

Direct Examination

Basic Prosecutor Course

August 2015

I. THE ROLE OF THE DIRECT EXAMINATION

Cases are won as a consequence of direct examination.

Direct examination is your opportunity to present the substance of your case. It is the time to offer the evidence available to establish the facts that you need to prevail. Having planned your persuasive story, you must now prove the facts upon which it rests by eliciting the testimony of witnesses.

Direct examination, then, is the heart of your case. It is the fulcrum of the trial – the aspect upon which all else turns.

Direct examination should be designed to accomplish one or more of the following goals:

A. Introduce Undisputed Facts

In most trials there will be many important facts that are not in dispute. Nonetheless, such facts cannot be considered by the judge or jury, and will not be part of the record on appeal, until and unless they have been placed in evidence through a witness's testimony. Undisputed facts will often be necessary to establish an element of your case. Thus, failing to include them in direct examination could lead to an unfavorable verdict or reversal on appeal.

B. Enhance the Likelihood of Disputed Facts

The most important facts in a trial will normally be those in dispute. Direct examination is your opportunity to put forward your client's version of the disputed facts. Furthermore, you must not only introduce evidence on disputed points, but you must do so persuasively. The true art of direct examination consists in large part of establishing the certainty of facts that the other side claims are uncertain or untrue.

C. Lay Foundation for the Introduction of Exhibits

Documents, photographs, writings, tangible objects, and other forms of real evidence will often be central to your case. With some exceptions, it is necessary to lay the foundation for the admission of such an exhibit through the direct testimony of a witness. This is the case whether or not the reliability of the exhibit is in dispute.

D. Reflect Upon the Credibility of Witnesses