

MORRISON
FOERSTER

DIRECT EXAMINATION

CARRIE H. COHEN
PARTNER, MORRISON & FOERSTER LLP
INVESTIGATIONS + WHITE COLLAR DEFENSE PRACTICE GROUP

April 2019
NYSBA Young Lawyers Section
Trial Academy
Cornell Law School
Ithaca, New York

DIRECT EXAMINATION

OBJECTIVES

- 1) Present case in a simple, logical, and orderly way
 - a) Provide story/roadmap
 - b) Story from answers not questions
 - c) No legalese
 - d) Order of witnesses
- 2) Deal with/limit opponent's case
- 3) Persuade trier of fact/present case in compelling and memorable way
 - a) Order of witnesses
 - b) Amount of detail (greater detail signals important fact)
 - c) Demonstrations, charts, visuals
 - d) Variations tone/pace/volume
 - e) Order of story (people retain what heard first and last)
- 4) Establish all elements of charged offense/claim

PREPARATION

- 1) Theme/Theory of Case
- 2) What evidence proves case
 - a) What exhibits go with each witness
 - b) Stipulations
- 3) Witness preparation
 - a) Witness tell story
 - b) Establish training, experience, expertise, if applicable
 - c) Review all prior statements
 - d) Prepare for cross
 - e) Cover logistics (dress/courtroom)

- f) Review exhibits

THE EXAMINATION

- 1) Short/concise questions
 - a) Witness is star, not you
 - b) Who, what, where, when, why
- 2) Phases of direct
 - a) Introduce witness (background/qualifications)
 - b) Establish why witness relevant
 - c) Substance of testimony
 - d) Bring out damaging cross on direct
- 3) Techniques
 - a) Slow witness down
 - b) Draw out important testimony
 - c) Cue witness
 - d) Looping
 - e) Topic sentences
 - f) Define terms

WHEN AND HOW TO BREAK THE RULES

- 1) More questions that call for small bits of information
- 2) Emphasize and Repeat
- 3) Close-ended Question (yes/no)
- 4) Alternate Choice Question