

## **DIRECT EXAMINATION**

Direct examination is the heart of most trials. Except for those criminal cases where the defendant calls no witnesses and does not take the stand (where cross-examination, objections and argument are all the defense lawyer does) direct examination is more important than cross-examination, the opening statement or the closing argument. For, unless the outlook is so dismal that the only hope for one side in the trial to win is to create confusion, a coherent statement of the facts by the witnesses is essential to the jury's understanding and acceptance of your position (J. McElhayne, "An Introduction to Direct Examination", Litigation Magazine, 1974).

The rules governing direct examination are fairly simple. First, leading questions are not permitted. Uncontrolled narrative questions are also not permissible--the attorney may set his/her witness on "automatic pilot" with a narrative question and let the witness fly alone. Multiple and repetitious questions are objectionable too.

A well-conducted direct examination must be carefully prepared in advance by the attorney and practiced with the witness. The direct examination is most effective when questions are put to the witnesses in plain language, rather than legal jargon, which may seem unduly long, stilted or unnatural to the jury.

The following is a list of the sorts of questions that might be asked on direct examination:

- \* "What happened then?" or "What did you see?"
- \* "How long have you worked for Mrs. Smith?"
- \* "What happened after you saw the yellow car?"
- \* "How far away was the other car when you first saw it?"
- \* "How long did you stand there?"
- \* "Did Bill (the defendant) say anything about..."