

DIRECT EXAMINATION

(of a lay witness)



Telling a Story

- Be Clear
- Be Entertaining
- Juries Have Short Attention Spans
- Don't Bore Them
- When You Wander Its Boring
- Be Interested And Engaged

Telling a Story

- Clarity
- Direction
- Mastery of Rules of Evidence
- Don't Give Opponent Opportunity to Interrupt Your Flow & Direction

Best Directs are Conversations

If Lawyer and Witness are
Engaged

Jury is Engaged

How To Be Engaged

- Don't Just Follow The Written Outline
- Look At Witness
- Listen To Witness
- React With Facial Expressions & Voice
- Allow What She Says To Affect Your Next Question

Sometimes There Are Surprises

- Witness goes to different topic
- Witness doesn't answer your question
- If appropriate you may follow
- If not, acknowledge it and retake control by returning to your story

Goals For Lawyer

- Interesting & Entertaining Conversation
- Within A Carefully Outlined Direct
- Where You Know Where You're Going
- Where You Are Constantly Steering Discussion & Direction of the Story

Goals For Jury

- Jury Understands The Story
- Jury Is Engaged in The Story
- Jury Wants to Hear More

Inoculating Against Cross-Exam

- Clear & Convincing Direct Can Be Destroyed By Cross
- Witness Must Be Properly Inoculated
- Talk About Demeanor (Earnest And Confidence)
- Tell Witness To Look At Questioner In The Eyes, Be Confident, Be Forthright

Goals for Inoculating Against Cross

- Think About & Practice Likely Questions
- Your Cross To Be Harder Than Real One
- Keep The Witness Calm & Have Consistent Demeanor

Personal Tip

*A Witness That Understands Your Themes
Is Calmer, More Confident &
Appears More Earnest*



CROSS EXAMINATION

(of a lay witness)



Goals of Cross Examination

- Tell your story/Reinforce your theme
- Control the witness
- Damage witness' credibility

How to do it...*generalities*

- Prepare!
- Have a plan and stay organized
- Know what you need for your other witnesses and for your closing argument
- Know your witness, Judge, and jury

How to do it...*specifics*

- Ask leading questions
 - Elicit a “yes” or “no” response
 - Use tags when appropriate
 - Isn’t it true...
 - You stayed up late, didn’t you...
- Start and end on strong points
- Do *not* ask a question you do not know the answer to
- Try to avoid the “one question too many”...

Try to avoid...

- Covering areas *not* consistent with the theory of your case
- Failing to structure your cross
- Failing to control the witness
- Repeating the direct
- Not listening to the witness' testimony & following up
- Not using short questions
- Using value words in questions (always, never, regularly)

Sometimes there are surprises...

- Even though you asked a leading question, the witness may interject “positive” testimony
 - Do NOT react
 - Make sure you have “key” testimony to follow-up with
 - Follow-up with:
 - “That wasn’t exactly my question. My question was...is there any part of that question that you do not understand?” Then, re-ask.
 - Ask the Judge to instruct the witness to answer

HAVE FUN!