1 Direct Examination
OPHS Mock Trial
Presented by Brandon Camhi &
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2 What is Direct Examination?
The side to which a witness belongs will conduct the direct examination of that witness
<ul> <li>Ex: Prosecution would conduct direct examination of Dr. Schwartz</li> </ul>
<ul> <li>Goal: To tell a story by eliciting facts that help your side</li> <li>In Mock Trial, each side has 14 minutes to direct 4 witnesses</li> </ul>
3 What is Direct Examination (cont.)
The attorney does NOT suggest answer in question
The attorney asks question that allow the witness to tell the story
Good Question: What, if anything, did you do after you saw the car?
Bad Question: Isn't it correct that you chased the car after you saw it?
4 🔲 What do I do if I'm an attorney?
Ask the questions in a way to minimize objections
Guide the witness through the story
DO NOT tell the story, that's the witness' job
Pose questions in a clear and logical order
Make sure questions build suspense and hook the listener
Respond to witness testimony through "looping" (Described on a later slide)
5 🔲 And what if I'm a witness?

▶ Respond to attorney's questions in a way that holds interest

# Tell a story based off attorney's questions

- ▶Be ADAPTABLE: Attorneys may have to cut or change questions due to objections and timing
- Have an idea of where the attorney wants to go in case of change, do not get caught up in "scripted questions"
- ►Don't ramble, it's boring and loses the audience's attention

#### 6 🔲 I know what Direct is....now what?

- Step 1: Attorneys should consult with other attorneys to determine what information has to come out in each direct
- Step 2: Attorneys work with individual witnesses to select information to be brought up and arrange by topic (time, etc.)
- Step 3: Each general topic or time period is a chunk. Arrange chunks in logical order.
  - Example of a Chunk if Directing Ryan: Events at the Festival

## 7 What goes into a "chunk"

Each chunk has two components:

- Foundational Questions: Place the witness and listener in the right location, show the witness had knowledge to testify to certain information
- •Ex: If directing Devin, show Devin with Becca at festival when Ryan comforted Becca at bar, this gives her depiction of events at the bar credibility
- •Will be objected "Lacks Foundation" if not done properly
- Main Questions: Get out essential information
  - •Ex: Devin will describe what occurred at bar during festival AFTER foundation has been laid

# 8 Ordering "chunks"

- ►Lay-Witness
  - Usually go in chronological order

#### ►xpert

- 1. Establish as expert (credentials, etc.)
  - •Last question of first chunk: May the Court please

recognize \_\_\_\_\_ as an expert in \_\_\_\_\_.

- •2. Overall conclusion (Usually 1 question)
- •3. Tell details of investigation and facts

# 9 D Transitioning Between "Chunks"

#### ►Verbal:

- •1. "I would now like to direct your attention to \_\_\_\_\_"
- •2. Begin asking questions after Step 1
- Non-Verbal:
  - Stay in one place during one chunk
  - ° Can move during transition
    - Only if judge is relatively permissive, judgment call necessary

## 10 How to Write a Question

- ►DO NOT use leading questions
  - Leading questions suggest answer and usually have "yes or no"
    - •Ex: Isn't it true that you were at the store last night"
- Ask questions that allow witness to tell story without being too broad
  - Bad Question: Tell me what you did during the night
- Good Question: How did you begin your night at the festival?
- Minimize Objections (Some hearsay will be necessary, have exceptions ready)

## 11 **Looping**

►To show you are listening to witness and to reiterate a point, it is SOMETIMES a good idea to include a part of the answer in the next question

#### ∘Ex:

- •Answer: When I opened the door, I saw Joe holding a gun to Jacob's head.
- •Next Question: When you saw Joe holding the gun to Jacob's head, what did you do next?
- Only use on important points



### 12 Suspense

If done sparingly, suspense can be use to enhance questions Ex: Have to show fingerprints found all around house

- Method 1: Where, if anywhere did you find fingerprints?
- Method 2: Did you find fingerprints on the door? And the staircase? And the window? And on the sheets?
  - Note: These questions are not leading because they do not suggest answer. A leading question would be: "Didn't you find fingerprints on the door?"
- •Which method is better?

### 13 How to Write a Good Direct

- Step 1: Organize Information into chunks
- Step 2: List information under each chunk
  - Fx:
    - [Chunk Name]
      - •Fact 1
      - Fact 2
      - Fact 3
  - This process will help prevent questions from becoming overly scripted. Witnesses and Attorneys should have this list committed to memory. If this is done correctly, witnesses and attorneys will be able to find different ways to communicate information if questions must be changed

# 14 How to Write a Good Direct (cont.)

▶ Step 3: Identify "Triage" Information

- In some instances, information must be cut due to timing. Although we will have timing worked out well before the competition, it is still advisable to know what can be cut in the event of an emergency
- Step 4: Write Questions (Leave a space between each chunk)



# 15 **Formatting**

- In the Header:
  - Attorney Name
  - Witness Name
- Person Portraying Witness
- JV/Varsity Prosecution/Defense
- Month Day Year
- Draft No.
- In the Footer:
- Page number centered, i.e., Page 1 of 2
- ► Title the Paper: [Witness Name]: Direct Examination
  - Shall be bold & centered
- Number Each Question
  - Answer
- Possible Objection
- Response to Objection (or hearsay exception)
- All questions shall be turned in this format for continuity.
- Font size shall be 12, Times New Roman

#### 16 Example

- What did you see after entering the house?
  - Answer: I saw Jacob holding a bloody knife in his hand laughing
  - Objection: None
- What, if anything, happened after you saw Jacob holding the bloody knife?
  - Answer: Jacob exclaimed: "I did it at last!"
  - Objection: Hearsay
- Response: Admission Against Interest, Excited Utterance
- Review: Rules of Evidence pp. 67-75

#### 17 One More Thing...

These questions are not just the attorney's job

- Witnesses must work with the attorneys to craft questions and responses
- ►It is both the witness' and attorney's responsibility to monitor time