

DIRECT EXAMINATION:

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Role and Importance of Direct Examination

- Direct examination serves as heart of the trial
- Your witness teaches the jury
- Direct examination supplies your evidence
- Your witness must be heard and be trusted



Prepare Your Direct Examination

Establish Your Theme

- It's like a “theme song”
- Provides overview of case, rationale
- Develop theme early; let it guide your preparation
- Be consistent; stick with your theme



Prepare Your Direct Examination

Account for Elements of Your Case

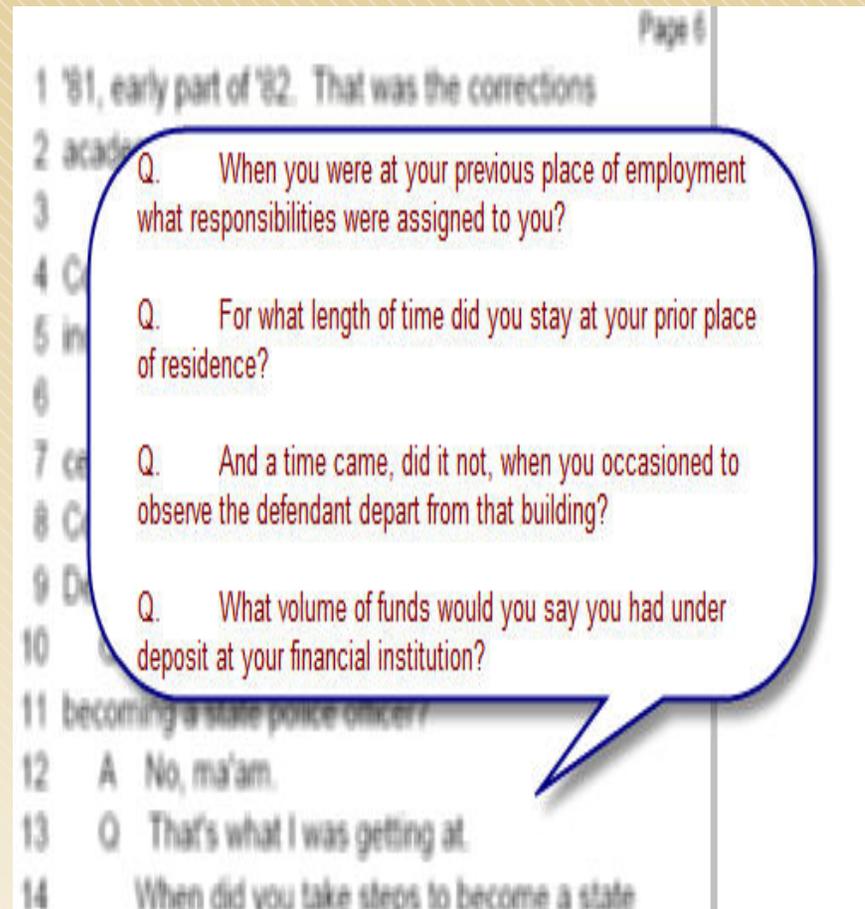
- The law actually matters – a lot
- Know the elements of claims
- Make list of critical facts
- Allocate critical facts among witnesses
- Check facts off as established



Craft Your Questions

Use Plain Language

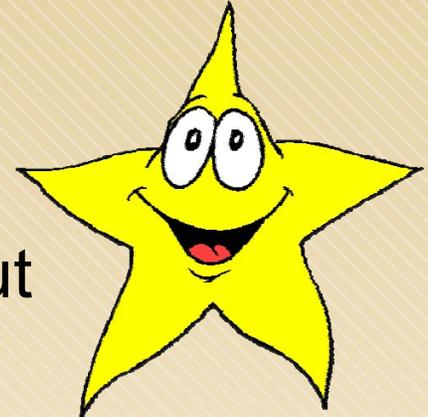
- Avoid lawyer-speak; use plain English
- Eschew words like, “eschew”
- Bad questions beget bad answers
- Read one of your depositions or trial transcripts



Craft Your Questions

Focus Attention on *Witness*

- Witness is star; lawyer is director (or supporting cast)
- Introduce witness to jury (It's not all about Rule 602)
- Why should we believe you? Let me count the reasons.
- Success: Jury forgets all about you, but remembers your witness



Lead On, Through the Minor Stuff

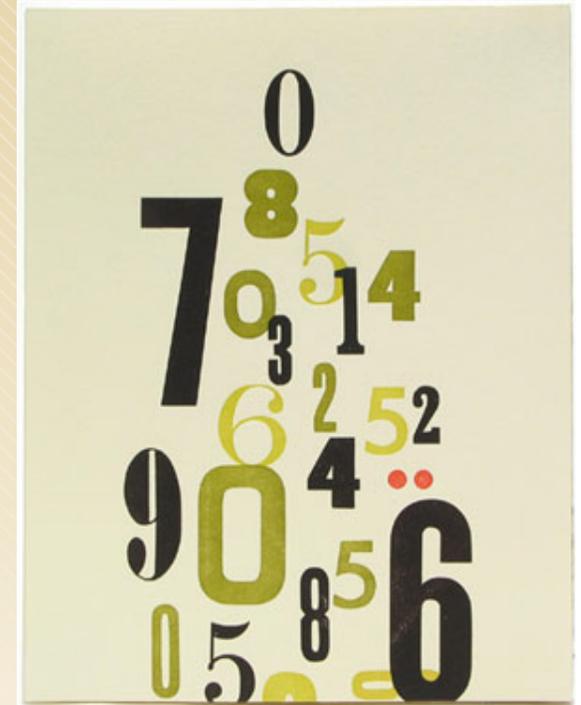
- Lead when appropriate
- Rule 611(c) – Lead when “necessary to develop his testimony”
- Age or infirmity; contradicting prior testimony; preliminary or background information; transition questions
- Don’t overdo it! You’re not why we’re here.



Craft Your Questions

Organize and Pace Your Examination

- Chronological order, topical order, or a bit of both?
- Use open-ended questions, with detailed follow-up
- Think like a juror: Can I understand this? Can I take this all in?



Organize and Pace Your Examination

Use Transition Questions

- Help the jury move from one part of your direct examination to another
 - Prologues
 - Transitions
 - Loops
- Make the examination a seamless story, not a set of unconnected data

Show & Tell with Exhibits

- Use exhibits as aids to memory
- Use exhibits liberally
- Incorporate exhibits in your outline
- Practice authenticating documents with witness
- Stipulate admissibility of documents



Draw the Sting – or Not?

- “Soon all will know”
(Marsalis, Wynton)
- Consider acknowledging and explaining, rather than running and hiding
- In civil litigation, the bad stuff is known from discovery
- Be strategic; don’t lead or end with it



Trim the Outline

- Jurors' capacity to follow and remember is not limitless
- Highlight the important; omit the trivial
- Not all repetition is bad – but, a lot of it is



Can I remember all of this?

- Avoid focusing on your notes
- Writing out your examination – question by question – can be helpful
 - Forces you to think through the examination
 - Helps avoid objectionable questions
 - Promotes confidence
- Try not to depend on your notes during trial
- Above all else, focus on your witness (and the jury) and NOT your notes



Prepare Your Witness for Direct Examination

- Witness preparation takes time – and a lot of it
- Explain difference between deposition testimony, cross-examination, and direct examination – Then practice it.
- Prepare, but don't over-script



How to Prepare Your Witness

- Make witness familiar and comfortable with questions
- Limit questions to matters within witness's knowledge
- Have witness read deposition transcript and pertinent documents closely
- Practice direct examination and related cross-examination repeatedly

To Script or Not to Script: How far to go?

- Should you create a document for the witness?
 - Essay or narrative of matter to be covered?
 - Script of questions?
 - Script of questions and answers?
- N.C.R. Prof. Cond. 3.4(b), 4.1
- N.C.R. Evid. 612



Rehearse the Setting and Conduct, Not Just the Words

- Practice with the witness in a realistic location
- Make witness aware of courtroom surroundings and personnel and their roles
- Tell witness where to direct her attention
- Help witness with appearance on and off the stand
- Make witness as comfortable as possible



Rehearse the Setting and Conduct, Not Just the Words



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