GEORGE MASON AMERICAN INN OF COURT

The Art of Direct and Cross-Examination

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Preparing the Witness for Trial

Preparation of a witness for delivering testimony at trial is a crucial step in ensuring that both the witness and trial lawyer are comfortable and confident in the testimony given during a trial. Successful preparation of a witness for trial includes (A) meeting with the prospective witness, (B) identifying and gathering the relevant documents, (C) preparing the witness for each stage of testimony, (D) teaching the witness best practices for effective testimony, and (E) addressing practical and logistical concerns.

I. Meet with the Witness

A preliminary meeting with a witness is a crucial step for trial lawyers to determine what relevant facts a witness can testify to and how the witness will act during the trial process.

First, preliminary meeting also helps trial lawyers determine the specific facts that the witness may testify to. According to the Virginia Rules of the Supreme Court 2:602, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Va. R. Sup. Ct. 2:602. If a trial lawyer determines that a non-expert witness does not have personal knowledge of some of the essential facts of the case, she has adequate time to find other witnesses that may be able to testify.

For potential expert witnesses, a preliminary meeting is essential to determine whether the witness is qualified to testify as an expert in the relevant field. An expert witness is qualified to testify to opinions as well as facts that are not within the province of the ordinary jury's understanding. *Grasty v. Tanner*, 206 Va. 723 (1966); *Venable v. Stockner*, 200 Va. 900 (1959). A witness need not have formal training or education to qualify as an expert but must "have sufficient knowledge of the subject to give value to his opinion" and be better qualified than the jury to form an inference from the facts. *Noll v. Rahal*, 219 Va. 795 (1979). A preliminary

meeting, or meetings, with the expert witness provides a trial lawyer with the opportunity to consider if the potential expert witness is qualified and whether she should testify.

Finally, a preliminary meeting with a witness helps trial lawyers build a rapport with the witness and gauge her personality prior to the trial. Does the witness seem comfortable with the idea of testifying? Does she seem confident in her understanding of the relevant facts? Are there avenues in which opposing counsel may attack her credibility? A preliminary meeting allows a trial lawyer not only to have an understanding of what the witness will testify to but also the person behind the testimony.

II. Identify and Gather Relevant Documents

After meeting with a witness and determining which facts or opinions the witness will testify to, a trial lawyer must then begin identifying and gathering all relevant documents for use in trial.

Key documents include those that corroborate a witness's testimony, help the witness understand the facts, and keep the judge and jury engaged. They can be gathered from the witness, from a third party via a subpoena, or through another party via document requests.

Witnesses should be aware of documents that may be introduced or referenced during their testimony. For expert witnesses, all relevant factual information pertaining to your case or background information should be given to the witness with adequate time for her to acquaint herself with the facts. Remember that opposing counsel may generally request production of any documents given to the witness during discovery.

Every relevant document, including reports and deposition transcripts, should be given to the expert for examination. Your expert may give invaluable assistance in understanding other

experts' reports as well as giving aid preparing your interrogatories, request for admissions and cross-examination.

III. Prepare the Witness for Each Stages of Testimony

A. Direct Examination

A witness should understand that direct examination is the first stage of a witness's testimony at trial and is when the trial lawyer that called the witness directs questions to the witness.

A trial lawyer can best prepare her witness for direct examination by keeping the witness in mind during each step of preparation. Direct examination questions should be crafted with knowledge of the law, facts and witness in mind. They should be simple, direct, free from evidentiary objection, and focused on a single fact the trial lawyer aims to elucidate.

After creating a draft of direct examination questions, a trial lawyer should go over the questions with the witness, determining how the witness will respond to the questions as currently phrased. The trial lawyer can then amend those questions that cause confusion or otherwise do not successfully prompt the witness to convey the relevant facts of the case.

B. Cross Examination

Witnesses should understand that cross-examination occurs after the completion of direct examination and is when opposing counsel directs questions to the witness. Although the witness will not have access to the questions that will be asked by opposing counsel before the trial, they should know that the scope of cross-examination in Virginia is generally "limited to the subject matter of the direct examination and matters affecting the credibility of the witness." Va. Sup. Ct. R. 2:611. For questions by opposing counsel concerning the subject matter of the direct examination, the witness may best be prepared through of the relevant facts through the general

questions about the facts of the case that are asked during the preliminary meeting or during preparation for direct examination.

Witnesses must be made aware of the potential for impeachment by opposing counsel on cross examination. The credibility of a witness may be impeached by any party other than the one calling the witness, with any proof that is relevant to the witness's credibility. Va. R. Sup. Ct. 2:607. Under Rule 2:607, the credibility of a witness may be impeached by several means, including:

> "(i) introduction of evidence of the witness's bad general reputation for the traits of truth and veracity as provided in Rule 2:2608(a) and (b);
>
> (ii) evidence of prior conviction, as provided in Rule 2:609;
>
> (iii) evidence of prior adjudicated perjury, as provided in Rule 2:608(d);
>
> (iv) evidence of prior false accusations of sexual misconduct, as provided in Rule 2:608(e);
>
> (v) evidence of bias as provided in 2:610;
>
> (vi) prior inconsistent statements as provided in 2:613;
>
> (vii) contradiction by other evidence; and
>
> (viii) any other evidence with is probative on the issue of credibility because of a logical tendency to convince the trier of fact that the witness's perception, memory, or narration is defective or impaired, or that the sincerity or veracity of the witness is questionable."

Witnesses informed of each the relevant means of impeachment, and their respective limits, are better prepared for these potentially invasive questions and have time to consider their own responses.

C. Redirect Examination

A witness should understand that redirect examination is the final stage of a witness's testimony and occurs after the completion of cross-examination. The witness should understand that the scope of redirect examination is generally limited to replying to matters brought out in cross-examination, and that new matter will not be introduced on redirect examination. *See, e.g. Fry v. Leslie*, 87 Va. 269, 12 S.E. 671 (1891); 1 The Law of Evidence in Virginia § 11-13 (2021).

Trial lawyers generally use redirect examination to allow witnesses to explain or clarify testimony that occurred on cross-examination, and, if possible, re-emphasize the key points discussed in the direct examination. Should the witness testimony face some issue that can be exploited on cross examination, such as a challenge to credibility, the witness should be assured that these challenges can be rebutted during redirect examination.

IV. Give the Witness Best Practices for Effective Testimony

Opposing counsel can on occasion ask questions to witnesses that may confuse them, and a witness answering a question they misunderstood can be incredibly detrimental to the outcome of the case. Trial lawyers should instruct their witnesses to be careful in their answers. Witnesses should be instructed to (a) be precise in answering, (b) keep answers short, (c) avoid absolute terms, and (d) avoid guessing.

Precision. Precision in word choice is critical in the delivery of effective testimony. Witness precision is achieved in two ways: precise choice of words and precise recollection of events. Precise recollection of events can be encouraged by asking the witness to specify her basis for the testimony. Precise choice of words can be encouraged by ensuring that the witness

is familiar with the kind of material that will be covered in the trial so that she may organize her thoughts and responses.

Short Answers. It will likely be to the benefit of a trial lawyer to instruct his witnesses to give short answers to counsel. This allows the trial attorney more control over the testimony of the case, reduces amount of excess information, and provides an easier to follow story for the finder of fact. This similarly allows opposing counsel the same advantages during cross, but this should be taken into consideration by the trial lawyer in selecting the witness.

Absolute Terms. In order to promote effective testimony, a trial lawyer should prepare witnesses to avoid absolute terms, such as always, or superlative terms, such as best. These terms can leave the witness open to impeaching questions on cross-examination if opposing counsel can identify exceptions.

Avoid Guessing. A trial lawyer must instruct witnesses to avoid guessing at answers. Any wrong answer may cast doubt on a witness' entire testimony. Witness' should understand that "I do not know" and "I do not remember" are acceptable answers, and that they can ask counsel to repeat or rephrase questions that they find confusing.

V. Practical and Logistical Considerations.

Finally, a trial lawyer should do everything possible to help ease the witness's anxiety before the beginning of the testimony. The trial lawyer should explain to the witness the logistics of the trial, such as where the courthouse is located, the room the trial will be held in, the name of the presiding judge, and the date and time they will need to be present. The witness should be informed of the appropriate courtroom attire, that the witness should sit outside of the courtroom until the court is ready for them to give testimony, and that they will be asked to take an oath upon taking the stand. Talk with the witness to determine if transportation to the courthouse

needs to be arranged and answer any questions that they may have about the trial process. These considerations help reduce anxiety both for the witness and for the trial lawyer.

The Direct Examination

I. The Rules[1]

In the most general sense, the rules surrounding direct examination are the Virginia Rules of Evidence, found in Part Two of the Rules of the Supreme Court of Virginia, and the surrounding common law. However, within this larger list are several core rules that govern the day-to-day of direct examinations.

A. Personal Knowledge and Opinions—What can your witness bring to your case?

Rule 2:602 requires that a lay witness have personal knowledge of the facts that he or she is testifying to. Requisite "evidence to prove personal knowledge may, but need not, consist of the testimony of the witness." Va. Sup. Ct. R. 2:602. Moreover, such testimony must generally pertain to factual testimony rather than opinion testimony. *See Hot Springs Lumber & Mfg. Co. v. Revercomb*, 110 Va. 240 (1909). However, the Rules establish an exception to that general principle in 2:701, where it allows lay opinion testimony that is "reasonably based upon the personal experience or observations of the witness and will aid the trier of fact in understanding the witness' perception." *See also Hot Springs Lumber*, 110 Va. 240. Such lay opinion may relate to topics such as "sanity, capacity, physical condition or disability, speed of a vehicle, the value of property, identity, causation, time, the meaning of words, similarity of objects, handwriting, visibility, or the general physical situation at a particular location." Va. Sup. Ct. R. 2:701; *see also Tyler v. Sites' Adm'r*, 90 Va. 539 (1894).

However, at no point are opinions of law or the ultimate issue admissible. Va. Sup. Ct. R. 2:701. Moreover, questions that aim to elicit characterizations of acts or conduct as careful, careless, cautious, dangerous, good management, in the line of duty, necessary, negligent,

[1] Most are pulled from the Virginia Practice Series, Trial Handbook for Virginia Lawyers, Chapter 13.

omitting anything possible, practicable, proper, prudent, reasonable, safe, skillful, usual or unusual are also improper. *See Davis v. Souder*, 134 Va. 356 (1922). Litigators should keep these principles in mind when crafting direct examination questions and laying their foundation, particularly what that witness may or may not testify to.

These rules are somewhat relaxed when it comes to expert opinion. Rule 2:702 and 703 govern expert witness testimony. The rules establish that a witness, once qualified as an expert, may opine on issues that are beyond the general knowledge of the trier of fact. Expert witness qualification may be based on knowledge, skill, experience, training, or education. Va. Sup. Ct. R. 2:702; *see Spencer v. Commonwealth*, 240 Va. 78 (1990) (explaining the Virginia expert standard regarding scientific evidence). Litigators should be prepared to establish their expert's qualifications to the court and be prepared to establish such via *voir dire*. Related to the personal knowledge component of a lay witness, an expert witness's opinion must be based on information personally known to that expert, though the information that forms the foundation for their conclusions need not be admissible. Litigators should also be aware of the various discovery obligations that surround expert witnesses and their testimony prior to trial.

B. Relevancy—What can you ask your witness on the stand?

Evidence must be relevant to be admissible at trial. Va. Sup. Ct. R. 2:402. The Rules define relevant evidence as that which has "any tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence." Va. Sup. Ct. R. 2:401. When evidence may become relevant upon the introduction of additional, later evidence, the trial court has the discretion to admit the original evidence based on the introduction of "proof sufficient to support a finding of the connecting facts" required. Va. Sup. Ct. R. 2:104(b). If evidence is relevant only to a particular purpose, the court may provide a jury instruction that

such evidence is not to be considered for any other purpose. Va. Sup. Ct. R. 2:105. The most commonly cited example of this scenario pertains to a witness's prior inconsistent statements. Litigators should note that even if testimony is relevant, it may still not be admissible if the court deems it cumulative or if its probative value is substantially outweighed by a risk of unfair prejudice or confusion. Va. Sup. Ct. R. 2:403.

C. Form of the Question—How must you ask your questions?

Rule 2:611(c) states that "leading questions should not be used on the direct examination of a witness." A leading question is often defined as a question which suggests an answer. *See generally Vass v. Commonwealth*, 30 Va. 786 (1831). Instead, open ended questions that allow the witness answer from their own knowledge or expertise are preferred.

If the witness forgets a portion of their testimony while on the stand, the attorney may refresh the witness's recollection using a document or other material to refresh the witness's memory and allow them to continue testifying. However, that document or material is not admitted into evidence and opposing counsel has the right to examine the document. *See* Va. Sup. Ct. R. 2:612; *McGann v. Commonwealth*, 15 Va. App. 448 (1992).

D. A Note on Adverse Witnesses

A party may call a witness which has an adverse interest and examine that witness according to the rules of cross-examination. Va. Code Ann. § 8.01-401(A); Va. Sup. Ct. R. 2:607(b); *Weller v. Commonwealth*, 16 Va. App. 886, 892 (1993) (also noting that the rule applies to both criminal and civil proceedings). An adverse interest as including "a party to the litigation, and a person, though not a party, who has a financial or other personal interest in the outcome." *Weller*, 16 Va. App. at 892. A non-party who has non-favorable or adverse testimony to the calling party is not, however, deemed to be adverse for these rules. *Id.* A witness that does

not have an adverse interest but is shown to be adverse or hostile to the calling party during a direct examination may be treated as an adverse witness with leave of court. *Id*; *see also Pendleton v. Commonwealth*, 131 Va. 676 (1921).

II. Tips

A. Know Your Witness

You should know what exactly your witness knows that is relevant to the case, and what opposing counsel might want to get out on the stand. Most lawyers have heard the maxim "never ask a question that you do not know the answer to." While this is not ironclad, at no point should you go on a fishing expedition during your direct unless it is absolutely essential. While some witnesses might veer into unexpected directions, ample preparation is key to bringing them back to the correct line of testimony. Additionally, know your witness's quirks—not everyone has a good demeanor on the stand and some freeze under pressure. If you know about this problem, you can plan a work around so that you can still get the requisite testimony.

B. Dress Them Up (or Down)

Once you know what you want out of your witness and you know the witness's demeanor, have them prepare accordingly. Moreover, prepare the jury of what they are about to see and hear. If the jury is about to hear from a preeminent expert in their field, make sure the jury knows that. If the jury is going to learn what happened from an eyewitness standing right beside the incident, make sure they know that as well. Conversely, if there is going to be a question on how the witness knows their testimony, address the issue head on.

C. Bring Out the Good, the Bad, and the Ugly

Do not let a surprising bad (or good) fact come out during your opposing counsel's cross examination. If there is going to be an unpleasant surprise about the witness's credibility or

knowledge, gain the jury's trust by letting them hear it from your witness during your direct. This will also help you mitigate whatever damage the testimony may have and will reduce the impact of the coming cross examination.

D. Rehearse in Front of Real People

It is common practice to rehearse in front of a mirror or pull your witness into an office to prepare them for a hearing, but make sure that both you and they are prepared for a direct examination in front of a group of people.

E. Welcome Your Experts to the Real World

Ensure that your experts know that this is not a presentation to a panel of peers or to the academy. After all, the doctor isn't in Kansas anymore. The jury will be composed of a broad swath of background, so inform your expert that need to make sure that the information that they are providing to jury is understandable and useful. Ultimately, the fact finder is going to make the decision, so the jury or court needs to understand what the expert is interpreting, the conclusions they've drawn, and why they have drawn them. This is not to say that expert testimony should be simplified to such a degree that it no longer is useful or reduces the witness's credibility or expertise in their field.

F. Know Your Courtroom and Your Judge

Each court and each judge has their procedures, make sure that you are aware of them. Moreover, know the layout of your court, know where you need to be to let your witness's testimony have its greatest effect. A litigator should also know any preferences of the presiding judge and prepare accordingly.

G. Use Notes, but Don't Read

Reading is apparent to an audience. Reading straight from your notes may impact your cadence and lessen the effectiveness of your advocacy and the witness's testimony. Instead, use your notes as a guide when questioning and adapt the exact verbiage to the situation as it unfolds.

H. Be Organized and Strategic

Ensure that you know the general order of your witness's testimony and the various exhibits that you are going to be using in your direct. Prepare the order of both so that you and the witness can lead the fact finder to the conclusion you are seeking with the greatest impact. Lessen any long pauses or awkward moments by knowing where each exhibit is and what information is about to come out.

I. Let the Witness Perform

In a direct examination, it is not the attorney that the jury should be looking to. The witness should be the star to the show. Frame your questions so that they allow the witness to explain what happened or what conclusions should be drawn rather than letting the jury hear it from counsel. It's the witness's show and story during a direct, you are just letting them tell it.

J. Listen to the Answer

When a witness answers a question, listen to the answer. Sometimes the answer may open new avenues for you to get out an important fact in a more impactful way or open the door to mitigate later issues. Moreover, adjusting how you ask your next question based on the witness's response will improve the flow and cadence of the examination. Impactful direct examinations can often sound like conversations between the attorney and the witness, and allow the jury to better comprehend the case as a whole.

K. Use Demonstrative Evidence

Do not just let the witness tell the jury, make use of clear demonstratives that show the jury exactly what the witness is telling them. Often, the witness themselves can use a demonstrative to show the jury where they were, what happened, or how something works. This also helps to contextualize what the witness is testifying to. Showing the fact finder, as well as simply telling the fact finder, is more impactful and memorable than simple words alone. However, counsel should ensure that demonstrative evidence is functional and correct—as one treatise puts it, "Murphy's law has been proven too many times."

L. Don't Screw Up – But Be Realistic

Plenty of preparation will mitigate any unfortunate moments. Preparation will also let you recover when they may occur. However, best practice is still not to screw up!

The Cross Examination

I. Importance of a Good Cross Examination

> "Man is the measure of all things: of the things that are, that they are, of the things that are not,that they are not." - Protagoras
>
> "Every truth has two sides, It is well to look at both before we commit ourselves to either." -Aesop.

Both these quotes show that truth is rarely a simple answer, and often has many versionsand many perspectives. Therefore, because the jury is determined to be the finders of fact and determine whether the burden of proof of guilt has been met, it is important that the jury be presented with both sides, and that the most effective Part of this process is allowing the adversarial counsel to question the "truth" presented by the witness.

Cross-examination is a key tool in the litigator's arsenal to question the witness and test evidence offered, to the finder of fact, to determine guilt. A tool guaranteed by the constitution ofthe United States of America. However, such a power tool, without the proper use, can lead to distraction of the issues, inefficiency in the court system, and a derogation of due process.

II. Key Rules for Cross Examination

A. Know and Stay within the Scope

While Direct Examination has a wide berth in what can be discussed, the Cross-examination is significantly reduced in the scope of allowable topics to be discussed. TheRules of Evidence tell you (a) what you are allowed to cover on cross-examination, and (b) the procedures you must follow. According to Va. R. Sup. Ct. 2:611, cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. *See also Smith v. Irving,* 268 Va. 496 (2004). If you exceed the scope allowed

during cross examination, this could tank your case on appeal if the judge did not prevent or wrongly allowed you to continue, *see Commonwealth v. Swann*, 290 Va. 194 (2015).

If you wish to introduce topics not discussed within direct examination, you have two courses of action: you could request, from the judge, permission to do so, or you can recall thewitness for additional testimony during your case-in-chief.

B. Avoid Argumentative Questions

Unlike what television drama would lead the public to believe, cross-examination is not an attack examination. Media portrayals of cross-examination in the real world would lead to judgesviewing their behavior as improper or impractical. This is your opportunity to challenge your adverse witness, not vilify, humiliate or plain attack the witness. Do not use your cross-examination time to ask argumentative questions, as this will be a waste of time to yourultimate issue and may make the jury see you as hostile to the witness.

III. Tips for a Successful Cross

A. Preparation is Key

Preparation for all parties involved is essential to ensure a successful cross-examination. You should know and have an outline for a vast majority of questions you will be asking the witness. However, ensure that you have flexibility in moving away from your outline. Nothing isworse than following your outline rigidly, getting off center because of new thoughts from witness answers, and not knowing how to reorient yourself.

Proper and thorough discovery and depositions will make your time during cross-examination less difficult than it needs to be. Cross-examination, just like all things in atrial, is based on information. The more information that you have ready to you, the more you can home in on effective strategies and questions you can use to help further

advocate for your client's position.

B. Pay Attention to the Witness

Ensure that you pay attention to exactly what the witness is saying while they are being examined. Lawyers want the best chance to ensure victory for their client so they will jump on the opportunity to discredit a witness on important matters. However, this may not always be thebest course of action. Listen to what the witness says. If they testify in accordance with the depositions, but it is clear that the position is weak or the issue you thought was important is actually far less critical than you first imagined, it may be more beneficial to forgo cross-examining that witness if it would more likely create a bad image of you in the jury's mind.

C. Maintain Control

Direct examination is the witness' moment to speak to the court. Cross-examination, on the other hand, is the opportunity for you, the attorney, to take control of the narrative and either expose flaws in the story or mitigate and/or reverse the damage done by witness testimony. In other words, YOU are in the driver's seat. Do not let the witness take control of what is your timeto shine.

When you begin to question or expose a witness' story they will do one of two things: tryto explain what they meant (giving themselves more air time to mitigate a potentially damaging testimony) or they will answer your questions evasively. Do not allow this. Again, you are in control, therefore, you have the power to steer the course of the examination, respectfully of course. If a witness tries to explain themselves, you have the option of asking them to just answer your question directly, as their attorney will have the opportunity to examine you after, ignore the explanation and emphasize the evidence the witness is trying to

mitigate, interrupt (respectfully) an explanation and request witness to directly answer the question, or have the judge strike the explanation after the answer as non-responsive. Ensuing that you maintain control of the course of the cross is the best way to ensure that you are zealously advocating foryour client.

D. Ask Direct Questions

The way we question people close to us or in a non-legal context is very nuanced, for good reason. Life is never black and white but full of gray areas and we want to fully understandwhat the people around us are going through. However, cross-examination requires a change of style. It requires you to ask pointed questions with little room for interpretation or explanation. Make your questions simple and clear enough so that people of all levels of intelligence will understand the point you are making. If you are creating a map for the jury to follow, make the road simple and clear.

E. Project Strength throughout the Examination

Even if you follow the advice given above, you will still experience situations that you did not anticipate that will require you to pivot and adjust. You must do so seamlessly, lest you expose your weakness to the jury. The jury will of course be listening to what you are saying butthey will also be watching how you are saying it and your bodily expression, and this may be of a larger effect to the jury than anything you or the witness says.

F. Know when to Stop

The late Professor Irving Younger had four simple “rules” for cross-examination:

- When you are winning, STOP;
- When you do not know what to do, STOP;
- When you have made your point, STOP; and

- Before you get hurt, STOP.

Similar to the kick in a street fight, cross-examinations are a period of high risk, high reward. Cross-examination is a powerful tool that can be used to completely undermine or destroy the case of the adversarial party. However, this is also a point in trial that can completelyundermine your own case. Ensure that you have a plan of attack and do not get overzealous in your advocacy that you are in an extended cross that, likely, will create holes that, given the opportunity, the opponent-attorney will use to destroy your argument.

Recent Cases that affected Cross-Examination in Virginia:

- *Graves v. Shoemaker,* 299 Va. 357 (2020*)*. The Supreme Court of VA rejected a "direct relationship" standard for the admission of an expert's bias under Virginia Rule of Evidence 2:411.

FACT PATTERN

Karen Peters is a 51-year-old, married hairstylist, who owns her own business in Falls Church, Virginia. She has two daughters, Susan and Lisa (ages 22 and 20 respectively) whom she also employed in the business. Her husband, Rakim, owns his own printing business.

On February 17, 2019 at approximately 10:30 am., Ms. Peters was driving a 2015 Volvo heading southbound on Route 123 near Burke Lake Park in Fairfax County, Virginia. At that time a 2014 Ford van driven by Arnold Taylor, proceeding in the opposite direction, lost control while rounding a right-hand curve, allegedly after hitting a patch of ice. His van crossed the double yellow line and side-swiped Ms. Peters' vehicle.

Mr. Taylor is a 65-year-old married, retired military officer who was working part-time for Noland's Flower Shop, Inc of Vienna, Virginia. At the time of the accident, Mr. Taylor was returning to the flower shop after completing his deliveries for the morning. He was in within the scope of his employment at the time of the accident.

Two days prior to the accident, it had snowed approximately four inches and the run off from the melting snow from a nearby incline had apparently accumulated across the north bound lane of Route 123 and froze overnight. The speed limit on Route 123 was 45 miles per hour. Mr. Taylor told the investigating police officer that he was going about 40 miles per hour as he proceeded northbound on Route 123. Mr. Taylor told the police officer that he could not see the ice until he was "right up on it" because of the of the right-hand curve. He admitted that he had passed other ice patches in the past couple of miles so experiencing the ice at the accident scene was not a total surprise. Ms. Peters said she really could not estimate the speed of Taylor's van, as she saw him out of the corner of her eye and only for a split second.

Jacob Jarby was traveling about 200 yards behind Mr. Taylor and was following him for about the last 2 miles. He told the officer he saw Mr. Taylor's van slide a bit on some ice about ½ mile before the accident, but that he got his vehicle under control. Mr. Jarby says he saw the van then slide into the plaintiff's lane of travel and sideswipe the plaintiff's vehicle. Mr. Jarby states that he had no problem keeping his vehicle (a 2018 Toyota Camry) under control. He never told the police officer that Mr. Taylor was exceeding the speed limit or that he saw Taylor's van skid prior to the accident. At trial Mr. Jarby testifies that he believes both Mr. Taylor and we were traveling about 50 miles per hour, just prior to the accident. Mr. Jarby has also recently brought suit in another action in Fairfax County case for soft tissue injuries he claims he received in a rear-end accident in January 2020. His case already went to trial and the jury returned a verdict in his favor, but it was well below the amount that was offered to settle his case.

The officer issued a traffic citation to Mr. Taylor for "Failure to Maintain Proper Control." Mr. Taylor marked the back of the ticket "guilty" and mailed the citation along with his check for $75 to the court in order to avoid spending time waiting around in traffic court.

Although shaken up, Ms. Peters refused medical treatment at the scene, reported no real injury to the police officer and drove her vehicle back to her home. Two days later she went to her family doctor with complaints of neck and shoulder discomfort. The family doctor told her to take it easy for a couple of days and to take Advil, as needed. Her symptoms appeared to have worsened over the next

few days and a week later Ms. Peters presented to the Fairfax Hospital where x-rays were taken of her neck which were essentially negative. The emergency room doctor referred Ms. Peters to an orthopedic surgeon in Tysons Corner, but Ms. Peters chose instead to go to a chiropractor in Manassas, Virginia, Dr. Malof, who had previously treated her and her daughter, Lisa, for neck injuries arising out of a previous car accident which occurred in 2014.

After four months of manipulative therapy with little improvement, the chiropractor referred Ms. Peters to an orthopedic surgeon, also in the Manassas area, who in turn, recommended that Ms. Peters undergo an MRI. This radiological study showed no abnormalities in and of her cervical discs, other than moderate ongoing arthritis, consistent with Ms. Peters' age. The orthopedic surgeon, Dr. Clemons, opines that Ms. Peters is not a surgical candidate and she should remain under the care of her chiropractor who now treats her approximately three to four times a month for her neck discomfort. Ms. Peters states that these chiropractor treatments give her temporary relief from her pain.

Ms. Peters has incurred approximately $18,600.00 in medical expenses to date related to her medical treatment. Dr. Molof will state that Ms. Peters will need ongoing chiropractic treatment for an undetermined time in the future.

Ms. Peters has filed suit in negligence against Mr. Taylor and Noland's Flower Shop alleging severe and on-going permanent injuries to her neck as a result of the February 17, 2019 motor vehicle accident. She has since given up her hairstyling business and sold her business to her daughters, because she claims she is unable to perform as a hairstylist because of her injuries. Dr. Molaf is to be called as a expert witness by Ms. Peters who will testify and she has incurred a permanent injuries from the February 17, 2019 motor vehicle accident. Dr. Molaf also recommends that she longer should perform any work as a hairstylist. She now assists her daughters with scheduling and expenses and paperwork at the shop and also helps her husband with the paperwork at his printing business. She is not compensated for either of these roles.

After suit was filed, the defendants filed an answer to the complaint denying that Mr. Taylor was negligent and also denying that Ms. Peters was damaged/ injured to the extent alleged. The defendants do not contend that Ms. Peters was contributorily negligent in the accident. The defendants' attorney requested that Ms. Peters submit to a medical exam at the offices of Dr. Lang, an orthopedic surgeon in Falls Church, Virginia, a doctor chosen by defense counsel. The court ordered such examination. After reviewing all of Ms. Peters' medical records and performing the medical examination, Dr. Lang issued a report reflecting his findings and opinions. Dr. Lang will testify that his examination revealed no objective signs of ongoing injury to Ms. Peters, but concedes that she in all likelihood sustained soft tissue strains to her neck and shoulder from the February 17, 2019 accident. He contends that any treatment and medical bills incurred more than 6 weeks after the accident would not be related to the accident. Dr. Lang further states that Ms. Peters' complaints are very similar to the ones that she made after her 2014 car accident. Dr. Lang will testify that Ms. Peters suffered no permanent injuries from the instant accident and that any complaints she has now is the result of her pre-existing arthritic condition, which has and will continue to worsen as Ms. Peters ages, which is unrelated to trauma. Dr. Lang has testified at the request of defense counsel more than 20 times in the past 5 years, and is being paid $2,500 for his preparation and his time in court in this case.