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CASE MANAGEMENT

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Abstract: *this study examines key aspects of legal advocacy, focusing on the strategy's attorneys use to plan and present their cases, as well as the preparation necessary for successful litigation. It highlights the importance of careful planning, such as determining the charges, analyzing disputed facts, and developing a working hypothesis to guide the case strategy. Essential concepts like crafting a case theory, organizing materials, and interviewing clients and witnesses are thoroughly discussed. The paper also covers best practices for advocacy, including maintaining checklists, setting priorities, and meeting deadlines. In the latter section, with a focus on arbitration in the case scenario, the discussion shifts to Alternative Dispute Resolution (ADR), comparing methods such as mediation and arbitration.*

Key words: *legal advocacy, alternative dispute resolution, case management*

INTRODUCTION

"When you're thrust into litigation, you obviously have to make sure you're prepared to deal with that"[1]. The sentiment expressed in the quotation embodies the view that before the litigation it is important to prepare an inner knowledge of the facts, evidence and suitable law which will be briefly discussed and examined in this paper. Following this, a reasoned example of good practice used by the lawyers will be shared[2].

[1] Roger Goodell, https://www.underbergkessler.com/articles-blogs/categories/litigation/page/3.
[2] Philip Howard, *Dictionary of Quotations* (Harper Collins Publishers 2004)

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Advocacy is considered as the profession of persuasion in a legal context; however, the persuasion should be based on a thorough understanding of the issues in the case, a clear understanding of the law, and an efficient and convincing performance in front of the court or tribunal.

In order to succeed in court cases and achieve a desired result a deep preparation

is needed. Gaining advocacy skills does not guarantee winning the case even though they are important. There are many different methods of approaching the mass

of information, both factual and legal, which may make up even a simple case, and of then analyzing the information for relevance, and organizing it for accessibility. In this section, we will examine various methods of organizing materials to ensure effective preparation for advocacy.

Case study, a method which has three principal stages which are the following:

1. the identification of the charge
2. the analysis of the facts that are disputed between prosecution and defense.
3. examination of how each side will seek to prove its version of the facts that are disputed.

One of the stages is identifying the elements of the charge. When there is a prosecution case against a client, it is important to review that there is evidence in regard of all the points. The lawyer obviously should understand that it is for the prosecution to demonstrate and prove each detail of the offence beyond reasonable conviction; in case of failing, the client must be discharged from the offence.

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Another aspect is identifying the facts in issue. There might be various elements which the prosecution must demonstrate. The client's report of events may clarify that some of the aspects of the prosecution case are not questioned. For instance, the client may admit that he was at the party, yet reject that he hit the host. Or he may deny that he attended the party at all. Lawyers subsequently should analyze and compare the two versions of the event that was introduced by the prosecution and the defense in order to find where the two versions are in conflict. The aspects of conflict are the 'facts in issue'.

Analyzing the evidence

From hypothesis to narrative: another case analysis technique

In Advocacy, Andy Boon offers an alternate strategy for case investigation, which begins at a far prior point the acquiring of the initial information. In this approach, the case investigation begins with division of the witness report into classifications of 'fact' and 'opinion'. Lawyers need to consider the significance to which witnesses can give applicable testimony on the facts, and whether the witnesses can be chosen to give opinion evidence to the court. Nevertheless, having checked the facts in this way, it is important to put forward an initial 'working hypothesis'.[3]

[3] Andy Boon and Julie Macfaclance, *Advocacy* (2nd edn, Cavendish Publishing Limited 1999).

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The working hypothesis

Boon proposes that it is crucial to make sure that the hypothesis is based on applicable facts, including the events that are argued.[4] In addition, a wide scope of fact should be used it is too soon to choose which facts might or might not later end up being important: It is reasonable not to reject facts as unessential too early during preparation. Nor is it reasonable to get involved in any one specific hypothesis at an early phase. When evidence is being collected, the lawyer may end up prematurely rejecting evidence that conflicts with the hypothesis.

Sometimes, the facts may not be in dispute, and lawyers end up carrying out a dispute with respect to the interpretation of the relevant law much the same as a mooting exercise. Such cases are relatively uncommon. In majority of cases, the valid background remains unclear and the theory will empower to draw together the facts into a logical structure.

The 'theory of the case'

The following stage is to define a 'theory of the case'; an analysis on how all the verifiable and legal issues can be linked to lead to the outcome which your client

is looking for. With the hypothesis of the case, lawyers are attempting to predict the proof which will be approved at trial. As a result, there might be various hypotheses, depending on which 'story' is acknowledged in evidence. As Boon mentions, this can lead to issues for the advocate, in trying to keep various potential choices open without seeming to introduce inconsistent or unreliable versions of event. It is, obviously, important to additionally attempt to formulate the hypothesis of the case which the other party will be seeking to promote. The

[4] Ibid.

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lawyer needs to assume the version of the case from the other party, as this will assist in identifying the opponent's weaknesses, which will later become the target for own cross-examination.

Organization

After defining the hypothesis of the case, advocates need to organize the materials.

The organization includes not just the psychological categorization and organization of the facts and the law into an approachable structure, yet in addition the physical organization of the myriad papers in order that lawyers can locate material rapidly and without any problem.

The narrative transition

At this concluding stage, the advocate can transform the 'hypothesis of the case' into a narrative form. As listeners, the first introduction to the organization of oral material is in the form of narratives. In evaluating the probability of events and, specifically, in assessing people's inspiration, lawyers depend on stories relatively without considering it: 'Would an individual truly act in this way?' 'Would this really occur?' As Keith Evans mentions:

First: despite the fact that the jury are obliged to be present there, they are not obliged to listen to advocates and prosecutors.[5]

Second: since there is a captive audience, advocate should view himself as obliged to make it as engaging for them as possibly, he can.[6]

There are restrictions to the duty of 'entertainment'; however, it remains a valuable notice that advocates have to keep the court's attention. Assuring that the

[5] https://www.goodreads.com/author/quotes/76595.Keith_Evans.
[6] Evans, K, The Golden Rules of Advocacy, 1993, London: Blackstone, pp 36–37.

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'story' of the lawyer's side is an essential process in ensuring that it is intriguing, and in case of it being interesting, the court with focus on what is being stated. If the court listen, the advocate may convince them.

Advocates conduct two types of interviews.

1) Client interviewing
2) Witness interviewing

Client interviewing is considered as a difficult work because of two reasons. The first one is the intellectual challenge of starting an analysis of the client's issue while, simultaneously, finding the client's objectives and the facts known to the client.
The second reason is the emotional challenge of forming a bond of trust and helping
an individual who might be under considerable pressure.

In any case, the client is an important resource. They will generally have the verifiable information important for the preparation of their case. Consequently, interviewing techniques that expand the amount of detail given are suggested. The types of questions asked are crucial. The essential distinctions are between open ended and closed questions. Open inquiries make the client talk with details; for instance: 'Can you introduce yourself?' Probing questions add open questions and support elaboration
of the account; for instance: Can you tell me more about that?' Closed inquiries require a short answer; for instance: 'Where were you born?'

These are the attorney's purposes in interviewing a client:

1. First, is to establish a lawyer client relationship.

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2. Second, to become familiar with the customer's intentions. What does the client need or want to have done? Does the client have any specific feelings about the different approaches for achieving those objectives?

3. Third, to determine all the information about the facts the client knows. This mostly takes up nearly all the interview.

4. Another important purpose of an attorney interviewing a client is to reduce the client's anxiety without being practical. On a reasonable level, clients come

to attorneys since they need the problems to be solved. However, on an emotional level, clients come to release from anxiety. Even in cases when the client is not in an argument with anyone and needs something positive done, for instance, drafting a will, feels better when a lawyer can say- 'The case might take some work, yet it can be done'.

Regarding witness interviewing, there are three types of possible witnesses.

The first kind of witness is the one who is friendly and wants to help so that the client wins. Another type of witness is referred to neutral, who is not interested in the outcome of the trial; neutral witnesses either do not have any desire to get involved or is willing to testify at preliminary out of a sense of liability to the system of justice. (These individuals do not care who wins. What the witness noticed and recalls, however, usually is beneficial for one party and hurt the other.) An opposing witness wants the client to lose or if nothing else needs the opposite party to win and is eager to state and do things that hurt the case. As it can be observed, every one of these witnesses should be dealt with in different ways. Witness interviewing

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can be simple and at the same time hard to conduct than client interviewing. It could be considered easy when the main objective is to get information and evidence. Witness interviewing can be more complicated if the witness is hostile or neutral. A client will usually inform of what needs to be known. An opposing or neutral witness will not provide with information and evidence unless the lawyer provides sufficient motivation.

Before concluding the above-mentioned points, a very persuasive practice along with approaches would be referenced. Advocates discovered the three important efficient tips that helped to prepare well for the case:

1. Maintaining a checklist that helps to follow the status of the case so that a lawyer can know at what point he is and what could be done more at any time.

The checklist ideally must incorporate all the steps to follow and should to be utilized to follow the progress of the case. This tip is also recommended by Steven Lubet that is mentioned in his paperwork Modern Trial Advocacy. Steven Lubert states that It is vital to make a checklist of witnesses that should be present at the trial in support of the facts and evidence the advocates will provide. The order in which the witnesses take stand is important as well.[7]

2. Prioritizing tasks helps prepare every case on time according to their importance and urgency. At the point when there is a considerable list of assignments

for each case and numerous such cases to manage, it is critical to organize and prioritize tasks so that the right case could be solved at the right time.

[7] Ibid.

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By considering how assignments are linked, lawyers can ensure tasks are finished in due time by the responsible individuals.[8]

3. Another tip is to appoint and schedule assignments. To make sure that nothing is forgotten, tasks must be assigned to individuals with deadlines. In addition,

it is essential to follow deadlines at different levels of the firm. By assigning and scheduling tasks and controlling the time taken to complete the tasks, lawyers are able to improve efficiency and better assess the time required for future cases.

On the trial day, it is important that the barrister is well prepared and aware

of the location of the court along with the scheduled time and make sure to arrive on time. In addition, it is essential to instruct the client clearly above all the above-mentioned points. The council must have a trial notebook where all the important materials in it including the chronology of the case, potential case theory, applicable evidence and the one which should be proven and legal sources. The client should

be informed about the ethics, manner of speaking, sincerity, tone and pace of voice by the counsel.

Alternative Dispute Resolution

Alternative dispute resolution (ADR) refers to ways of resolving disputes between consumers and traders that don't involve going to court. Common forms of ADR[9] are mediation, arbitration, neutral evaluation, negotiation and conciliation.

[8] https://www.studocu.com/row/document/law-development-centre/family-law/final-trial-advocacy-firm-x2-discussion/126190741.
[9] Alternative Dispute Resolution.

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In the given case scenario, mediation and arbitration will be examined as the contract provides for two methods. However, the parties do have a right to implement one of the suitable method or neglect and file a claim immediately. After the analysis of the provided case the most suitable method will be arbitration. This choice will be illuminated by explaining each method separately by providing examples and comparing the advantages and disadvantages of each option.

Arbitration is considered as one of the methods of ADR in which the parties engaged in an argument consent to resolve their disputes by appointing a mutual judge. A judge is an experienced legal expert liable for investigating the arguments and the evidence introduced by each party objectively and make a decision that is mutually favorable for everyone concerned. If there is an absence of an agreement to arbitrate, another method is used for dispute resolution referred to as litigation. For anyone involved in a dispute, litigation can occur as inconvenient, ineffective and a costly process. Consequently, deciding on arbitration to resolve the disputes does not only save finances that are needed to pay for legal fees, yet additionally preserves its reputation.

The parties to arbitration can provide some regulation over the plan of the arbitration process. In certain circumstances, the extent of the rules for the arbitration process are set out by law or by contract; in some cases, the parties cooperate to draft an arbitration process which is appropriate to their dispute. For instance, in some situations the parties may designate the arbitrator, may reduce the length of opening statements, or may agree to not have a disclosure or an oral hearing. Hence, the process can be adjusted to meet the requirements of the parties.

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When the parties have set the boundaries for the arbitration, the arbitrator accepts full control of the process.[10]

Litigation is a process of taking legal action in court in order to enforce a particular right. There are advantages as well as disadvantages of litigation. Starting with the benefit, the party is completed to comply with the judgments, right to appeal, precedent setting and potential for a predictable outcome. Whereas the drawbacks are that the process takes longer time, it is costly and damaging the relationship and it will attract public attention as most court documents are available publicly. In addition, the right to appeal was mentioned as a pro of litigation, it can also be considered as a drawback. There is always the possibility that the decision in a case may be overturned by an appellate court, thus forcing the process to be redone all over again.

Comparing Arbitration with other Dispute Resolution Processes.

Arbitration shares the aspects of mediation. Mediation along with arbitration

is voluntary and confidential. Additionally, neither arbitral proceedings nor mediation proceedings may be used as evidence in a subsequent trial. Arbitration hearing takes places in a private conference room rather than in a public courtroom. In comparison

to litigation, arbitration and mediation save parties' money and time. An arbitrator can

be appointed and the hearing held in far less time than it would take for the same case

to proceed through litigation. Unlike mediation, arbitration is a judicial process.

[10] Richard K. Neumann, Jr and Stefan H. Krieger, Essential Lawyering Skills: interviewing, counseling, negotiation, and persuasive fact analysis (5th edn, Wolters Kluwer in New York 2015)

The arbitrator, like a judge, renders a decision based on the merits of the case. In arbitration, the parties do not create their own settlement. Instead, the arbitrator imposes a resolution on the parties, bounded only by the limitations articulated in the parties' agreement. Unlike in traditional litigation, the arbitrator's decision generally cannot be appealed. In addition, arbitration is much more flexible than litigation.

Conclusion

Summarizing, lawyers can be more confident in the courtroom when they are fully prepared for the trial that will lead to victory. I believe that the key to success is relied mainly on how well the lawyers are prepared for the litigation.

Additionally, the significance of witness and client interviews has been underlined, emphasizing the necessity of good questioning strategies and excellent interpersonal skills. In addition to obtaining factual information, a lawyer must also establish credibility, calm clients, and manage witnesses with different personalities.

The effectiveness of case preparation is further increased by useful tools like assignment scheduling, work prioritization, and checklists. These guarantee that

no important detail is missed and that the matter is handled carefully and precisely in every way.[11]

A legal case's success is based on a mix of professional communication, systematic preparation, strategic planning, and analytical thinking rather than just

[11] Deveral Capps and Flona Boyle, A Practical Guide to Lawyering Skills (2nd edn, Cavendish Publishing Limited 2003)

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legal expertise or courtroom performance. What finally sets a good advocate apart is their mastery of these components.

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4) Richard K. Neumann, Jr and Stefan H. Krieger, Essential Lawyering Skills: interviewing, counseling, negotiation, and persuasive fact analysis (5th edn, Wolters Kluwer in New York 2015).