

# How to Authentically Present the Witness' Story in a Legally Favorable Way

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Simon Vorburger

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# Witness Statements as "Direct Examination" (1|2)

- Today's reality: Witness statements serve as "**direct examinations**"
- Advantages:
  - **Saves time** at hearing → costs
  - Enables opposing counsel to prepare and deliver cross-examination efficiently → costs
  - Prevents other party from being taken by surprise
  - Helps to **define the issues** for argument at the hearing more clearly

# Witness Statements as "Direct Examination" (2|2)

- *But* witness statements are **often abused**:
  - Counsel drafts witness statements that are not in the witness' voice and not the witness' story
  - They are merely a written submission having the witness' name on it



**Risk** for the witness  
when facing cross-  
examination

# What Is the Role of Counsel?

- Effective counsel:
  - **Assists** the witness in developing **confidence and clarity** to focus on the **relevant aspects** of the testimony
  - Does **not** have to **conceal** his|her involvement
  - *Instead:* Acknowledges his|her involvement but uses that involvement to let the **voice of the witness** come through

But how?

# Tips for an Effective Description of the Witness' Story (1|2)

- **Define the scope** of the witness' statement: Why has this witness been brought?
- Generally do **not** include **conclusions** (legal or otherwise)
- Use as far as possible the **witness' own words** – not the lawyer's
- **Avoid legalistic** words or statements (e.g., "peruse")
- When in doubt, leave it out?
- Be **authentic**

# Tips for an Effective Description of the Witness' Story (2|2)

- Be **precise** or explain why it is not possible
- *But* **avoid unnecessary length** and needless repetition
- **Avoid inconsistencies** and contradictions (internal and external)
- Do **not** include statements of **opinion**
- **Mark** portions based on **hearsay** as hearsay
- Use **paragraph numbering** and short paragraphs

## For Discussion...

- Can a "bad" witness statement be used as a strategic advantage?
- How to deal with witnesses who are not fluent in the language of the arbitration?
- Are there alternatives to witness statements in narrative form?
- How best to refer to exhibits and other documents?
- Should cross-references to other witness statements be made?
- Should the witness statement use the same language as the submission?

Thank you very much for your attention.

**Simon Vorburger**

simon.vorburger@homburger.ch

T +41 43 222 10 00

**Homburger AG**

**Prime Tower**

**Hardstrasse 201 | CH-8005 Zurich**

**P.O. Box 314 | CH-8037 Zurich**

**[www.homburger.ch](http://www.homburger.ch)**