

Cross-examination Problem
2021

In our first class on August 23, 2021 each student will be prepared to cross-examine Mary Jones, who is the government's star witness in the case of *United States v. Stephen Smith*. You represent Smith who is accused of trafficking in crack cocaine.

Jones testified on direct examination that she was a street dealer selling crack cocaine for the Smith cocaine organization. On Sept. 11, 2020, Jones was arrested by officer Sam Robinson of the drug task force of the Miami Police Department for selling crack on the corner of NW 2nd Avenue and 11th Street in the Overtown area of Miami. She sold 10 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.

Jones was kept in solitary confinement at the Federal Detention Center for several weeks because she was labeled as an escape risk. Finally she agreed to testify against Smith. She was brought to the federal courthouse and she signed a plea agreement requiring her to testify against Smith 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 into the courtroom and convinced the judge to release her from jail on her own recognizance without posting any monetary bail. Jones will not be sentenced until after she testifies in court against Smith.

Your investigator discovered that Jones was romantically involved with Smith, but they broke-up when she found him in bed with one of her girlfriends. She had been living with Smith at the time in a Brickell Avenue condo. She immediately moved out and began living in an Overtown apartment with several crack addicts and prostitutes. Jones has a five-year-old daughter named Samantha. She is estranged from her family and no one has come forward to take custody of Samantha.

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 Smith in order to qualify for substantial assistance credit and the three year suspended sentence.

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 the questions you ask, how it fits into your theory of the case and thereby advances your goal.

This problem gives you several areas of cross-examination. You may follow all of them or only one or any combination of them. The purpose of the exercise is to get you on your feet asking questions and confronting a hostile witness.

Don't be concerned that you have no experience with cross-examination. None of you do. My teaching method is to have you do the skill first then coach you how to improve and master the skill.