

Direct Examination of Witnesses



**VICTIMS, DEFENDANTS, EXPERTS, YOU
NAME IT**

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Direct Examination-An Overview



1. This doesn't have to be boring just because there is no attack
2. Whether a cop, an victim, a client, or an expert, you are having a conversation. Make it an interesting one.
3. You can only control so much. This is the witness' story- you are merely the facilitator.

Getting to know your witness



- No matter what their role
- You are helping them tell their story
- You need to believe it too
- It will help you sell it

The Only Way to Screw this Up...



IS TO LIE

War Story Time



- Annie Davis
- Amy Keyes

PREPARATION



- CHECKLIST of what *they give you that helps your case*
- Making sure you get what you need from them
- For prosecutors, it's elements and JIGs, for defense, it's punching those holes.
- NOT a list of questions – you can start there
 - ✦ Answers, not questions, are what matter

MECHANICS



- Keep asking until you get your answer (or not)
- Active listening/not reading
- Base questions on answers
- Note taking: check off versus transcribe
- Practice out loud

SAMPLE OUTLINE FOR DIRECT



-
-
- Name and occupation
- How long a PO
- Present duties---how long in that position
- Educational background
- What type of training to become a PO
- Directing your attention back to the 17th of June of this year, were you on duty at about 9:53 pm.
- What were you doing----PRESUMABLY PATROLING
- In a car by yourself or with another officer
- Are you always by yourself, or sometimes with another officer
- Did you receive a dispatch to go to a residence located at 5516 84th ave north----BPark?
- What information did you receive in the call
- Who had called 911---male or female
- Is that address a single family or multiple family dwelling
- How long did it take you to get to the address after receiving the call
- What did you do once you got there
- What did your partner do
- Which door did you go to
- Both of you or just one of you
- Why either way
- Did you announce yourself at the door---was the door closed
- What did you say
- Did anyone come to the door]
- Who was that

REVISED OUTLINE FOR DIRECT



- OFFICER JOHNSON

- MPD 10 years
- Patrol since 2010, detective trainee 2008-10, patrol 2003-08
- B.A. Criminology UMD 2002
- Ongoing training
-
- 6-17-12 9:53 pm
 - Partner James - regular assignment
 - Dispatch 5516 84th Ave N, Mpls.
 - Domestic assault – 911 caller female
- Arrive 9:56 pm
 - Duplex – upstairs
 - Front door – partner to back of bldg. – back door in case defendant runs out
 - Announce “police” at front
 - Door locked – hear shouting
- Man answers door
 - Identify D by name
 - Identify D in courtroom
 - Another person in house/allowed inside/looked for her

PREPARATION



- **PREPARE THE WITNESS**
- The ideal is to have time to meet with them, go over what you understand their testimony to be, and disclose.
- Doesn't always work that way
- Make sure they know what they **CAN'T** say
- **PREPARE ANY EXHIBITS ASSOCIATED WITH THE WITNESS**

Think About Objections Ahead of Time



- This is a presentation
- If your worried about an exhibit coming in, or a question being objected to, prep a response.
- 98% of my motivation is trying not to look like an idiot
- 20% success rate

EXECUTING DIRECT EXAMINATION



- This is a conversation
- You have to look interested in it, too
- The jury watches you and the witness
- Facial expressions, non-verbals matter

EXECUTING DIRECT EXAMINATION



- **NON-LEADING QUESTIONS**
 - Can lead on preliminary matters
 - Context – “Headlines” – good technique
 - ✦ “After you came back from break “
 - ✦ “Let’s go back to “
 - ✦ * Good to repeat what they already heard. Great if there is a barrier to communication.

The Hostile Witness



- Sometimes it's easier to call them in your case
- Even if they hate you
- Can't call them just to impeach
- But once you have them there, you can lead (611 (c)) if you've established for the record that they hate you...

Direct Examination of Experts



The joy of expert testimony



- You don't need to know it all, that's why _____ is testifying
- You do need to know enough to ask questions without looking like an idiot.
- Pay attention
- There's the rub. "As I just indicated" is something you don't want to hear from your witness during your direct.

Experts who have schooled me



- Dr. Karen Bruggemeyer and Dr. Rich Kaplan
- Too many BCA, Hennepin County and MPD crime lab people to name over the years
- Numerous Medical Examiners (Drs. Butch Huston, Andy Baker, Lindsey Thomas, Mike McGee, Kelly Mills- to name only a few)

Common Expert Testimony



- Toxicology
- DNA
- Medical Examiners
- Firearms/Ballistics
- Fingerprints
- Trace evidence
- 20.01/20.02

More Expert Testimony



- Rape Trauma- *Obeta*
- Domestic Violence- *Hennum*
- Forensic Interviews of Children- Cornerhouse
- Child Abuse specialists

Experts in High Profile Cases



- Child Abuse Death case- State v. Hokanson
- 5 Experts testifying on various medical issues- from the child's health from birth to the autopsy performed when he died at 18 months old, and the multiple fractures he received in between.
- Drs Cox , Hymen, and Dick Kaplan. Seriously.
- These wits can be very helpful and cooperative, or real pains in the ass.

A good expert won't let you stretch it



- If they can't infer or say it, they won't, no matter how politely or desperately you ask and no matter how much they are paid.

As opposed to...



- The expert that overreaches
- Many of them out there
- They give opinions they shouldn't and lose credibility
- Don't use them, because a good cross of a defense expert is as good as it gets.

Examples of experts who go too far- AKA hired guns



- The unfortunately named Dr. Charles Hymen, who was supposed to offer an opinion about a child's injuries, but also offered an opinion about the credibility of the mother of the child, among other inadmissible opinions.
- Accident reconstruction expert who did not read all the witness statement before opining fault

Additional examples of Experts gone bad



- The expert who opined that the defendant

-who had planned a murder,

-drained a victim's bank accounts, and

-ran a property business

was mentally retarded and incompetent to assist in his own defense.

Direct Examination



- Doesn't have to be dull
- Your interest and reactions go along way with a jury
- Hard to let the chips fall, but with direct you have to let go of that control

Questions?



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