

Witness Pre-trial Preparation¹

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.²

[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.

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.”).