

Exploring Direct Exams

BASIS Scottsdale Mock Trial Team

The content of this presentation is from NITA's 2nd Edition ***Mock Trials: Preparing, Presenting, and Winning Your Case***

Direct Examinations



The Role of Direct Examination

- **Direct examinations** are the heart of your case
 - You present your witnesses' testimony through questions and answers
 - You develop your persuasive trial story and the evidence that supports that story
- Every other aspect of the trial is derivative of **direct examination**
 - Opening statements and final arguments are simply the lawyers opportunity to discuss what the witnesses have to say
 - Cross-examination exists solely to allow the direct to be challenged or controverted

The Goals of **Direct Examinations**

- A. Set Forth Your Theory of the Case
- B. Introduce the Undisputed Facts
- C. Enhance the Likelihood of Disputed Facts
- D. Lay Foundation for the Introduction of Exhibits
- E. Reflect upon the Credibility of Witnesses
- F. Hold the Attention of the Trier of Fact

The Rules of **Direct Examination**

Ask Only Non-leading Questions

- The attorney may not “lead” the witness
- **Leading question:** any question that contains or suggests its answer
- Whether a question is leading is frequently an issue of **tone** or **delivery**

Of course, you crossed the street, didn't you?

Did you cross the street?

Didn't you cross the street?

- Exceptions:
 - To lay foundation
 - To make transitions

Avoid Questions That Elicit “Narrative” Responses

- Witnesses may not testify in a narrative form
 - Any answer that goes beyond responding to a single specific question

Q: Were you able to get a good look at the robber, Ms. Kearney?

A: Yes, I was able to see him clearly.

Q: How tall was he?

A: About six feet tall.

Q: How heavy was he?

A: He was heavy like a football player, broad shoulders and a thick torso. He must have weighed over 200 pounds.

Q: What race was he?

A: He was white.

Q: And his complexion?

A: His complexion was fair.

Q: What color was his hair?

A: He didn't have any hair he was bald.

Q: Did he have any facial hair?

A: Yes, he had a goatee.

Q: Could you see his eyes?

A: Yes, he came right up to me.

Q: What color were they?

A: Brown.

Obey the Non-opinion Rule

- If a witness's testimony goes beyond his or her own sensory observations, the testimony runs the risk of being speculative, lacking foundation, or venturing into the territory of an improper lay opinion

Refresh the Witness's Recollection When Necessary

- Even scripted directs can go off the rails due to imperfect witness memories
- Competition can be stressful, and nervous witnesses may forget

Directs Checklist

- Are all of your questions non-leading?
- Did you avoid asking questions that seek narrative responses?
- Did you avoid speculative testimony?
- Are you prepared to refresh the witness's recollection if necessary?

Planning

Direct

Examinations

Planning Direct Examinations

1. Remind jury about the **theme**.
2. **Lay foundation** so that the jury knows what you're talking about.
3. **Sign post** to show where you're transitioning to in your direct.
4. Attorneys AND witnesses **both** develop the questions and answers to have equal input and cohesiveness throughout the direct.

For Attorneys

1. Let the witness be the star
2. React like you've never heard it before
3. Match the witness's tone
4. BE A HUMAN, not a robot
5. Move & change tone to emphasize key points
6. Primarily look at the witness, but at certain points, may be appropriate to glance at the judge or jury

For Witnesses

YOU ARE THE STAR

- This is your opportunity to show your character
 - The more into character you are the better
 - Remember this is a performance

LET'S TALK ABOUT THIS CLOSER

For Witnesses : Creating a Witness Bio

Who is your witness?

- Where are they from?
- How did they grow up?
- Who or what influenced them to be who they are today?
- What do they look like?
- How do they speak?
- What is their occupation & why?

How is your witness involved in the trial?

- Why do they matter?
- How do their actions contribute to the facts of the case?
- Why are they testifying in court?

Let's practice

Direct

Examinations

❏ Demo from Cameron &
Sesha

❏ Witness Game