

# PERSUASIVE DIRECT EXAMINATION

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# Direct Examination

It's a Story!!!

# Direct Examination

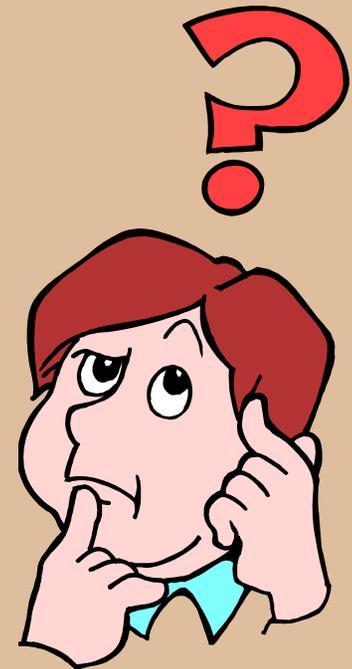
Why Do It?

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Why Not?

# Why Do It?

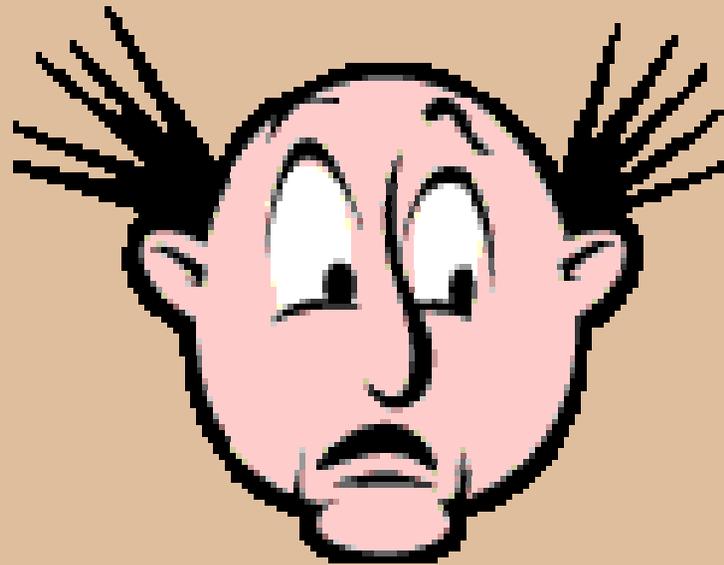
- Advances theory of the case
- Impeachment
- Fills in Gaps
- Enhances emotion or narrative
- Organizes and orders evidence
- Client will do well



# Why Not?



***IT'S TERRIFYING***



- It so often goes badly
- We aren't good at it
- No Control
- Cross Examination

# Getting Started



# ***PRIMARY RULE***

- DO NOT PUT ON A WITNESS WHO DOES NOT ADVANCE SIGNIFICANTLY THE THEORY OF THE CASE

- Ernie Lewis

# Risks to Consider

- Prior Criminal Record
- Opening the door
- Ability to communicate and handle cross
- Is testimony only evidence
- Is testimony corroborated



# Plan

- What testimony will you elicit and how does it advance your theory of the case
- DON'T ask questions that don't advance your theory of the case
- Unnecessary testimony detracts from important testimony and may broaden the scope of cross



# Anticipate Objections

- Know potential objections
- Know your response
- When you win, repeat the question → let's the jury know you won



**FACTS NEEDED  
FOR WITNESS**

**POSSIBLE WAYS STATE CAN  
TRY TO KEEP IT OUT OF EVIDENCE  
/DEFENSE RESPONSES**

	<b>GROUND 1</b>	<b>GROUND 2</b>	<b>GROUND 3</b>
<b>FACT 1</b>			
<b>FACT 2</b>			
<b>FACT 3</b>			

# Anticipate Damaging Information

- Does benefit of testimony outweigh risk
- How will you deal with potentially damaging information
  - Pre-trial Motion in Limine
  - Seek ruling prior to cross
  - Contemporaneous objection



# Prepare Your Witness!!!

- Prepare them psychologically
  - Mock Cross-Examination
  - Place witness in realistic environment
  - Explore witnesses fears



# Prepare Your Witness!!!

- Prepare Nonverbal Communication and Demeanor
  - Nervous habits (rocking, tapping fingers, gum)
  - Dress
  - Attitude



# Prepare Your Witness!!!

- Prepare for use of real or demonstrative evidence
- Prepare for prior inconsistencies
- Prepare problem areas
- Prepare for objections
- Tell witness to always tell the truth

# Prepare for Cross

- Don't ask prosecutor questions
- Short answers; explain on redirect
- Listen! Think before answering!
- Don't forget everything; don't remember more than possible
- Admit to talking to you
- Don't look to defense lawyer for help

# THE PRESENTATION



# Accredit the Witness

- Bring the witness to life
- Make the witness a person the jury will want to believe
- Consider WHEN to do this – how does it best fit into the story

# Organizing Your Presentation

- Primacy and Recency
  - Elicit denials at beginning and end
  - Start with powerful moment then go back and accredit
  - What makes the best story
- Chapter Method
  - Write each chapter
  - Put in most compelling order

# Form of the Question

- Open ended (Who, What, Where, When, Why, and How) / Avoid “Did”
- Short, simple, concise
- Conversational

# Word Choice

- How Big vs. How Small
- How Fast vs. How Slow
- Hit vs. Pummelled

# Talk Like a Person

- No legalese
- No “cop” speak

# Performance

- Body Language
- Use of Courtroom
- Tone of Voice

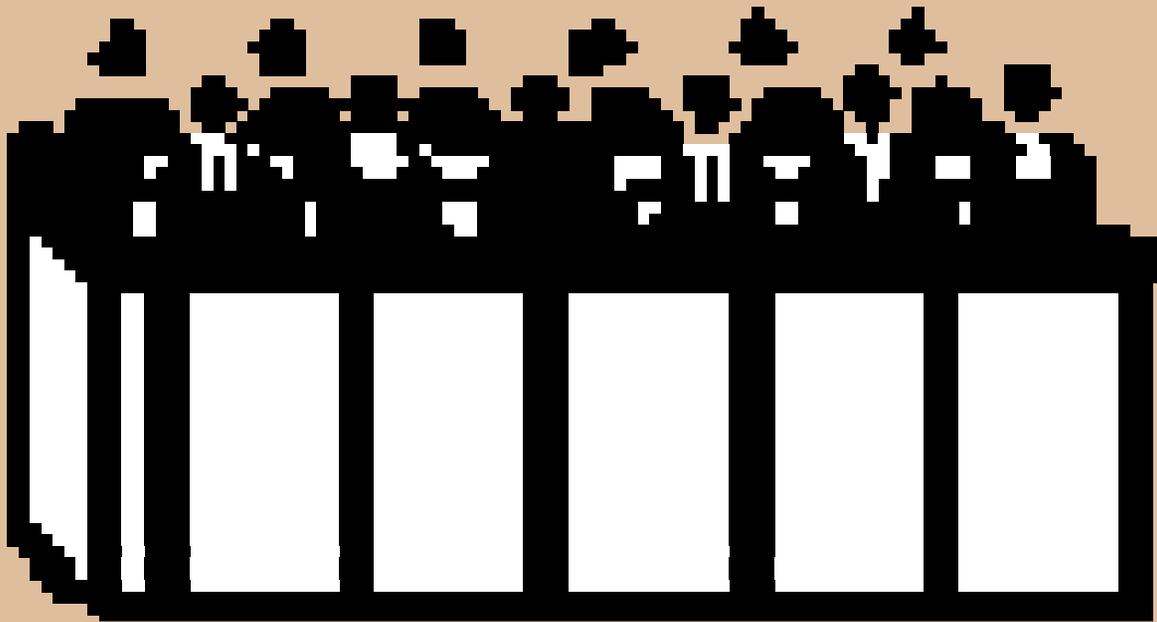


# Listen!

- You won't always get the answer you expect
- Danger of script



# Anticipate Juror's questions



# Deal With Bad facts



# Bad Facts

- The intoxilyzer number
- Bad driving
- Bad field sobriety tests
- Bad statements

# Persuasion Techniques

- Headlines



- Silence



- Looping



# HEADLINES

## Changing subject matter

– Let's talk about . . .

- Changing location

– I want to take you to . . .

- Changing time

– Let's go back to / move ahead to . . .

# Silence

Q: Michael, did you think Officer Fern was trying to trick you?

A: Yes.

Q: How did that make you feel?

A: Very betrayed. I was brought up to believe the police were fair & just.

# Looping

Q: Tell us about your shoes.

A: They were enormous. Maybe two feet long. They were real wide. It was hard to walk in them.

Q: What did you think about walking up that steep damp hill in those enormous shoes?

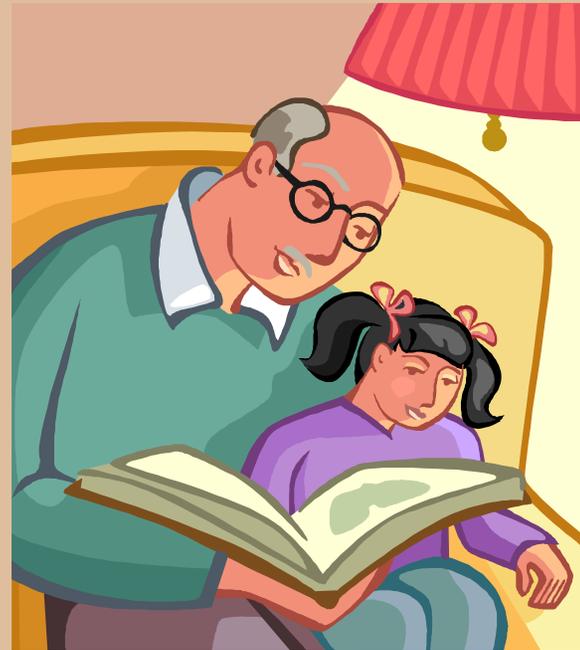
A: It was impossible.

Q: How did you feel taking the one leg stand in those enormous shoes?

A: I couldn't do it.

# How to Tell the Story

- Present tense
- Flash back
- Flash forward



# Tell the Story in Present Tense

Now Michael, put yourself back on that sidewalk with those enormous shoes & tell us about what is going on in your mind.

# Flash Back

Q: Let's leave the drive home for a moment and go back in time to the Halloween party. Tell us about that.

# Flash Forward

Q: Let's move forward in time and tell us what went on with Officer Fern after you felt you were in a game you couldn't win?

# After Direct – You Job is not Done

- Listen for objectionable cross-examination
- Consider re-direct, if any