

**DIRECT EXAMINATION OF THE ACCIDENT
RECONSTRUCTIONIST BY RICHARD M. BREEN**

*“If I take so many precautions, it is because
it is my custom to leave nothing to chance”
- Napoleon Bonaparte*

The three rules of effective direct examination are: “Preparation, preparation, preparation.”

“Preparation is the cardinal, indispensable quality of direct examination. This requires consummate knowledge of the case, including all claims and defenses, comprehensive information of each witness’ testimony, recognition of the elements necessary to satisfy the burden of proof and determination of exhibits to be used during the examination.” Hon. Steven R. Plotkin.

THE ART OF PERSUASION — the techniques we use to convey our message:

1. SINCERITY — CREDIBILITY	DECEIT — HYPOCRISY
2. HONESTY — REASONABLENESS	EXAGGERATION — OVERSTATEMENT
3. DIRECTNESS — CANDOR	VERBOSITY — OBFUSCATION
4. POLITENESS — PLEASANTNESS	ACRIMONY — CONTENTIOUSNESS
5. GOOD MOTIVATION — (ACTING FOR JUSTICE & FROM DUTY)	BAD MOTIVATION — (SEEKING SYMPATHY & PERSONAL GAIN)
6. STRENGTH -- LEADERSHIP	WEAKNESS — UNCERTAINTY
TOTAL — POSITIVE IMAGE	NEGATIVE IMAGE

Stress to the witness your desire to employ the elements of a positive image and to avoid the elements of a negative image. Towards that end:

- Inform the witness what you expect from them.
- Instruct the witness on attire and conduct.
- Never use the word “insurance”.

- Tell the truth.
- Direct answers to the jury.
- Correct or clarify wrong answers immediately.

EXAMINATION ITSELF

- I. Qualify the Witness.
 - A. Educational background and training in the area of reconstruction — particular courses & training
 - B. Teaching positions.
 - C. Publications.
 - D. Collateral positions.

- II. Investigation — walk the witness through all elements of his/her investigation.
 - A. All documents and things reviewed.
 - B. Trip to the scene.
 - C. Physical evidence (Alexander v. Swearer, Ky., 642 S.W.2d 896, 1983) — testimony must be supported by physical evidence observed by him and these facts must be disclosed to the jury... Expert opinion may not be based on any assumption... Witness statements are not “physical evidence”.
 - D. Elements of the reconstruction (remember some leading questions are permitted with an expert witness Brewster v. Commonwealth, Ky., 568 S.W.2d 232 (1978))

- III. Opinions.

- IV. Bring out witness’ weaknesses and unfavorable evidence.

- V. Debunk Defendant’s experts’ theories and evidence.

- VI. Redirect.

*“Above all — preparation.
 Three P’s — be prompt, polite, and prepared.
 Better yet — preparation, preparation, preparation.”*

- Hon. Charles M. Leibson