

## Witness Pre-trial Preparation<sup>1</sup>

You have heard testimony about (specify: the prosecutor, defense lawyer, and/or investigator) speaking to a witness about the case before the witness testified at this trial. The law permits a (specify) to speak to a witness about the case before the witness testifies, and permits a (specify) to review with the witness the questions that will or may be asked at trial, including the questions that may be asked on cross-examination.<sup>2</sup>

[You have also heard testimony that a witness read or reviewed certain materials pertaining to this case before the witness testified at trial. The law permits a witness to do so.]

Speaking to a witness about his or her testimony and permitting the witness to review materials pertaining to the case before the witness testifies is a normal part of preparing for trial. It is not improper as long as it is not suggested that the witness depart from the truth.

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1. Revised in February, 2014 and the last sentence was revised for clarity, without substantive change, in September, 2018.

2. See *People v Townsley*, 20 NY3d 294, 300 (2012) (“The [prosecutor’s] argument suggested to the jury that there was something improper in a lawyer’s interviewing a witness in the hope of getting favorable testimony. That is not in the least improper. It is what good lawyers do.”); *People v Liverpool*, 262 AD2d 425 (2d Dept 1999) (“[W]here the defense counsel argued in summation that the prosecutor improperly coached his witnesses to ‘clean ... up’ problematic information in a police report, it was proper for the court to instruct the jury that there is nothing wrong with a prosecutor speaking to his or her witnesses before trial.”); *People v Fountain*, 170 AD2d 414, 415 (2d Dept 1991) (“This court finds no error in the trial court’s charge to the jury that it is usual, and not illegal, for a prosecutor to talk to his witnesses, in light of the clear and continued suggestion by the defense through cross-examination by defendant’s counsel of the People’s witnesses and summation, that the prosecutor improperly coached the People’s witnesses to effect a ‘cover-up’ of the mistaken arrest of defendant.”).