Justice Hampel (playing Mr Von Naustraum):** That's right yes.
- Saul Herman:** You didn't see a ponytail on him at that time, is that right?

- A** **Mrs Justice Hampel (playing Mr Von Naustraum):** No, I didn't notice it at that stage.
- B** **Professor George Hampel:** Right, we'll have to stop you there I'm afraid, you're up to... just over your time, thank you.
- ***
- C** **Professor George Hampel:** Your theory, as you articulated it to me, was that this person although he saw different things about the first person that he saw at 11 and what he saw later, and although he saw all these differences, he conflated it somehow and still thought it was the same person, is that fair enough?
- D** **Saul Herman:** Yes
- E** **Professor George Hampel:** Alright. So why don't we get on with that? You went over nearly five minutes, four and a half minutes, into all sorts of things which really don't bear on that topic at all. The fact that they're having champagne, the fact that they're celebrating, the fact they're doing... that they might have a
- F** kiss, the fact that there's a toilet on the boat, what on earth has that got to do with the focus on the idea that this man is a good observer who undoubtedly notices what he does notice, according to your theory? So why do want him
- G** possibly distracted by all sorts of things?
- H** **Saul Herman:** That's right, the distractions were about creating an opportunity for other people to come and go in particular, of course, for Mr. Telfani to come onto the dock without being noticed by Mr Von Naustraum and the assailant needs to leave without being noticed.
- Professor George Hampel:** Indeed, well that might be a good point, but the other activities that you've mentioned really didn't relate to that point. So the two things here are first of all the descriptions, and we're going to talk about how

- A** we can make more of that in a moment. The second thing that you took on was the fact that he did not see the car there, which is a very good point and I'm going to take that up as my second point and talk to you about laying the
- B** foundation for that. Because you were lucky, you got the right answer from this witness, but what if the witness had said "I don't... I think I might have noticed that car there but just didn't think of it" so you were taking a risk without
- C** ensuring that you can somehow deal with that.
- So, I think the main thing that I want to raise with you is the skill of being able to bring out the differences in a very powerful way to make those people, the jury, feel that this could not be the same person. Alright, so this time we're not going
- D** to use Mr Von Naustraum but you as the witness, so I don't want you to think we've rehearsed this in any way. So you can be the witness and I'll cross-examine you, mainly to focus on the description business and then a little bit about the
- E** car.
- ***
- F** **Professor George Hampel (playing cross-examiner):** Mr Von Naustraum, you were sitting on the deck of your boat?
- G** **Saul Herman:** That's right.
- Professor George Hampel (playing cross-examiner):** And that's directly opposite, or almost directly opposite, the first entrance, gate one as it's called on the plan - and just beyond that gate is the car park?
- H** **Saul Herman:** That's right.
- Professor George Hampel (playing cross-examiner):** And between the car park and the pier there is a wire fence, or some sort of fencing, but you can see straight through it.

A

Saul Herman: That's right.

Professor George Hampel (playing cross-examiner): And you're sitting in a slightly raised position on the deck of your boat?

B

Saul Herman: The boat sits a little lower in the water but the decking is still somewhere above that.

C

Professor George Hampel (playing cross-examiner): Slightly, slightly above the pier?

Saul Herman: Yes.

D

Professor George Hampel (playing cross-examiner): So you had a, sort of, half a birds eye view of that gate and what was behind it?

E

Saul Herman: Yes.

Professor George Hampel (playing cross-examiner): When you first saw this man coming on at about eleven O'clock, you first noticed him face on as he came onto the pier?

F

Saul Herman: That's right.

G

Professor George Hampel (playing cross-examiner): For a short time?

Saul Herman: A matter of seconds.

H

Professor George Hampel (playing cross-examiner): And then he turned one way, towards his right?

Saul Herman: Yes

Professor George Hampel (playing cross-examiner): And then he turned towards his left?

- A** **Saul Herman:** That's right.
- Professor George Hampel (playing cross-examiner):** And started walking down the pier?
- B**
- Saul Herman:** Yes
- Professor George Hampel (playing cross-examiner):** You noticed that he had a
- C** moustache.
- Saul Herman:** I did, a curly moustache.
- Professor George Hampel (playing cross-examiner):** Yes, you've described it as
- D** a curled moustache. Would you just show the jury just how it was curled, was it about half...
- Saul Herman:** Well I'm afraid I can't curl mine quite as well, but it came up to
- E** about here.
- Professor George Hampel (playing cross-examiner):** Thank you. Well I notice
- F** that you've described it as coming right up his cheeks, is that right?
- Saul Herman:** Yes, that's right.
- Professor George Hampel (playing cross-examiner):** And was it about the same
- G** colour as his hair generally?
- Saul Herman:** It was, it was a dark moustache.
- Professor George Hampel (playing cross-examiner):** Yes, and was it as thick as
- H** yours or was it thicker or thinner in parts?
- Saul Herman:** Even a little thicker.

- A** **Professor George Hampel (playing cross-examiner):** It was even thicker than that. And you saw that first of all when you saw him face on.
- B** **Saul Herman:** Yes, that's right.
- Professor George Hampel (playing cross-examiner):** And until he turned his back to you entirely you could still see the moustache.
- C** **Saul Herman:** I could.
- Professor George Hampel (playing cross-examiner):** Well, as he walked down the pier he walked more or less under a light, didn't he?
- D** **Saul Herman:** There's a light near one of the gates, that's right.
- Professor George Hampel (playing cross-examiner):** Yes, and you saw him walking towards it and then you saw him walking more or less under it?
- E** **Saul Herman:** I wouldn't say under it, the light is up on the footpath.
- Professor George Hampel (playing cross-examiner):** But it's high up?
- F** **Saul Herman:** It is but not so high up that one passes directly beneath it on the pier.
- G** **Professor George Hampel (playing cross-examiner):** Right, but as he came towards that light you could see his head, it shone on his head obviously.
- Saul Herman:** I could.
- H** **Professor George Hampel (playing cross-examiner):** Yes, and that's when you noticed that he had a particular style of hair?
- Saul Herman:** I did.

- A** **Professor George Hampel (playing cross-examiner):** First of all it was curly?
- Saul Herman:** That's right.
- B** **Professor George Hampel (playing cross-examiner):** You noticed that. And was it sort of ring type curls or were they...?
- Saul Herman:** No, they were more wavy curls.
- C** **Professor George Hampel (playing cross-examiner):** Wavy curls. And you noticed that it was short, although it was wavy it was short.
- Saul Herman:** That's right.
- D** **Professor George Hampel (playing cross-examiner):** You described that. And as he walked past this light, you could see the back of his head?
- E** **Saul Herman:** I could, of course as he was walking towards the light the back of his head was somewhat in shadow.
- F** **Professor George Hampel (playing cross-examiner):** Yes, but as he walked past the light you could see the back of his head?
- Saul Herman:** I think I did.
- G** **Professor George Hampel (playing cross-examiner):** Yes, and that's when you noticed particularly that it was short at the back.
- Saul Herman:** Yes.
- H** **Professor George Hampel (playing cross-examiner):** And the shoes that he was wearing, were they... did you notice any type of shoe that it was? You said it was a black shoe.

- A** **Saul Herman:** I had the impression the shoes were dark, and reading it as a black shoe, I wonder if that's over stating it.
- B** **Professor George Hampel (playing cross-examiner):** Alright, you described it as a black... as black shoes and you saw him walking away?
- Saul Herman:** Yes
- C** **Professor George Hampel (playing cross-examiner):** And then when you saw the man coming back about 30 or 40 minutes later, you've described what you saw about him already, you saw him go to a, what you describe as a, a very nice red Saab.
- D** **Saul Herman:** I did.
- E** **Professor George Hampel (playing cross-examiner):** You're quite keen on nice cars aren't you?
- Saul Herman:** Oh of course, as a pilot you like all sorts of fast vehicles.
- F** **Professor George Hampel (playing cross-examiner):** And the car, this beautiful red Saab as you've described it, was right there in front of the boat in the car park.
- G** **Saul Herman:** It was, I noticed it for the first time.
- Professor George Hampel (playing cross-examiner):** And it was so close that you could read the number plate name on it; ELMO 1.
- H** **Saul Herman:** I could.
- Professor George Hampel (playing cross-examiner):** And you could see its colour?

A

Saul Herman: I could.

Professor George Hampel (playing cross-examiner): And it was perfectly visible to you.

B

Saul Herman: Yes.

Professor George Hampel (playing cross-examiner): Yes, thank you.

C

Professor George Hampel: Right OK, now take a seat, come back here.

D

Did you see what I did with the description?

Saul Herman: Yes.

E

Professor George Hampel: What?

Saul Herman: Putting the details that the witness wouldn't resolve from...

F

Professor George Hampel: But how?

Saul Herman: Asking them to demonstrate so they have added impact, the gestures...

G

Professor George Hampel: Yes. And what did I do in terms of mentioning the various features? I slowed them right down didn't I? I spent a lot of time on the moustache. Now, we're taught of course, you and I both know, that most of the time you don't ask a question unless you know the answer; but I broke that rule didn't I?

H

Saul Herman: You did.

- A** **Professor George Hampel:** And I broke it because I knew you would not get to
resile from a moustache, so it's quite safe for you to demonstrate the moustache
to the jury; but you weren't going to say "oh no, well he didn't have a moustache"
- B** were you?
- So I've slowed it right down and had you talking about the moustache a lot and
of course that moustache, my argument is going to be it's not going to be
- C** overlooked the second time you see him coming right towards you. Now about
the hair, what did I do about that?
- Saul Herman:** Well, I think I tried to push back a little when you put the
- D** description curly.
- Professor George Hampel:** Right
- Saul Herman:** You asked what sort of curly, what sort of curly it was.
- E**
- Professor George Hampel:** Yes.
- Saul Herman:** And I had the opportunity to say it was more wavy.
- F**
- Professor George Hampel:** And then I had the short part of it, although if you
leave it short. So I'm keeping you to your description but I'm not confronting you
with the descriptions and enabling you to go beyond them, outside them.
- G**
- So the technique is to go straight to the things that you really need for your
argument, to slow the action down to make the impact on the jury about the
- H** description of the various features and not just the mention that he had a
moustache, that's not enough. We want to work it a little bit and get it out a little
bit higher and so what I want you to think about is what is essential for your
argument and getting straight into it. Because what happens if you go into all
sorts of peripheral aspects of it; you get the witness accrediting themselves, you

A get things that are unexpected coming in and so on. So, brevity is very important
here and you've got one good point here, it's these totally different descriptions
and he conflates them. Now, you fairly said that you wanted to use the other
B things to illustrate the fact that he does not see the other person; Telfani, coming
onto the pier.

Saul Herman: Or the first man leaving.

C
Professor George Hampel: Yeah, or the first man leaving. The point is that of
course that could happen over here, but Telfani will have had to have arrived in
his red Saab, which was right in front of you. Now did you notice how I laid the
D foundation for the red car? How?

Saul Herman: The proximity of the car park, the lack of obstructions, the
lighting...

E
Professor George Hampel: Visibility of the car park, your interest in nice cars,
later the fact that you were so close that you could actually read the ELMO 1 on
F the number plate and so on; so the argument in the end is going to be how on
earth could this terrific observer not have seen that car if that man had walked
straight from that car, in effect, through the gate. That's the argument, so it's
the laying the foundations for that point, do you follow?

G
Alright good, thank you.

H
John Lynch: Your honour, I turn now to the evidence of Jane Sledge. You will
remember that she told you of her qualifications, you may feel that she does not
have the qualifications adequate to the task in a trial as serious as this. You may
also feel that she is not sufficiently experienced to give evidence in a trial such as
this. But there are a number of other matters that you should bear in mind.

- A** First, she told us that all the clothing she received was in the same bag when she got it. She said it was possible that there could have been transfer of blood from one item to another that you may feel undermines her whole account.
- B** Second; Ms. Sledge looked at the clothing in a vacuum, she wasn't able to conclude whether the prosecution's theory of what happened on that night was more or less likely.
- C** Third; the blood that she found was not all necessarily from Elaine Briggs; it was only of the same type.
- D** Fourth; and most importantly, her evidence was you may feel, largely consistent with the account that Elmo Telfani gave you in evidence; she told you that the pattern of blood staining on the clothes could have come from coughing.
- E** Elmo Telfani told you that Elaine Briggs was bleeding around the mouth and that she was spluttering and coughing when he went to her aid. Ms. Sledge also told you that stepping in blood can create a spatter pattern on the shoe. Elmo Telfani
- F** told you that Ms. Briggs was bleeding pretty badly, that there was blood near to the body and in the circumstances, the picture that Elmo Telfani painted of Elaine Briggs lying and coughing when he went to assist her, crouching near her,
- G** is entirely consistent with the conclusions reached by the expert.
- H** Finally; you will bear in mind that Ms. Sledge told you that the golf club that does belong to Elmo Telfani was not bloody and had no foreign matter on it such as hair or skin. A fact, which again, is entirely consistent with Mr Telfani's account; and entirely inconsistent with the prosecution's theory of what happened that night. In all the circumstances you may feel that Ms. Sledge's evidence does not help the prosecution at all, but rather serves to assist the defence.

Mrs Justice Hampel: Do you say I should discount her evidence entirely then?

- A** **John Lynch:** Well, that's a matter for you, your honour, as to whether you feel her qualifications are adequate or not. If you feel they are inadequate, you could discount her evidence entirely.
- B** **Mrs Justice Hampel:** Thank you.
- John Lynch:** If you feel that they are, then I ask you to bear in mind the other
- C** remarks I have raised.
- Mrs Justice Hampel:** Thank you. George, can you keep time?
- Professor George Hampel:** Yes, 25 past.
- D** **Mrs Justice Hampel:** How long have you got? Can you keep time for the length of his cross-examination?
- E** **Professor George Hampel:** Oh yes, I will. Yes, thank you.
- Mrs Justice Hampel:** Yes, thank you; cross-examination when you're ready.
- F** **John Lynch:** Certainly. I wanted to ask you first of all about your qualifications
- Ms. Sledge.
- Professor George Hampel (playing Ms. Sledge):** Yes.
- G** **John Lynch:** You majored in forensic biology, immunology and biochemistry.
- Professor George Hampel (playing Ms. Sledge):** Yes, that's for my science degree, yes.
- H** **John Lynch:** Now those on their own are not enough to qualify you to give expert evidence about blood spattering are they?
- Professor George Hampel (playing Ms. Sledge):** Not alone, not alone, no.

A

John Lynch: You need more?

Professor George Hampel (playing Ms. Sledge): I said not alone.

B

John Lynch: You're authorised in the area of blood stain pattern interpretation?

Professor George Hampel (playing Ms. Sledge): I am, yes.

C

John Lynch: Since 5 years?

Professor George Hampel (playing Ms. Sledge): About five years, yes.

John Lynch: What additional qualifications did you undertake?

D

Professor George Hampel (playing Ms. Sledge): We have a three year full-time course in blood stains. The forensic section of the forensic science laboratory has the most rigorous training in that. We are given dozens and dozens of different types of blood spot analysis to do, we're tested on by very experienced people, we conduct some laboratory testing during those three years which enables us to watch blood spots being deposited on different surfaces, from different directions and so on; I mean I could go on for a long time, it's a very thorough course.

E

F

G

John Lynch: Have you attended many crime scenes?

Professor George Hampel (playing Ms. Sledge): Oh heavens yes! 11 years I've been at it... Can't tell you how many I've been to.

H

John Lynch: And you've given evidence for both the prosecution and the defence.

Professor George Hampel (playing Ms. Sledge): I have indeed, yes.

John Lynch: What is the split in terms of prosecution and defence work?

- A** **Professor George Hampel (playing Ms. Sledge):** Well look, probably 70 % of the time I'm called by the prosecution, simply because we're pretty much first on the scene. But I've given evidence for the defence many many times.
- B** **John Lynch:** Turning now to this case, you didn't attend this crime scene did you?
- Professor George Hampel (playing Ms. Sledge):** No, no, no.
- C** **John Lynch:** You base your conclusions only on the items you've received.
- Professor George Hampel (playing Ms. Sledge):** Well, not only on that but on what I've learnt from witnesses... other witnesses. Like, for example, the
- D** statement from Dr. Johnson.
- John Lynch:** But you yourself didn't attend the scene?
- E** **Professor George Hampel (playing Ms. Sledge):** Oh no, I didn't, course not.
- John Lynch:** When you received the clothes, they were all in the same bag?
- F** **Professor George Hampel (playing Ms. Sledge):** They were.
- John Lynch:** Along with the shoes, that's right?
- G** **Professor George Hampel (playing Ms. Sledge):** Yes.
- John Lynch:** Is it possible that there was a transfer of blood from one item to another?
- H** **Professor George Hampel (playing Ms. Sledge):** Certainly not in relation to the clothing; shoes, theoretically possible but highly unlikely.
- John Lynch:** So there is a possibility of contamination?

- A** **Professor George Hampel (playing Ms. Sledge):** In what respect? Not about the clothes.
- B** **John Lynch:** Transfer of blood.
- Professor George Hampel (playing Ms. Sledge):** Not with the clothing.
- C** **John Lynch:** But, in relation to the shoes?
- Professor George Hampel (playing Ms. Sledge):** Shoes, yes.
- D** **John Lynch:** And would you agree that if there had been such contamination that would undermine your conclusions?
- Professor George Hampel (playing Ms. Sledge):** Definitely not in this case.
- E** **John Lynch:** I want to discuss those conclusions for a moment, they are listed as A, B and C on your witness statement.
- Professor George Hampel (playing Ms. Sledge):** Certainly.
- F** **John Lynch:** I'd ask that you look in particular at B.
- Professor George Hampel (playing Ms. Sledge):** Yes.
- G** **John Lynch:** Now you refer, at B, to projectile spraying of blood.
- Professor George Hampel (playing Ms. Sledge):** Yes.
- H** **John Lynch:** Coughing can projectile spray blood, can't it?
- Professor George Hampel (playing Ms. Sledge):** Certainly
- John Lynch:** So, the spatter pattern that you saw on the clothing could have come from an individual coughing blood couldn't it?

- A** **Professor George Hampel (playing Ms. Sledge):** From an individual cough, did you say?
- B** **John Lynch:** An individual coughing blood.
- Professor George Hampel (playing Ms. Sledge):** Oh, an individual coughing, I'm sorry yes. Yes it could have been.
- C** **John Lynch:** And if someone's back were turned and a person were coughing blood, you could see spattering of the type you saw on the shirt couldn't you?
- Professor George Hampel (playing Ms. Sledge):** Possible.
- D** **John Lynch:** And if someone were crouching next to an individual coughing blood, you could see staining of the type seen on the trousers couldn't you?
- E** **Professor George Hampel (playing Ms. Sledge):** Oh yes, easily.
- John Lynch:** You add also at the end of your statement that a person who steps in blood can create spatter patterns on their shoe.
- F** **Professor George Hampel (playing Ms. Sledge):** It can happen, yes.
- G** **John Lynch:** So, if Mr Telfani, on the evening in question, had stepped in blood you could have seen the type of stain that you did see on his right jogging shoe.
- Professor George Hampel (playing Ms. Sledge):** In theory yes, but there's a problem with that.
- H** **John Lynch:** What is the problem?
- Professor George Hampel (playing Ms. Sledge):** The problem is that there was no blood whatever on the sole of either of the shoes and particularly surprising because, as you know, a running type shoe has lots of corrugations and it's not a

- A** plain sole so if someone's stepped in blood to get the sort of blood drop on the top of the shoe, there'd be no way that there wouldn't be some blood on the bottom of the shoe.
- B** **John Lynch:** Why then in your statement did you refer to someone stepping in blood as a possibility...
- C** **Professor George Hampel (playing Ms. Sledge):** Well that's a possibility...
- John Lynch:** As a possibility of that having happened in this case?
- D** **Professor George Hampel (playing Ms. Sledge):** Well in theory that's a possibility but it doesn't work in this case because of the problem that I've mentioned.
- John Lynch:** But why mention it at all in your statement?
- E** **Professor George Hampel (playing Ms. Sledge):** Because I'm fair and I try to describe all possible results.
- F** **John Lynch:** But if you're describing all possible results you'd only describe possible results in this case, is that right?
- G** **Professor George Hampel (playing Ms. Sledge):** Well yes, but you see I described the fact that items that projections can be by spraying of blood and so on, well that's not this case either as far as the one side is concerned at least. So I didn't care about the case, I expressed what were my scientific view of how the stain on top of a shoe could have got there.
- H** **John Lynch:** There was no blood found on the golf club, was there?
- Professor George Hampel (playing Ms. Sledge):** Well nothing was on the golf club.

- A** **John Lynch:** No other foreign matter whatsoever?
- Professor George Hampel (playing Ms. Sledge):** No, it must have been cleaned.
- B** **John Lynch:** You spoke in your evidence of cast-off type blood droplet deposition, do you remember that?
- Professor George Hampel (playing Ms. Sledge):** Yes.
- C** **John Lynch:** But that was not in relation to this club was it?
- Professor George Hampel (playing Ms. Sledge):** No, I knew nothing about this club.
- D** **John Lynch:** That was theoretical.
- Professor George Hampel (playing Ms. Sledge):** Of course.
- E** **John Lynch:** You did not address the question in your evidence as to whether this club would have caused this stain did you?
- F** **Professor George Hampel (playing Ms. Sledge):** Well how could I?
- John Lynch:** Because there is nothing to link this club to the assault on Elaine Briggs, is there?
- G** **Professor George Hampel (playing Ms. Sledge):** I don't know, I'm not going to speculate about what could have happened. I can tell you from the scientific point of view what the... what is... somethings are consistent with and what they're not consistent with, that's all I can do.
- H** **Professor George Hampel:** Alright, we'll have to stop you there.

A

Mrs Justice Hampel: Ok. John, take a seat.

B

You identified a number of different points you wanted to make about the evidence of Jane Sledge, what I wanted to talk to you about first is whether the points you were making were all consistent.

C

As you opened... as you did your closing speech, you said first that she wasn't sufficiently qualified or experienced to express the opinions she did, that was your first point. Your fourth point was, was that her evidence was entirely consistent with the account that had been given by Elmo Telfani as to what he'd done. And, in effect, gave an innocent explanation, an explanation consistent with his about how the blood came to be on the clothes. I couldn't see why you would want to discredit the qualifications of the expert if you, in fact, thought that you could rely upon her to support your case and your client's account.

E

Similarly, you said that there was a risk of contamination of the blood transferring from some of the items of clothing to the others cos it was all in the one bag. And yet again, I couldn't see how that was consistent with what you identified as your fourth point; namely that the evidence that Sledge gave was supportive of the account Elmo Telfani had given.

F

G

So my real concern, and the point I want to make, the main point I want to make to you is, the importance of ensuring that of all the possible points you could cross-examine about, you're not going to take one that looks quite good on paper but in fact undermines the force of what is probably your strongest point.

H

Now when you came to your point four; that is that the blood all could have been deposited in the way Elmo Telfani said, by coughing depositing the blood on the back as he was kneeling and turning, by coughing depositing on the knee as he was kneeling and by a splash of blood from the coughing onto the top of the

A

shoe as he was kneeling and assisting; all of that you needed to have her accredited as an expert in order for that to be accepted, didn't you?

B

John Lynch: My rationale was that either they could dismiss her evidence altogether, I mean obviously her expertise is not in doubt following the cross-examination... that point I perhaps would not have made.

C

Mrs Justice Hampel: But if they'd dismissed her altogether, then she doesn't provide support for your case that the blood could have gotten onto the clothing in the way that Telfani says. And therefore you're losing a very important piece of support for your case; that's the point I'm trying to make.

D

So if you think that although you can attack her qualifications, on the other hand you can use her qualifications - even if you want to say they're relatively limited - but they support your case, then the last thing you want to do is undermine her.

E

Now as it turned out because you challenged her on her qualifications and she told you how well qualified she was, it meant you could have affirmatively used her qualifications to support the support for your case theory. But that was more by good luck than anything else because your intention had been to discredit her.

F

G

So, my main point is consistency; does undermining her qualifications support your main theory that everything's consistent, everything that she says as an expert, is consistent with what he says. If so, we'd want to turn it around, wouldn't we? And if you do want to whittle down her qualifications a bit, it might

H

be not so much on whether she's as qualified as... or qualified enough to give evidence but the fact that she was only asked to express an opinion on one possible cause of the blood getting on the clothing, mainly swinging with the golf club and she wasn't asked to consider or express a view about any other possibilities. And that may be a way of showing why you could discredit that part of the evidence she gave in chief and give more support to the evidence that she

A gave when you put the alternative scenario or hypothesis to her in cross-examination; so that's my major point.

B My second is; let's think about if you had in fact wanted to discredit her, a safer way about going about discrediting her than the way you did. What you did was ask her some open-ended questions, didn't you, about the qualifications and

C experience that she had and to allow her then to tell you just how rigorous her course was. And I don't know whether you were getting as sick as you would have felt if you were in a real court and that were happening to you in a real case, but it didn't support what you were trying to achieve, did it?

D **John Lynch:** No, but I don't think you would be in that position in a real case, but there you go.

E **Mrs Justice Hampel:** Well, let me see what you asked her. Your degree; the things that you studied in your degree were not alone enough to qualify you, you need more; and the witness just affirmed that but in a way that already gave me a

F warning you were going to be in trouble if you asked another loose question.

G You say "you're authorised in blood stains, what qualifications do you have for that?"; and there you allowed her to give all the evidence about the 3 year full-time course, the rigorous training, the laboratory testing and then you did the

H same about the crime scenes. Your masochism levels, I must say, are very high because I'd have been belted on the - a very Australian term forgive me - been belted on the qualifications in the laboratory about blood stains, you then asked about attendance at crime scenes and got humorous and got the reference to the 11 years of full... of time at the laboratory and then asked about split between prosecution and defence, again open-ended question about that although you know from her qualifications she works for the police forensic

- A** laboratory and what did you get? A seventy thirty split but an explanation for why it's so... so skewed that way because they're usually first on the scene.
- B** All of that served to accredit enormously and if your purpose had been to discredit, it was a very counterproductive way of going about it. So, the second thing I want to talk about is how to formulate the questions to be able to narrow or limit the type of qualifications the person has.
- C** But let's go to the first point and I'll just do a short demonstration and I'll do what George did and I'll make you the witness so that it doesn't look as if we've set this up and I'll demonstrate a part of how you would deal with the blood
- D** spatter and the alternative hypothesis in a way that accredits. And although I'm doing two vignettes, what I'm going to actually do is... I suggest that this will be the earlier part of the cross-examination before you've dealt with the
- E** qualifications.
- ***
- F** **Mrs Justice Hampel (playing cross-examiner):** Now when you were asked to look, Ms. Sledge, at the blood splatter on the clothing, you're asked to first identify the type of splatter weren't you?
- G** **John Lynch:** Yes
- H** **Mrs Justice Hampel (playing cross-examiner):** And then you were asked whether it was possible that those blood splatters could have appeared on the clothing by the use of a long club or bar, weren't you?
- John Lynch:** I did address that, yes.
- Mrs Justice Hampel (playing cross-examiner):** And... Because that's what you were asked to address?

A

John Lynch: Yes.

B

Mrs Justice Hampel (playing cross-examiner): Yes. You weren't asked whether there were any other ways in which those three blood splatters that you've described could have got on the clothing or the shoe, were you?

C

John Lynch: Well they did talk about that in relation to the shoe.

D

Mrs Justice Hampel (playing cross-examiner): Alright, well leave the shoe to one side, I want to come to the clothing if I may first. And let me suggest something to you, you've talked about the blood stains on the back of the shirt, they were the globular ones that weren't quite dried; that's right isn't it?

E

John Lynch: Yes.

Mrs Justice Hampel (playing cross-examiner): They were clearly formed by some sort of projection or spray weren't they?

F

John Lynch: Yes, I think so.

Mrs Justice Hampel (playing cross-examiner): One way in which blood can be projected or sprayed is by somebody who's got blood in their mouth coughing it out and that blood then falling on an item such as a piece of clothing?

G

John Lynch: Yes.

H

Mrs Justice Hampel (playing cross-examiner): And if the person is wearing a shirt and is in close proximity to somebody who is coughing or spluttering blood, blood could be projected onto their shirt in that way?

John Lynch: Yes.

- A** **Mrs Justice Hampel (playing cross-examiner):** And, in such a volume that at the time of seizure of the item and inspection it would be globular and not quite dried?
- B** **John Lynch:** Yes, it's possible.
- C** **Mrs Justice Hampel (playing cross-examiner):** Now let me tell you what Mr Telfani said to the police. He told them that he went into the boat and found Ms Briggs lying on the floor with a lot of blood around her mouth, coughing and spluttering blood. He said that he knelt down beside her and then twisted to get a cushion to put under her. You follow what I'm saying?
- D** If she had coughed blood, if that's correct and she had coughed blood at the time he was twisted to get the cushion that could account for those blood globules on the back of the shirt couldn't it?
- E** **John Lynch:** As I've said before, it could, yes.
- F** **Mrs Justice Hampel (playing cross-examiner):** Yes, and if you'd been asked to express an opinion about that in your report you would have said just that wouldn't you?
- G** **John Lynch:** Yes, if I'd been asked.
- H** **Mrs Justice Hampel (playing cross-examiner):** Yes
- ***
- Mrs Justice Hampel:** OK, so you see how I've set that part of it up by establishing that this is the alternative possibility, but also just having a dig on the side about the unfairness of the police because they only asked for one possibility; the club, but they didn't ask for the other possibility which I've also thrown into those questions they knew about because Mr Telfani had said so in his interview.

- A** So, you see how if we do that then I think I've accredited her and used her affirmatively for my defence purposes so that's why I wouldn't want to discredit her. If I did want to discredit her, instead of asking her open ended questions I
- B** might do this:
- Mrs Justice Hampel (playing cross-examiner):** Now, you've got a basic bachelor's degree in science haven't you?
- C**
- John Lynch:** Yes alongside my qualification in blood science.
- Mrs Justice Hampel (playing cross-examiner):** Yes, well let me talk about your bachelor's degree first. That, as you've self-acknowledged, certainly is not
- D** sufficient for you to have the expertise to express opinions about blood splatter?
- John Lynch:** No, one needs a lot of expertise
- E**
- Mrs Justice Hampel (playing cross-examiner):** That's right and the additional qualifications you got were all in the police laboratory weren't they?
- F**
- John Lynch:** They were, I was working with the police...
- Mrs Justice Hampel (playing cross-examiner):** Yes, that's right and it's the police laboratory that devises and administers the course in blood splatter
- G** analysis, isn't it?
- John Lynch:** Er... Yes.
- Mrs Justice Hampel (playing cross-examiner):** Yes, now, and the training that you have received is from other people giving evidence, or who are in the police
- H** laboratory and are called by the police to examine crime scenes?
- John Lynch:** Yes.

A **Mrs Justice Hampel:** OK, I'd almost leave it at that because all I've done is
thrown in a little bit about it's in house training and it's all for the cops and it's all
B for the prosecution. If I wanted to discredit that's all I'd do because anymore
you're going to do what you want to do and what George wanted to do when he
was Jane Sledge which is tell me how much you know and how little I know. I
didn't give you that opportunity and the difference between the responses we
C got and the use we can make of them flows directly from the closed questions I
put to you about it, but the little loaded comments in it, compared to the "tell me
what other qualifications you've got then, come on hit me, hit me" type of
questions, OK? So those are the two main points for you.

D **Professor George Hampel:** Great, thank you very much; now take a seat.

OK, well now let's look at the differences. First of all; the difference in the sort of
E level and intensity of both dealing with the points, knowing where they're going
and then dealing with a number of points and the level at which you discuss it
and demonstrate it; you would never do that with your Pupils who are 3 months
F out. They're not there yet, they're not ready for that.

Now this is a fairly simple case study in both Von Naustraum and Sledge are not
complex witnesses, they're not complex situations, and yet here are advocates
G who are going well beyond what they need to support their arguments. Sledge is
the perfect example of that; that you've got everything you need in Sledge's
account to help your case and all you need is to focus on what Felicity focused
on. And I also liked, particularly with jury advocacy, because the witness used the
H word "consistent with", I always like - that's a personal thing that I will teach an
advanced cross-examiner - is to remove the risk of the jury, some jurors may think
that "consistent with" means "caused by" so I sometimes do something like this,
here's my witness again. When you scientists talk about something being

A consistent with something else, what you mean is that that's one possible way that they could have been caught, is that right?

Audience member: Yes

B

Professor George Hampel: And that just lays that little foundation and then "let's have a look at what you've said..." and you can go straight on to what

C Felicity was doing. Just another touch of that sort of thing, because I feared looking at juries for a long time but I'm just not sure that they understand "consistent with" meaning as being as limited as it really is.

D But, apart from that, this is obviously a case where you would want to accredit this witness, not discredit them because they support your case. And they'll support your case because there is a cushion there, that's found there, he says I turned around to get the cushion and he actually had to get the cushion. So he's

E got his back to her, she's spluttering blood there's no doubt about that; there's other evidence here from the doctor. So there's tremendous support for the alternative case, the alternative consistency if you like, and that's all that you

F need from this witness. Which is critical in advanced advocacy particularly.

G There is no doubt that the more advanced the cross-examiner is, the fewer the points, the shorter the time and the greater selectivity. And that's one of the things that we're try and teach as much as we can-

H **Mrs Justice Hampel:** -Can I just come in and pick up on the way I taught the case theory there?

Professor George Hampel: Yes

Mrs Justice Hampel: Because, you know, we said that with advanced advocacy we can teach some case theory in the course of the review. And so I did deal with case theory by talking about whether there was a consistency or an inconsistency

- A between the discrediting of the qualifications and the positive use that he wanted to make of the alternative explanation.
- B You don't have time to do that with the beginners, but in order for me to be able to review that point and then to deal with the what happened in the attempt to discredit, it was necessary to go into develop the case theory and to talk to him about what I saw as the difference or the tension between the two... those two
- C points. I'm not sure that John was entirely in agreement with me and so I didn't allow a full blown discussion to develop between the two of us, I rounded it up and then moved straight back on to the accrediting part of the alternative
- D theory. But I couldn't have done that review with a beginner because I would have been reviewing on a different case theory. But by trying to demonstrate how you could affirmatively use Sledge's evidence to support the case theory I hope that I would then be able to show why the discrediting of the qualifications
- E was not a good idea, but then at the end just picked up and showed a way, if you do want to discredit, how you can do it in a shorter, safer question.
- F **Professor George Hampel:** And with Van Naustraum, he was onto the right theory; in other words, you're onto the right theory saying the descriptions are different. So the two things that I hope you got from this was first of all that you
- G went into a fair bit of unnecessary stuff that really wasn't going to ultimately get you anywhere, not going straight for the jugular, and then using the emphasis, the timing, the slowing down of the action, the descriptions of it all to actually make the impact on the jury about these different characteristics. Not just the
- H statement; it's not enough to say "oh yes this time you saw a moustache, short curly hair, black shoes and next time you saw pony tail la-la-la". That's alright, that does it but it's the impact that we're talking about when we're talking about advocacy. We're talking about making that jury see that moustache curl up here above the cheeks and all that sort of thing. We're making sure that the action is

- A** slowed down in the way he sees it. Remember all that time about coming under the light and seeing the back of his head and all that sort of thing? It really focusses on it, it's working the point not just making it and that's a very
- B** important part of the more advanced cross-examination. So, we've got that out.
- Now, so, we've got about ten minutes and we've got enough time just to think about the differences between the approaches between Pupils-
- C**
- Mrs Justice Hampel:** -Did you just want to say something about the developing of the case theory session?
- D**
- Professor George Hampel:** Yes
- E**
- Mrs Justice Hampel:** If the advocate hasn't got onto the right case theory, and you've not been able to review it in the time you've had for review or if some of them in your group of say six have got the case theory and others haven't, then at the end of our session we will have the time for a discussion with the group about the development of the case theory and get them to discuss where they see the strengths and weaknesses and where the tensions are. We've covered a
- F** fair bit of that in the course of the reviews that we've done.
- G**
- Professor George Hampel:** We have yes...
- H**
- Mrs Justice Hampel:** So although George promised to do that earlier, I'm not sure if it's absolutely necessary in the time available
- Professor George Hampel:** Yes, well we may not...
- Mrs Justice Hampel:** But you also did, and I don't know that we need to do a full cross-examination of either witness either because I think we've done....
- Professor George Hampel:** Probably not, unless someone asks for some more...

- A** **Mrs Justice Hampel:** A fair bit by demonstration. Again, it depends on the level of the Pupil whether you think just by doing demonstrations of parts of what they've done, that'll be enough. Or whether it's going to be much more helpful
- B** having had the discussion about case theory to then do a demonstration on the case theory that you've got them all to engage and discuss in together, to demonstrate then how that can be carried into effect.
- C** We know from the feedback we get from Pupils that the demonstrations are incredibly important to them, and at the advanced level sometimes taking the time to do it from the top, you've got to choose a relatively short example so it
- D** may only be a three or four-minute cross examination, but taking the time to do one from top to bottom so they can see how it's actually done. And the modelling of it at the advanced level as a standalone piece can be really
- E** important and something that we just don't get the opportunity, and probably shouldn't take the opportunity of doing, with the juniors because we might make them think that we're setting the bar too high for them.
- F** **Professor George Hampel:** So the way we might begin the conversation on case theory would be something like this: John, is there something particular in Jane Sledge's evidence which helps your case theory?
- G** **John Lynch:** Yes, I mean...
- Professor George Hampel:** What is it?
- H** **John Lynch:** Well it's the fact that he's opened the possibility that the blood was cast onto the clothing, at least, if not the shoes as well.
- Professor George Hampel:** But it is... is it your theory that it could have happened the way she described it on an elongated club? Does that hurt you?
- John Lynch:** Not necessarily, no...

- A** **Professor George Hampel:** No of course not... Because you know that she will agree that it's consistent with that theory but also with your theory. That's all you need in a criminal case isn't it, for your expert to say yes it could have
- B** happened the way the defence said it happened. That's all you need, so that's got to be the focus on it. So therefore we work through with him, have him articulate further the way he might then cross-examine and what he'd leave out.
- C** **Mrs Justice Hampel:** Yes, or with Saul what we might do is say, you've said that there's a conflating of the two descriptions that he... of the two sightings so that he believed it was the one person.
- D** **Saul Herman:** Yes.
- E** **Mrs Justice Hampel:** And you said that you thought that the time he really came to believe that was when he made the police statement.
- F** **Saul Herman:** Yes.
- G** **Mrs Justice Hampel:** What have you got, do you think, to be able to support that? And so again, you're getting him to think about that and get him to articulate that and use that as then the basis for seeing whether there's anything else that it would have been helpful or useful to cross-examine about and the time at which to do it. So what do you think you've got to support his belief later, retrospectively, that it's one and the same person?
- H** **Saul Herman:** On the... on the papers the ID parade, as a way that it might have become conflated.
- Professor George Hampel:** Good
- Mrs Justice Hampel:** Good

- A** **Saul Herman:** And in the background, the way that police asked questions so that when [unintelligible]
- B** **Mrs Justice Hampel:** Anything else?
- Saul Herman:** Not entirely...
- C** **Mrs Justice Hampel:** Well, do you think that he has assumed that it is one and the same person?
- Saul Herman:** Yes
- D** **Mrs Justice Hampel:** Do you think he's ever had to think about whether it might have been two different people?
- Saul Herman:** No, almost certainly not.
- E** **Mrs Justice Hampel:** Yeah... and is that something that you might be able to use to inform some of the thinking behind the cross-examination and maybe some of the questions?
- F** So you see you get very guided questions, very sort of directed, so they're not necessarily things that Saul's articulated for himself before now but he's thought through the problem and so when he's asked the questions you can see him
- G** immediately computing and thinking about it and seeing yes, yes that would be right. So it's forcing a sort of process of reasoning for him of thinking it through more and then working out how to apply it.
- H** So, it's as much teaching the process of reasoning or analysis as it is the performance and, particularly at advanced level, what we're wanting to show, help people do, is that deeper thinking and analysis in order to get to the stage of being able to perform it differently. Because at the advanced stage if you're just teaching technique it's sort of papering over the top but the thinking underneath

A it has to be there. But I could see, see his mind is ticking, look at him, he's already thinking about the ways he could, you know, work through the fact that of course.... that sort of understandable thing of of course he'd assumed it was one and the same person, he'd never had to think about it, and what... the way you might be able to make use of that.

C **Professor George Hampel:** OK, we've picked a particularly simple example for this purpose because we knew we were limited in time and we could only have about one or two points in each of these. What we quite often do is we design examples in order to teach particular things.

D So, although there's a little bit of expert evidence here; not terribly sophisticated, there was a sufficient point there for the advocate to find and use that point alone and not be tempted to go anywhere else. This is a three minute cross-examination, and a good cross-examiner in a trial would take three minutes to cross-examine Sledge. From our perspective, that's good advocacy, that's good cross-examination. You need three minutes including the bit of body language that Felicity demonstrated when putting to the witness that... that he... she wasn't... she did not consider the other, the Telfani version of what happened, you notice how she actually showed how he turned and used her body language which you should have done when you're going to that point because you've got it there; he says "I turned to get the cushion", and the cushion's there... we know the cushion... "I turned to get the cushion", the back's exposed. Now, body language is terribly important in that scene.

H In other cases we will design a little scenario where other pieces of body language are important to emphasise the points that the advocate is making. But I would be amazed if this... if any really competent cross-examiner took more than five minutes with Sledge - it's just not on. With Van Naustraum, maybe ten, but of course people torture them for hours, and get all the wrong answers.

- A** OK, well, we've got five minutes, we'd like to open it on the question of the differences between the basics, the advanced, the Method of us being the witnesses, giving... having the teaching opportunities from the witness box, and
- B** the Method of speaking first and talking about what you're going to do, the argument, and finally the level of discussion and demonstration and case theory and so on with the advanced stuff compared to the beginner. Yes?
- C** **Audience Member:** What year of call... How many year's call do you think on average merits the advanced cross-examination class? I mean I remember last year when you came over and you had us all doing exercises as Silks and I
- D** thought that was fantastic; you took us all apart, and I thought it was a very good example of putting yourselves out there and learning from each other.
- Professor George Hampel:** Yeah.
- E** **Audience Member:** And that, for me, was an advanced cross-examination class.
- Mrs Justice Hampel:** Yeah.
- F** **Audience Member:** So I'm interested to know when you do this, what is the average year of call you're dealing with? And do you have classes specifically for Silks?
- G** **Professor George Hampel:** No, we don't have classes for Silks, but what's happening more and more is that in our advanced training, which is in appellate advocacy, advanced cross-examination, experts and jury advocacy, we're getting
- H** more and more Silks turning up. And they're voluntary...
- Mrs Justice Hampel:** Or people on the Silk road...
- Professor George Hampel:** Yes...

A **Mrs Justice Hampel:** A lot of people, if they've had feedback from an
unsuccessful Silk application that they're... they lack experience in appeal work or
they've... they've been spending their time doing commercial work and they
B haven't seen a witness for ten years, will do that in order to improve their skills.

So that's part of it, but so it depends enormously on the amount of exposure
people have had too; a criminal practitioner may be doing a lot more cross-
C examination than somebody who is... who is the second junior in a commercial
case and has been for five years. So it's as much the exposure as well as the
experience of life and experience in practice. Just to pick up one other point, I
D often talk about it as a masterclass. Particularly if we're dealing with it as senior
juniors and Silks, I think we should approach the teaching as a masterclass and so
it's a sharing of knowledge and information rather than the teachers being the
E font of all wisdom and the Pupils knowing very little which is often the level at
which the teaching is pitched, understandably, when you're teaching Pupils.

The other thing that, it's a really important part to think about is this: we often
F use the advanced workshops as a recruitment pool for people to do advanced
teaching or to get people who we've been keen to get to teach so, if they can
come to and enjoy and participate in an advanced workshop then it's a fabulous
G recruiting pool for new teachers and it also creates a real sense of empathy for
anyone who's going to perform at a workshop after that. Because I know those
of you who did our workshop last year here spoke about the nervousness about
performing in front of your peers and the greater nervousness often of doing that
H then on a paying case for a real client in front of a judge. So, appreciating that
because you've had to do it when you're teaching other people, particularly
when you get into the 12th review of the day and they appear to be wilfully
stupid or wilfully unprepared is a really good lesson.

A **Professor George Hampel:** OK, so, seniority is not necessarily the thing. I've
selected some juniors who I approached who've been around for three years and
they're well advanced in their cross-examination; and they're well ahead of a
B couple of Silks that turn up. But that's... As a general indication, of course, the
more senior you are, the more likely you are to have the better insights and
understanding, but it doesn't always follow. And one of the problems, I think I've
C already mentioned for this advanced training, is the self- selection is sometimes a
problem.

D **Mrs Justice Hampel:** Oh yes, never have so many had such high opinions for so
little reason.

E **Professor George Hampel:** Anyway, we said we'd finish at eight and it's right on
eight. We can go over by two minutes if anyone has any more important
questions?

F **Mrs Justice Hampel:** No, no because Master Leonard... Master Leonard's...

G **Professor George Hampel:** Nope, Master Leonard says no... Alright, well before I
sit down then, may I again thank you for your interest because our experience,
which we really enjoy, of being involved in your advocacy training is that you've
got a lot of enthusiasm, but you've got a lot of difficulties with the numbers that
you have to deal with. But what we need is real commitment from tutors to do it
over and over and over and over again and work with other senior teachers and
be involved and committed and passionate about it, not just saying "yes, I'll do
H the Pupils a favour and turn up once or twice a year." That doesn't get you to the
advanced stage. Thank you.

Anthony Leonard QC: May I just add this, personally a huge thanks to the poor
advocates who [unintelligible]....

A

Mrs Justice Hampel: Yes.

B

Anthony Leonard QC: They'll never be frightened of anything again, not even appearing in front of the Lord Chief Justice.

C

Secondly, this: have you noticed how compact this problem was? And how much there was in it? We spend days creating 40-50 page problems that have nothing in it and there's a huge lesson to be learned from what you've seen here this evening.

D

George has talked, at the end there, about doing training on a regular basis, for most of us, four times a year would seem to be a regular basis. I made the grave error of asking George and Felicity how many weekends they give up each year, and it was something over 20 they said. If you're doing this half your weekends of a year, you can get pretty good at it and that's what we've seen tonight. And

E

I'm hugely grateful to the two of you for coming over yet again, I hope we can encourage you to do it yet again, yet again. But not only to see the skills of your training, but also to introduce us to new ideas. Thank you very much.

F

END

G

H

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