

Ethical Situations—When Going Too Far is Too Far

Program Number: 98-175A

Title: Ethical Situations—
When Going Too Far is Too Far

Presented By: The Willamette Valley American Inn of Court
Salem, Oregon

Date: April 16, 1998

Materials: Outline, Script, Articles, Law,
Facts, and Video required

Summary:

There are many subtleties in law, hanging simply on the words that lawyers use in a closing argument or a settlement, that when mishandled cross over thin boundaries and become unethical. The Willamette Valley American Inn of Court tackled this subject with three situations connected with the theme of lawyers going too far. After each presentation, the pupillage team (a.k.a. "The Mighty Carson Jr. Players") challenged the Inn members to identify the elusive ways that the lawyer abused the law and asked for means to remedy the act with the proper authority.

The first situation, "Closing Arguments Best Left Unsaid," was a closing oral argument to a jury on behalf of the plaintiff in a personal injury lawsuit. Delivered very seriously, the argument contained several unethical statements as the attorney attempted to sway the jury into making a profitable decision.

"Avoiding the Web" was a dramatization in two scenes that explored the dilemmas surrounding revealing one's settlement authority or refusing to do so during a settlement conference. The case involved a wrongful termination of employment contract, leaving numerous ethical questions to be posed.

The final presentation, "Zealous Representation," started with a videotaped, major car crash, followed by "Danny Drunk" claiming it was a minor fender bender. Several scenes explored ethical dilemmas faced by the civil and criminal litigators, including the duty to disclose adverse law to opposing counsel and to disclose adverse facts to the court.

The program includes a script of the first presentation, and a video tape of all three situations with following discussions. The scripts for Parts 2 and 3 can easily be obtained from watching the video, hence an Inn can act out the entire program without the use of video equipment.

Roles:

"Closing Arguments Best Left Unsaid"
Attorney delivering closing argument
Judge and Jury (if desired)

"Avoiding the Web"
Corporate CEO
Attorney
Plaintiff's Counsel

"Zealous Representation"
Attorney
"Danny Drunk" (humorous)

Agenda:

Part 1: "Closing Arguments Best Left Unsaid"

- A. Video presentation
- B. Panel discussion with audience
- C. Authorities provided

Part 2. "Avoiding the Web"

- A. Video presentation
- B. Authorities provided
- C. Panel discussion with audience

Part 3. "Zealous Representation"

- A. All materials provided
- B. Video presentation
- C. Panel discussion with audience

Physical Set Up and Special Equipment:

A courtroom for Part 1 and offices for Parts 2 and 3. The program was videotaped prior to the presentation, and the discussion during the program was also videotaped.

References:

- Stevens, Sylvia E. "A Tangled Web." *Oregon State Bar Bulletin*, October 1997, pp. 33-34.
- Geronemus, David. "Lies, Damn Lies, and Unethical Lies." *Business Law Today*, May/June 1997, pp. 11-17.

Comments:

This program could be adapted, especially Part 3, to the law of any jurisdiction. The ethical issues throughout are of universal interest.



DEPARTMENT OF JUSTICE

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April 24, 1998

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Ms. Terri Sweat
American Inns of Court
127 South Peyton Street Suite 201
Alexandria, VA 22314

Re: Current Program Report/Application for Consideration of Award for Next Reporting Period "WHEN GOING TOO FAR IS TOO FAR" by Oregon Chief Justice Wallace P. Carson, Jr.'s Pupilage Team (aka "Mighty Carson Jr. Players"), Willamette Valley Inns of Court, April 16, 1998.

Dear Terri:

Thank you for your assistance. I hope our Inns President, Mike Brink, is also able to send you Circuit Court Judge Pamela Abernethy's program from earlier this year. That would be a separate submission. Both presentations are of the very highest quality (I am biased). As I understand it I can adapt your form and retype it.

American Inns of Court
Willamette Valley Inns of Court
Salem, Oregon Inn No. 30175

Summary of Demonstration:

Three stand alone ethical situations connected by the theme the lawyers are going too far. The presentations were video taped and edited and the actual discussion was video taped and the whole presentation when merged runs about an hour.

1. "Closing Arguments Best Left Unsaid" (Can you spot them all?) - This is a closing oral argument to a jury on behalf of the plaintiff in a personal injury lawsuit. The argument contains several unethical statements. The argument is delivered seriously. It is followed by a discussion with the audience.

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2. "Avoiding the Web" This dramatization in two scenes explores the dilemmas surrounding revealing one's settlement authority or refusing to do so during a settlement conference. The case involves a wrongful termination of employment contract. Numerous ethical questions are posed.

3. "Zealous Representation" This dramatization starts with a video taped major car crash quickly followed by "Danny Drunk" who claims it was a minor fender bender. Several scenes explore ethical dilemmas faced by the civil and criminal litigator including duty to disclose adverse law to opposing counsel and to disclose adverse facts to the court.

Number of participants required for program:

Part 1. can be done with one attorney but we used six for a jury and one for a judge. We also could have added additional realism with a plaintiff and possibly others at counsel table.

Parts 2. and 3. used about seven attorneys total.

Each part can be followed by as many panel members as you want for leading discussion.

Materials were handed out at different times for the different scenarios. For example we didn't hand out the authorities for part 1. until after the discussion in which the audience had to spot the unethical arguments.

Roles:

Not complicated. Mostly attorney roles as described above although "Danny Drunk" in part 3. can be a humorous delivery. Part 1. has one speaking part, the attorney delivering closing argument. Part 2. has a corporate CEO and his/her attorney as well as plaintiff's counsel. Part 3. has attorneys and "Danny Drunk".

(We use all levels of membership category in the program and it doesn't make any difference who does what or who leads the discussions).

Materials: Attached. Our agenda shows when to distribute the various program handouts:

Agenda

The argument from Part 1; the authorities for Part 1.
Authorities and description of the setting for Part 2.
Facts, issues and authorities for Part 3.

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Agenda:

Attached

Recommended Physical Setup and Special Equipment

A courtroom for Part 1 and offices for Parts 2 and 3.
We video taped the parts before presentation and then video taped
the discussion.

Authorities

See attached (VIDEO TAPE OF ENTIRE PROGRAM WILL FOLLOW UNDER
SEPARATE COVER)

Comments

This program could be adapted, especially in Part 3, to the law
of your jurisdiction. The ethical issues throughout, especially
in Parts 1 and 2, are of universal interest.

Sincerely,



Thomas K. Elden
Assistant Attorney General

TKE:lk/EFW0AD80

w/enclosures

c: Mike Brink w/o enclosures

Chief Justice Wallace P. Carson, Jr., w/o enclosures

AGENDA
WILLAMETTE VALLEY INNS OF COURT
APRIL 16, 1998
MIGHTY CARSON JR. PLAYERS

ETHICAL SITUATIONS - WHEN GOING TOO FAR IS TOO FAR

5:45 to 6:30 Informal Gathering

6:30 to 7:00 Dinner

7:00 to 8:05 Program

Presenters:

Chief Justice Wallace P. Carson, Jr. (Oregon Supreme Court)
Dean Robert M. Ackerman (Willamette University College
of Law)

Willamette Law Student Karl Weiss

Carl R. Amala (Private Practice)

John H. Beckfield "

Tammy M. Dentinger "

Thomas K. Elden (Sr Assistant Attorney General)

Dennis J. Graves (Private Practice)

Lori Jenkins "

Jay T. Jennings "

Kristin LaMont "

Michael C. McClinton "

Gary A. Rueter "

**Part 1: Mike/Tom/Kristin/Karl "Closing Arguments Best Left
Unsaid" Can you spot them all?**

- a. Video presentation (closing argument)
- b. Written closing argument provided
- c. Panel discussion with audience
- d. Authorities provided

**Part 2: Gary/Dennis/Dean Settlement Negotiations
"Avoiding the Web"**

- a. Video presentation
- b. No script provided
- c. Authorities provided
- d. Panel discussion with audience

Part 3: John/Lori/Carl/Tammy "Zealous Representation"

- a. All materials provided
- b. Video presentation
- c. Discussion with audience