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Learning Trial Advocacy: An Experience Sharing

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The Road goes ever on and on Down from the door where it began. Now far ahead the road has gone, And I must follow, if I can, Pursuing it with eager feet, Until it joins some larger way, Where many paths and errands meet

... JRR Tolkein My law professors used to say: 'Unless you burn the midnight oil, you can never become a good lawyer'. Believe me, in my student life I ended up with innumerable sleepless nights to decipher the critical sections of law with utmost sincerity! When I entered the legal profession in Bangladesh, I found immense difficulties to rhyme theory with the practice. I realised for the first time that trial advocacy does not mean only knowing the law rather it means much more than that. Knowing the law and its application is of course a necessary condition but not a sufficient one. Advocates' should more importantly know how to present their case in the Court. It requires skill and that was never taught in law schools. I must admit that there is very limited institutional scope in Bangladesh to learn the techniques of trial advocacy. Therefore, I was very much eager to attend the Intensive Trial Advocacy Workshop, jointly organised by the Bangladesh Bar Council and the Australian Bar Association in Dhaka. I attended the 1998 workshop and I was fascinated by the Australian trial advocacy techniques taught by the senior members of the Australian Bar and the Bench (especially the late Mr. Justice Robert Kent, judge Ann-Ainsle Wallace and barristers John Watts and Dan O'Gorman) who visited Bangladesh in that year. I wished that the workshop could go on for a few days more but that was not possible. Hence, I sailed across the continents in quest of learning the difficult 'art of advocacy'. Advocacy, as I have learnt, is just like a 'performance' perhaps a theatrical one. A courtroom is like a 'stage' for trial advocates where they have to do their 'final performance'. Of course they have a definite costume (gown) to wear, a theme (theory of the case) to establish, dialogues (arguments) to communicate and above all, an audience (judge, jury, colleagues, and clients) to impress. Advocacy is like an art and if I may refer to George Bernard Shaw's words, '[advocacy] is the art of making the audience believe that real things are happening to the real people'. A command over language is an essential ingredient of successful advocacy. Words create an atmosphere in which a trial advocate leads the mind of judge and jury. Therefore, advocates are required to be very careful about what they say. It is important for the advocates to try to build up a style of their own, different from the rest. They need to be courageous but at the same time, courteous in their presentation. Again, they need to give particular attention to matters like the way they stand before the Court or move their hands while addressing the Court. Their voices need to be distinct and their speech should be audible. They are always expected to try to make eye contact with the judge. Trial advocates need to be very systematic both in their thought and action. Nothing pays as well as a sound planning in trial advocacy. The art of advocacy is just like the 'art of warfare' because in both cases strategies are as important as capabilities. A successful courtroom performance does not happen by accident. Advocates have to develop this craftsmanship within them. Hence, it is essential that trial advocates design their strategy beforehand. Also, as the trial proceeds, they expected to be ever ready to adapt to unexpected circumstances and, if necessary, take recourse to a 'cease-fire', namely by asking for an adjournment if the situation demands so. Initially, I used to wonder whether an advocate should be loud and aggressive towards their witness, especially during the cross-examination. I did not get a definite answer from my professional seniors; they were rather divided on the issue. With the passage of time, I got a definite answer. The answer is, 'no, and a hundred times no'. Cross-examination is the most sophisticated part of trial advocacy - a battle can be won or lost on that ground only. Therefore, while cross-examining, a trial advocate should be very calm and patient as any aimless question asked on the spur of the moment may ruin their case. From my experience, I have also learnt that advocates should learn how to deal with the weak points of their case. By

willfully shutting their eyes to weak points advocates invite unnecessary doubts in the mind of the Court. Therefore, they are expected to try to give a reasonable explanation of such matters at the earliest possible time. Last, but not least, so far I have learnt that persuasiveness is one 'golden thread' that passes through all the aspects of trial advocacy. The role of the advocate is to persuade the Court to get relief for their client. A case may not always be that - strong, evidence may not always be that supportive and the law may not always be totally in favour, but the 'magic touch' of persuasion can make all the difference. Persuasion does not necessitate adopting unethical practices or dirty tricks by distorting the facts. Rather it means the advocate's argument must be logical, believable and legally coherent. Through their submission an advocate should plead to the Court that their client is an essential consumer of justice, and the injustice inflicted on them should not remain unattended. A persuasive argument with convincing overall trial advocacy silently steals away the hearts of the judge and jury. As I look back, I find myself to have travelled a long, long way from where I began my quest. I always tried to shape and reshape my ideas, sharpened my thought processes, and picked up a definite style that completely suits me. For me, the learning should not stop at any particular point of time but rather go on forever as: ... I have promises to keep, And miles to go before I sleep. And miles to go before I sleep. The writer is a Prosecutor, International Crimes Tribunal of Bangladesh and Professor and Chairperson, Department of Law, East West University

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