

The part of the trial called
DIRECT EXAMINATION

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The Show Begins ...


- Considering your entire story, why THIS witness?
- Engaging the jury with this character
 - Show, don't tell
 - Who is this person, in this story?
 - Why is he here, now?
 - **Can I believe what he says?**
- The Physics of Space – You Can Only Keep What Fits.

The Show Begins ...

- Considering your entire story, why THIS witness?
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WHAT ARE THE TAKE-AWAYS?

- Why is he here, now?
- **Can I believe what he says?**
- **The Physics of Space – You Can Only Keep What Fits.**



Know the Law

Have it 'at the ready'

- FRE 601 – Competency
 - FRE 602 – Personal Knowledge
 - FRE 401 to 415 – Relevancy
 - Relevant, unless ... *character, other acts, habit, policy, sexual assault, privilege*
 - FRE 611 – Leading Questions – no ... and yes
 - FRE 701 – Opinions – again, no ... and yes
 - FRE 801 to 807 – Hearsay
 - Non-hearsay
 - Exceptions to Hearsay
 - FRE 901 – Authenticating Evidence
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The Structure of a Directed Examination

Why is THIS character in THIS drama?

INTRODUCTION of THIS WITNESS

BACKGROUND of THIS WITNESS

SCENE in the DRAMA

THE ACTION

THE RESULT

THE ENDING

The Structure of a Directed Examination

INTRODUCTION of THIS WITNESS

- First impressions are largely non-verbal
- Your relationship with this witness is being displayed
- You are being introduced as ...
 - an honest broker?
 - an unreliable source?

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EXHIBITS

- Why — remember physics
 - When — the play's the thing
 - How

EXHIBITS

- Authentication -

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only--not a complete list--of evidence that satisfies the requirement:

(1) **Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.

(2) **Nonexpert Opinion About Handwriting.** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) **Comparison by an Expert Witness or the Trier of Fact.** A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) **Distinctive Characteristics and the Like.** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

et cetera

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- The Action -
Make the Evidence Come Alive

- Point of View
 - Present Tense
 - Pace, Repetition
 - Sensory Language
 - Witness Demonstration

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LANGUAGE

- Tags for Key Evidence, Key Events
 - Your Questions – Clear, Plain, Impactful
 - Witness -
 - With the Court -


LANGUAGE

- Tags for Key Evidence, Key Events
 - Your Questions – Clear, Plain, Impactful

- The Math of-Preparing a Witness: More Time = Better Results
- Explain the Take-Aways
- Use Leading Questions for Transitions – for W and Jury
- Refreshed Recollection/Rule 612 – Watch Out!!
- Listen to the Answer

LANGUAGE

- Tags for Key Evidence, Key Events
 - Your Questions – Clear, Plain, Impactful
 - Witness -
 - **With the Court** -



The Structure of a Directed Examination

How to Respond when you are Derailed

STRAYING WITNESS

VALID OBJECTIONS

OBSTRUCTIVE OBJECTIONS

PRESSURE FROM THE BENCH

SURPRISE!!

