

Trial Preparation

For this group work, you need **three colors of writing utensils** and a few pieces of paper.

Part 1:

Preparing for DIRECT EXAMINATION:

In the blue-sheet of affidavits, the statements are very short, so that students can be creative, and exercise their growing knowledge on court procedures. Your first task, now, is to create scripts of questions and answers from the information in the affidavits that allow a witness to expand on every sentence there, locking down all angles in which this witness could be attacked by the other side, and most importantly, furthering your side's points.

If you were on the Prosecution, Matt would be a witness on your side. Look at his statement. Most people concentrate on the fifth sentence, when Matt writes that Alli said "'Oh no!" However, there is a lot you could make out of Matt's 2nd, 3rd, and 4th sentences. According to the 4th sentence, Alli seemed "nervous" to Matt. It might be tough to describe that to the jury, and possibly Alli's lawyer would attempt to stop Matt from making such a description by claiming it is just a teenager's speculation. The best way to combat Alli's attorney in this, is by expanding on information from the 2nd and 3rd sentences. It is great for the Prosecution that Matt notes that Mr. Tilman first went through Matt's own locker and backpack. Now you can ask Matt how he felt about Tilman doing this. You would want to plan Matt's statements along the lines that he was fine with it, or that at worst he was thinking about missing an important trigonometry lesson during that time, or that Matt was glad the Administration was doing this to get a handle on the drug problem at the school... Whatever it would take for the attorney and Matt to show that Matt was **not** "nervous" about **his** locker being searched. By doing this, you want the Jury to pick up on the fact that one should not be "nervous" about a locker search if there was nothing to hide.

1. Choose one of your three colors of pens, and on your paper make a script of questions and answers for Matt and his attorney that go along the lines of what was discussed above. And, do include the "Oh no!" statement, preparing to handle any objections from the Defense. Though the previous information talked about the first paragraph of Matt's statement, in your own script include information from Matt's second paragraph in the same expanded manner. Again, you need to play-up things like the "four years" Matt has attended school with Alli. You **cannot** have Matt say that they are great friends, or the Defense will counter that when their witnesses are on the stand. And, none of the affidavits say anything about being "friends." Still, you need to get across to the Jury why going to school with Alli for four years helps your credibility. The sentences about Alli never having been in trouble but her friends have? Spin the meaning of that! What does "been in trouble" mean—in a way that helps your side's point? So, Allie is hanging out with kids that get into trouble? Hmmm...

Caution: You cannot make up a lot of new information about other people in this case to which they themselves would never agree. Besides something inflammatory would have been in the affidavit. Saying that Alli was "nervous" is a lot different than surprising the court with, for example, the idea that Alli whispered in Matt's ear that there was drugs in her locker. Likewise, you can't make-up a situation in which Matt has seen Alli deal with drugs in the past. Rather, you are simply to *expand on the existing information, and spin it to enhance your side's points.*

2. Using a different color pen than the one with which you wrote the script, go through your script and put an **X** by all questions in which your attorney asked your witness a question and your witness' response was a simple "yes" or "no."

3. As you might remember from a previous class handout, it is against court rules to ask your side's witnesses any yes-or-no questions. That would be "leading the witness." (Your opponents on the defense would object, and the witness would not be allowed to answer.) Now, with the same pen you used for #2, rewrite any question with an **X** by it, so that the attorney is simply prompting the witness to give information. You may have to write several questions and answers to get the same point across to the jury that you were trying to make with just one yes-or-no question.

Examples:

Marked with an X: So, Matt, Tillman searched your locker too, right? **Yes**.
But, you weren't nervous? **No**.

Rewrite: Matt, tell us what happened during the locker search involving you and Alli.

Mr. Tillman pulled several students from their classes to search lockers for drugs, and Alli and I were one of them. Um...Mr. Tillman searched my locker just before Alli's, closed it and moved on to Allies. There he...

Matt, how did you feel when he was searching through your locker and backpack?

I didn't care. I had nothing to hide. Heck, I'm glad the Administration is doing something about the increase in drugs on campus.

Please clarify, Mat. When Mr. Tillman was searching your backpack in your locker, what were you feeling? What was your demeanor?

You see, rather than those two first attempts that were simple yes-and-no questions, you would have to write three or more questions that have the witness give real information and explanations. The attorney can't be the person who gives the court real information (through his question to the witness).

- *Do **not** start making a new script because of this, just squeeze in your rewrites using margin space or by using arrows, or whatever. Though this may be a bit messy, your additions and changes must be able to be read by your teacher.*
4. As you may remember from your previous class work, the opposition's lawyers can stop a witness from giving an opinion on the matter at hand (unless the witness is an "expert witness" on the matter at hand). Matt is not giving an opinion if he testifies that he—himself—was not nervous during the search. However, Matt's attempt to state that Alli was nervous could be argued as Matt's inadmissible **opinion** (—unless you can explain why its not an opinion or why his opinion on this item should be allowed).
- A. Now, look at your script from the opposition's point of view. Is there anywhere they will stop your questions or answers based on your witness giving an opinion? If so, use your third color of pen and mark those questions with an **O**.
 - B. Next modify the questions you marked with an O, maybe keep one as it is (hoping to slip one raw opinion by), or establish your witness as an expert in an area relative to the question. You can decide to try to keep only ONE unsubstantiated raw opinion in your script for this witness. You'd be hoping that your opposition wouldn't catch it or stop you. (However if you leave in more than one raw opinion in your script, you will be graded down.)
- *Again, you may be making this script messier, but your changes must still be understandable!*

5. On a new piece of paper, apply the previous four steps to a script for Sandy the Science Partner and her attorney. (You do not have to follow all four of the previous steps exactly, but you are accountable for a finished product along the same lines.) Before you start, consider the following:

No sentence is of too little import in her paragraph on the blue sheet. Again, students that participate in a mock trial make the mistake of homing-in on one inflammatory phrase (like Sandy's statement about Alli seeming "hyper"), but then they neglect other important information that makes the witness credible; like Sandy's 2nd sentence: "We do all of our experiments together." This statement could establish that Sandy has a lot of experience with Alli in science class over the year (or years?), and so she can indeed make qualified comments about a change in Alli's performance; like maybe an "expert"... You might create more questions and answers that really get this point across to the jury; like how many experiments over the months and years, and how calm and focused Alli used to be as she pursued good grades... You are establishing, then, that your observations (informed opinion?) about Allie's recent poor performance and behavior are valid; that you have truly seen a change. Finally with Sandy's script, you may still have to try to just slip one unsubstantiated opinion by the court. It seems pretty vague and opinionated when Sandy writes, "I think she has some other problems." Though we know what the Prosecution is getting at with this statement, nowhere does any affidavit say that Sandy has any solid knowledge that Alli does drugs, and again, you can't make-up something that drastic for this exercise.

Checklist for script involving Sandy:

- No yes-or-no questions allowed! Sandy must be the person who gives the court real information, not the attorney.
- Watch out for Sandy's opinions. Either ask several questions that first establish her qualification to make a given opinion, resort to sneaking ONE opinion through, or get rid of any opinion you can't make work.
- Don't skip ANY little detail! Every little sentence has two or more questions that help make Sandy valuable to the Prosecution's case.
- Recheck your full script for Sandy, and make changes as you find faults.

There is greater help for your side behind every sentence in the affidavit. (You will need to create it within the realm of obvious possibility; nothing ridiculously outlandish.)

6. In the two scripts that you have completed, is there any question you can ask your witness that would help shore-up the statements by your side's other witnesses? Though you have not made a script for Tilman and his attorney, read his affidavit and apply his information in this step.

Here is an example in which I have added information to Matt's testimony—that is not in his affidavit—to support Tillman's points.

In Tilman's affidavit, he stressed that there has been a more public drug problem at the school and that the school board wants him to get a handle on it. Matt's affidavit has nothing about the school's drug problem. But, being a student, you can assume he has some sort of view of this school-wide problem. So, in the examples written under task #3 (previous page), I had Matt mention the drug problem in his answer about something else, and he even said he was happy the principal was doing something about it. (See this in #3 on the previous page). This helps the whole Prosecution's case, making Mr. Tilman's views more credible, making searches of locker contents more acceptable to jury members, and more.

Here is an example of added information on the Defense's side:

Alli's affidavit says she is a bit overwhelmed with track, job, band, and more. Though Rob (Alli's cousin) has nothing about track in his affidavit, you should consider how you can slip something into his testimony that would contribute to Alli's statements about how busy she is due to track. Similarly, when Alli is on the stand, she should comment about how close she is to Matt, so Matt's opinion about Alli's busy schedule is valid. You need to consider creating such testimony for each witness, based on what you are going to have other witnesses say. Have the witnesses support each other!

7. Mr. Tilman, Vice Principal. –Time for a brand new piece of paper! Using what you've learned from your previous work, make a script that covers all information—and more!—noted in Mr. Tilman's affidavit **AND** from information in the packet titled "**The Facts**" of the case. –You must draw from both of these handouts! Naturally you will create prompting questions that get Tilman to tell the jury all the basic facts of his search and what was behind it. However, make sure you really make something of his past as a police officer to bolster his credibility in searching techniques, the law, the view that the school does have a drug problem, and more. (Had this Vice Principal not been a cop, then his credibility would be up for debate more. But, having been a trained and experienced cop, you can argue he has broader expertise in matters of drugs and searches!) Yet, all these points, will need to somehow be brought out in the correct forms of questions and answers! (That is, the attorney cannot make a speech to the court. Only the attorney's questions and Tilman's answers will get your spin about "experience" out.)

Checklist for script involving Mr. Tilman:

- No yes-or-no questions. (That would be leading the witness.)
 - Watch out for Tilman giving opinions without first setting him up as one who is an "expert" in the area of the opinionated question.
 - Don't skip ANY little detail! Every little sentence has two or more questions that help make Mr. Tilman valuable to the Prosecution's case.
 - Recheck your full script for Tilman (X's and O's), and make changes as you find faults.
 - Finally, check to see if you can add any little details to Tilman's script that bolsters what the other two witnesses on your side have said! There is an item or two from Matt or Sandy's testimony that a Vice Principal would know about...
8. For Mr. Tilman's script we are going to go farther than just what has been written and said by our side's witnesses. Tilman's testimony must also head-off where information and excuses by witnesses from the other side!
- A. Read through Alli's and Rob's affidavits. What is the general excuse they are going to make about the drugs, the backpack and Alli's innocence? In your answer, include what Alli will say as to why she never knew the drugs were in her backpack? –Regardless of the backpack's origins and her throwing the backpack aside until Monday, did Alli not notice there was a baggie of cocaine in it?
 - B. The other side will also use some of Tilman's own testimony. What does Tilman's affidavit say that could bolster Alli's testimony that she didn't know the cocaine was in there? Add to this that Tilman is a trained cop! (–Even He almost missed it...?)
 - C. Now, taking your information for A and B into consideration, head-off these excuses and problems with your witness, Mr. Tilman, by adding to Tilman's script. Somehow bring up the opposition's ideas with Tilman, and spin them to your own advantage! After all, Tilman will be on the stand before Alli, so your team will have deflated the defense's excuses before they even get a chance to bring them up. (-:

9. Was it legal to search the locker and the backpack? Did Tilman break a law or violate rights in the Constitution?

A. Again, add questions and testimony to Mr. Tilman's script to head off this upcoming complaint by the Defense. You will use regular laws and the Constitution to show that everything Mr. Tilman did was legal.

For example, using the second page of the handout titled "The Facts," the following question could be formed in your script:

Mr. Tilman, there are some who would say that your search was illegal, unconstitutional, that you need a warrant to search someone's personal possessions. What would you say to that?

In your script, formulate an answer to this question that uses information from the Washington State Constitution **and** the photocopied page of RCW's. (And, yes, you must use and quote information from this page of RCW's! –starting with section 28A.600.210.)

B. Prepare a more detailed "**summation**" of this issue of constitutionality and the law that will be given in a speech by the attorney. The attorney will be allowed to break from the court rules (of just getting answers from a witness), and simply speak to the legality of the search.

Why can this be done?

When an accusation of constitutional legality is brought to the court's attention, the judge can suspend the normal flow of the proceedings, excuse the jury for a time, and have the attorneys argue simply argue in front of him whether or not the constitution (or the law) was disobeyed.

Your group needs to write this separate argument for the attorney.

Write this on the same paper as Tilman's testimony or on a new piece of paper.

Next: **Part 2**



Part 2: Preparing for CROSS Examination:

A cross examination is where you get to ask questions of the opposing side's witness. These are not YOUR witnesses, as has been the case with your previous work. Thus, they are considered "hostile witnesses" to your side, and a key rule for forming questions is brought into play:

You CAN ask them yes-and-no questions!!! This is huge!

- Essentially, you can lead their witnesses! In fact, to be safe, you almost always want to ask the opposing witnesses questions that will only require them to respond with one word, like "yes," "no," "up," "down," etc.
- The opposition has called witnesses that are sympathetic to their case, and in this case want to see the defendant set free. If you ask the opposing witness to relate part of their story to you or to explain something, they will do this in a way that helps them and hurts your case. So, don't ask them to explain anything or to expand on anything. Just ask them simple yes-or-no questions that they have no choice to answer in the way you want.

Thus,

◆ **Rule #1 for Cross Examination:**

Only ask an opposition's witness questions that can be answered with a "Yes" or "No" (or with one word).

◆ **Rule #2 for Cross:**

If the opposing witness attempts to answer your yes-or-no question with anything but a "yes" or a "no"—that is, she starts to give an explanation of her thoughts and knowledge—then cut her off and insist that just a "yes" or "no" is all that is required. If a witness says, "Well, ...yes, but you have to understand that it was spring time and..." then the cross-ex lawyer who asked the question must raise his voice and say, "STOP, just a simple Yes or No, please."

(The witness MUST then stop and comply.)

Here is a sample cross-examination section for you to ask Rob in order to discredit two simply statements in Rob's affidavit. It uses the two aforementioned rules. Rob wrote, "**Alli is a good kid. She doesn't get into trouble.**"

Rob, does Alli live in her parents' home?

Answer: Yes.

She does not live with you in anything like full time.

Answer: Correct.

Rob, if you do go to the same school as Alli, you don't have all classes with her.

Answer: No. But we have had one or two in the past.

Ok, so, you might have one class with her, and that's five periods out of the day she is not with you.

Answer: Correct.

When you are in class together, like most students, don't you have to work on academics, assignments, listening to the teacher?

Answer: Sure.

So, it is safe to say that you really can't share life's deep problems in classroom, during class nor in the three minutes between classes.

Answer: I s'pose.

So, Rob, she doesn't live in your house, and you don't hang out together in class.

Answer: Ok...

Alli is in track, band, and has a job, right?

Answer: Right.

It would be unreasonable to assume you are in all of those activities with her. Even if you were in Track, you don't work at the grocery store with her.

Answer: Ok.

And if you are in track together, you're not chatting up a storm, you are working out most of the time?

Answer: Well, there are times at track when...

STOP. Answer my question with a yes or a no. Track practice is more about working out for and with the team rather than for sitting, socializing, and delving into deep, personal issues with those around you. Any coach would agree with that, right?

Answer: Ok.

I am sure how much your two families do visit each other, but those visits cannot amount to every-day visits, as Alli's schedule shows.

Answer: Well, we see each other a lot.

I am not sure what you mean by that. She doesn't live with you, she doesn't visit with you during the hours of class you have at school, you don't "visit" at track or at work, so ...you see her a lot?

Answer: ???

If you two get together Sunday afternoon, I'm sure it's a nice visit. But, really "**knowing**" her and what she is up to does not seem correct.

Now, Rob, next you say that she does not get into trouble.

Answer: Right.

But, we've established that you can't know all that's really going on. Tell me, Rob, do **MOST TEENAGERS** go over to relatives houses and proclaim how much they've gotten into trouble? I mean, does one family visit another and the teen say, "*Attention everyone, I just want you all to know I have been getting into a lot of trouble lately and have started using cocaine... Thanks, go back to your dinner.*" That would be silly, right?

Answer: Fine.

So, Rob, you are not with her all day at school, you are not chatting up a storm when Alli is at track, you don't work at the same store that Alli works, and yet you wrote to this court that that Alli is good and does not get into trouble. Shouldn't you simply add that Alli does not get into trouble...**that you know of?!**

Thank you. No further questions.

SO, to tear apart just those two sentences of Rob's, I asked 13 yes or no questions!

But, there would be more than just those two sentences for you to tear apart.

Look earlier in Rob's affidavit. He states that Alli does not use drugs. In cross, I could have just as much of a hey-day. (With leading yes-or-no questions, I could establish that Rob wouldn't know because he is not with her all that much and she probably wouldn't tell a nice guy like Rob that she uses drugs... Along those lines, I would first ask Rob if he uses drugs. Naturally, he would respond that he certainly does not. I would ask Rob if he hangs around with drug dealers and users. With a response of "no," I would ask Rob that since—as he says—he and Alli are so close, she knows of his feelings about drug users. With a "yes" response, I could assume then that Alli would not tell Rob if she used drugs. Get it? It takes quite a few questions to get to that point, but that is the way of Cross Examination.)

10. Using your understanding of the previous example and the rules for creating questions for cross-examination, make a cross-examination script of questions (and expected answers) that you would use against Ms. Swanson, the band director.

**Another example of Cross-Examination:
Prosecution's witness, Vice Principal Tillman.**

He states that he found the cocaine in an inside zippered pocket, and that he almost missed it. He also states that he was a police officer for some time before being a vice principal. So, a lot of cross-ex questions go into making it known that a trained cop almost missed an inside pocket in this recently purchased backpack.

Mr. Tillman, you are aware by now that Alli bought the backpack in question at a garage sale on a Friday, and you searched the backpack on the next Monday?

Answer: Yes.

So she bought it on Friday, took it home, threw some stuff in it Monday morning and went to school?

Answer: Sorry, I couldn't say.

[An answer like this is ok. **You just wanted to get that fact out there!**]

Mr. Tillman, is it true you were a police officer before being a Vice Principal?

Answer: Yes.

And as a police officer you were trained in search techniques and what to look for?

Answer: Yes.

And yet you state that you, a trained police officer almost missed this inside pocket?

Answer: Well, yes, but...

The "YES" will be fine. You may stop answering now.

[Cross-examiner may cut off witness, it is allowed if the Cross Examiner asked for a YES or NO answer.]

It can also be assumed that Vice Principals are trained in how to search students, right?

Answer: Ok.

Mr. Tillman, you also state that you help train other school administrations in how to handle such drug problems. Right?

Answer: Yes.

So, a trained cop, a trained Administrator, and a specialist that help train others, and YOU almost missed this inside pocket.

Answer: Well, yes, but there was lots of...

I will just take the YES. You can stop answering. You almost missed it -- yes or no?

Answer: Yes.

So, again, lots of questions just to go after that **one** sentence.

Another great tactic for cross-examination: Analogies.

For instance, to counter Matt's statement that Alli seemed guilty because she said "Oh, no!" when Vice-Principal Tillman found the cocaine, you should ask Matt if someone might say "oh no" if a car hit his car in a fender bender, if they were tripped and spilled some... ..and so on. I would ask anywhere from three to six such analogies of Matt, to prove my point that the exclamation "oh no" was natural, not one of guilt.

Another place an analogy would help is when crossing Alli about her claim that she didn't look at the backpack all that much before she bought it. First, establish that a backpack is an important, vital item to students; and that it must really do the job needed to carry so many different things...etc. Then, start with the analogies. Ask Alli if it is reasonable to assume most people would check out a used car before they bought it, check under the hood, look at cup holders, etc. Then ask Alli the same question about another vital item you can think of. Then another. In some or all cases, ask her if it is Unreasonable to assume that someone would not check out [said vital item] before they bought it and relied on it. At the end of your analogies, ask, "So, Alli, you are saying that you did not checkout this backpack?—this item that will have to hold cell phone, pencils, binders, and.....? [Remember, if she says "no" and starts to explain, you are allowed to cut her off. Just stop her at "no," shake your head in disbelief, and either be done or move on to another item that you need to question her about.]

11. Write a full cross-examination script that pokes holes in all aspects of Alli's affidavit.

Use yes-or-no questions that will go your way,
and
use analogies as I have outlined above.

Next: **Part 3**



Part 3:

REDIRECT: You get the last word with YOUR witness!

After the other side has cross-examined your witness, you may ask your witness to clarify or correct anything from what was said (or went unsaid) during the cross examination.

Go back to the page with the example cross-ex questions for Tillman, and re-read it.

If you were Tillman's lawyer you would have made notes during the cross on what questions you would need to ask Tillman order to shore-up what was "twisted" during the cross examination. During these last words that the jury would ever hear from your witness, you would allow Tillman to "fully" expand on any answer that the cross-lawyer cut off or twisted:

Mr. Tillman, can you explain your response that you "almost missed" the pocket that held the cocaine in the backpack?

Answer: *YES! Thank you. There was a lot of stuff in the backpack, books, uniform, and more. I was not expecting to see something like a hidden pocket inside a section, so yes, I almost went right by it. But, in the end, I didn't. Even with all that stuff in there I did not miss it. If the backpack were empty, that pocket would be easy to spot...*

If cross-ex did their job right, you should have quite a few redirect questions for your witness.

You are **not** bringing up rehearsed, new information, you are simply redirecting your witnesses to the questions asked by the cross lawyer, and for your witness to add necessary information for your side. (In essence, this is about the other side not getting the better of your witness!) So, in preparation, there might be no script for redirect. You make notes while your witness is being grilled, and allow your witness to expand on information he wasn't allowed during cross; and in the end, make your side look good.

12. Though you normally would not get to make a script for redirect, exercise this skill nonetheless, by using the cross-examination you made for Alli in your work for #11. In this, you are switching roles and looking at your results for #11 as an opponent would. If the cross you made in #11 went successfully, then what would Alli's lawyer want to redirect Alli to talk about? Generally, what are some key things Alli should say to de-bunk the cross that you wrote?