Direct Examination: Lawyer as Director

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legal advice for themselves and people they know. If you are serious about expanding your client base, then you have to be serious about being seen. This does not necessarily mean “networking” events where everyone is looking for clients, as I find these to be some of the least effective ways to find clients (since the folks attending these events are mainly sellers of services and not looking to buy yours).

In my experience, one of the best ways to meet clients is by volunteering. Do something you enjoy and get to know people without having to openly market yourself. It is an opportunity for you to put your passion and character on display while doing something you believe in, which will attract potential clients. Not only will the experience be personally rewarding, it will also open all kinds of professional doors for you. Once you have built a client base through networking and volunteering, your caseload is bound to increase, since each client can refer to you perhaps dozens of future clients. So be sure to treat each client like gold, as he just may be that valuable during your potential client search.

**Fee Agreements.** While not required in every case, you should almost always have a written fee agreement, with money paid up front — whether by a flat fee or hourly with an advance retainer that will be placed in your trust account. For trust-account setup, you can check with the WSBA for approved banks. Contact Pete Roberts and the WSBA’s Law Office Management Assistance Program for tips and tools when setting up the IOLTA trust account (as well as other great law practice management tools). WSBA has also created a publication on IOLTA accounts, which can be found at www.wsba.org/media/publications/pamphlets/managing.htm. Failing to have a written fee agreement that makes sense and mismanaging client money are two of the most dangerous pitfalls encountered during the practice of law. Making an effort on the front end to avoid these hazards will be time and money well spent.

**Doing the Work/Substantive Knowledge.** Now that you have clients coming in the door, how do you actually go about doing the work? While there is no substitute for experience, preparation is a pretty good alternative. On the preparation front, two of the best sources I have encountered for obtaining a substantive base of knowledge are the Lawyer’s Deskbook and CLE materials available at the law library. While pricey, the Lawyer’s Deskbook, by Dana Shilling ($195), covers nearly every existing substantive area of practice. If you can actually read it cover to cover, you will find that you have become an extraordinary issue spotter. With respect to the CLE materials, someone, at some time, has written about almost every substantive and procedural area of the law, quite often for the purpose of presenting at a legal seminar. CLE materials at the library are free and often right on point. They are the best way to familiarize yourself with an area of law.

As for research materials: sure, we are all hooked on Westlaw or Lexis, but these legal research services are very expensive. This is why Casemaker, the free legal database for WSBA members, has turned out to be such a blessing. Though perhaps a little difficult (or even deficient) in indicating which cases have been overturned or questioned, Casemaker is a great resource for Washington primary law and for a host of other jurisdictions. With Casemaker, you will discover that you can actually practice law without using one of the big two online legal research providers.

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**Direct Examination: Lawyer as Director**

by Maureen A. Howard

A trial lawyer presenting her case in chief through direct examination is somewhat like a film director: the lawyer thoroughly analyzes the case and develops a plan for the most effective way to present the case to the jury to best advance her theme and theory. Just as no script would play out on film the exact same way in the hands of different directors, no case would be presented in exactly the same way by different trial lawyers. Yet there are constants to be found in the steps effective trial lawyers take during their case in chief when presenting their evidence through direct examination.

**The Witness Is the Star, Not the Lawyer.** With the exception of actor/directors (e.g., Woody Allen, Clint Eastwood, Mel Gibson) or those who fancy cameo appearances (e.g., Alfred Hitchcock, Spike Lee, Martin Scorsese), most directors operate behind the scenes. So, too, on direct examination, effective trial lawyers relinquish the spotlight and let the witness take the lead role. One way to do this is for the lawyer (in state court) to position himself back near the corner of the jury box, which forces the witness to talk “to” the jurors when answering questions on direct exam. Another way is to allow the witness to tell her story, not to merely confirm the lawyer’s recitation of it. This means that even when good trial lawyers know they can get away with leading questions on direct exam, they don’t do it. It takes more effort to craft a direct examination using the non-leading questions, “Who . . . ?” “What . . . ?” “Where . . . ?” “Why . . . ?” “Explain . . . .” “Describe . . .” or “Tell me about…”,” but the benefit is that the juror hears the witness tell the story in her own words, boosting credibility.

**The Witness Does Not Testify**

**In a Void.** Few films have characters who appear in critical scenes before allowing the audience to get a sense of who the character is vis-à-vis the overall story. Likewise, good trial lawyers allow the jurors to learn who the witness is in relation to the case before eliciting critical testimony. This is separate and distinct from eliciting background information about the witness. While background information is useful for a number of reasons (building witness rapport with the jurors, relaxing the witness, building witness credibility, qualifying an expert, etc.), jurors are best able to process the significance of the background information — and the rest of the testimony — if they first understand where this witness “fits” in the case. The jury has already been read a
Federal Judges Provide Guidance to King County Young Lawyers

by Ben Nivison

In January, during an event organized and sponsored by the King County Bar Association’s Young Lawyers Division, four federal judges from the Western District of Washington gave young lawyers frank advice about how to succeed in and outside of federal court. Judges John Coughenour, Richard Jones, and Ricardo Martinez served as panelists, and were introduced by the Honorable Robert Lasnik, chief judge of the Western District. The distinguished panel supplied practice tips to an audience of mostly newer attorneys at the federal courthouse in Seattle.

Judge Coughenour focused on what young lawyers can do to hone their courtroom skills. He reminded those in attendance that “trial lawyers try cases.” Acknowledging that trials are becoming more and more infrequent, Judge Coughenour offered several suggestions about how aspiring trial lawyers can get into court. First, he emphasized that pro bono work provides a great opportunity for young lawyers to assume significant case responsibilities. He mentioned the Federal Bar Association’s pro bono panel as a good place for a young lawyer to help real clients resolve significant legal issues while obtaining valuable courtroom experience.

Second, Judge Coughenour recommended that junior practitioners notify their colleagues that they would like to try cases. A stated willingness to do the difficult, in-depth work on cases can help a young lawyer get into a courtroom sooner, said the judge. Along those same lines, he also suggested