**Tip on Drafting Direct Examinations and Initial Witnesses Prep**

- Preliminaries when interviewing a witness

-- Thank the witness for taking time to meet with you

-- Introduce yourself and explain what your role is

-- Be kind and considerate. Most people are nervous about the subject matter and setting

- During the interview

-- One Trial Team member directs the interview initially, the other takes notes

-- Let the witness know that people tend to summarize events; you will need details

-- Allow the witness to tell the story

-- If the witness is flowing logically through the recollection

--- Take notes and write down your questions for clarification

--- Refrain from asking questions to disrupt the flow

--- Allowing them to go through the story provides a framework to build on

--- The context allows for recollection of details during the clarification

--- If not, ask questions to draw out information and to get them talking

-- After the initial recounting, ask clarifying questions

--- Provide context (e.g., you mentioned \_\_\_\_, can you recall \_\_\_)

--- Don’t ask the challenging questions yet, keep getting details

-- After the clarification of information, discuss challenging issues

--- Let them know it is good to discuss challenging issues now, rather than facing it on cross examination for the first time

--- Allow them to explain why they may have done something counter-intuitive

-- When done, paraphrase the information and ask for corrections/missing info

- After the interview

-- Take them to the front desk, the witness waiting area, and the courtroom

-- In the courtroom explain where everyone sits

-- Practice them walking to witness stand, facing you, swearing in, and taking their seat

-- Paraphrase their testimony that you expect them to provide; ask if anything needs to be corrected/clarified (or practice a direct exam based on your notes and recollection)

-- Explain the roles and expectations

--- Judge presides and is the expert on law

--- Jury decides what happened

--- Counsel asks questions and argues case

--- Witnesses answer questions that are asked honestly and respectfully

--- If witnesses argue or try to control, they step out of their role and lose credibility

-- Explain how you can redirect after cross exam if needed, but why you might not do so

-- Ask if they have thought about what they will wear to trial; discuss conservative attire

-- Let them know that it’s natural to recall more details in the days following an interview

-- Ask them to call you as if they remember more or need to clarify something

- Sketch the direct exam the same day!

-- Record the answers/information you wish to solicit in bullet form

-- Step back and evaluate the points… Is anything missing? Did you cover the elements?

-- Asking questions can help shape the direct (not limited to the following):

-- What are the key points needed from this witness? What is gained by each point?

-- Do you have to lay a foundation for evidence?

-- Are there areas in which you do not wish to open the door to defense?

-- How does witness’ info fit together? How should you organize the direct?

-- How do the points fit into big picture? What will you raise in opening/closing?

-- Draft simple, clear questions to fit the organization and answers