

IADC TRIAL ACADEMY 2019

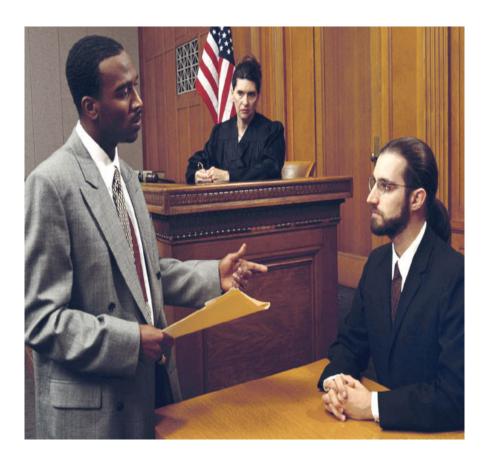
Direct Examination

Kim Bessiere Martin

[©]Bradley Arant Boult Cummings LLP

Attorney-Client Privilege.

- Very important part of the case
- Allows jury to hear directly from client
- Often overlooked part of prep
- Not as much "fun" as cross





- Goals of Direct Exam Tell the story
 - BUT, must present facts needed to support claims or defenses
 - Satisfy burden of proof
 - Background information make more credible or compelling
 - Lay a foundation for other evidence
 - Admit exhibits



- General Considerations
 - Witness should be storyteller and focus not the lawyer
 - Use short, open-ended questions; be conversational
 - Usually best to organize in chronological order of the story



- General Considerations
 - Convey confidence in client's case
 - Use emotion where appropriate
 - Watch the judge and jury for visible reactions/attentiveness
 - Try not to turn back on a witness or block jury's view



- Organization Background Questions
 - Starting point for the direct
 - Puts the witness at ease
 - Allows the jury to learn about and relate to the witness
 - Be focused and targeted in background questioning



- Organization Substantive Questions
 - Organize substantive questions to bring out best telling of story/themes
 - Be open about weaknesses but pick times to address strategically
 - Do not invite over-statement of evidence
 - Be careful not to open the door



Preparing for Cross

- Tell the truth
- Don't argue; stay calm; Avoid absolutes "never" or "always"
- Short, direct answers to questions
- Prepare on anticipated subjects of cross
- Ask for clarification and don't guess



Re-Direct Examination

- Opportunity to clarify testimony made confusing on cross
- Affords the opportunity to rehabilitate impeached testimony
- Permitted to respond to new matters brought out during the cross-examination
- Re-direct is permitted at the judge's discretion

