RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

MOOT COURT EXERCISE AND INTERNSHIP

(CLINICAL)

Course : BBALLB , 3rd Semester

Subject code : BBL903

Faculty Name : Ms Taruna Reni Singh

Moot Court Exercise and Internship

Objective: The objective of having moot courts is to give the students practical tanning how the proceedings of the court takes place.

The Paper will have following components

- Moot Court: Every student may be required to do at least one moot court in a year. The moot court work will be on assigned problem.
- Observance of Trial in one case, either Civil or Criminal.
    - Students may be required to attend one trial in the course of the last year of LL.B. studies. They will maintain a record and enter the various steps observed during their attendance on different days in the court assignment.
- Interviewing techniques and Pre-trial preparations and Internship diary.
    - Each student will observe one interviewing session of clients at the Lawyer's Office/Legal Aid Office and record the proceedings in a diary. Each student will further observe the preparation of documents and court papers by the Advocate and the procedure for the filing of the suit/petition.
- The fourth component of this paper will be Viva Voce examination on all the above three aspects.
- Student will be required to undertake legal awareness programme in association with N.S.S. and other authorities as directed by the Faculty.

LECTURE 4

I. THE ETHICS OF PERSUASIVE STORYI'ELLING

In the preceding section we discussed the way in which an advocate imagines a persuasive theory or story. We also noted that lawyers are bound to the truth- we are not free to pick stories simply on the basis of their persuasive value. Within this parameter, exactly how much room is there for creative theory choice?

A. Assuming That You "Know" the Truth

Let us begin with the proposition that in most cases neither the lawyer nor the client will know with certainty what we might call all of the "relevanttruth."

As in the scenario above, for example, the plaintiff knows her own actions, but has no special knowledge about the defendant.The lawyer, of course, is not free to persuadeor coachthe plaintiffto alter her own story simply to make it more effective.

This is not to say, however, that legal ethics permit us to do nothing more than put the plaintiff on the witness stand. The lawyer's duty of zealousrepresentation requires further inquiry into the existenceof additionaldetails, not to mention the artful use of sequencingand emphasis. For instance, let us assume that the plaintiff has informedher lawyer with certainty that the fire truck was flashing its lights, but not sounding its siren or bell. There is no doubt that an attorney absolutely may not coach the plaintiff to testify that the siren and bell were sounding. Such testimony will be false, perjurious, and unethical.

On the other hand, there is no requirement that the absence of bell and siren be made the centerpiece of the plaintiff's direct examination. Sequencing and emphasis may be used to minimize the adverse impact of this information. Therefore, the direct examination could be developed as follows: "The fire truck was the largest vehicle on the road. It was the standard fire- engine red. All of its lights were flashing brightly – headlights, taillights, and red dome lights. It could be seen from all directions. All of the traffic, save the defendant, slowed down for the fire truck. It was not necessary to hear a siren in order to notice the fire truck." Thus, the lawyer has held closelyto the truth, while establishing the irrelevance of the damaging information.

Assuming That You Don't Know the Truth

A different situation arises whenthe advocate is not able to identify truth so closely, as in the example above concerning the defendant's reasons for failing to notice the fire truck in time. Recall that we considered a variety of possible reasons, Including inattention, drunkenness, and homicide. Some reasons have clear forensic advantages over others. What are ethical limitations on the attorney's ability to choose the best one?

First, it should be clear that we are not bound to accept the defendant's story in the same way that we must give credence to our own client. The duty of zealous representation requires that we resolve doubts in our client's favor.Moreover, we speak to our client within a relationship of confidentiality, which not only protects her communication,but also gives her additional credibility. Without her consent,

what our client tells us will go no further, and this knowledge gives her every reason to makea full disclosure.When our client gives us damaging facts (such as the absence of the fire truck's siren), it is even more likely to be true, since she obviously has no reason to inject such information falsely. Conversely, statementsthat we obtain from the defendant are not necessarily accompanied by comparable indicia of reliability, and we are entitled to mistrust them.

This is not to say that we must always accept information from our clients as revealed wisdom. Clients may mislead us as the result of misperception, forgetfulness, mistake,wishful thinking,reticence,ignorance, and, unfortunately, they occasionally lie. Moreover, opposingpartiesin litigationusually tell what they perceive as the truth!As a tactical matter, trial lawyers must always examine every statementof every witness for potential error or falsehood. As an ethical matter, however, we should be more ready to assume that our client's words-both helpful and damaging-are likely to be true. It is, after all, the client's case.

Recognizing, then, that we must go beyond the oppositeparty's version of the facts, we next evaluate the entire universe of possible stories. In our examplewe determined that the "in a hurry" story would be the most persuasive. Simultaneously, we must also determine whetherit is an ethical story to tell.

The key to determining the ethical value of any trial theory is whetherit is supported by facts that we know, believe, or have a good faith basis to believe, are true. In other words, the story has to be based on facts that are "not false."

Returning to our fire truck case, assume that the defendant has denied that he was in a hurry. He has the right to make this denial, but as plaintiff's lawyers we have no duty to accept it. Assume also that we have not been able to locate a witness who can give direct evidence that the defendant was in a hurry. We do know where and when the collision occurred, and assume that we have also been able to learn numerous facts about the defendant's home, automobile, occupation, and place of employment. The following story emerges, based strictly on facts that we have no reason to doubt.

The defendant lives sixteen miles from his office. He usually takes the train to work, but on the day of the accident he drove. The accident occurred on a major thoroughfare approximately eleven miles from the defendant's office. The time of the accident was 8:35 a.m., and the defendant had scheduled an important, and potentially lucrative, meeting with a new client for 9:00 a.m. that day. The parking lot nearest to the defendant's office is over two blocks away. The first thing that the defendant did following the accident was telephone his office to say that he would be late Our conclusionis that the defendant was in a hurry. Driving on a familiar stretchof road, he was thinking about his appointment,maybe even starting to count the money, and he failed to pay sufficient attentionto the traffic. We are entitledto ask the trier of fact to draw this inference, because we reasonably believe its entire basis to be true. The known facts can also support numerous other stories, or no story at all, but that is not an ethical concern. Perhaps the defendant was being particularly careful that morning, knowing how important it was that he arrive on time for his appointment. Perhaps the appointment had nothing to do with the accident. Those arguments can be made, and they may turn out to be more persuasive stories than our

own. Our ultimate stories might be ineffective, or even foolish,but they are ethical so long as they are not built on a false foundation.

B. The Special Case of the Criminal Law

The analysis above, regarding both persuasion and ethics, applies to civil and criminal cases alike. In the criminal law, however, the prosecutor has additional ethical obligations and the defense lawyer has somewhatgreater latitude.

A criminal prosecutor is not only an advocate; she is also a public official. It is her duty to punish the guilty, not merely to win on behalf of a client. Therefore, a public prosecutor may not rely upon the "not false" standard for determiningthe ethical value of a particular theory. Rather, the prosecutor must personally believe in the legal validity of her case, and must refrain from bringing any prosecution that is not supported by probable cause.

Conversely, a criminal defendant is always entitled to plead not guilty, thereby putting the government to its burdenof establishingguilt beyonda reasonable doubt. A plea of not guilty need not in any sense be "true,"since its function is only to insist upon the constitutionalright to trial. Of course, a criminal defendant has no right to introduce perjury or false evidence. However, a criminal defendant need not present any factual defense, and in most jurisdictions a conviction requires that the prosecution "exclude every reasonable hypothesis that is inconsistent with guilt." Thus, so long as she does not rely upon falsity or perjury, a criminal defense lawyer may argue for acquittal - that is, tell a story - based only upon "areasonable hypothesis"of innocence.