



Simulation Assignment Winter 2013



Quantitative Methods for Lawyers
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Simulation Assignment for First Portion of the Course

The first portion of this course does not require any independent research. There will be some reasonable book reading assignments. Additionally, there is an important reading of a single Nursing Research Study Proposal. This will be used with the assignment explained below.

The first portion of this class **will require a single written memorandum of 5 to 7 pages along with some specially requested direct examination questions, OR a mock trial role.** Whichever is assigned to you, the in-class lectures will prove extremely important for completion of this task. Therefore, class attendance is extremely important because your assigned role is heavily based upon knowledge gained in this first portion of the class. Whether you are assigned the memorandum or the mock trial role, this will represent 30% of your grade. The due date for the memorandum and direct examination questions is January 25. *Two copies* are to be delivered no later than noon to Sue Nelson, on the Fourth Floor. **The due date for the mock trial is February 4** which will be done as part of that class. There are special instructions for both roles.

Assignment for first portion of this class

Your client is a nurse who was charged with voluntary manslaughter involving a terminally ill patient. Apparently, the nurse chose to not provide medication to this comatose, terminally ill patient thereby accelerating the dying process. The nurse's action was done with the consent of patient's spouse, but was strongly opposed by the patient's sole surviving child. Your law firm defended the nurse at trial. After 3 days of deliberations, the jury found the nurse guilty as charged. The case is set for a aggravation/mitigation hearing.

The law firm has a senior partner who has very little background concerning scientific research, but that lawyer tends to be successful. The senior partner believes this law firm should present scientific testimony from a scientific researcher who authored a proposal entitled "Nursing Research Study Proposal." The senior partner feels this testimony will benefit the nurse at the aggravation/mitigation hearing by showing the special and complex role required from nurses assigned to terminally ill patients. Such testimony could assist counsel at that aggravation/ mitigation hearing to secure a reduced sentence for this client.

After some preliminary legal argument, the court authorized this researcher's testimony for the aggravation/ mitigation hearing. Under the state's law, both sides are allowed to ask for an aggravation/ mitigation hearing to be presented to the jury. The jury will hear any aggravating evidence from the prosecutor and then any mitigating evidence from the defense. The jury then makes an advisory ruling for the court to consider. The choice is either an aggravated or mitigated sentence.

The judge told the counsels that mitigation "might be an appropriate option under the facts of this case." The judge then authorized the defense researcher to present this testimony as it might help the jury with its recommendation. The judge expressed some worry regarding whether the researcher's testimony would be too complex for the jury to understand. In response, the senior partner assured the court that the trial attorneys would fully elicit testimony from the scientific researcher to explain all relevant scientific terminology and all relevant scientific steps concerning the author's research proposal. The judge did acknowledge the Nursing Research Study Proposal would be a helpful format to explain the scientific process and to explain to the jury why nursing the terminally ill is such a complex issue.

You have a significant role. Depending upon your assignment, you either will be assigned:

(1) to write a memorandum for the trial lawyers about the Nursing Research Study Proposal along with some specially requested direct examination questions,

-- OR --

(2) you will be assigned to the trial team to prepare and/or do the direct examinations of the scientific researcher.

With either role, be especially mindful to fulfill the senior partner's assurances to the judge.

DIRECTIONS FOR ALL STUDENTS

All students are required to read the Nursing Study Research Proposal and the researcher's qualifications. The students then will be assigned to do memorandums and draft some specific direct examination questions or assigned to a mock trial team. As noted, all students must read the Research Proposal, but all students also should read all of the below directions. In short, no matter which assignment applies to you, read both sets of directions. This way, all students will understand their interrelated roles.

SPECIAL DIRECTIONS FOR STUDENTS DOING MEMORANDUMS

For the first portion of this course, most students are required to prepare written memorandums and draft certain selected direct examination questions. For those students writing memorandums, they shall be no less than 5 typewritten pages and no more than 7 typewritten pages. Almost all concepts required for this project will be addressed in the classroom. The readings will supplement the concepts, but *there is no need for any independent research, footnotes, or source citations. Everything needed for these memorandums should come from your classroom notes, classroom notes and your classroom experience and the supplemental reading. assignments.* Students should pay particularly close attention during class because most of the relevant concepts will be presented at class.

For those preparing memorandums, this is your opportunity to convey your classroom knowledge as it applies to this Nursing Research Proposal. The trial lawyers need your insights, and they ask for these memorandums to explain the relevant concepts in the Nursing Research Proposal.

No later than noon on January 25, you will bring two copies of your memorandums and direct examination questions to Sue Nelson on the Fourth Floor. Please sign the sheet when you deliver these items. When writing these memorandums, be mindful of the specific assurances made to the judge by the senior partner. Be prepared to meet those assurances in your memorandums.

Again, this memorandum is not meant as a research paper. In short, you must explain to the trial lawyers the concepts existing in the Research Proposal based on your knowledge gained from your classroom experience and the supplemental readings. You will draft some direct examination questions as noted below.

Start your memorandums at fundamental levels. As an example, prior to discussing individual concepts from the Nursing Study Research Proposal, the memorandum might explain the basic differences between qualitative and quantitative research. Then, the writer could tie this foundational concept to more specific concepts arising in the Nursing Study Research Proposal.

The sole basis for this memorandum is limited to the topics discussed in class. You are not responsible for any topic arising after the due date of this assignment. All of the following general topics will be discussed in class:

- (A) Hypothesis
- (B) Assumptions
- (C) Sampling techniques
- (D) Variation
- (E) Identifying qualitative vs. quantitative studies
- (F) Qualitative data and data quantitative combined
- (G) Bias
- (H) Literature reviews
- (I) Variables

- (J) Correlation vs. causation
- (K) Ecological fallacy
- (L) Reliability and validity

Please note those general topics above are lettered from (A) to (L).

At the end of the written memorandum, you are required to supply certain direct examination questions. You will be assigned a group number. It either will be group #1, group #2 or group #3. For each group number, there will be a special assignment concerning direct examination questions.

You are welcome to do group study to review any classroom information and to discuss how this Nursing Study Research Proposal is explained through the classroom information. Group study may help you to write a more complete and more focused memorandum. So group study is encouraged.

However, people with the same group number will have a common assignment to draft some pre-selected direct examination questions. Try to avoid group study with students from your group number. When writing the direct examination questions, those questions should be drafted independently of other people within your group number to avoid excessive duplication of the direct examination questions.

There always will be some duplication, but by avoiding people with your group number, your direct examination questions will have less overlap with others from your group number. So while group study is recommended, it is not recommended between students with the same group numbers.

Special direct examination instructions: **Write six (6) direct examination questions for each topic specially assigned to the group number. Note, each group number is assigned 4 topics below. This totals 24 direct examination questions from each person.**

Group #1: Six Questions for each general topic (A), (B), (I) and (L) above.

Group #2: Six questions for each general topic (C), (D), (H) and (J) above.

Group #3: Six questions for each general topic (E), (F), (G) and (K) above.

As an example, if you are in group #2, you must write six (6) direct examination questions for each topic at (A), (B), (I) and (L). This totals 24 questions.

When the memorandums and direct examination questions are due, *bring TWO copies of the memorandums and direct examination questions. Both are delivered to Sue Nelson on the Fourth Floor.* One copy will be graded by the professor. **The second copy of the memorandum will be used by the trial team to assist the team in its preparation.**

SPECIAL DIRECTIONS FOR STUDENTS ON THE TRIAL TEAM

The following instructions are **recommended** for the mock trial team members. These instructions should be helpful to achieve a successful outcome. However, the mock trial team is authorized to modify these instructions, if needed. Regardless, the due date for the mock trial presentation on **February 4** is firm as this is the day the mock trial direct examinations will be presented in front of the class.

It is suggested that the trial team consist of students playing the roles of:

- (i) two trial attorneys [each doing half of the actual direct examination]
- (ii) one testifying witness [i.e., the researcher who wrote the proposal]
- (iii) two assistants trial attorneys (who assist in organization, etc.)

The trial team will be given fictional qualifications for the scientific researcher.

The two readers will each read an equal share of the memorandums including the suggested direct examination questions. The questions drafted in the memorandums and the concepts presented in the memorandums should allow the trial attorneys a strong start. The two readers will meet with each other to categorize the information. This will be completed within two days after receipt of the memorandums. It should not be later because the mock trial attorneys and mock researcher must prepare.

The readers will physically highlight the memorandums and then categorize the information from them, including categorizing the proposed direct examination questions. The two readers then will meet with the trial attorneys and the testifying witness. The readers will guide the lawyers and testifying witness. The readers will make specific trial suggestions. The lawyers and testifying witness shall have open access to the highlighted memorandums and proposed direct examination questions.

Two students acting as attorneys will divide the direct examination topics. Please remember that some topics require more presentation time than others. The intent is for each attorney to use half of the allotted time. Both attorneys will draft their direct examination questions and then rehearse those questions. At some point in the direct examination, the questioners must intertwine the facts of this manslaughter case and the relevance of the research proposal to those facts.

The student acting as the testifying witness shall be informed of the actual direct examination questions. The scientific researcher is a friendly witness for the attorneys and is being paid by the defense. The attorneys and the testifying witness will practice the direct examination and the answers to those questions. The readers shall be present for at least one practice session of the direct examinations to contribute their observations and advice. This will make the presentation smoother and more predictable.

This is a team effort and a team grade. All of the mock trial team members need to help each other. The readers must assist the attorneys and the testifying witness to achieve a successful direct examination. *Be sure to watch the time requirements.*

The total direct examination should be at least 30 minutes but no more than 40 minutes. Each lawyer should use approximately half of the time frame. The testifying witness appears for the total time. All members of the mock trial team will be present for the direct examination to the class and be ready to answer questions after the presentation.

The following should be very helpful hints for your presentation. Do not forget to raise foundational questions such as researcher's qualifications. A very significant portion of your presentation is to educate the court about scientific studies.

Too many lawyers rush to the researcher's conclusions. This makes the presentation too short with less impact. Educating the jury is equally, and likely more important, than the researcher's conclusions. As one example which may or may not be important to the presentation, the researcher could explain the different types of sampling techniques and then answer why the researcher selected one technique instead of the other techniques. If the questioning is done in this manner with those two short questions and answers, this might understate the impact of the sampling technique issue. Should this issue be deemed important to your presentation, you need to expand the questioning. For example: (1) You could ask the researcher for a listing of the sampling techniques. (2) Then for each one, ask the researcher to define it. (3) Next, using one technique at a time, ask for an example of when that technique would be preferred in research. (4) As each example is given, follow up the witness' example answer by asking the benefits from that technique. (5) This leads to a follow up question as to the deficiencies with the technique. (6) Finally, why did the witness select or not select this approach with the Nursing Proposal?

Whether it is helpful to expand the questions about sampling technique options is a judgment call for the trial attorney. It is important for a trial lawyer to assess the issues. The most important issues require more impact. If all issues are short, none have extraordinary impact. The presentation should include both short issues and long issues. The mock trial attorneys need to assess the importance of each issue with due regard to winning the aggravation/mitigation hearing.

As another example, the researcher could read some specific questions from the proposed questionnaire and then explain why those questions in the questionnaire are important to answer the issue in the hypothesis. The researcher also could explain the complexity of the issues surrounding end-of-life questions as shown in the actual questionnaire questions.

Lawyers frequently cite to case law. This is not objectionable as hearsay. Case law is not introduced as truth. It is introduced to establish the current status of law. Some prosecutors will object to literature review questions as hearsay since the testimony is based upon other scientific studies. Those objections generally are unsuccessful.

Prior research studies are not introduced as truth, but to establish the accepted outlook of the scientific community on the issue. Therefore direct examination can properly cover the researcher's literature review to show the scientific community's prospective on the issues surrounding end-of-life care. Direct examination questions can increase the credibility of the witness and indirectly tie the testimony to this manslaughter trial. It explains why this research proposal is appropriate as the past and upcoming research understands the complexity of the issue and its relationship to this manslaughter jury.

Of course, those prior studies in the literature review have different methodological approaches from the current research proposal. The witness' testimony must explain those differences and why those studies still are relevant even though they used different approaches.

The most successful trial lawyers dealing with scientific testimony take time to teach the significant topics to the court and jury. In the end, the jury must be impressed with the level of detail this researcher used in this study. As the selected mock trial attorneys, you have a difficult task. You must teach the most relevant topics to the judge and jury while being mindful of the time limits set for this presentation. Because of those time limits, the mock trial attorneys must correctly and cautiously select the topics which will be presented as mitigation.

Remember to complete this direct examination with summary questions which directly or indirectly tie these scientific concepts to the current manslaughter trial. While the final attorney will have numerous other topics, the final attorney specifically should conclude with a series of summary questions to nail the need for mitigation. Again, both lawyers should be cautious of their time limits.

The trial team selects who does which role. Those role assignments should be decided within 7 days after the team is formed. When the roles are assigned notify the professor. Remember this is a team effort gets a team grade so it is best to assign roles without a dispute. If an agreement does not arise within the 7 days, immediately advise the professor who then will assign roles.