

Direct Examination

"Cases are won on direct examination."

Fairly paraphrasing Mauet, Fundamentals of Trial Techniques and dozens of other Trial Practice gurus

- Direct examination is the opportunity to relive the story of the case in the presence of the factfinder.
- After a good direct examination, the factfinder will feel like part of the story.
- During direct examination, the witness, not the lawyer, should be the center of attention.
- At the close of the examination, the factfinder should not only understand, but believe the story.
- The key, then, to good direct is the ability to get the story across in an understandable, interesting, convincing, and memorable way.

Understandable

- **Simple, straightforward direct examination**
 - How can this witness
 - (a) tell the story
 - (b) establish the elements of my case
 - (c) establish the witness' credibility
 - (d) set up the need for the other side to respond
- **Organized direct examination**
 - What is the most persuasive way to relate the story to the factfinder? Where should I begin the story?
 - Chronological approach
 - Significance approach

Interesting

- **Interesting direct examination**
 - How do I make the direct examination interesting?
 - Background
 - Who is this witness?
 - What does the witness know that can help the factfinder decide the case?
 - What is the best way for the witness to tell the story?
 - Props
 - What means other than verbal communication can I offer to make the story more interesting?
 - Verbal pictures
 - Illustrative aids
 - Demonstrations
 - Exhibits

Convincing

- **Convincing direct examination**
 - Humanization, Background and Perspective
 - What makes this witness human/likeable?
 - What makes this witness believable/credible?
 - What about this witness' background or perspective makes their story convincing?
 - Presentation
 - Has the direct examination flowed without obtrusive interruptions?
 - Has the witness *told* the story rather than being led by me?
 - Integrity
 - Have I exposed weaknesses (or evaluated the need to expose weaknesses) about the witness or the witness' story in order to maintain credibility with the factfinder?

Memorable

- **Memorable direct examination**
 - Did the witness tell the story in a logical way so as to make it easy to remember?
 - Did I listen to make sure that the witness clearly covered all essential points of the case?
 - Did I employ the strategies of primacy, recency, and repetition?
 - To emphasize the testimony and make it memorable, did I use the
 - Highlight/Signpost approach
 - Narrative-Detail approach, or
 - Looping approach

Planning Direct Examination

- Selection of the Right Details for an Uninformed Audience
- Determination of Order & Sequence
- Integration of Theory & Theme
- Use of Thematic Words and Phrases
- Consistent Use of Chosen Labels
- Anticipation of Unfavorable Matters
- Choice of Approach or Approaches
- Preparation of Ending of Direct Examination

Content of Direct Examination

- Introduction of and Humanization of the witness
- Transition and Orientation to essential facts
- Description of essential facts
 - Selection of essential facts
 - Order of essential facts
- Repetition and clarification of essential facts
- Ending of Direct Examination

Control during Direct Examination

- Questions as a means of Control
 - Open, nonleading, but narrow questions
 - Rather than "What happened?" ask "What happened on the evening of March 1?"
 - Framing or looping questions
 - Rather than "What happened next?" ask "What happened after you saw the blue car come screeching out of the driveway?"
- Voice, Positioning, Movement as a means of Control

Direct at the Next Level

- Positioning
- Voice
- Pace
- Anticipation


