

UNSW LAW SOCIETY – ADVANCED GUIDE TO TRIAL ADVOCACY

by Jason Qian

Introduction

The following constitutes some of my thoughts on the trial advocacy competition. I have found that there is a copious amount of excellent material on trial advocacy generally, but much less on the competition itself. It is not actually difficult to prepare a case theory, opening, EiC, cross-examination, and closing – it is doing it all in the available time that I find competitors may have trouble with.

This guide is directed at students who have not participated in the trial advocacy competition before, but who want to improve their skills before taking part in the two preliminary rounds. Hopefully, it will assist in getting everybody to the basic level where they can make a resilient case in the short preparation time, and get through the trial without embarrassing themselves. More advanced competitors will, of course, realise that some of the things that work for me are not optimal for them; this guide should not be followed rigidly and can certainly be improved upon. Nevertheless, I hope this provides a more in-depth foundation for UNSW Trial Advocacy Competitors.

Resources

The Very Basics

If I had to pick two **short** things to read, they would be:

- On generally how a trial runs: Hugh Selby, *Advocacy: Preparation and Performance* (2009 Federation Press) (or earlier editions)
 - o This short book goes through all the essential parts of a trial, has numerous examples, and has a good section on the theatrics of the trial.
- On evidence, John Stratton's Criminal Law Survival Kit.
<http://www.criminallawssurvivalkit.com.au/Evidence.html#Part%20B:%20Evidence>

Further Reading

- Mauet and McCrimmon, *Fundamentals of Trial Technique* (3rd ed 2011 Thomson Reuters) is also very good, and a prescribed textbook for some advocacy courses.
- Stephen Odgers, *Uniform Evidence Law* (9th ed 2010 Lawbook Co).

What I do in preparation

- **Read exactly what the charge is and skim the relevant law.** Note each of the elements that might need to be proved.
- **Skim the witness statements** to get a quick overview of the scenario. You might want to mark the statement as you go through it, but don't spend too much time on a first reading, since you do not yet know which the most important parts of the statement are.
- **Do a close reading of the witness statements** after you have skimmed them. This time, more carefully mark which parts of the witness statements relate to which elements. What I have done in the past is allocated numbers to each of them – eg in a self-defence case: 1) homicide 2) intent to murder/recklessness 3) whether conduct was reasonably necessary in the circumstances 4) whether the defendant actually believed they were in imminent danger 5) credibility¹ 6) issues to raise for *Browne v Dunn*.²
 - o I write those numbers in the left hand column if they support the prosecution, and the right-hand column if they support the defence; this makes it easier to skip to relevant parts and remember what they relate to.
 - o Do note that important points might not be explicitly in the witness statement. **Read between the lines.** A witness statement might be superficially consistent, but when you examine their motives or positioning it just doesn't add up. Think about what the witness could have done but didn't, think about their state of mind over the events in question, and take a birds-eye view of the entire scene to trace what everybody is doing in relation to each other.
- **Make sure you have correctly identified the issues.** The case might look like self-defence, but is the actual act of homicide also in doubt? Is the onus of proof on the prosecution, or, as in many drug possession cases, is there a deeming provision that shifts the onus onto the defendant?

¹ Unless both witness statements very strongly support your case (and I have found this to be very rare), you **MUST** consider the credibility of your witnesses. I know this sounds obvious, but I've been tempted in the past to try and win on the basis that the other side's statement is consistent with my case theory; for some reason this has rarely ended well. I think it is because the witness can and will always depart from an obvious interpretation of the statement enough to hurt your case.

² If you are defence, the rule in *Browne v Dunn* says that you must put your case to the prosecution witnesses, so far as it concerns them. If you are prosecution, then you should comment on the defence's failure to do so.

- **Write up an opening**, since it is your first impression on the judge.
- **Timing:** I spent 30 minutes understanding the case in general and writing up an opening, and 30 minutes brainstorming and writing up questions for cross-examination. I will also start the outline of the closing in this time. The last 30 minutes goes to witness preparation, preparing examination in chief, and finishing up cross-examination questions. Finally, I revise either my opening if I am the prosecution, or cross-examination if I am the defence.

Witness preparation

I do this in four steps.

1. **Explain generally what the case is about**, the charge to be proved, how good the witness statement is for your case.
2. **Explain what the other case wants to prove.** Point out weaknesses in your case and explain the implications of uncertain facts.
3. **Only then take them through the statement.** You effectively encourage them to see things from your point of view, and not the other side's, without coaching the witness. Explain that they should try and remember **AS MUCH AS POSSIBLE** about what happened, and that the judge and other side will try and attack gray areas in the statement. Ask them to think about these gray areas and fill them in with what they remember.³
 - a. This is effectively when you write your examination in chief. As you go through it, you can note parts of their evidence which might be inadmissible (you can ask them to cross it out). You might also discover aspects which may relate to their credibility. I write keywords for examination for chief in the margins, and underline key parts of the evidence that must be gotten out.
4. **Give advice on answering questions in cross at the very end of your preparation time.** I think that the most important thing is for your witness to act honestly, and to explain themselves if they think the question demands further explanation. I tell them to stand their ground if they think the cross-examiner is mischaracterising what you're replying. I have found that is NOT helpful for the witness to be overly argumentative if this detracts from how honest they seem.

³ To be clear, this is not coaching. Coaching is when you tell them the witness not to say; it is not coaching to explain the implications of uncertainties in the statements.

- a. You may want to give your witness a copy of the other side's statement at this point, but I'm actually not sure whether it helps – witnesses tend to accept innocuous parts of the other side's statement that can be very bad for your case.

The prosecution Opening

Don't get fancy.

1. **Introduction.** Shortly explain the very basics of the case.
 - a. "In this case the accused⁴ has been charged with murder under s xx of the crimes act. However, it is not anticipated that the homicidal act will be disputed; instead, this case will turn on whether the defence of self defence has been made out"
2. **Explanation of the law.** Quickly go through the elements, explaining anything unusual (such as an onus reversal)
 - a. "Murder is a common law offence, and its elements are xxx. The defence of self defence is found in s 9AC. This requires that the defendant believe the conduct was necessary in the circumstances"
3. **Application of the law to the facts:** Anticipate the evidence and lay out what your case is (i.e what you think really happened)
 - a. "It will be the prosecution case that this was not necessary. We will hear from the prosecution witness that the deceased was a non-violent person, that he loved his wife, and that he did not abuse her, and that there was no reason that she would have believed he was trying to kill her. Indeed, we will hear that she was after his life insurance money."⁵
 - i. You are not meant to be argumentative in your opening since the court hasn't heard evidence; but in anticipating the evidence and stating what your case is you lay the foundations for the closing argument.
 - ii. As prosecution, you would theoretically not know whether the defendant would give evidence at all, and therefore should not anticipate any evidence that they will give.
 - iii. Advocacy writers like the use of "labels", or emotionally charged short phrases that sum up the case. I'm sure that if you can come up with

⁴ Trial advocacy is theatrical. When you are the prosecution, refer to the defendant as the accused, and to your witnesses by name; as defendant, refer to the prosecution witness as such, and the defendant by name.

⁵ Note that the prosecution case should stand on its own. Hence, as prosecution, you should refer only to the prosecution witness.

these rapidly it will give your opening greater impact; I personally tend to get bogged them in them.

4. **Conclusion:** sum up the desired verdict, state the onus, and call your witness.
 - a. “We will be asking the court to give a verdict of guilty to the charge of murder. The prosecution must prove its case beyond reasonable doubt; and to that end, we will call our only witness, Mr prosecution witness.”

Evidence in chief

- **Try to get out as much as the evidence as you can.** For the purposes of this competition, it is much better to have the judge stop and ask you about the relevance of some of the evidence during EiC, than to be writing your closing only to realise you forgot to adduce an essential point. However, note that if the problem contains a large lead-up to the event in question (eg, lots of information on the prior relationship between a charge of stalking on a particular day), do not neglect the events of the day of the charge in question.
- **Piggyback important evidence, but do not otherwise respond to answers.** This means repeating the evidence that the witness gives when it is important, before moving on to the next question. Some judges love it, some think it is annoying, but it shows you know what you’re doing.
 - o Q “what, if anything, did you notice in particular about your attacker?”
 - o A “Yes, he was wearing lurid pink tights that didn’t fit very well.”
 - o Q “Lurid pink tights. And how would you describe his build?”

Do not say “ok”, “hmm” “yes” after your witness answers. Judges hate this.
- **You can ask focussed questions while still being non-leading.** You can narrow your questions to events, times, places, and things, if the witness is starting to stray.
 - b. “What happened in relation to X?”
 - c. “What, if anything, did Mr X do with the gun?”
 - d. “I’d like to ask you some questions about the night of the 6th of June. Would you tell me what you were doing at 9pm that night?”
- **Check the rules as to whether you can stray from the statement.** If you are allowed to go outside the statement (and you should be),⁶ clarify the uncertain parts of your

⁶ It is not unfair to stray from the statement. The other side’s answer is to raise the fact that the statement does not include such evidence, and to ask why it the witness didn’t include it in their statement if it was so important to their case.

statement if it benefits your case (unless it benefits your case, you are sure your opponent will cross-examine on it, and you want to disappoint him).

- **Stopping the witness** before they say something inadmissible demonstrates you have control of your witness. On the other hand, some judges don't seem to mind you trying to get it out. The former is probably safer.

Cross examination

1. **Write down the heading of each line of cross-examination.** This heading should be the point you are ultimately trying to prove and will use in your closing. This makes it easier to spot on the page if you are constructing a line of questions, on the fly. Make sure you know precisely how each heading is relevant to your case.
2. **There are two (maybe three) subject-matter of cross examination**
 - a. Evidence that supports your case theory. There is no reason to be at all hostile to the witness when adducing this sort of evidence.
 - i. Eg the location of people at certain times, the precise sequence of events, knowledge about persons.
 - b. Things that affect the credibility of the witness, and therefore, how far the court should believe them when they say they didn't do it. It is here that you want to challenge the witness.
 - i. Eg, Distance, lighting, other things that might have a bearing on perception, evidence of the kind of person the witness is (quick to anger? Impatient? Takes advantage of people? History of lies?), bias (financial, emotional), explicit inconsistencies in their evidence, unusual aspects of their evidence, odd responses to the events in the witness statement, personal bias of the witness against other individuals or groups of people, allegiance to others, etc.
 - ii. This is the fun part of trial advocacy! This is where you innocuously close gates and try to trap the witness. The trick is to ask a series of small questions that, put together, makes the witness look bad, even if the final answer to an incriminating question is "no".
 - iii. In the following sample cross, the defence advocate is cross-examining a security guard who caught the accused with perfume in her bag. The defence advocate knows that the managers of the store told the security guard they were losing money, and the

guard has called police to deal with serious incidents previously. The defence advocate is trying to demonstrate bias in the security guard's evidence:

1. "You work as a security guard?" "Yes."
2. "You mentioned before that you had gotten this job through the Special Forces?" "Yes."
3. "But you got this job on your own merit, didn't you?"⁷ "Yes"
4. "You mentioned that, when a serious incident occurs, you call the police?"⁸ "Yes"
5. "The police handle the serious incidents?" "Yes"
6. "Matters like fights, and chasing smash and grab thieves?" "Yes"
7. "So your main responsibility is loss prevention, isn't it?" "Yes"
8. "That's what you spend the most time on?" "Yeah, sure"
9. "It's your job to help prevent people from taking things from the store without paying for things?"⁹ "Yes"
10. "The managers told you that they had been losing about 10 tester perfume bottles a week, didn't they?" "Yes"
11. "Each one worth about \$100-400?" "Yes"
12. "So over a thousand dollars a week?" "Yeah, I guess"
13. "And it was your job to help stop that?" "Yes"
14. "Management can't have been happy that they were losing that much money, could they?"¹⁰ "No, they weren't"
15. "And when you say "management", you mean of course the people who run David Jones?" "Yes"
16. "This includes who is hired and fired?" "Yes"
17. "You eventually report to the people in management, don't you?" "Yes"
18. "I suggest to you that management also told you that you weren't doing a very good job of your main role as loss prevention officer. Is that true?" "That's not true"
19. "You knew you were in danger of losing your job unless you caught someone, didn't you?" "No"

⁷ I want to demonstrate that his job security was at risk. This closes off the option of him saying he had a guaranteed job.

⁸ This line of questioning goes towards the fact that his main job is loss prevention, and his failure at loss prevention may lead to bias.

⁹ I didn't say "It's your job to STOP people from taking things", only that "it's your job to HELP PREVENT people from taking things", since the former invites a long discussion on how a security guard's role is as much deterrence as it is actually catching offenders.

¹⁰ Note that the issue is what the security guard thought management thought, not whether management was in fact unhappy.

20. “That is the reason why you’ve given evidence against the accused today, isn’t it?” “No, I’m telling the truth”

Even though the witness says “no” to the last few questions, you have established a logical line of propositions such that the court can infer bias, even in the absence of an admission.

- c. (The third thing is putting your case to the prosecution witness if you represent the defendant, as per the rule in *Browne v Dunn*. Hint: do not say “I put it to you”. Apparently no real barristers do this; they say “I suggest to” you if they are doing it at all. Some barristers like it when you explicitly tell the witness that you are going to ask them some questions in the interests of fairness.)
3. **Keep your questions confined so that they only demand a short answer.** If the witness is permitted to talk and talk I feel that 1) it will raise evidence bad for your case, 2) it repeats and solidifies the evidence given in chief, 3) it’s not good for the flow of cross-examination questions, and 4) all of the above make it very demoralising.
- a. You may demand an answer to your question, and no more than an answer to your question – *Libke v R* [2007] HCA 30, [128] per Heydon J. Of course, if you want a yes or no answer your question must be answerable by a yes or no.
 - i. “is it or is it not true...”
 - ii. “did you or did you not...”
 - iii. “I wonder if you could answer this question with a yes or a no...”
 - b. **What to do when the witness rambles:** One option if they still don’t say yes or no, but go off into a tirade, is to let them finish, then confirm those parts of the tirade that provide a yes or no answer to your question, and confirm the yes or no answer. If they still try and avoid it, then (assuming your question has been properly confined) call attention to it in cross and in closing.
 - i. “Mr Witness was confronted with a simple question in cross-examination: did you feel angry at the security guard after he caught you shoplifting. Mr Witness refused to give an equally simple answer. We heard about how he was an emotionally complicated creature, how anybody would have been flustered. It took a long time for him to flat out deny it. This, your honours, is the response of somebody trying to cover up the extent of his anger.”
 - ii. Along those lines, you don’t need to necessarily “win” over the witness in cross if you can make good use of the answer in closing.

Alternatively, you can interrupt the witness and repeat your question. If your opponent objects, argue that the answer was not responsive to your question, which was simple and demanded a yes or no answer.

4. **Unexpected answers.** In the above cross-examination, any of the “yes” answers could have been an “no”, or a further explanation that you didn’t expect. You have three options.
 - a. Move on, if the point is not important. If you decide to move on, decide quickly – try not to break the flow of cross-examination. Control your response and act as if the reply was completely expected.
 - b. If the point is important, you may wish to argue it out. I personally find this extremely difficult to do on the fly – such an answer to an important point usually means that the witness has a back story to justify it.
 - c. If the answer contradicts (explicitly or otherwise) what is in the statement, then cross-examine them on the document (see below). For example, in the above cross-examination there was a reference to management. If, in response to q 16 and 17, the security officer said management had nothing to do with his security officer job, then you could raise the document, noting that an ordinary person would refer to “management” as including their bosses.

5. **When you have the witness “on the ropes”**, it is a fine line between asking one question too many, and hammering home an important point. I think this depends on your witness. If they are mostly compliant, or have been noticeably thrown off by your cross-examination, hammer away. If they are the type itching to explain themselves, and have accidentally dropped something useful, then draw attention to it and don’t go further.

6. **I ask questions to which I do not know the answer.** This is almost required for the closing of the gates. In a competition you cannot know the answers to some basic questions (like the layout of a crime scene). If you don’t get the right answer just continue on and don’t acknowledge the fact that it’s bad for you (observers probably won’t know). Of course, try to disguise your intent – if the witness is openly hostile just lead the opposite answer to the one you want and wait for them to contradict you.

7. **Where the witness is inconsistent with the statement:** The statement is not in evidence. However, your freedom in cross-examination means that you can ask

questions that mirror the statement.¹¹ If they agree, all is well; if they don't, and you prefer the statement, then do the following:

- a. Confirm what they're saying and that it contradicts what the statement says.
- b. "Shortly after the incident, you made a statement to the police?"
- c. "While it was fresh in your memory?"
- d. "That's it in front of you?"
- e. "You wrote it?"
- f. "You wrote it in response to a police investigation?"
- g. "You knew at this point that it was important?"
- h. "It's 15 paragraphs long, in chronological order?"
- i. "So you had time to think over what you wrote?"
- j. "You tried to tell the truth?"
- k. "Because it was a serious matter, wasn't it?" (elaborate depending on case)
- l. "In fact, you knew that someone could go to jail for this?"
- m. "So you included everything that you knew that you thought mattered to the police investigation?"
- n. "Let me take you to paragraph 15. You said something different, then, didn't you?"
- o. "And it's what you said then that is correct, isn't it?"
- p. "Just now, when you said something different, you made a mistake, didn't you?"
- q. "And you may have made other mistakes while giving evidence?"

This is very damaging to their credibility in court now; and doesn't get the whole document tendered into evidence.¹²

Surprisingly often, the witness will say that they didn't write it, and they got it an hour ago. There should probably be rules saying that the witnesses are taken to have made the witness statements, but in their absence, hammer away at this. "Your lawyer prepared it? You met him half an hour ago? He probably told you what to mention, didn't he?" It's pretty cheap, but shows your skill in nailing a witness.

¹¹ See also *Evidence Act 1995* (NSW) s 43.

¹² *Evidence Act 1995* (NSW) s 45.

Closing

DO NOT WRITE THIS OUT. YOU DON'T HAVE THE TIME. WRITE HEADINGS AND SPEAK LOGICALLY.

The structure I use goes like this:

1. Reiterate the crux of the case and the application of the law. State what your basic case is

- a. "May it please the court, the issue in this case is whether Ms Rogers intentionally took the perfume bottle, or, as in the prosecution case, it was a classic case of casual inadvertence that cannot satisfy the mens rea requirement of the charge of theft."

2. Discuss what your witness said and how it is good for your case

- a. "The first reason your honours should make this finding is the evidence of the Ms Rogers. Ms Rogers told us she was late for a date. She had become accustomed to putting her perfume in her handbag after she had used it. She was talking with friends, and was distracted, and as a result accidentally placed the tester bottle into her bag. This is not the situation of a woman out to steal from her former place of work."

3. Discuss why you should believe your witness

- a. General comments on how credible/consistent his evidence was as a whole.
 - i. "Ms Rogers' story adds up. It is perfectly reasonable to think that one might be distracted from one's lateness by being engaged in conversation with friends, and further to think that one might be distracted from ones belongings because of one's lateness. This is what happened to Ms Rogers."
- b. General comments on his evidence under cross examination, including the refutations of the things your opponent was trying to cross-examine for.
 - i. She was also credible under cross-examination, firmly sticking to her recollection of events despite exhaustive questioning. The notion that she didn't like the security guard does not support the defence case; had she wanted to steal perfume she had many friends still working at David Jones."

4. **Discuss what the other side's witness said and how it is good for your case**
 - a. "The second reason your honours should make a finding of not guilty is the evidence of the defence witness. In cross-examination, he plainly admitted that the perfume counter workers would know to take off the magnetic stickers before leaving the store."

5. **Discuss why, for the parts of the other side's witnesses testimony which were bad for your case, you should not believe the prosecution witness**
 - a. As in point 3, consider both how believable his evidence is as it stands, and also the witness's demeanour under cross-examination.
 - b. "Furthermore, your honours should give little weight to any argument that Ms Rogers looked like a thief on her way out of the store. The prosecution witness only gave evidence that she was hot and bothered, and admitted in cross-examination that he rarely caught thieves. Anybody would be hot and bothered in the circumstances of having a security alarm go off."

6. **Conclusion**
 - a. "Ultimately, we submit that on the balance of the evidence, your honours should be satisfied that the charge is/is not made out beyond reasonable doubt. We therefore seek a verdict of guilty/not guilty. MIPTC"

Objections

1. **Do object.** Objections can interrupt your opponent's flow and make them think about things other than their line of questioning. Disrupt your opponent without obviously wasting the court's time. You will also no doubt end up learning something about evidence law when the judge corrects you.
2. **Don't feel like every objection needs to get through.** All you need to do is make yourself heard and to apply evidence law to make a good impression.
3. **Judges sometimes object to test you.** When a judge says "I don't see the relevance of this at all", all it means is that you are expected to explain how the evidence relates to the facts in issue. In this competition, most of the witness statement is relevant, so press the issue.
4. **Objections can be made on evidentiary grounds or the manner of questioning.** Evidence is discussed in the proceeding section. Improper questions will be disallowed as per s 41 and common law rules. In the competition, this usually

comes up when you object to questions which are misleading (such as “have you stopped beating your wife?”, also called a duplicitous or double-barrelled question), or are unduly repetitive, or cut the witness off.

Evidence

- This section on evidence is at the end, because practising doing all of the above speedily is more important.
- However, getting a point of evidence wrong in a case at best makes you look bad, will usually unsettle you and force you to rethink your approach, and at worst destroy your entire case because evidence crucial to your case theory was inadmissible.
- Here is an *extremely brief* guide to evidence law in the context of the trial advocacy competition.
- Evidence must be relevant or it will not be admitted (and the judge will tell you to stop asking questions.¹³ **Relevance means that the evidence must, if accepted, rationally affect (directly or indirectly) the assessment of the probability of a fact in issue.**¹⁴ So if a judge asks you how evidence is relevant, you must explain how it goes towards proof of a fact that satisfies the elements of the charge.
- Certain types of evidence are controlled. Chapter 3 of the Evidence Act lists the following: hearsay, opinion, admissions, judgments and convictions, tendency and coincidence, credibility, identification
- Hearsay evidence is one or more steps removed from the original observer. So if A told B that C was wielding a knife, evidence from B would be hearsay evidence for the purpose of proving that C was wielding a knife. It is not normally admissible,¹⁵ **but there are important and wide exceptions.**
 - Statements made shortly after the event in question occurred, which are unlikely to be fabrications, are an exception.¹⁶
 - Admissions of facts which are against the defendants interests are exceptions to hearsay.¹⁷

¹³ Evidence Act 1995 (NSW) s 56.

¹⁴ Evidence Act 1995 (NSW) s 55.

¹⁵ Evidence Act 1995 (NSW) s 59.

¹⁶ Evidence Act 1995 (NSW) s 65(2)(c).

¹⁷ Evidence Act 1995 (NSW) s 65(2)(d), 81.

- If a person made a contemporaneous statement about their health, feelings, sensations, intention, knowledge or state of mind, that evidence will not be affected by the hearsay rule.¹⁸

- Opinion Evidence: Witnesses may not speculate, for example, on what another person is thinking or on things that require specialised knowledge¹⁹ (such as whether a trap could have injured someone if the witness has no experience with such traps). However, they can give opinions if it is necessary to understand what the person perceived (such as whether a person was drunk,²⁰ or angry).²¹

- Tendency and Coincidence: you can only adduce evidence to suggest that a person tended to act in a particular way, or that two or more events were not a coincidence and were linked, if such evidence has “significant probative value”²² (that is, it is very relevant).

- Character Evidence is evidence about a person’s character that inevitably falls under the opinion or tendency rules. But, as an exception, a defendant can always call evidence to show that the defendant is of good character,²³ in which case the prosecution can rebut this.²⁴

- The rule in Browne v Dunn (which most judges seem to accept) is that the defence must put its case to the prosecution witness (in cross-examination) so far as it concerns them, so that they can comment on it.

- Evidence which is more prejudicial than probative may not be admitted due to ss 135 and 137 (for example, a description of someone as “furtive” is prejudicial because that word has negative connotations). Most judges will just say they will simply give little weight to such evidence, instead of excluding it altogether, but it is good to raise and perhaps cross-examine on.

- The returns, for this competition, from delving any deeper into evidence law diminish rapidly after this.

¹⁸ *Evidence Act 1995* (NSW) s 66A.

¹⁹ *Evidence Act 1995* (NSW) s 76, 79.

²⁰ *Whitby* (1957) 74 *WN* (NSW) 441

²¹ *Evidence Act 1995* (NSW) s 60, s 79

²² *Evidence Act 1995* (NSW) s 97, 98.

²³ *Evidence Act 1995* (NSW) s 110.

²⁴ *Evidence Act 1995* (NSW) s 110.

Excelling at the trial advocacy competition

Trial Advocacy competitions champions tend to be **imperturbable** and **flexible**. The best look and sound supremely confident even as the witness strongly resists cross-examination, or their case crumbles in the face of an unpredicted answer in examination in chief; they are in control of their cross-examination such that it crescendos seemingly no matter where the witness goes. You must, of course, have the understanding and flexibility to realise what such unpredictable answers mean to your case, and be ready to adjust your cross-examination and closing argument to them.

Conclusion

There are a good few reasons why Trial Advocacy is hard. It's something that everyone will tell you you only learn through experience, and with a five minute qualifier and two preliminaries, it's hard to get very much of it. Hopefully, by sharing some of mine, we can continue to raise the standard of UNSW competitions.

Good luck!

