Podcast 17 – The Gift of the Gab – The Lawyer as Oral Advocate

PROFESSOR FORCESE: Welcome back to the virtual Orientation for the incoming class of the English language JD program at the University of Ottawa. In this podcast, I discuss the issue of oral advocacy with Professor Stephen Blair and we focus both on oral advocacy for those in legal practice and also some of the skills and aptitudes associated with oral advocacy. I began by asking Professor Blair about his professional career.

PROFESSOR BLAIR: Well I’ve been teaching at the law school for over ten years now. I teach several courses: contracts in first year and then upper year courses (commercial law, evidence and trial advocacy, and appellate advocacy). And I also coordinate the Nelligan O’Brien Payne first year competition which is held in November of each year.

PROFESSOR FORCESE: You were in private practice before coming to the law school?

PROFESSOR BLAIR: Yes, I was in private practice for about fifteen years at the firm of Osler, Hoskin & Harcourt in Ottawa. I was primarily involved in a commercial litigation practice although I did other areas of litigation such as insurance and defense work, some municipal law work, and some plaintiff personal injury work.

PROFESSOR FORCESE: So this podcast is on the concept of oral advocacy, what do you mean by oral advocacy?

PROFESSOR BLAIR: Well I think traditionally oral advocacy connotes a lawyer appearing in court or in front of a tribunal to plead or argue their case and present evidence to the body who is hearing the matter. However, oral advocacy has a much wider role in being a lawyer that goes well beyond traditional court type of work.

PROFESSOR FORCESE: So for example?

PROFESSOR BLAIR: To be an effective lawyer, whether you are involved in court or whether you are involved in solicitor work, office work, transaction type work, you have to be an effective advocate of your client’s position and the positions you want to take to people on the other side of a transaction or a court case of the fence you end up. So certainly skills that you learn, advocacy skills that you learn in a more traditional sense, can be applied to other areas of law.

PROFESSOR FORCESE: So it’s just not building to present your views in front of a formalized tribunal. It’s also to be able to speak persuasively in a transactional context or any other context where you need to advance a prospective.

PROFESSOR BLAIR: Well absolutely and by acquiring the basic advocacy skills which might be more related to a court type proceeding then these are easily transferred to other areas of law. You know you learn the language and technique of lawyers which no matter what type of work you do is really not that different from area of practice to area of practice.

PROFESSOR FORCESE: So a lot of people are nervous about the area of public speaking. Are there skills and aptitudes they can develop to help them with their oral advocacy?

PROFESSOR BLAIR: Well I think in most cases, most students are, I don’t want to say terrified of public speaking but they are a little bit nervous about when they embark upon their initial advocacy or public speaking in a law school context and I guess what I’d say is that, first of all, you’re not alone. Every law student has felt that way and what we try to do is to move you into a situation where you are more comfortable in speaking.

PROFESSOR FORCESE: How do you do that?

PROFESSOR BLAIR: Well, we offer a number of courses that are aimed at improving your oral advocacy skills and I guess that begins probably in first year with our Nelligan First Year Moot Competition which is a voluntary competition for first year students. It’s not part of the curriculum, but well over fifty percent of first year students take advantage of that and that’s a moot court exercise which takes place in November, so eight or nine weeks after you begin law school, you are on your feet arguing a case and we wouldn’t do that if we didn’t think students, at that in time, couldn’t do it. And most students perform very well.

PROFESSOR FORCESE: What’s a moot court?

PROFESSOR BLAIR: Well a moot court is, I don’t want to say a pretend court, but it’s not a real court, but it’s run like a real court. So we hear cases in a moot court in law school because we argue like they are real cases, but obviously they have no real outcome because they are not going to affect anybody and they are done for practice purposes and sometimes for competition purposes.

PROFESSOR FORCESE: So you have been teaching oral advocacy in various capacities for a number of years and making all sorts of comments and observations for or to students in terms of improving their skills, what are some of the common shortcomings of someone starting off in this area that you might be able to share with our listeners?

PROFESSOR BLAIR: Well I guess I look on it the other way and say that most students do remarkably well in the oral advocacy program so it’s not a case of saying that there are many shortcomings. Some people start off and they are naturally more adept at this type of exercise, but students who have less experience or are not so much inclined to speak in public, they improve rapidly through the exercises that we do and I should also add that in first year, we also have the mandatory ADR program in January, which involves advocacy exercises in terms of negotiation and attempts to resolve disputes, and in many of the small group classes in first year, they have . . . they run their own moot court exercises in March where students are required to prepare and argue a case in class. So those are the opportunities in first year and then we have a whole range of opportunities in second and third year.

PROFESSOR FORCESE: Some people use video to analyze a person’s speaking and advocacy courses. Do you use video?

PROFESSOR BLAIR: I don’t use video, although I think it is very helpful. I find it somewhat cumbersome to use in the sense that we don’t have built-in video facilities at our law school that are readily accessible. However, if students want to bring their own computers or devices these days and record themselves, then of course they are free to do so. I would like to build something more formal into the courses I teach, but at the moment, I am not doing that.

PROFESSOR FORCESE: So what type of comments do you make after someone made a presentation? What would they expect in terms of feedback?

PROFESSOR BLAIR: What we tend to do is to provide feedback in two ways. One way is how did you do in your presentation? So are you standing up straight? Are you making eye contact with the witness? Are you talking too fast or too slow? Things of that sort, so just basic skills that as an observer you can make when anybody speaks in a public setting and then secondly we would look to some degree to the substantive content to see whether or not the student is addressing the right issues in the presentation they are making. We’re not terribly concerned about whether what’s being done is right or wrong, but obviously we want to direct or make sure you are moving in the right direction and asking questions that are pertinent and providing submissions that are pertinent that is being addressed by the exercise.

PROFESSOR FORCESE: It’s often said that, I think, being an effective advocate is preparation. Would you agree with that?

PROFESSOR BLAIR: Well I think that is true. Yes, you hear that universally. People say that preparation is important. Knowing every important and less important detail of the case that you are presenting to a court or a tribunal or knowing all important details and less important details of a transaction which you are involved in, that goes a long way and you add that together with basic skills in terms of how to make the presentation in a formal way and you can move very effectively forward.

PROFESSOR FORCESE: Is there any other advice you’d have for students who are interested in developing their oral advocacy skills? Things that they can do not just in the first-year program, but perhaps in upper year and perhaps even in extra-curricular activities?

PROFESSOR BLAIR: In terms of upper year courses, the first thing that people can do is to try out for a competitive moot. We participate in roughly fifteen competitions involving other universities in a variety of areas of law. These competitive moots are very demanding exercises, both in terms of the written submissions that you have to make, which again is part of advocacy on the written side and secondly in terms of the oral presentations that you have to make. That’s a very effective way to develop skills. We offer a variety of courses as well. We have trial advocacy both in the civil side and on the criminal side. We also have an appellate advocacy section. We teach appellate skills. There are other opportunities.

There is a negotiation course that you can take. There are negotiation competitions that you can enter into. And I believe in labour law as well. There is an advocacy component of the 221 of the labour classes. Perhaps it’s advanced labour where they involve themselves in arbitration side of proceedings. Now what else can you do? I think people often say well you go to court and watch cases being argued, and that is true. Some of that is useful. However, the problem with going to court is that unless you are really involved in the case, then often times it isn’t that interesting, so I don’t expect people to go to court every week to see what’s going on, but the opportunity to see appeal work being done at the Supreme Court of Canada is unique to this school, so I’d encourage students to go and watch cases in which they have some interest in the outcome a few times during their stay here and then to attend some of the trials that take place at the courthouse at 161 Elgin Street. It’s a bit of a hit and miss process in terms of whether or not you’re going to walk into a case that is interesting or not, but at least spend a little bit of time there. And both courthouses, the Supreme Court and the local courthouse, are close to the law school.

PROFESSOR FORCESE: Thanks very much for the interview.

PROFESSOR BLAIR: Okay. You’re welcome.