

# Cross-examination Problem

## 2015

Each student will cross-examine Mary Smith, who is the government's chief witness in the case titled *United States v. Abdul Ibrahim Rahman*. You represent Rahman who is accused of trafficking in crack cocaine. Smith claims that she was a street dealer selling crack cocaine for Rahman's cocaine organization. On Sept. 11, 2014, she was arrested by officer Sam Robinson of the Miami Police Department for selling crack on the corner of NW 2<sup>nd</sup> Avenue and 11<sup>th</sup> Street in the Overtown area of Miami. She sold 3 vials of crack to Robinson who was working undercover.

At her first appearance hearing before the federal magistrate, she claimed she was indigent and was appointed the federal public defender. He informed her that the penalty for trafficking in crack cocaine is a mandatory minimum sentence of 10 years and that her sentencing guideline calls for 20 years in prison.

Smith was kept in solitary confinement at the downtown women's jail for several weeks because she was considered an escape risk. Finally she agreed to testify against Rahman. While in jail she signed a plea agreement promising to testify against Rahman in exchange for a promise by the federal prosecutor to recommend a three-year suspended sentence. After she signed the agreement, the prosecutor immediately went to court and convinced the judge to release her from jail on her own recognizance without posting any monetary bail. Smith will not be sentenced until after she testifies in court against Rahman.

Your investigator discovered that Smith was romantically involved with Rahman, but they broke-up when she found him in bed with one of her girlfriends. She had been living with Rahman at the time in a Brickell Avenue condo. She immediately moved out. Smith has a five-year-old

daughter named Samantha. She is estranged from her family and no one will take custody of her.

On direct examination, the prosecution introduced her written plea agreement into evidence. The agreement stated that she faced a 20-year prison sentence, but if she fully cooperated and abided by the terms of the agreement, the government would recommend to the court that her sentence be reduced to 3 years' probation. She testified that her plea agreement required her to tell the truth in order to obtain her sentence reduction. If she failed to cooperate or did not tell the truth, the agreement would be revoked and she again would face a 20-year sentence. A specific paragraph in her plea agreement required her to testify against Rahman in order to qualify for substantial assistance credit.

Strategy: This is the star witness for the prosecution who is only testifying because of her plea bargain. Obviously she seeks a reward for her testimony. This should make her testimony less reliable than the ordinary witness to a crime. You must expose the weaknesses of her credibility to the jury. How do you do this? Get into her head. Role play. Think like her and brainstorm why she is testifying. What is her motivation? What does she have to gain? Your job is to expose all her fears, and hopes to the jury. There is no need to be hostile, but rather firm and be sure get responses to your questions.

Cross-examination is one of the most difficult trial skills to master. This exercise is designed to test your tactical ability to punch holes in the believability of a witness. Be prepared to explain the purpose behind each line of questions you ask, how it fits into your theory of the case and thereby advances your goal.