FUNDAMENTALS OF TRIAL ADOVCACY COURSE

April 3-7, 2017
Phoenix, Arizona

ETHICS FOR PROSECUTORS

Presented by:

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Distributed by:

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Trial Ethics

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Ethical Rule 3.8

- Special Responsibilities of a Prosecutor

Ethical Rule 3.8

- Special Responsibilities of a Prosecutor
  - Don't prosecute a case unsupported by probable cause
  - Make sure accused is advised of right to counsel
  - Not seek unrepresented to waive pretrial rights
  - Timely disclosure of everything that helps defense
    - Disclose all mitigating evidence

Ethical Rule 3.3

- Candor Toward the Tribunal
  - No false statement of facts or law
  - Correct any false statement
  - Disclose adverse authority
  - Do not offer false evidence

Ethical Rule 3.4

- Fairness to Opposing Party and Counsel
  - Don't obstruct access to, destroy or conceal evidence
  - Don't falsify evidence or assist in false testimony
  - Diligently comply with discovery requests
  - At trial don't
    - Allude to irrelevant evidence
    - Assert personal knowledge
    - State a personal opinion

Vouching

- Prosecutor places the prestige of the government behind its witnesses
- Prosecutor suggests that information not presented to the jury supports the witness's testimony.

Vouching

- Make all your arguments based on the evidence at trial.

Comment on Right to Remain Silent

- Note that the burden of proof is on the prosecution and that the Defendant has failed to call witnesses to support the theory.
- Except when only witness who could do so is the Defendant.
- When a prosecutor comments on a defendant's failure to present evidence to support his or her theory of the case, it is neither improper nor shifts the burden of proof to the defendant so long as such comments are not intended to direct the jury's attention to the defendant's failure to testify. *State v. Martinez*, 130 Ariz. 80, 82-83, 633 P.2d 7, 9-10 (App.1981).

Personal Attacks

You have to keep in mind that everything that you-or your decision has to be based on what came from the witness stand. It can't be based on what came from that chair-I'm pointing to [defense counsel's] chair.

You remember during his opening statement, he wove quite a tale to you about what happened on the way down to south Phoenix or perhaps what you thought the evidence would be. That's not what the evidence was. None of that is before you. You are not to consider it. *There is nothing in the evidence at trial that supports it.*

Were they lying?

- Arizona prohibits lay and expert testimony concerning the veracity of a statement by another witness. *State v. Moran*, 151 Ariz. 378, 382, 728 P.2d 248, 252 (1986) (expert witness); *State v. Reimer*, 189 Ariz. 239, 240–41, 941 P.2d 912, 913–14 (App.1997) (lay witness). Determining veracity and credibility lies within the province of the jury, and opinions about witness credibility are "nothing more than advice to jurors on how to decide the case." *Moran*, 151 Ariz. at 383, 728 P.2d at 253.

Were they lying?

- Q. So what Jack [the manager] came up and testified to earlier today, and you were sitting right here, that was all a lie?
- A. Yeah.
- Q. Okay. So Jack was lying?
- A. Yeah.
- Q. And [the clerk] was lying when she said that you said the F word, right?
- A. I would say so, yeah.
- Q. Okay. So we got two liars that I brought up on the stand today, right?
- A. Appears to be, yeah.
- Q. For you're not a liar, right?
- A. No.

Were they lying?

- Q. So what Jack [the manager] came up and testified to earlier today, and you were sitting right here, none of that happened, right?
- A. Yeah.
- Q. Okay. So Jack's testimony was not correct?
- A. Yeah.
- Q. And when the clerk testified that you said the F word, that wasn't correct, right?
- A. I would say so, yeah.
- Q. So what those two witnesses said about you was incorrect?
- A. Appears to be, yeah.
- Q. And everything you said today was the correct version?