

# STRATEGY ANALYSIS - LESSON PLAN FOR TEACHER OPENING STATEMENTS

- A. Main arguments in favor of each side
  - B. Facts that support/weaken each major argument
  - C. Evidence for each side
  - D. Opening statements
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## ACTIVITIES

### ASSIGNMENTS -

#### Sides of the Case

Assign students to prosecution/plaintiff or defense/defendant teams. Specific role assignments (attorney, witness) need not be given yet. However, having a particular point of view will help the students engage in strategic case analysis. Once students are divided into prosecution/plaintiff and defense/defendant teams, team captains might be designated by appointment or election. These students could help lead small group discussions and help direct case preparation.

#### Strategic Analysis by Teams

Split the students into two team groups (prosecution/plaintiff and defense/defendant). Each team should discuss the following:

- A. What does our side want to achieve in the case?
- B. How will we accomplish this goal?
- C. What evidence do we have to help us?
- D. What evidence do we have that hurts us?
- E. What can we claim we will prove in the opening statement?

#### Team Brainstorming for Opening Statements

Brainstorm and focus on:

- A. What are the most important facts we want to tell in our opening?
- B. What evidence will we present that we should stress?
- C. What kind of ruling do we want from the judge?
- D. How will we ask for that?

#### Homework

Students should bring their individual opening statements. Each student should have a chance to present their prepared statement to the team. The team should decide which statement is best or which portions of various statements might be used in combination.

***NOTE:*** Be sure the students are very familiar with the facts of the case ***BEFORE*** your Attorney Coach arrives. The Attorney Coach must not be expected to teach the students the case. They can best assist you and the team when all team members are prepared and know the facts.

# PREPARATION OF PROSECUTION/PLAINTIFF & DEFENSE/DEFENDANT CASES

## WITNESS EXAMINATIONS & CLOSING ARGUMENTS

- A. Logical sequence of direct/cross examination questions designed to achieve purpose of witness examination.
- B. High points of ideal closing arguments
- C. Important points made in the witness affidavit.
- D. Correct witness responses to questions

### **Role Assignments**

The teacher coach should assign students to specific roles required in the trial materials . Alternates should also be appointed for each role.

### **Reading Assignment**

Students should read *ALL* the case materials again and study the particular parts of the case materials applicable to their assigned roles.

### **Small Group Preparation**

Separate the class into prosecution/plaintiff and defense/defendant teams:

<u>Role</u>	<u>Prosecution/Plaintiff - Defense/Defendant</u>	
Witnesses/Alternates	P1	D1
Examining Attorneys	P2	D2
Attorneys/Opening/Closing	P3	D3

### **P1 and D1**

Drill students on their knowledge of the facts and their witness statements. By taking turns drilling each other, team members will acquire information about all other witness statements. Witness #1 is the first to be drilled. Starting with "State your name, please" and proceeding through the witness statement. Witness #1 is asked every conceivable question by other students in the group. Witness #2 and #3 go through the same process and then the alternates follow. The questioning drill continues around the circle until each student can answer the questions without looking at his/her statement.

Once the initial knowledge is acquired, the Witness Group should focus on style and characterization. Going around the circle again, the students should help each other try to develop a specific type of character and responses to fit their roles.

**P2 and D2**

During This session, the attorneys conducting each direct examination begin designing the questioning strategy for each witness in consultation with the other attorneys in the group. The group should start with Witness #1, and, as a group, outline the basic series or direct exam questions needed for that witness. They then do the same for Witness #2 and #3. Attorneys should write out the examination questions for homework.

**P3 and D3**

This group should brainstorm the main points to be included in opening statements and closing arguments. After the outlines are planned together, the students then work independently to write the statements. These can also be drafted for homework. Once the statements are written, the students reconvene to hear and critique each other’s statements.

**Small Group Preparation**

Rehearse and refine case presentation:

<u>Role</u>	<u>Prosecution/Plaintiff</u>	<u>Defense/Defendant</u>
Attorneys/Opening Closing	P1	D1
Witnesses/Direct Exam Attorneys	P2	D2
Cross Exam Attorneys	P3	D3

**P1 and D1**

Each attorney delivers the prepared statement. The others in the group critique.

**P2 and D2**

Using the direct examination questions developed earlier, the attorneys rehearse the examinations with the witnesses and make changes as necessary.

**P3 and D3**

Attorneys responsible for cross examination for each side can assist each other in trying to project what testimony might be given on direct examination, thus showing what material might be appropriate for cross examination. Attorneys can develop a series of possible cross examination questions and ask each other the questions to see how they will work. Students must remember that they may have to alter their prepared materials based on what happens in the direct examination.

# RULES OF EVIDENCE AND PROCEDURE

- A. Purpose of the rules of evidence
  - B. Leading questions, hearsay, irrelevant testimony, opinions
  - C. Proper objections to violations of the rules of evidence
  - D. Responding to an objection
  - E. Correctly introducing pieces of evidence
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## **Reading Assignment**

**Read as homework or aloud in class.**

## **General Discussion**

What is the purpose of rules of evidence?  
What might happen without them?  
What are specified rules of procedure in daily life?

## **Discussion of Examples**

Take each rule of evidence and ask for an example of a rule violation, other than the ones given in the materials.  
What harm would come if the particular rules did not exist?  
Is this a useful rule?  
Are the rules given sufficient to make the trial fair?  
What rules would the class add?

## **Team Drill**

Return to prosecution/plaintiff and defense/defendant teams.  
Ask one attorney to start direct questioning of a witness in the case being prepared. All others in the group listen for violations of rules of evidence and make objections as appropriate.

## **Individual Drill**

On the chalkboard, write the steps for introduction of physical evidence. Drill each attorney individually.

## **Discussion of Impeachment**

Ask students for their understanding of the idea of impeachment. Discuss how the concept is applied in a trial to shake the credibility of a witness. For homework, ask each attorney witness team to develop one example of possible impeachment for that witness. Demonstrate examples in class.

## REVIEW - Rules of Evidence Hypotheticals

- A. Doug told me he killed his brother and Doug is on trial for the murder. Should I be able to testify to what he told me?
- B. During direct examination, the attorney wants to show that the witness, David, was at school on November 30. Can he ask, "You were at school on November 30, isn't that correct?"
- C. Same situation as in B. Can the attorney ask David, "Where were you on November 30?"
- D. Harry is being sued in a civil trial for breach of contract. Can the plaintiff introduce evidence that Harry has been unfaithful to his wife?
- E. Can Harry's unfaithfulness to introduced in a contested divorce case?
- F. John made a sworn statement two days after the automobile accident he had witnessed. When the case finally comes to trial and he is called as a witness, John cannot remember what happened. Can his attorney show John the statement that may help him remember? Must the attorney introduce the statement into evidence?
- G. Same situation as in F, only John does remember and testified on direct examination. However, his testimony contradicts his earlier sworn statement. On cross examination, can the other attorney bring up the inconsistencies?
- H. Mary is in a car accident and she sues the other driver. On her direct examination, damage to the car is never mentioned. Can the defense, on cross examination, ask about the repair costs of the car?
- I. Herb is a doctor. The attorney has Herb testify to this when Herb is on the stand. Can Herb testify that in his expert opinion, the victim was suffering from a fracture of the right leg?
- J. Can Joe, a plumber who worked with the victim, testify that the victim was suffering from a fracture of the right let?
- K. Kevin has never seen Amy with her baby. Can Kevin testify that Amy is a terrible Mother?

## **ANSWERS - to the Rules of Evidence Hypotheticals**

- A. This is allowed as a statement by a party (the defendant here) as an exception to the general rules against hearsay. The defendant is present and can deny having made the statement.**
- B. This is a leading question as it has the answer the attorney wants in the question and cannot be asked on direct examination. It could be asked on cross examination.**
- C. Yes, this is not leading.**
- D. No, this is not relevant to the contract issue.**
- E. Yes, this may be relevant to issues in a divorce case.**
- F. Yes, if the witness could not remember he may be shown a written statement to refresh his recollection.**
- G. Yes, this is proper, to impeach the credibility of a witness.**
- H. No, on cross examination an attorney may only bring up issues raised on direct examination; this is called a question outside the scope of the direct examination.**
- I. Yes, if Herb is first certified as an expert witness through being questioned about his prior training and experience.**
- J. No, not as an expert, but he can testify to the fact that the victim appeared to be in pain or to other facts from his direct observation.**
- K. No, one can testify only to things one knows from direct knowledge.**

## REVIEW - The Evidence Cases

These examples will help the students recognize improper questioning in a trial. They will also understand the rationals better behind evidentiary rules. They will get valuable practice in conducting proper introductions of evidence. Attorney coaches can be invaluable source of assistance here.

Assign eleven witness and eleven attorney roles. Duplicate two copies of the Cases below. Cut the Cases apart. Only each lawyer gets the entire slip. For the eleven students who who act as witnesses, black out or cut off the lower part that describes the lawyer's job so the witness will not have advance knowledge of what the lawyer is going to try. Students should not disclose their roles to other students. The teacher calls out the Case number at random and reads the facts position (at the top) to the entire class. Participants perform as instructed on the slip. Other students observe and make objections. Objections must be explained. Rephrasing is proper. These are only a few examples, you will probably want to expand on these and add your own to extend the exercise to meet your needs. In each of the examples asking for a questions from an *INEFFECTIVE LAWYER* you can then use the same Case and ask for rephrasing to be an *EFFECTIVE LAWYER*.

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1. **The Case:** A delinquency proceeding in juvenile court resulting from serious assault on a student on a school playground.

The witness on the stand: The mother of the Victim.

Your job as an **ineffective** lawyer: Ask the witness a **HEARSAY** question.

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2. **The Case:** A dispute over the amount of money owed under a written contract.

The witness on the stand: One of the parties to the contract.

Your job on an **effective** lawyer: You want to have the written contract introduced into evidence as an **EXHIBIT**. Ask the witness questions to identify the contract and move the exhibit into evidence.

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3. **The Case:** A lawsuit brought by a woman who fell on spilled pickle juice at 9:30 p.m. in a grocery store.

The witness on the stand: The plaintiff (the woman who fell).

Your job as an **ineffective** lawyer. Ask the witness an **IRRELEVANT** question.

**4. The Case:** A medical malpractice suit - a doctor prescribed medicine for a pregnant woman and the baby was born retarded.

The witness on the stand: The father of the child.

Your job as an **ineffective** lawyer. Ask the witness an objectionable **OPINION** question.

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**5. The Case:** A contested marital dissolution (divorce) in which the wife is accused of being a chronic alcoholic.

The witness on the stand: The wife.

Your job as an **ineffective** lawyer: **BADGER** the witness with questions.

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**6. The Case:** A dispute over the custody of two children.

The witness on the stand: The mother of the children.  
(She is being questioned by her lawyer.)

Your job as an **ineffective** lawyer: Ask your client on the stand a **LEADING** question.

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**7. The Case:** A department store sues a customer for failing to pay the bill.

The witness on the stand: The customer.

Your job as an **ineffective** lawyer: Ask the witness an objectionable question about his **CHARACTER**.

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**8. The Case:** Criminal trial for purse snatching.

The witness on the stand: An eyewitness testifying for the defense; she just testified that the defendant looks like the person who committed the crime.

Your job as an **effective** lawyer: **IMPEACH** (destroy the credibility of your witness).

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**9. The Case:** A criminal trial for burglary; the defendant claims he was in Florida on the day of the crime.

The witness on the stand: The defendant.

Your job as an **ineffective** lawyer: Ask the witness an objectionable **CHARACTER** question.

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**10. The Case:** A suit for emotional distress suffered by a man who found a dead mouse in his soda.

The witness on the stand: The man who found the mouse.

Your job as an **ineffective** lawyer: Ask the witness **BADGERING** questions.

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**11. The Case:** A dispute between a customer and a TV seller resulting from the failure of the seller to repair the set.

The witness on the stand: The consumer.

Your job as an **ineffective** lawyer: Ask the witness a **HEARSAY** question.

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# DEBRIEFING

After each mock trial and trial simulations, it is important for the team to discuss the proceedings. This is known as “debriefing.” It is designed to put the mock trial into perspective by relating it to processes of the American court system. The discussion should focus on a review of the legal issues in the trial and courtroom procedure, as well as broader questions about our trial system.

Questions and topics for discussion or to be completed as written assignments--

- ◆ Were the procedures used fair to both of the parties?
- ◆ Were some parts of the trial more important than others?
- ◆ Did either side forget to introduce any important evidence?
- ◆ Could either side have been more effective or successful in their direct or cross examination of the witnesses?
- ◆ Was justice achieved?
- ◆ What were the strong points of each case presented in the trial.
- ◆ What were the weak points of each case presented?
- ◆ How could weak points have been avoided?
- ◆ Who were the persons whose performance made a difference in the case?
- ◆ Were the attorneys prepared correctly?
- ◆ Were objections pertinent and on target?
- ◆ Did each side achieve its goal? Why or why not.
- ◆ If the goal was achieved, could it have been accomplished in a different manner?

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Source: Materials adapted from the Illinois Mock Trial Program and *Street Law Mock Trial Manual*.