

Street Law Model Lesson Plan

Topic: Mock Trial Preparation—Direct and Cross-Examination

Steve Murphy

May 9, 2001

Time: One Class (50 Minutes)

Materials: Three Handouts.

- I. Goals: An understanding of how to conduct a direct and a cross examination of a witness will help students to:
 - A. Recognize the difference between open- and closed-ended questions, and when each is used in the examining of witnesses.
 - B. Feel more confident in their ability to question witnesses.
 - C. Better appreciate our adversarial system and the trial process.
 - D. Get greater enjoyment from their Mock Trial experience.

- II. Objectives:
 - A. Knowledge Objectives: As a result of this class, students will be better able to:
 1. Distinguish between open-ended questions that allow the witness to tell his story and closed-ended questions designed to elicit yes or no answers.
 2. Recognize a leading question when it is asked.
 3. Effectively examine a witness.
 4. Play the part of a witness on the stand.

 - B. Skills Objectives: As a result of this class, students be better able to:
 1. Conduct a direct examination of a witness using open-ended questions.
 2. Conduct a cross examination of a witness using short, closed-ended, leading questions.
 3. Play a convincing witness on the stand.
 4. Compete in their Mock Trial.

 - C. Attitude Objectives: As a result of this class, students will feel:
 1. Better prepared for Mock Trial.
 2. More confident in their ability to examine a witness.
 3. More confident in their ability to play a witness.
 4. That Mock Trial is interesting and challenging.
 5. They know more about how a trial works.

III. Classroom Methods:

1. Explain to students that today's lesson is an introduction to examining witnesses, skills they will use in their Mock Trial; that they will be practicing both direct and cross-examination of a witness.
2. Begin with an explanation of the purpose of direct examination, making these general points about direct examination:
 - It is a narrative, the purpose is telling your side of the case;
 - Open-ended questions are used to encourage story telling.
 - It should further your theory of the case;
 - The witness is the focus of attention, not the attorney;
 - It sets the scene;
 - You accredit the witness;
3. Tell the students that for the purpose of this exercise, the questions they will be asking the witness on direct examination will begin with WHO, WHAT, WHERE, WHEN, WHY AND HOW.
4. Offer examples of open-ended questions; for example:
 - “What happened next?”
 - “What else, if anything, did you learn about that night?”
 - “When did you first learn something was wrong?”
 - “How did the scene appear when you arrived?”
5. Explain how questions used on cross-examination differ from those used on direct, making these general points about cross-examination:
 - It is used to further your theory of the case, to elicit testimony favorable to your side;
 - Have just a few points to cover;
 - Only one point should be made per questions;
 - Questions are short, simple, closed-ended, and leading;
 - They should suggest a Yes or No answer;
 - Questions should not be argumentative, or ambiguous;
 - The attorney is the focus, not the witness.
6. Offer examples of closed-ended questions for cross; for example:
 - “You were alone in the room?”
 - “No one else was present when the gun was fired?”
 - “He walked right by you but you didn't see him?”
 - “Your second statement contradicted your first statement?”
 - “You needed money for your daughter's operation?”
7. Tell the students that you will now be handing out the facts of a hypothetical case, on which they will be basing their examinations of the Prosecution's witness, Jack Smith.
8. Pass out HANDOUT #1, the hypothetical facts of The Case of the Grocery Store Robbery, and have volunteers read the facts.
9. Pass out HANDOUT #2, the first Statement of Jack Smith, and have a volunteer read the statement.
10. Pass out HANDOUT #3, the second Statement of Jack Smith, and ask for volunteers to read the second statement.

11. Tell the students that they will soon be dividing into small groups to practice direct and cross-examination, but first ask for a volunteer to play Jack Smith.
12. Conduct a practice direct and cross-examination of Jack Smith; one teacher first asking open-ended questions based on the facts of the case on direct, and then the other teacher asking closed-ended, short, leading questions on cross.
13. Ask the students to count off by three; the ones are Prosecutors and will conduct direct examination; the twos are Defense attorneys and will conduct cross-examination; threes will play Jack Smith.
14. Give the students 5-10 minutes to re-read the facts and the statements and then tell them to begin questioning. While the Prosecutors are conducting the direct examination of the witness, the Defense attorneys should be taking notes and preparing for cross. Stress that this is just a practice exercise and the form of the questions is all that matters, not the content.
15. Teachers circulate around the room, assisting and listening as student attorneys practice questioning their witnesses.
16. Allow the last few minutes to debrief the exercise.

IV. Evaluation:

1. Based on the questions they asked their witnesses, how well did students grasp the difference between direct versus cross-examination?
2. Were the students into the role-play; was the level of concentration and enthusiasm high?

V. HANDOUT #1—The Case of the Grocery Store Robbery:

The Facts:

At about 5 p.m. on the afternoon of June 5, 2001 Jack Smith entered Brown's Market in the Lake City neighborhood of Seattle. Smith was wearing a bandana to cover his face and pulled a gun out of the waistband of his pants. He told the owner of the store, sixty year-old Tom Brown, to give him all his money. Mr. Brown had seen the robber get out of the passenger side of a late model blue, American made car that had pulled up to the curb outside his store. Mr. Brown was working with his wife, Judy, who was in the back storeroom unloading boxes when Smith entered the store.

When Smith demanded the cash, Mr. Brown didn't move. Smith then reached across the counter and pushed the button on the cash register, opening the cash drawer. As Smith grabbed a handful of cash, Brown reached under the counter for his own gun. Mr. Brown came up firing but Smith had time to duck. Unfortunately, the bullet struck Mrs. Brown as she was coming back from the stockroom. Mrs. Brown was seriously wounded but not killed.

Mr. Brown told Smith not to move and he called the police after making sure Mrs. Brown was going to be okay. The police arrived quickly and took Smith into custody. Mr. Brown told the police what had happened, and about the blue, late model American car with what looked like Washington license plates, the ones with a picture of the baseball stadium on them.

Smith waived his Miranda rights at the station house and gave a statement, saying he acted alone, that he had bought the gun he used the night before in a bar in Tacoma and had hitchhiked to Seattle, his last ride dropping him off in Lake City.

Two days later, Detective Vu of the Seattle P.D. took a second statement from Smith. Detective Vu had evidence that Spencer Jones was the driver of the blue car and Smith's accomplice. Vu told Smith his story about the gun didn't make sense and that if he cooperated he might be able to cut a deal with the Prosecuting Attorney's office. Smith chose to cooperate and testify against Jones, who is now on trial for armed robbery and attempted murder.

HANDOUT #2: Jack Smith's First Statement

STATEMENT OF JACK SMITH

My name is Jack Smith. I live at 5555 1st Avenue, Seattle, Washington. I am 27 years old. On June 5, 2001, I attempted to rob Brown's IGA Market on the corner of Lake City Way and Cascade Avenue. During the course of that attempt, the owner of the store pulled a gun out from under the counter and fired at me. I ducked and he shot his wife; I guess she came out of the back of the store. I had a gun but I didn't try to use it. The owner of the store held his gun on me until the police came and arrested me.

I bought the gun from a man I didn't know the night before in a bar in Tacoma, Washington the night before. On June 5, which was a Sunday, I hitchhiked from Tacoma to Lake City. It took me several rides to get to Lake City. I didn't know any of the drivers who picked me up. The last ride was in a late model blue Oldsmobile. I had the driver drop me in front of the grocery store that I tried to rob. I didn't mean for anyone to get hurt, I was just broke and out of work and I can't collect any more money from the state.

Signed,

Jack Smith
June 5, 2001

HANDOUT #3: Jack Smith's Second Statement

STATEMENT OF JACK SMITH

My name is Jack Smith. I live at 5555 1st Avenue, Seattle, Washington. I am 27 years old. I've been told what my rights are and I am giving them up to make this statement. I am making this statement of my own free will. On June 5, 2001, I was involved in the robbery of Brown's Market on the corner of Lake City Way and Cascade Avenue in Lake City. I gave another statement on June 5, 2001, which was false because I was afraid of telling the truth. This statement is the whole truth and nothing but the truth.

On June 5, Spencer Jones picked me up on the corner of 145th Avenue NE and Lake City Way. I knew Spencer from years ago when we were in jail. We weren't that close but we had run into each other in a bar in Seattle about two weeks before the robbery. I think it was called The Shamrock. Jonesy told me about this plan he had to rob a grocery store, said it was going to be an easy job. He said an old man and his wife ran the store and they kept a lot of cash in the store. He needed somebody to help him because he had in been casing the place and he was afraid they might recognize him if he pulled it off. He said he would drive if I helped him. He said a Sunday would be best and that he would give me a call when he was ready, so I gave him my phone number.

On Sunday, June 5, he called and told me to be on the corner of Lake City Way and 145th between 4:00 and 5:00 p.m. and to wait until he got there. I got there around 4:00 and he got there a few minutes after me. I didn't have a watch on, so I'm not real sure about the time. Jones drove around a couple of blocks and we talked. The car was a pretty new blue Oldsmobile. Then he pulled over and gave me a bandana and a gun. I said I thought it was supposed to be an easy job, why did I need a gun. He said the gun was just to scare the old man and the old lady and that it wasn't loaded.

We pulled up to the store and I went in with the bandana on and the gun in my coat pocket. When I got inside I pulled the gun on the old man who was behind the counter. Everything else happened just like I said in my other statement except that after the old man shot his wife, I heard Jonesy take off. That is the whole story.

Signed,

Jack Smith
June 7, 2001