

Direct Examination

Purpose of direct is to let your witness tell their portion of your story (what you need to prove to win) in an easily understood and persuasive way.

The witness is the Star.

Use open-ended questions that require more than a simple “yes” or “no” answer so the witness (not you) must tell the story.

Open-ended questions generally start with:

Who

What

Why

When

Where

How

Explain

Describe

Tell us

Example Case: Driver of white car sues driver of red car for collision in intersection with traffic light. Dispute is about who ran the red light.

Some direct questions you may ask for that case:

Who was driving the red car?

What color was your light?

Why were you driving on that street?

When did you first see the red car?

Where did the collision take place?

How did it happen?

Describe what the intersection looked like.

Explain what happened right after the impact.

Tell us how you felt after the impact.

Tips for an Effective Direct Examination

Place the witness

To focus the fact finder on reason why the witness is important to your case, you can ask “why have you been asked to testify?” (Especially good for use with expert.)

Organize your question

Examples: Chronological or By Topic

Use action words to paint a picture for the fact finder.

Instead of “hit”, use “collide”, “smash”, “careen into”, “slam into”.

Use Recency and Primacy

Start strong and end strong. People tend to remember the first thing they hear and the last thing they hear.

Use Sign Posting

Make a statement that directs the witness to a particular topic. This helps the witness as well as the jury understand where you are going.

Examples: “I now want ask you about the day of the accident.” “Let’s talk about what you saw right before the collision.”

Use Looping

If you get a really good answer from the witness that bears repeating, you cannot just state it. However, you can “loop”, make the good answer the first part of your next question. (Use this technique rarely.)

Example: Witness testifies “I saw him shoot her.” To loop, your question is “After you saw him shoot her, what did he do?”

Be Conversational

If you are interested in what your witness has to say, the jury will be too. Also the testimony will not sound rehearsed and therefore more credible.

Spin / Slant your question

Ask the question in such a way that it predisposes the jury to draw a conclusion you want them to draw.

Example: Assume that the speed of the two cars in an accident is relevant.

To spin that white car was not speeding, ask “How slow was the white car going?”

Conversely, to spin that the red car was speeding, “How fast was the red car going?”

Address weaknesses (steal thunder from Cross)

If witness has given a prior inconsistent statement, has been convicted of crime, etc., bring it out on direct and let witness explain. You do not want jury to hear bad things first on cross examination.

REDIRECT

Used to rehabilitate witness by covering an area asked about in cross examination. You must use open ended questions as you are still on “direct”.

CROSS EXAMINATION

Purpose is to get testimony from adverse witness to support your case by using extreme control over the witness and/or show the witness is not credible.

Use only leading one fact questions. Make statements witness must agree with. On Cross, you are the Star.

Two definitions of what is “leading”:

1. Question suggests the answer.
2. Question can be answered with “yes” or “no”.

Examples in the car wreck case: The red car ran the light. It was raining that day. You never called the police.

Cross does not have to be “cross” although tone is usually “less friendly” than on direct.

Tips for an Effective Cross Examination

- Start strong (remember primacy and recency).

- Get everything you want from witness that helps you before impeaching. Then impeach, showing that the witness is not credible on other issues.

- If impeaching with a deposition or other prior inconsistent statement, have “lies” marked for easy access.

- Never ask a question you do not know the answer to unless any answer will help you.

Example: In a medical malpractice case, where the accuracy of the patient’s chart is an issue, you might ask the doctor “Isn’t it true that it is important for a patient’s chart to be accurate?” When he says “Yes”, you can ask “Why?” (Not leading, but anything he says helps you i.e. “must be able to treat patient correctly” or “avoid lawsuits”, etc.

- End strong.