

Mock Trial Preparation and Performance

You put your hand up, or maybe a friend put it up for you, or wrote your name down. Perhaps a teacher said, “Give it a go.” Whatever, because now you’re in a team that has to prepare for a mock trial and you haven’t got a clue and so, what now?

Well, you have got a mock trial competition manual and with these notes you have the scripts for both sides in a practice trial case called *Raleigh v Dampier*. [Please note that the case file uses ‘old’ year dates. Replace them with last year and this year.] This is your chance to get some useful experience before you compete against other schools.

We’re going to use those practice scripts to learn how to prepare and perform in a trial. When we’re done you’ll have the skills to:

- analyse a case from both sides;
- sound and look confident as you make an opening address;
- ask your own witness questions as though the two of you were a stage team;
- make and win objections;
- cross examine the other side’s witnesses so that they wish they were somewhere else; and then,
- link the facts and the law together in a closing address which is a real winner.

For more information and examples of advocacy that win, see the short paperback, **Advocacy – Preparation and Performance**, by Hugh Selby who wrote the following notes. It’s published by Federation Press, Sydney. You can obtain detailed information about the contents and then order a copy by going to:

<http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862877443>

or by placing an order through your favourite bookshop.

A summary of what is required

1. You must use courtroom language.
2. Your opening address paints a picture. It is not an argument.
3. Except for this training round you do not know what your opponent’s witnesses will say until just before they say it.
4. All witnesses must know and follow their scripts.
5. You can object to the opposing witness not following the script.
6. You can object to the way the opposing barrister asks a question.
7. You and your witness cannot use any extra visual aids.
8. Your witness has some room for invention during cross-examination.

9. There is no re-examination of any witness.
10. Your closing address is an argument about which facts are to be accepted, what principles of law apply, what outcome follows.
11. After the closing address of the defence you must hand up the solicitor's notes made during the trial.

A start to case analysis

Now you're ready to **start your case preparation** for *Raleigh v Dampier*.

Get the following together:-

- Your team,
- A white board or a blackboard and a bunch of marker pens,
- Prosecution material, and
- Defence material (but ignore the two witness statements until later).

Read the formal notice with the heading **Information**. Use the legal notes to help you understand what those words in the Information mean. Identify the task of the prosecution. It has to **prove beyond a reasonable doubt that the defendant Dampier:**

- By a deception (deliberate or reckless) of word or conduct...as to her/his present intention, and
- Which reasonable people would think was 'dishonest'
- Got a financial advantage.

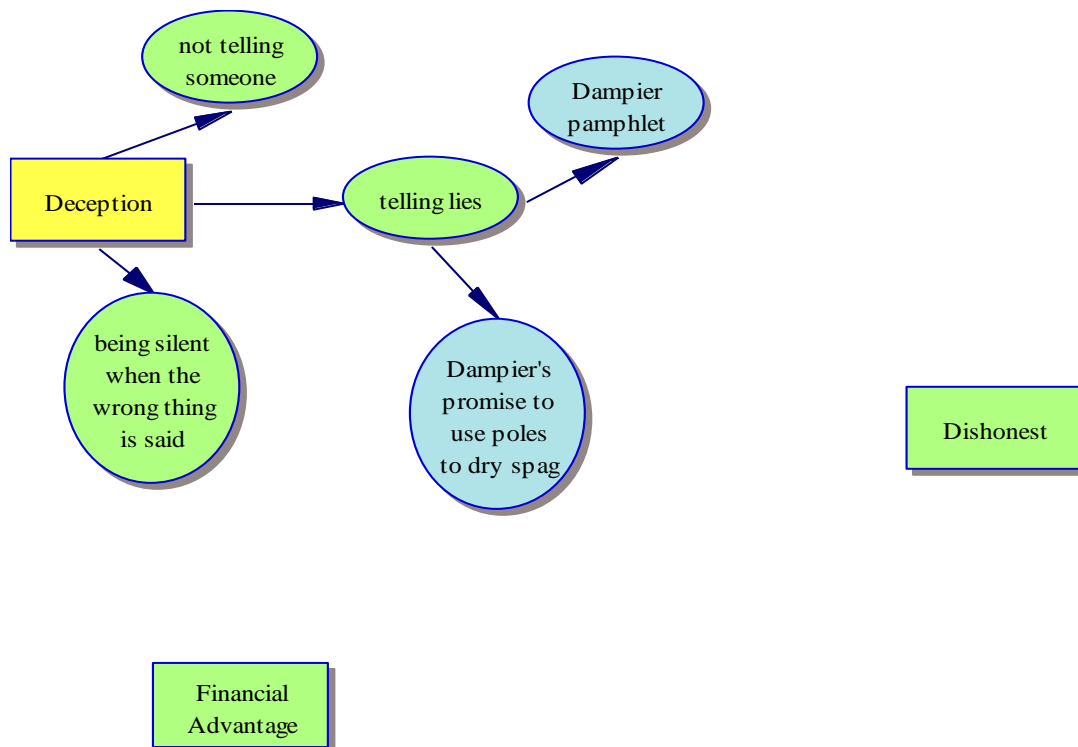
Now read the statement of Raleigh several times. The first few times you read it just to get the story. Then you think about how Raleigh's account fits with your idea of deception, dishonest, financial advantage.

Use your whiteboard/blackboard. **Write up 'deception', 'dishonest', 'financial advantage', with lots of space between each term, and then circle each term.**

Next, off each of these circles and without considering the facts of this case, write how you think each of these could arise in everyday life. For example, three possible new circles off the 'deception' circle could be:

- Telling lies;
- Being silent when the wrong thing is said; and,
- Not telling someone.

Once you have exhausted your ideas, look at the facts of the case. Do any of the facts fit here? If they do, put it next to the appropriate 'new' circle. Raleigh heard the defendant Dampier say at a meeting, "...I promise that I will see that the use of ...poles for drying spaghetti will cease as soon as the current contract expires..." So next to your 'telling lies' circle put 'Dampier's election promise to stop spag drying'. And put up another entry, 'Dampier's pamphlet'. And then put up this third entry, 'Dampier votes for spag to keep on drying'. If the facts raise another possibility, just add another circle."



All three bits are next to your ‘deception circle’. There’s nothing next to the other circles so you hope your other witness is going to fill in the gaps.

There is another problem. Raleigh is told by someone else that Dampier voted for more spag in the street. Raleigh wasn’t in the council chambers to see it happen or hear it happen. So that bit of news is **hearsay** and the other side is going to object to it – using ‘Objection, what Raleigh was told by someone else is hearsay’. The magistrate is going to say, ‘Sustained’. You might as well put a cross through that third entry.

Now read Columbus’ statement. There’s some gold in it, especially what Columbus hears Dampier and Magellan say to each other. Use that conversation to make entries next to the circles for ‘deception’, ‘dishonest’, ‘financial advantage’. Because Columbus was present at the vote you can remove the cross from your earlier entry. There is now direct evidence that Dampier voted for more spag in the streets.

Colombus can give evidence of what Dampier and Magellan said to each other because:

- S/he was there and heard and saw it;
- What s/he heard and saw is highly relevant; and,
- What s/he heard Dampier say is against Dampier’s interest.

Any objection to that evidence will fail.

Looking at your circles there is now evidence of each element of the charge. Dampier made a promise, and almost immediately told Magellan that s/he would not be keeping it. Reasonable people would call that promise ‘a barefaced lie’. And

Dampier's statement about the 'lovely \$20,000' could be interpreted as recognising the financial advantage at the time.

But you and your team are a long way from winning.

This is a contest, a competition, in which your opponent also has a chance to ask each of your witnesses questions. You and the witnesses need to be ready. **To be ready your team has to pretend to be acting for the other side.** You have to anticipate how your opponents would undermine each of your witnesses. Remember they can attack the witness, they can attack the witness's story, they can attack both the witness and the story.

In this competition **using your imagination and your knowledge of how people behave is essential for effective cross-examination.**

With all witnesses you must ask yourselves, 'How would I assess this witness if I was hearing the story and had no interest in winning or losing?' That is why we looked to everyday life at the start of this case analysis. Put another way, does this witness seem trustworthy? Is this witness's story believable, possible, or far fetched?

Sample cross-examination

Here is a segment of a possible cross-examination of Raleigh. You should be able to pick how the cross-examiner undermines Raleigh's assertion that s/he could have been misled by Dampier's speech. The cross-examiner also uses this opportunity to attack the notion that Dampier was looking for a financial advantage.

- Q. You paid a lot for your home?
A. Yes.
Q. So you've been successful in life?
A. Yes.
Q. You're not easily fooled?
A. No.
Q. You can spot self-seeking, toady, property-developer types?
A. Yes.
Q. You heard Dampier tell you that 's/he would see to it that the use of the council poles would cease'?
A. Yes, I've told you that.
Q. And you're no fool are you?
A. No.
Q. This was a single by-election wasn't it?
A. Yes.
Q. Dampier was not standing as the leader of a ticket?
A. No.
Q. So you knew s/he could only cast one vote?
A. Yes.
Q. S/he didn't say they could control how anyone else voted?
A. No.
Q. So when you heard the words, 'I'll see to it' you knew that was just political wind didn't you?
A. No. I wouldn't have voted for Dampier if I'd thought that.

- Q. Oh, so you would have voted for the other candidate?
- A. Yes.
- Q. The one who was happy to keep the spag on the street?
- A. No, that's not what I meant.
- Q. Did you mean then that you would vote informal?
- A. I suppose so.
- Q. Now you know that the difference in vote tally was just one vote?
- A. Yes
- Q. So if you had voted informal then it would have been a tied vote?
- A. It might have been, yes.
- Q. So your only chance to get the spag off the street was to vote for Dampier?
- A. Yes.
- Q. And you're no fool are you?
- A. I told you before, No!
- Q. So you knew s/he was just going to be one councillor vote in nine?
- A. I guess.
- Q. Well try another guess. S/he was only one vote in nine when it came to deciding about allowances too?
- A. Yes.
- Q. The other eight councillors were all voted into office weren't they?
- A. Yes.
- Q. So the community voted in a majority of councillors who have voted to have spag in the streets?
- A. Yes.
- Q. Nothing further.

Keep the following points in mind as you consider this cross- examination.

- There are many other effective ways to cross- examine Raleigh. List your own ideas and then experiment with questions to the witness members of your team;
- Use your imagination;
- Ask closed questions;
- Use short questions;
- Have one point in the question;
- The cross examination has set up a basis for a closing argument in which your opponent will argue that there was no deception, no dishonesty, and no connection to any financial advantage; and,
- By exploring how your opponent may cross-examine you are able to prepare for your re-examination of your witness. In re-examination you can repair the damage of the cross-examination.

The next step is to imagine how your opponents will cross-examine Columbus. In their place you might see such openings as:

- Does Columbus retire or does he resign?

- Columbus fails to report the Dampier/Magellan conversation for a long time;
- The council meeting which voted 5:4 to continue the spag hanging was open to the public; and,
- Columbus had a cleaning contract for the council while he was Town Clerk. As town clerk his duty is to get the best cleaner at the lowest price. As a cleaning contractor he wants the highest price for the least work. That's an interesting conflict of interest.

Just before we imagine a cross examination based on that assessment here are some useful tips for cross examiners:

- Never be nasty until you have exhausted the benefits of being nice;
- Start with some punch;
- Hold a good, strong closing question in reserve;
- Always listen to the answer;
- Always listen to the answer (repeated because it is the hardest lesson to learn); and,
- Make use of the answer you get, not the one you hoped for in vain.

Here is a possible cross-examination of Columbus:

- Q. Still cleaning council venues are you?
A. Yes.
Q. That's a contract you got while you were town clerk?
A. Yes.
Q. Nice little earner in retirement is it?
A. It's OK.
Q. Now when you were town clerk, sorry cleaner, you heard that conversation between Dampier and Magellan?
A. Yes.
Q. Didn't report it did you?
A. No.
Q. You didn't go to the town clerk, sorry that's yourself, and make a note about a disgusting conversation?
A. No.
Q. Actually, what you did, like a cleaner, was to sweep it under the carpet?
A. Um.
Q. That's a yes, isn't it?
A. Yes.
Q. Anyway you're retired in Calm Beach?
A. Yes.
Q. But you told us that you resigned in disgust?

- A. Yes.
- Q. You like things to be clean?
- A. Yes.
- Q. Even if that means sweeping things under the carpet?
- A. No. I don't like that.
- Q. Now that vote to keep the spag hanging was in open session wasn't it?
- A. Yes.
- Q. All above board?
- A. Yes.
- Q. With minutes taken at the time?
- A. Yes.
- Q. Rather different to your failure to make a note of that Dampier Magellan conversation?
- A. Yes.
- Q. I suppose you were very busy when you had to clean and be Town Clerk?
- A. Yes, I was.
- Q. That was a neat deal for you to be Town Clerk and venue cleaner wasn't it?
- A. Yes, the council benefited because I did and do a good job at a reasonable price.
- Q. A cosy deal for everyone - is that what you are saying?
- A. Yes.
- Q. When you told Dampier what would happen if the spag contract was not renewed you told him that council would have to cut down on expenditure?
- A. Yes.
- Q. Your cleaning contract is part of that expenditure isn't it?
- A. Yes.
- Q. Without that spaghetti you might not have the sauce of your contract?
- A. Someone's got to do the cleaning.
- Q. Quite so, but you know it was corrupt of you to have both jobs don't you?
- A. No.
- Q. You don't see that as a deception?
- A. No.
- Q. You don't see that as dishonest?
- A. No.
- Q. But you got a financial advantage from that cleaning didn't you?
- A. Yes.

As with the imagined cross-examination of Raleigh there are many possibilities. Your team should now list a few and then practise cross-examination with your witness Columbus.

Early preparation for opening and closing address

Now that you know your story you can **prepare your opening address**. This is your chance to catch the interest of the magistrate with an interesting story that blends the facts with the charge elements. Do not argue points. Do be interesting. Try to find a motif, a catch phrase that you can repeat throughout the hearing.

'Your Worship, when asked, 'What are you going to do about the spag hang? the defendant, Dampier, said, 'I will see that the use of council poles for drying spag will cease'. That's what he said to our first witness Raleigh. He said it to get the votes that

would put him on the Council. Minutes later, in the very same place, he was more honest when he thought himself away from public gaze, 'I'm not going to stop that use'. And he explained why too. 'They mightn't be able to pay me that lovely \$20K'. He was overheard by another witness, Columbus. And time was to show that the unemployed Dampier was true to himself, if not to the electors. Deceptive, dishonest, and with an eye to the loot – that's the Councillor Dampier that our witnesses will reveal.'

Now have a go at your own opening address. The first barrister in your side should deliver it to the rest of the team who must critique it. Does it catch attention? Does it outline some key facts? Is there a phrase or motif that you'll be able to use later with your witnesses, with their witnesses, or both?

Time to **prepare a draft of your closing address also**. It can only be a draft because you will be changing it during the hearing to deal with your opponent's surprises. To be persuasive you need a strong start, a strong finish, and you deal with the weaknesses in the middle.

What are your strong points? Financial advantage is the most obvious, as is Dampier's quick dismissal of his electioneering promise when he is talking to Magellan.

What are your weak points? There seem to be a few. Even if Dampier too readily made a false promise did it amount to dishonesty in the context of an election campaign? Is there any real link between what he says at the meeting and gaining the financial advantage? Won't your opponents argue that even if Dampier made a false statement that he did not secure a financial advantage from that?

Tie your closing back to your opening. Remind the court of what you promised to do. Restate that Dampier was true only to himself; to others he was deceptive and dishonest. Link the facts to the legal elements by explaining why and how your witnesses should be accepted and how those findings back up each element of the charge so well that the charge is proved beyond reasonable doubt.

Leave room in your notes to give yourself instructions on how to handle points that your opponents bring up in their opening address or through their witnesses. Many advocates have found that leaving a very wide margin, say about 5 to 6 centimetres, is the best way to ensure room for your ideas to be jotted down.

Examination-in-chief

Sorry, but you're not done yet. You've done the analysis, planned the opening and closing, and anticipated your opponent's cross. What's left? Just the little matter of asking your own witnesses questions that will get the information in their statements before the court – **your examination-in-chief**.

We've left it to last because it's so much fun, and because it requires team work between the barrister and the witness to tell the witness's story in a seamless, smooth and persuasive way.

Here are some tips to make that happen.

- The witness must give their answers and eye contact to the Magistrate, while listening and giving their ear to their barrister;
- The barrister should also look towards the Magistrate, look occasionally at the witness to give them confidence, and speak slowly, always more slowly;
- The barrister sets the topics, announces the move from one topic to another, and controls the pace by asking short questions which require short answers; and,
- The barrister uses a **looping technique** to remind everyone of the key part of each answer and to add a sense of flow to the dialogue.

Here is an example with explanations as we go. The Barrister is B.

B. Tell us your name please

A. Ivana Raleigh

B. How do you spell 'Raleigh'?

A. R.A.L.E.I.G.H [this slows down the witness. Also it helps build witness confidence]

B. Well Ms Raleigh [loop repetition] where do you live?

And later:

B. We move now to a meeting that you attended. When was that meeting?

A. 26 July

B. Of what year?

A. Last year

B. Where was the meeting?

A. Calm Beach Community Centre

B. Did you see anything of interest at the Community Centre?

A. Yes

B. What was it?

A. A sign that read, 'Down with Spaghetti'.

B. Let's discuss what happened at that meeting. Who spoke?

A. Dampier

B. What did Dampier say?

A. He said,.....

A little later you need to **get an election pamphlet into evidence**. Here is how you do it.

B. Sometime after the meeting you received something. What was that?

A. An election pamphlet from Dampier

B. I show you a piece of paper. What is it?

A. That is the election pamphlet that was placed in my letter box

B. I tender the pamphlet

Magistrate: Any objection?

Opposing Barrister: No

Magistrate: The pamphlet will be exhibit one.

And later:

B. Our final topic is some inquiries you made at the local council offices. When did you go there?

A. 28 September

B. Did you speak to anyone?

A. Yes.

B. What did they tell you?

Other Barrister: Objection – hearsay – this witness cannot tell us what some third party might have said.

Magistrate: Sustained. Witness, the objection is correct; however, tell us what you were told.

A. The defendant had voted for the continuation of the spaghetti roll out.

B. Having been told something what did you do?

A. I came to this court house and had a summons issued against Dampier.

Checking out the other side's story

For this training exercise you have the witness statements of both sides. Let's now look at the defence statements from the perspective of both prosecution and defence teams. Your first task is to read the two witness statements several times.

As before your early readings are to become very familiar with the facts. Then you read again as you analyse the case and look for the pieces that will become a part of the defence argument.

There is a very **important difference between the prosecution and the defence approaches to case analysis**. The prosecution is always trying to build a watertight case. The defence is always looking for a small hole in that case which it can enlarge sufficiently that the prosecution fails.

The defence puts up the same circles – deceptive, dishonest, and financial advantage. But then it examines the evidence in its witness statements that undermine those labels. For example, against 'deceptive' it shows 'Only promised to do what he can', 'Down with Spaghetti' banner was not Dampier's. If the defence can throw doubt on any deception then the prosecution fails.

The defence, like the prosecution, also considers what uninvolved people would say about these facts.

Now the defence must try to anticipate what the prosecution witnesses will say so that cross-examination can be prepared. This task will draw on the same imagination which we used with the prosecution case. A look at the summons shows that the key date is the date of the election meeting so the allegations must be about what Dampier said or did at that meeting. This is confirmed by the defence witness statements.

The **opening address for the defence** can always mix a positive statement of its story with a denial of what the prosecution has already claimed. So the defence might open with:-

‘Councillor Dampier was elected just last year. S/he and her/his campaign manager Magellan will tell you about that campaign, and in particular about the meeting which Raleigh and the former town clerk attended. Councillor Dampier will tell you what s/he actually said, which is rather different to the spiteful accounts you have heard from the prosecution witnesses. Yes, it’s quite true that Councillor Dampier receives a generous allowance from the Council for her/his time and effort. It’s true too that the money comes in handy. But, it’s not true that s/he made any deceptive promise. And it’s not true that s/he did anything dishonest.’

Whether the defence will make that opening address or use another approach depends on their assessment of how the prosecution case is received by the Magistrate. Remember that in this competition the defence does not see Raleigh’s or Columbus’ statement until just before each of those witnesses gives their evidence-in-chief.

Running and dealing with the Defence

As the prosecution makes its opening address the defence team listens carefully and checks to see that there is agreement about the issues. If there is any disagreement then the defence needs to quickly decide if the difference matters. If it does matter then is it to the defence or prosecution advantage? For example, if the prosecution opening address stresses the financial advantage then the defence is unconcerned. Their strategy is to say, ‘Sure the job of Councillor comes with money, but Dampier didn’t act deceptively or behave dishonestly to acquire that benefit’.

The defence analyses Raleigh’s statement just before and as Raleigh gives evidence-in- chief.

- One team member should search the statement for possible objections and spot the hearsay in the last paragraph about what happened in the council meeting. You can choose to let the Magistrate know in advance, or you can make the objection when the witness reaches this late part of their statement.
- A second team member should be quickly assessing the chances for cross-examination. That team member should notice that Raleigh seems to assume that Dampier could control a vote in the Council to deliver on the promise. For a possible cross-examination of the prosecution witnesses see the earlier discussion and examples above.
- The third team member should be focussing on **the requirements of Browne v Dunn** .

The rule in Browne v Dunn

In this competition the Browne v Dunn rule always affects the defence side. When the defence team knows that a prosecution (or plaintiff) witness is stating a fact which is different to a defence fact then the defence must raise their version with the opposing

witness during cross examination. This is because the rule calls for a witness to be given the chance to comment on an alternative, so far unstated, version of fact.

Notice that the defence witnesses give their evidence after all the prosecution/plaintiff evidence has been heard. Therefore the defence cannot be taken by surprise and so the Browne v Dunn rule requires no action from the prosecution/plaintiff in this competition.

Here is an example of when the rule must be applied. Raleigh asserts that Dampier promised to see that the use of council poles for spag hang WOULD cease in April. That is what Raleigh will say in examination-in-chief.

But both the Dampier and Magellan statements claim that what Dampier actually said was, ‘...My policy is to see IF the use of the poles...can be stopped’ – which is very different. Browne v Dunn requires that the defence include during its cross examination of Raleigh the following:

B. You claim that Dampier promised to see that the use of the poles for spag hang WOULD cease, don’t you?

A. I certainly do. Yes.

B. Actually all that Councillor Dampier promised was that he would see IF the use of the poles could be stopped, didn’t he?

A. No, he promised to put an end to it. He was very specific. That’s why I voted for him.

There’s no joy in that for the defence but it must be done. Because there’s no joy in complying with the rule it is a persuasive guideline that you put these questions in the middle of your cross-examination. Do not start, and do not finish with these questions because they give the opposing witness a sure fire boost of confidence.

Let’s take another example, this time from Columbus’ statement. Columbus, the moonlighting cleaner, claims that Dampier said to Magellan, ‘...they mightn’t be able to pay ME that lovely \$20,000 allowance each year’. Dampier claims that what s/he actually said was, ‘The rest of THEM won’t want to lose their lovely \$20,000 a year allowance..’ As with the last example, a few words make a big, big difference. Raleigh is not present for the Dampier Magellan conversation so the Browne v Dunn rule does not apply to her/his evidence: there is no reason to cross-examine Raleigh about that conversation.

However, Columbus must be cross-examined on the difference in the versions of this conversation. Here is how to do it.

B. I am now going to ask you some questions about the Dampier Magellan conversation. I am doing so to comply with the rule in Browne v Dunn. You told this court that Dampier said to Magellan, ‘...they mightn’t be able to pay ME that lovely \$20,000 allowance each year’.

A. Yes, that’s what I clearly heard her/him say.

B. Actually, what s/he said was, ‘The rest of THEM won’t want to lose their lovely \$20,000 a year allowance...’ isn’t that right?

A. I’ve told you what I heard her/him say and your account is wrong.

B. I am now going to ask you about.....

To check whether you understand when and how to apply this rule make a list of other fact items which invoke the rule. Then check your list against the one that follows.

Cross examination of Columbus:-

1. Columbus claims that s/he told Dampier that without the spag funds Council couldn't afford the allowances, or study tours, or even morning teas. Dampier makes no mention of this. If the defence asserts these words were not spoken by Columbus then the Browne v Dunn rules applies. If Dampier merely says that s/he does not recall if Columbus said those words or not then the rule does not apply.
2. Magellan says that Dampier said to her/him in Columbus' hearing, 'Everybody knows I'll do my best when elected'. Columbus does not mention this. It is an important statement to back up Dampier's innocent intent. Therefore it should be put to Columbus during cross-examination.

Taking objection

The defence will get Columbus' statement just before s/he gives evidence-in-chief. The same division in team member tasks should be applied.

The team member looking for objectionable material should spot the statement in the last line of Columbus' statement, 'I was disgusted by the behaviour of the defendant'.

This statement is objectionable because the witness's opinion is not relevant .

However, the defence wants the magistrate to hear the witness state that opinion because it opens a useful line of cross-examination, namely that the witness is a bit of a hypocrite. To solve this problem:

- Tell the magistrate that the sentence in paragraph 13 of Columbus' statement is objectionable because it is an irrelevant opinion. However, you will not be making the objection during the examination-in-chief because the tactical benefits of saying nothing are greater than the benefits from having the statement excluded.

For possible ways to cross-examine Columbus effectively and meet the requirements of Browne v Dunn see the earlier discussion and illustrations.

While one defence barrister is cross-examining Columbus the other barrister and solicitor should be **reviewing the proposed defence opening address** to see whether it still flies and how it can be improved. Last minute changes are made while the prosecutor is re-examining Columbus. Deliver the defence opening address with confidence, speaking slowly, and with eye contact with the Magistrate.

How the Prosecution responds to the Defence case

It is now the turn of the prosecution to work quickly as a team to master the defence witness statements. From the defence cross-examination of the prosecution witnesses and the opening address the prosecution should be well aware that the defence argument is no deception and no dishonesty.

The prosecution will **object** to Dampier's assertion that, '...I suspect there was some dirty business about the vote counting' because it is irrelevant, or because it is unfounded opinion, or both.

Later the prosecution will object to Magellan's assertion (last lines) that, '...in my view it was clear that the Candidate...' because it is opinion, and because it is an opinion which goes to the task before the court.

When **planning cross-examination** of Dampier the prosecution should exploit:

- That he was out of work;
- That he already knew the Councillor's allowance was under threat if the spag dollars disappeared; and,
- The admission that the \$20,000 'would come in handy'.

Here is an example of how to use the second of these opportunities.

B. You told us that you said to your campaign manager, Magellan, that, 'the rest of THEM won't want to lose their lovely \$20,000 a year allowance' didn't you?

A. Yes.

B. And you heard Colombus state in this court that you said something rather different, namely, '...they mightn't be able to pay ME that lovely \$20,000 allowance each year'?

A. I heard her/him say that, yes.

B. And you say that Colombus is wrong don't you?

A. I most certainly do.

B. You were unemployed at the time of the election?

A. Yes, I've already said that.

B. So you have, so you have. And you've also already admitted that the \$20,000 would come in handy, haven't you?

A. Yes.

B. Now at the time of the election campaign you had absolutely no knowledge about the precise nature of Council finances did you?

A. Of course not.

B. In fact you were quite happy to have a look and see whether the spag hang contract could go, weren't you?

A. Yes.

B. You had no clue about whether or not the Council could pay or not pay \$180K, being nine councillor allowances, did you?

A. No.

B. But you could use that \$20,000 allowance, being unemployed, couldn't you?

A. Yes, I've said that a couple of times already.

B. And you want us to believe that knowing your need for cash, and your NOT knowing anything about council finances, that you said to your mate Magellan, 'The rest of THEM won't want to lose their lovely \$20,000' ?

A. Yes, that's what I said.

B. Columbus wasn't unemployed when s/he heard your conversation was s/he?

A. No.

B. And s/he was up nice and close wasn't he?

A. That's what s/he said.

B. And you want us to accept that you said THEM and s/he heard ME?

A. Yes.

B. I thought you'd say that. (avoid this type of sledging comment!)

Other barrister: I object – argumentative.

Magistrate: sustained.

When planning the cross examination of Magellan the prosecution can exploit:

- The friendship between Dampier and Magellan; and,
- The failure of Magellan to mention the part of the conversation about the \$20,000 allowance.

Here is an example, but please plan and practise using your own ideas.

B. You're a good friend of Dampier aren't you?

A. Yes.

B. You had no proper electoral funding when the public meeting was held?

A. That's right. We didn't.

B. In fact you were so skint that your only banner couldn't withstand rain?

A. Yes, you couldn't read it.

B. It's hard to run a campaign with no money isn't it?

A. Yes.

B. So you must feel pretty proud at the victory?

A. Yes.

B. During the campaign you drafted the leaflet?

A. Yes.

B. And you arranged for the copying?

A. Yes.

B. And the distribution?

A. Yes.

B. No money to employ anyone else?

A. No.

B. Now Dampier has admitted that the \$20,000 allowance would come in handy.

Did you know that?

A. Yes.

B. Because if you're unemployed and running a campaign with no funds then a \$20,000 allowance looks very handy, don't you agree?

A. Yes.

B. Do you remember your conversation with Dampier in the Community Hall after her/his speech?

A. Mostly, but not all.

B. Do you remember that Dampier told you how s/he would like to get that allowance?

- A. I don't remember anything about that.
B. But you've got a pretty good memory for a lot of what happened that night?
A. I think so, yes I do.
B. But you simply can't recall any discussion about that allowance?
A. I can't.

The effect of this cross examination is to reduce the credibility of Magellan because Dampier and Columbus have such clear, if inconsistent, accounts of that allowance being discussed. What's more this cross-examination makes defence re-examination on the topic pretty much impossible: Magellan is locked in to her/his lack of memory.

Closings

During the few minutes allowed to finish the preparation of the closing addresses both sides are busy considering what they should say both to advance their argument and to rebut the other side. The defence has the advantage that it can work on its address to deal with the arguments put in the prosecution closing address.

Remember: start and finish with strong points; be sure to deal with the elements of the charge when submitting for the prosecution that the case is proved beyond reasonable doubt or for the defence that the case has not been proved to that degree; when referring to a legal authority, such as R v Smith, you say, 'in the case of the Queen (or King) AND Smith the court held...'; and, look and sound confident – after all you have all worked hard.

Where to from here?

This training material has used the scripts from a past competition. To improve your skills as you prepare for the competition rounds:

- Read and reread this material and discuss it with your team so that everyone has mastered the concepts.
- If possible rerun the practice trial, but you should take the other side so as to develop you ability to see and run a case from both sides.

And finally, if this competition attracts you to the wonderful career of being a lawyer, then spend some time at: <http://law.anu.edu.au> . You won't be disappointed with what your National Law School offers. It's the place the writer calls home.

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