

# DIRECT EXAMINATION

# Easiest Thing to Do – Hardest Thing to Do Well

## What is Direct Examination?

Attorney asking questions so answers will tell a story

Key is to have ANSWERS tell the story

Use open ended questions, not leading questions

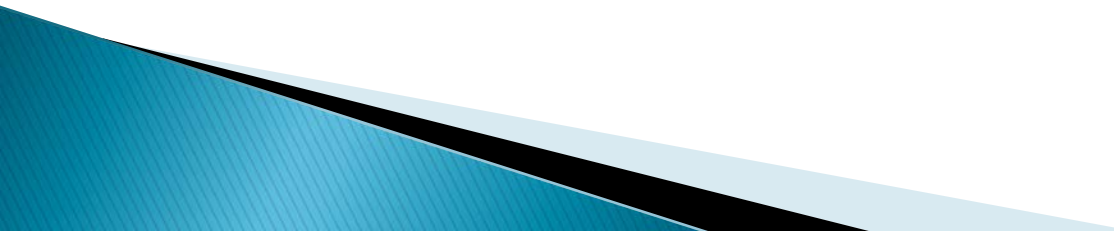
## Leading Questions Suggest the Answer

## Open-Ended Questions Request an Answer

Who, what, when, where, why, how, explain, describe



# PREPARATION

- ▶ Determine what you want to get from witness
  - ▶ Outline how you want to get it
  - ▶ Use broad topics
  - ▶ Do not write out your questions
  - ▶ LISTEN TO ANSWERS
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# ORGANIZATION

- ▶ How do you organize?

Usually chronologically, but can be by topic

Primacy and Recency

Start interesting and end with impact

Give clear structure regardless of how you do it

You are director, so direct

Use lead in questions and headnotes

Have a purpose



# ORGANIZATION

## ▶ Accredit

- “Please introduce yourself to the ladies and gentlemen. . . .”
- “You are here because you witnessed the automobile accident of May 5<sup>th</sup>. . . ?”

## Set Scene

“Why were you at the intersection of. . . .”

## Big Picture/Action

“Tell the ladies and gentlemen of the jury what you saw. . . .”

## Fill in the Details

“What was the first thing that drew your attention. . . ?”

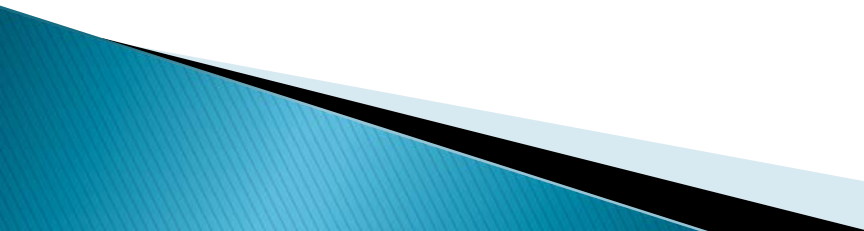


# PERSUASION

- ▶ Pace and Style
  - ▶ Be interesting! Keep interesting pace!
  - ▶ Use eye contact or voice to convey dramatic or critical part of your story
  - ▶ Use pace to convey mood
  - ▶ Use ordinary language
  - ▶ Conversational tone usually works best, easier to listen to
  - ▶ Interrupt long answers (slightly raising your hand works wonders!)
  - ▶ Most important – let witness tell the story
- ▶ You can only persuade if the jury is listening!

# PERSUASION

## ▶ Pointers and Suggestions

- ▶ Usually better to go from general to specific
  - ▶ Focus on facts, not conclusions
  - ▶ Use details for credibility, not tedium!
  - ▶ When possible, use simple, one fact questions (easier to follow)
  - ▶ Use connectives and looping back: “After you stopped at the light, what did you do next?”
  - ▶ Torture key facts
  - ▶ Try to use exhibits when appropriate (makes things more interesting)
  - ▶ NEVER READ QUESTIONS, and avoid obvious reliance on notes
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# PERSUASION

## ▶ Anticipate Cross Examination

Two very important reasons not to ignore cross

1. Credibility
2. You frame the issue!

Hit it directly, “I anticipate opposing counsel will ask. . . how do you respond?”

Make it part of your questions without highlighting it is subject of cross

Your choice, but do not avoid it!