

Advocacy

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expressed the approach in this way:

"Every document creates its own problems; it is up to you to think how can this witness explain this away; and long before you obtain the admission, cut off those gateways and explanations. In practice you will find a witness will say that he has changed his view since the time that letter was written, he did not have all the information in his possession at that time, he relied on other persons, and so on. They are common explanations, and you have to frame your questions so that you cut off those explanations, until finally when you put that particular part of the document to him there is no way out.

Another way a witness will sometimes seek to avoid the effect of documents is to say, "Oh, somebody told me to write it", or "I really didn't know what was in it", or "I was seeking to get some advantage" or something of that nature. You need to get his admission that when he wrote the document he was not setting out to deceive anybody."

When you have locked the witness into his evidence under oath before the court and you have closed the gates in relation to the earlier statement, it is then time to put the contradictory material to the witness. In so doing you will maintain control of the situation by putting to the witness only that material upon which you wish to rely and you will do so item by item. When the contradictory material is placed before the witness he should be invited to acknowledge that it is inconsistent with what he told the court under oath. Depending upon the circumstances you may wish to pursue him by establishing which version of events is untrue, what he said under oath on this occasion or what he said under oath or in his carefully prepared statement on the earlier occasion. Alternatively, you may wish to leave the contradiction unexplained. However, you must remember that re-examination on this topic may follow. Much will depend upon the circumstances of the case.

If you use a document to contradict a witness in this way you must be conscious of the fact that you may be required to tender the document. I refer you to section 20 of the Evidence Act.

1 MH McHugh QC (1985) 1 ABR 51

AROUND THE NT BAR

This column is supplied by the NT Bar Association and features profiles of barristers working in the Northern Territory.



David Alderman

David Alderman is a barrister at William Forster Chambers in Darwin, Northern Territory.

David was first admitted to practice as a solicitor in South Australia in 1979. He moved to the Territory in January 1980 to work for Darwin firm Ward Keller where he became a partner 1986.

David joined the Independent Bar on 1 February 1995.

David's main area of practice is commercial litigation but he has a healthy balance of common law work as well. His work in the commercial area includes problems relating to contracts, construction law, partnerships, banking, the Trade Practises Act, insolvencies and administrations, workmen's liens and corporations. His common law practice includes personal injuries, insurance law, professional negligence, motor accident's and crimes compensation. He has also dealt with problems relating to discrimination, work relations and coronials.

Sally Gearin

Sally Gearin is a barrister at William Forster Chambers in Darwin, Northern Territory.

Sally was first admitted to practice in New South Wales in 1983. She moved to the Northern Territory in 1986 to work as a senior lawyer with the Northern

Territory Attorney-General doing mainly major commercial litigation.

Sally was admitted to the Independent Bar in 1990, the first woman in the Northern Territory to do so. In 1992 she was awarded the Northern Territory Women's Fellowship for contributions made towards advancing the status of women in the Territory. She was a foundation member of the Northern Territory Women Lawyers Association and president for five years. Sally was also a steering committee and foundation member of the National Women Lawyers Association.

Current appointments include: Vice President of the International Commission of Jurists (NT Branch), Executive Member of the NT Bar Association, member of the Family Law Section of the Law Council of Australia and Australian Women Lawyers Association.



Sally's area of practice includes: both trial and appellate work in all civil jurisdictions including the High Court, Supreme Court, Local Court, Federal Court and Family Court and various tribunals and commissions.

Particular areas of interest include torts (personal injury including medical negligence), workers compensation, building and construction and general contract, family law and de facto, administrative and discriminative law.

Sally's interests are her family, including her grandchildren, sailing, yoga, overseas travel and Aboriginal and South East Asian Art.