**Role of the court system / Guidelines principles of defense attorney**

The first rule for running a successful practice is the defense attorney providing competent leadership and ability to represent the respected client. The competent know how of being a defense lawyer requires the knowledge, skills, and preparation to proceed to the full extent of the law. The full extent of the law can be a trial where the defense attorney and prosecutor have the opportunity to choose 12 people from the community to decide the verdict of the crimes that the client is facing. Once the attorney files a motion of appearance; he accepts the duties of representation and shall not delegate the duties or responsibilities to another lawyer. The competence is now set between the client and the lawyer. The defense attorney has successfully instilled the knowledge into the client that he is willing able to represent him. This is often misunderstood to meaning that a defense attorney can win every case. However, under my field observation a case dismissed is absolutely impossible for a defense attorney in every single criminal matter. A defense lawyer is not like a sports team where you can keep a record of wins and losses’. The statistic for wins is keeping a person out of jail, agreeing upon the necessary terms that will rehabilitate the offender, and teaching him/her how to comply to instruction. A win can be viewed as probation, supervision, and small amount of time in jail. Once the client hires the attorney trust and confidentially is passed between the lawyer and the client. This is where the relationship begins. The trust allows the attorney to fact find every last detail to build a defense on behalf of the client. An example would be; once a client hires James Schwarzbach it is his responsibility to keep confidentiality between him and his client, and not delegate information to attorney Ritacca. Because James has accepted all duties of his client’s representation not Ritacca. The example of trust would be when a defendant tells Schwarzbach exactly what happened the night of the crime, criminal history, gang affiliation, family affiliation, and if jailed the people to talk to resolve the case at hand. It is not stressed enough how dependent the client becomes on the knowledge and expertise of the defense attorney. Even though, I was allowed to sit in on these informal interviews between client and attorney, it was up to the client to give permission since I am not officially legal counsel.

The second rule is referred to as scope representation. A lawyer shall abide by a client’s decisions concerning the objectives of representation. An example is when the defense attorney and state agree upon the conditions of a deal. It is still up to the client to accept this deal. At the pretrial agreement the judge asks the client if he has been promised anything, forced into this deal, if the client responds with no to the questions. The judge rules that the client has made a knowing and voluntary decision. In a criminal matter the lawyer is obligated to abide by the decision of the client to enter a plea, and whether he will waive his right to trial and whether the client will waive his right to testify. Even though, a client can agree to a plea; I have learned that he still has within 30 days to appeal his decision. The reason is if there is new evidence that can be brought before the court, change in representation, or change in the plea; the defendant still has ample time to think over his plea.

The third rule is a lawyer who represents more than once client shall not participate in making an aggregate settlement of the claims of or against the clients, or in any criminal case an aggregate agreement as to guilty or nolo contendere pleads, unless each client consents after disclosure. An aggregate settlement to my research is each client has a separate case, and it is the responsibility of the defense attorney to not make a group settlement.

Before a defense attorney even steps into the court room those guidelines above are the conduct that is expected before representation. The court room conduct can be defined by a separate code. This code is protected under the CPP or Client Protection Program. This program is established to reimburse claimants from the Disciplinary Fund for losses cause by dishonest conduct committed by lawyers. The purpose of this CPP is to promote public confidence in the administration of justice and to uphold the integrity that lawyers conduct themselves with. For example; when a lawyer is paid a substantial amount of money to defend a client it is his obligation to fulfill his commitment through the proceedings. Disagreements between the client and the defense are normal. The reason is the client doesn’t have the knowledge the attorney does, which is why the attorney was hired in the first place. Under no circumstance should a lawyer withdraw without the permission of the client. It is only under verbal dissatisfaction in front of a magistrate should a defense attorney put in a motion to withdraw. For example: while waiting in pre trial I had the opportunity to view other attorneys conduct themselves. In one particular case I heard the defendant state that he did not want his current attorney to represent him, the judge asked is that his wish to seek further counsel. The defendant responded yes, and at that particular time it is acceptable for the attorney to state that he will file a motion to withdraw. It is highly unprofessional for an attorney to not show up at court and tell the defendant that he withdraws, once a motion is in place for representation it is a responsibility of the attorney to appear at every court appearance until the case is closed. It was alarming to see how many bench warrants were issued because the lawyer stated to the magistrate that the defendant wasn’t happy with my representation. The program protects these clients however that pay substantial amount of money, and don’t receive proper conduct from their attorney. The client protection program reimbursements of losses are decided by the discretion of the Commission. The commission is in charge of establishing the rules and the maximum amount that the claimant may recover from the claim and may establish the maximum amount that should be recovered by the dishonest conduct of the attorney.

The preamble states that the practice of law is trust between an individual and a legal representative. Lawyers are the trustees of the system by which citizens are able to resolve disputes among themselves, punish and deter crime, and determine their relative rights and responsibilities toward the government and each other. Lawyer’s responsibilities consist of presenting character, knowledge, competence and integrity of the persons that have hired them. The duties are not only to the clients that have hired them, but to ensure confidence through the system of justice by acting competently and with loyalty to the best interests of the clients and facing the challenges of changing society. The lawyers for example have the ability to negotiate with the state the punishment that is best for the client at pre trial. In some legal matters their can be 5-10 pre trials depending on the facts of the case. The lawyer has the ability to negotiate what is in the best interest of the client which can be related to the example of when the lawyer will state this offender is a “probationable” offender. This term refers that in the client’s best interest but also societies that it is best for the client to be rehabilitated on a monitored time period. A felony probation for example, keeps a defendant out of prison, but allows him to receive mental treatment, drug treatment, work release, community service, and supervised release In these type of cases the client and society both win. The reason is in the eyes of the client he deserves to remain out of prison but under certain guidelines (curfew, work release, order of protection) society wins because if this offender violates in that time period a PTR is filed. A PTR is a petition to revoke, re opens the case and the defendant will be prosecuted to the full extent of the law If the client doesn’t violate his probation, then in the eyes of the attorney and prosecutor it was the proper agreement that the defendant followed the terms of his probation. Along with doing that; however, the defense attorney will work to have that penitentiary time shorter than the state offers, which is also in the best interest of the client. The plea agreement is then seen as a negotiated plea, where the state and the defense both get terms of what they see as justifiable.

The rules that I have described are codes and conduct found in the Code of Professional Responsibility, *Rules 1-101Article 8 of Court Rules*. Through my observation in the court proceedings; I am able to articulate on certain rules and regulations that I have learned. For a defense attorney the court room is not a place to argue and negotiate with a client the certain conditions of a plea agreement. On more than one account, I have witnessed other attorneys argue with their clients about their plea in the court room. It is specified under the code of conduct that before the court room hearing, it is the responsibility of the attorney to explain with honesty, integrity, knowledge, and competence to discuss with the client their options before court. At a pretrial hearing there are many clients waiting to be called before a judge. It is irresponsible and unethical for negotiations to be happening between counsel and a client while the judge is hearing other cases.

One of the rules of the code of conduct for an attorney is to be timely and prompt for court proceedings. Unfortunately, this is one of the hardest obligations under the code to follow. In Lake County there are 15 criminal court rooms, and all have 9:00 a.m. trial call. It is virtually impossible to be at all trial calls at 9:00. However, it is possible to be at each trial call that morning, which means 10:30 a.m., can be considered acceptable by the client, magistrate, and prosecutor.

My particular field observation was handled in a law office and a court room; I didn’t conduct any observation in the practice of law enforcement, but I did see their conduct in court proceedings and interrogation interviews through video tape. Unfortunately, law enforcement officers in court proceeding are the states witness’s. They are responsible for testifying to what occurred and are subpoenaed to be witness’s on behalf of the states argument to why the defendant is guilty. The relationship between a defense attorney and the police is conducted in a professional manner but not necessarily friendly. The police officers that are called to testify in court proceedings are either the patrolling officers of the scene of the crime, or the investigator that interrogated the client at hand. Their professionalism and testimony is often questioned and ridiculed down to every conceivable detail by the defense attorney. It can be extremely intense and sometimes viewed as personal. However, the officer, prosecutor, and magistrate understand that the duties of the cross examination by the defense attorney are to eliminate charges brought upon by the officers judgment, which eliminates personal conflict and questioning of professionalism all together. Being able to listen and watch via video of traffic stops, interrogations, and arrests it is my own personal determination that more times than not officers follow the proper procedures. But I can state that I have seen questionable testimonies and questionable tactical interrogation. In every situation I viewed the following: traffic stop the rights are given, in interrogation Miranda rights are read, and upon arrest the right to an attorney and the fact that anything you say can be used against you is instructed.

My only observation is that in certain situations; I have viewed tactics to get confessions, reasons for a traffic stop; home and property seizures have been done unethically in certain cases. These unethical and improper actions have been followed with the suppressing / and squashing in most cases. It is rare for a confession without the reading of Miranda rights to be useable evidence in court. The defense attorney files motions to have those thrown out before a jury is ever thought about being sworn in. The unethical conduct that I would describe would start with the interrogation room. For example: in a murder case interrogation the task force officer stated that the other co defendants had already confessed to the murder and have told us that you were the shooter. When in fact the co defendants hadn’t been put in custody yet, the officer was lying to the accused to get a confession. When the accused asked if he could call his father being only 17 he is a juvenile and has the right to be interviewed with his father present they told him after he answers their questions. Under statute the task force took advantage of an ignorant not UNintelligent kid who didn’t and doesn’t understand the law. I would argue the way the task force conducted themselves using strategy to get a confession is unethical. However, others would argue that the specific duty of the task force is to get confessions and can do so through mindful tactical strategic questioning as long as there is no use of brutal punishment. In response a motion has been filed to suppress and quash the statements because the offender asked twice in the official interview for his father. Once the interviewee asks for representation, the questioning must end at that particular moment. In this case “PV” was held and questioned for 4 more hours. This would be seen as an unethical interview and is being reviewed by the magistrate to be squashed discover and evidence.

**Patterns of alleged criminal behavior**

The pattern of criminal behavior that could be linked in almost all violent criminal matters was a willing offender, a suitable target, and lack of capable guardianship at the location. In one of my weekly journals I described a specific case that follows the pattern of the Routine Activities Theory, and in many cases the routine activities theory can be applied. The pattern that I was instructed to describe through my pre trial observing were the ethical, social, and economical issues that the client had. The reason that these three issues are a pattern is because the clients of attorney Schwarbach and Ritacca all have some time of ethical, social, or economical issue. According to these attorneys the reason beyond a theory like the Routine Activities is the reason why these clients become classified as motivated offenders.

For each case; I described what the offender was charged with and some definite characteristics. These characteristics stemmed from: work history, family, living situation, previous record, gang affiliate, alcohol and drug affiliate, violent offender, and education. These characteristics tell a story of why the person is before a court room. I described in my journals some specific cases and their economic, social, and ethical issues to go further I will describe how I classified those patterns. First, when a client is brought before a judge being unemployed it is considered an economical issue. The reason is the person most likely cannot post bond, pay an attorney, and can’t effectively support his family, and be rehabilitated back into society. This is beyond an economic issue because socially this person is seen as under achieving by society. It was rather alarming to see the amount of clients that participate in the underground economy to support their family rather than employment. When an offender is brought before a court, the judge understands that if the person is unemployed then he is most likely doing illegal acts to survive. In criminal law someone who is unemployed and facing felony charges isn’t going to catch a break because at this particular time; he doesn’t have a commitment to keep him honest and doesn’t have a job to show self worth. A judge and prosecutor are more likely to work with an offender who is employed than one who is not. The reason is because in society it is unacceptable to be unemployed according to the procedure of our court system. I firmly believe this because in bond court when Judge Raymond Collins would ask at arraignment are you employed, it would follow with a “why not”. Every time the answer was no, it was almost a 100% that he would ask the prosecutor for factual basis for the charges followed by placing a bond that was higher compared to someone with similar charges but who was employed. The reason behind that judgment of keeping a high bond is the fear that before trial this person that is unemployed will either pick up new cases or flee. There is absolutely nothing keeping that unemployed person honest (maybe besides his family that he is not supporting). Unfortunately, the magistrate has no sympathy for anyone that is unemployed, and it is a deep economic and social issue that is a pattern in our court system and has strict procedure. The pattern for someone unemployed is almost a guarantee of work release if not prison. When the order of periodic imprisonment and work release are put into place it is due to the fact that the magistrate wants to see if the offender can stay committed to work. It builds self worth, commitment, and solves economic issues. At the completion of work release the offender is seen as being integrated into society and feeling better about themselves. A particular case “Painter Ray” who struggled with finding a job was sentenced to work release after his alcohol evaluations. Ray had struggled with alcohol making him violent. His violence effectively ruined his marriage and ended with his small children being put into a foster home. Ray was given the opportunity instead of state prison to show to the court and to himself that he could clean his act. He was sentenced to periodic imprisonment by work release. In work release Ray learned traits of roofing, sanding, and other labor trades. Now, after the completion of his work release he is employed by a building company / construction company and just recently re-did the Law Office of Robert Ritacca piping and roofing. This is evidence that the social and economical issue of unemployed offenders can be resolved. The pattern for the unemployed who aren’t facing class X, 1, 2 felonies are given the opportunity to work. After Ray’s story and his proving of rehabilitation, it is evident that there is a procedure under criminal law to solve economic and social issues. Besides having Ray’s attorney believe in his abilities and rehabilitation I have actually seen another client succeed in this procedure under criminal law. Cesar W was a gang affiliate who struggled with violence and the abusing of alcohol. At his sentencing after pleading guilty to a Class 4 felony having a prior record it was either periodic imprisonment or the department of corrections. He was able to make a statement on his behalf before Judge Bridges made his decision on the plea. Cesar stated that under his current probation that he had found a job under the court order of 24th month felony probation and has made the commitment to his girl friend who has a child on the way. He admitted that he had made some costly mistakes, and understands that this is his last chance. He almost completed his 24th month probation, but irresponsibly was 20 minutes to the bus that brings him back to the court house. Judge Bridges stated that he has considered the statements and defense on your behalf, but I see you as someone who needs the department of corrections, then stopped himself and told Cesar to sit back down. When Cesar was recalled Judge Bridges ordered him that he was going to give him one last chance and that he was able to finish his probation and can continue to work and provide for his child on the way. At that moment I understood that the advice that attorneys give and the success in work release actually saves people’s lives, not only Cesar’s but his girl friend and the child that is on the way. This social issue of supporting your family was the difference between prison and integration into society. Two days later driving downtown Waukegan, I get a honk and see Cesar in a tow truck on his way to the next job. It was eye opening that the procedure of the court system actually works. It brought a violent, alcohol abusing, gang member to become a working, mature, adult that admits his faults but wants to change his life. At that particular moment I began to understand the importance a defense attorney to give these offenders the ample opportunity to succeed while they are awaiting trial to get evaluations, work, community service and other acts that better their case, and it is the judge’s duty to sentence these individuals to proper consequences that rehabilitate them. When the social and economical issue arises of an unemployed offender I truly believe in the system and the issues that I have seen it solve.

However, there are social and economical issues beyond unemployment in our society that have court procedure. I touched on of them being the abuse of drugs and alcohol, but just like unemployment there is a procedural solution that the court system uses to solve this issue. Ethically, it is looked down upon for a repeat offender of DUI and alcohol related crimes to be able to continue to abuse alcohol; however it is extremely difficult to have a one procedure that solves this reoccurring issue. The reason is the world is run on cars. People have to be able to drive to transport their family, work, and other basic needs. It is an ethical issue that is extremely complicated and fought in the court of law. The fact finding is that I have witnessed 5-6 different clients with multiple Drive Under the Influence (DUI) charges. They still have licenses and obviously still don’t fear the law, or in the defense’s argument this person doesn’t know how to drink responsibility. This becomes extremely difficult for the judge to rule on especially with factors of work, family, and other responsibilities that this person may have. The ethical issue is that this person should not be able to drive, the economical issue then becomes a factor because the person isn’t able to get to work as efficiently as when they could drive. The pattern for this type of offense of multiple alcohol related crimes is Haymarket and the Oxford house. For clients that consistently abuse alcohol is referred to these rehab facilities, and after they complete their outpatient or inpatient they are able to get a driver’s license. The ethical issue is solved because if a client is able to complete 60 or 120 days of rehab then they have shown that they understand they have abused alcohol, and have gone a lengthy amount of time without using it. The social / economical issue is also solved because they are able to get a driver’s license whether they have a BAIID machine, or continue their AA classes while on probation. This issue of DUI has a procedure in the criminal process, it is effective it cases for people who want to stop abusing alcohol, but I don’t find it as effective as the work release program. The reason is alcohol is a commercialized and acceptable social activity. Alcohol is everywhere and avoiding the temptation is extremely hard for people have abused, and people think that they can just have one. When that mind set happens is when clients people repeat offenders or guilty of the term recidivism that is frequently used in the criminal justice system.

**Discussion of Internship Experience**

Through my factual learning of the criminal justice system there are some consistencies and inconsistencies that come from the perspective of a criminal defense attorney. First, in the media and television it is broadcasted as if every case goes to a bench and jury trial. Learning the criminal justice system; I learned quickly that about 90% of all cases are handled in pre trial plea agreements. That statistic is consistent in the perspective of a criminal defense attorney. According to attorney Schwarzbach; he has about 10 bench trials and 3-4 jury trials a year. This statistic would be consistent with an article from PBS authored by Kelly Jarrett who states that 95% of cases are settled in plea bargaining.

An inconsistency that comes from a defense attorney’s knowledge is the statement a person remains innocent until proven guilty. One would argue that the statement should be a person remains guilty until proven innocent. The inconsistency is the technological advances have helped the police gather information to put together a case. With the advances in texting, facebook, wire taps, video surveillance, and interrogation surveillance, law enforcement are able to gather the information to charge and present evidence through video and audio to the court of law, which make it extremely difficult for attorneys to prove their client innocent. Attorney Schwarzbach currently has a 17 year old juvenile facing life for murder. He was charged by making a confession through a wire tap. The inconsistency is the impact of technology on court cases because the valuable asset it is to the court system. Many offenders that are awaiting trial have been caught on tape or audio committing crimes already making them viewed as guilty before a court opening statement is drafted.

A consistency with book knowledge to a defense attorneys perspective is the race of clients. Learning the percentages of race of inmates and offenders is consistent with the races of clients that Schwarbach has represented this summer. From my learning in the classroom is most robbery, gang affiliated, murder / violent crimes are offenders that are either Hispanic or Black compared to a small percentage that is white. It was alarming to notice the data of race of clients between Schwarbach and Ritacca. The data follows:

This isn’t a violation of confidentiality between client and attorney because this data can be publicly accessed. Along with receiving permission of both attorneys to write the name and race.

|  |  |
| --- | --- |
| Jose Horta | Hispanic |
| Jim Mcpherson | Black |
| Phillip Vatamanuic | White |
| Thomas Albea | Black |
| Robert Bunk | Black |
| William Fillyaw | Black |
| Jose Garcia | Hispanic |

There are currently 20-30 individuals being held in Lake County for murder charges, 7 of them are clients of Schwarbach or Ritacca. Out of the seven that in fact are being tried for murder six are either black or Hispanic. That is consistent with the data that has been presented in the classroom, and consistent with a small sample in Lake County Illinois. For armed robbery the statistics might even reflect my book knowledge even more.

|  |  |
| --- | --- |
| Kenneth Cooper | Black |
| Jimmie Cook | Black |
| Todellion Yarborough | Black |
| Christopher Emory | Black |
| Denise Mcduffy (robbery) | Black (female) |
| Phillip Vatamanuic | Armed Robbery (also murder) White |
| Michael Coffee | Black |
| Benjamin Schenk | White |
| Darrick Yarborough | Black |

Unfortunately, I am not in the position to be able to gather how many criminals are facing armed robbery in Lake County, but out of two defense attorney’s calendar 7 out of the 9 are African American. This is definitely a reflection that the alarming rate that African Americans have a higher percentage of murder and armed robbery than any other race.

**Most Valuable Learning Experiences**

It is extremely hard to identify one lesson or learning experience as the most valuable. I would rather take a general picture to describe my outlook on participating in this business. Having my father as an attorney; I have been able to learn the confidentiality before I even thought about actually observing the practice. Never once was client case the dinner table conversation, nor have I had the courage to ask. The criminal defense attorney is a strict business that takes many years of learning. There isn’t a book or a bar exam that can teach the fundamental skills of being able to deal with clients, plan a strategic defense in trial, or win every case. Every person that walks through the doors seeking legal help is different from the person before. It’s not like selling financial advice, cars, or anything else. There isn’t a routine with dealing with criminals. It takes honesty and the demonstration of trust to be able to build a successful practice. In the demonstration of Ritacca and Schwarzbach their isn’t commercial advertisement, facebook pages, billboards, or signs out the door that say 20% off, the way that they have established client relationships and a successful practice is by preparing and executing the law. The law system takes work and countless hours of reading reports, talking with witnesses, and mitigating with the state. This isn’t a position for the weak of heart. To be able to continually get clients is only through the word of mouth from other clients. When people get arrested they immediately ask people they know that have gotten in trouble what to do and who to talk too. The attorneys with the best tract record of being honest with their clients and working for their freedom are the ones who have the most successful retention of clients. It’s a trust business, it can’t be stressed how intense this business is. Literally lives are on the line and the procedure for preparing cases can be mentally grueling, but by listening, asking questions, and observing I was to the best of my ability a grasp of how a successful practice is run.

Jarett, Kelly. (2004). Frontline News. PBS. August 12 2013.

http://www.pbs.org/wgbh/pages/frontline/shows/plea/etc/synopsis.html