INSTITUTE FOR
LAW TEACHING AND LEARNING

Teaching Law Practice Across the Curriculum

Workshop 6D

Modeling Success in Every Law School Class

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Institute for Law Teaching and Learning
Teaching Law Practice Across the Curriculum
Modeling Success in Every Law School Class
Friday June 18, 2010
Mary Rose Strubbe and Douglas William Godfrey

Background information for students in Employment Discrimination class before modeling an interview with a prospective employment discrimination claim plaintiff

I. Readings and Class Discussion Preceding the Modelling

A. Whatever substance you are covering on Title VII, ADEA, and analogous state statutes

B. Krieger and Neumann, Essential Lawyering Skills, chapters 2, 3, 5 – 8, covering "Professionalism," "Lawyering for and with the Client," "Communication Skills," "Multicultural Lawyering," "Observation, Memory, Facts, and Evidence," and "Interviewing the Client."

II. The Scenario

Your assistant has spoken via telephone with Mr. Doug Green, employed until last week by Giant Technology Consultants. His position with Giant was as a project director for educational technology. Your assistant has filled out the basic portion of the firm's pre-interview intake form, which includes name, address, date of birth, employment and educational history, whether Mr. Green has ever sued an employer before, salary, length of time with Giant. So you know that Mr. Green is forty-six years old, has an undergraduate engineering degree from the University of Illinois, a Masters degree in Computer Science/Knowledge Management from DePaul University, has worked in various engineering and information technology positions for more than twenty years, and has been employed by Giant since 2001. He has never been fired or laid off from a position, never been disciplined or reprimanded at Giant. He receives annual performance evaluations; the last one was administered in February 2010. His overall rating on that evaluations was "Exceeds Expectations," the second highest overall ranking.

On June 1, 2010, Mr. Green was called into his manager's office and terminated.. He wants to know whether he has any claims against the company – he believes younger project managers, and three minority project managers with less seniority than he, were retained.

III. Pre-modeling discussion with class

- **Brainstorm potential claims**
- **Elements of those claims**
- **Potential defenses**
- **information you need to evaluate Mr. Green's situation**

Modeling Legal Skills

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You are them most important lawyer your students know.

Medical School Model

- "See One, Do One, Teach One"

Reasons to Model Skills in a Casebook Class

- Shows Mastery of a Topic
- Gives Adult Learners the Context they Need
- Makes Concrete Abstract Principles
- Allows Professor to Show Enthusiasm
- It's Fun

Appeals to Our Students

- YouTube Generation
- Remember the famous advice about good writing for screen plays – "Don't Tell Me, Show Me"
- If you were teaching someone the piano or tennis, you would never lecture or ask them probing questions when they were neophytes

Good Modeling

- Describe the Skill
- Discuss the Strategy and the Steps in performing the skill
- Break the Skill into Component Parts
- Model the Skill
- Have the Students discuss their Reactions to the Demonstration

Example: Motion in Limine in an Evidence Class

- Describe the Reasons for bringing a Motion:
  - Exclude the Evidence
  - Educate the Judge on a Point
  - Preserve the record
  - Send a Message to the Other Side
  - Get a Matter in the Record for the Press

Describe the Skills to Successfully Arguing a Motion

- File a well-prepared motion and Memo in support
- Clearly state the relief you are requesting at the beginning
- Only cite two or three authorities to the trial judge – rely on your motion and memo in support for the rest
- Anticipate the other side's objects
- Give a motivating reason as well as a legal reason

Godfrey Argues Motion in Limine

- Fact pattern based on the George Ryan trial

Strubbe Demonstrates Careful Client Listening/Interview

- Fact Pattern
  - Potential client thinks he may have been discriminated against by his employer in not being promoted

But do I have the time to Model a skill for a class of 80?

- Yes
  - modeling the skill reinforces the doctrinal substance under discussion
    - For example, have the students compile in advance a list of the key facts needed from the interview

Quick Ways to Model Other Skills

- Draft a Document, such as a simple complaint in a Civil Procedure class or a provision of an important clause in a Contracts class and annotate it for the students. Then, do a "think-aloud" in class while going over the document: Why did you insert certain language? Why is the document structured as it is?

List of Examples of skills that can be modeled

- Interviewing skills
- Writing and reporting skills
- Argumentation skills

Brain Storm

- Now, as a group, let's think about some vital skills students need to have demonstrated to them

Group Work

- Divide into pairs and think about what you could model for your students in one of your casebook classes that would enhance these skills

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 506
	)	
LAWRENCE E. WARNER and	)	Honorable Rebecca R. Pallmeyer
GEORGE H. RYAN, SR.	)	

RYAN'S MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OR ARGUMENT RELATED TO THE WILLIS ACCIDENT

Defendant George H. Ryan, Sr., by and through his attorneys, respectfully moves *in limine* for this Court to issue an order precluding any and all evidence, comment or argument regarding the automobile accident referenced in the Indictment (Indict. Count 2, ¶ 130(D)(iv)). Permitting the government to introduce evidence of, or make reference to, this accident would not only violate Rules 401, 402, and 403 of the Federal Rules of Evidence, but would also infect the current proceedings and severely compromise Ryan's constitutional right to a fair trial.

In this Indictment, there is no allegation whatsoever that connects Ryan to licenses-for-bribes or bribe conduct at the McCook SOS Facility. There is no allegation — nor could there be — that Ryan was involved in the bribe conduct that resulted in the truck driver receiving a license from McCook. There is no allegation that these defendants are criminally responsible for whatever wrongdoing led to the accident. Because the factual circumstances of this accident are utterly irrelevant to any of the charges against Ryan, even a limited or veiled reference to it could potentially inflame the jury and mislead it into believing that this accident is part of the charged conspiracy. Any reference will confuse the issues and grossly prejudice Ryan

— to no legitimate evidentiary purpose. Accordingly, this Court should issue an order prohibiting the government from introducing any such evidence at trial.[1]

BACKGROUND

In Count Two, Paragraph 130 of the Indictment, the government sets forth allegations regarding alleged actions taken with respect to the Office of the Inspector General during Ryan's tenure as Secretary of State. Among other things, the government alleges that:

> In November 1994, [inspectors from the Office of the Inspector General] learned that a driver involved in a widely-publicized fatal traffic incident may have obtained his commercial driver's license illegally at the McCook driver's license facility. After the allegations were learned of by an IG Investigator and a preliminary inquiry was made, the allegations were reported to the Inspector General who, in turn, notified other high-ranking SOS Office officials of the allegations.

Indict., Count II, ¶ 130(D)(iv). The government's statement about the "widely-publicized" incident refers to the tragic automobile accident that occurred on November 8, 1994 and claimed the lives of six of Scott and Janet Willis's children.

Ryan has reason to believe that the government will attempt to introduce evidence of, or make reference to, this accident at trial and accordingly asks this Court to preclude any evidence or comments relating to the accident. The accident that claimed the lives of the six Willis children was, without a doubt, a horrific and tragic event. Yet the accident has no connection whatsoever either to Ryan or to any of the criminal charges against him, and thus has no place in this trial. Instead, the government's only possible purpose in seeking to introduce such evidence would be to elicit anger and other negative emotions towards Ryan and to inflame

[1] Indeed, this Court previously granted a motion *in limine* based on similar grounds in *United States v. Fawell et al.*, pursuant to the parties' agreement that evidence relating to details of the Willis accident would not be introduced at trial. *See United States v. Fawell et al.*, No. 02 CR 310, Minute Order dated January 8, 2003.

the passions of the jury. Referencing the Willis accident for these purposes would be utterly improper.

The government should be prohibited from making any references to the Willis accident for the following two reasons. *First*, because Ryan had no connection to the accident, any evidence or comments relating to the accident are irrelevant to any of the charges in this case and should be excluded pursuant to Rules 401 and 402. *Second*, even if there were any probative value to this evidence (and clearly there is none), it should still be excluded under Rule 403 because any possible probative value would be substantially outweighed by the prejudicial effect of the evidence and the danger that it could mislead and inflame the emotions of the jurors. Therefore, any evidence of, or reference to, the November 8, 1994 automobile accident should be prohibited at trial.

ARGUMENT

The Federal Rules of Evidence define relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. The Rules further mandate that evidence that is not relevant must be excluded. Fed. R. Evid. 402. Furthermore, even relevant evidence is excludable "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403.

I. EVIDENCE REGARDING THE WILLIS ACCIDENT IS IRRELEVANT TO THE ACTS CHARGED IN THE INDICTMENT

The only facts of consequence to this case are those that shed light on whether Ryan in fact committed the criminal acts alleged in the Indictment. The Federal Rules are clear

that evidence is relevant only if it tends to "make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401; *see also Old Chief v. United States*, 519 U.S. 172, 178-79 (1997); *United States v. Benson*, 941 F.2d 598, 610 (7th Cir. 1998). Here, the fact that the accident took place does not make it any more or less probable that Ryan committed any of the criminal activities alleged in the Indictment. There simply is no evidence linking Ryan to the accident, even tangentially. Furthermore, evidence regarding the Willis accident will not aid the government in meeting its burden of proof on its charges against Ryan. Therefore, any evidence regarding the accident is irrelevant to the resolution of the government's case against Ryan and is therefore inadmissible. *See* Fed R. Evid. 402.

II. EVIDENCE REGARDING THE WILLIS ACCIDENT WILL UNFAIRLY PREJUDICE RYAN AND CONFUSE THE JURY

Furthermore, even if this Court were to conclude that evidence regarding the Willis accident has some relevance to the government's criminal charges against Ryan, such evidence should nevertheless be excluded under Rule 403. As noted above, evidence that is relevant under Rule 401 must still be excluded if the probative value of that evidence is substantially outweighed by the prejudicial effect of the evidence and the potential that the evidence could confuse the trier of fact. Fed. R. Evid. 403. In this context, "'[u]nfair prejudice' . . . means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403 advisory committee's note; *Old Chief*, 519 U.S. at 180; *see also United States v. Pulido*, 69 F.3d 192, 201 (7th Cir. 1995).

Any evidence or comments relating to the Willis accident should be excluded from this trial pursuant to Rule 403 because the unfair prejudice caused by such evidence would be immense and likely would destroy any chance for Ryan to receive a constitutionally

guaranteed fair trial. As the government itself acknowledges in the Indictment, the accident that claimed the lives of the six Willis children was "well-publicized" in the media and aroused great horror and sympathy in the public. Indeed, more than a decade later, the tragedy continues to inspire deep emotions in many potential jurors, as well as references to it in the local media — some of which implicitly — and improperly — lay the blame for the Willis children's deaths directly on Ryan's shoulders.[2]

It is for precisely these reasons — the tragic aspects as well as the well-publicized nature of the accident — that the government should be precluded from introducing any evidence relating to the Willis accident at this trial. "[Evidence] is unfairly prejudicial if it 'appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish,' or otherwise 'may

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[2] On December 18, 2003, less than two weeks after Ryan was indicted, the *Chicago Tribune* published an article by columnist John Kass entitled *Charges Bring No Joy to Parents of Willis Children*. Chi. Trib., Dec. 18, 2003, at News 2. In that column, Kass stated that "[w]ith the help of the combine, and the billions of dollars' worth of deals he promised, Ryan was elected governor on a lie in 1998. This corruption comes with a body count. And you could measure it by the angels hanging on Scott and Janet [Willis]'s Christmas tree."

Indeed, this was not the first or only article written by Kass that attempted to blame Ryan for the Willis accident. *See, e.g.*, John Kass, *Onetime Scorned Lawyer Emerges as Unsung Hero*, Chi. Trib., Jan. 9, 2005, at News 2; John Kass, *Murphy Won't Let Corruption Go Up in Smoke*, Chi. Trib., Jan. 21, 2004, at News 2; John Kass, *Soft Sentence for Fawell Deals Blow to Justice*, Chi. Trib., July 2, 2003, at News 2; John Kass, *Truth of Matter Is Lies Are at Heart of Ryan's Reign*, Chi. Trib., Jan. 12, 2003, at News 2; John Kass, *Blagojevich, Ryan Failed Kids Years Ago*, Chi. Trib., Oct. 25, 2002, at News 2; John Kass, *Governor Debate Might Make Good TV, But Little Else*, Chi. Trib., Oct. 24, 2002, at News 2; John Kass, *Governor's Race: My Machine Pal's Better than Yours*, Chi. Trib., Oct. 16, 2002, at News 2; John Kass, *Bauer a Walking Ad for Club Fed's Restorative Power*, Chi. Trib., July 29, 2002, at News 2; John Kass, *For the Willises, Justice Lies Buried in Political Muck*, Chi. Trib., Apr. 4, 2002, at News 2; John Kass, *Poshard Predicts a Vallas Victory by a Whisker*, Chi. Trib., Feb. 25, 2002, at News 2; John Kass, *Most Roads Lead to Democrat in Governor's Office*, Chi. Trib., Jan. 24, 2002, at News 2; John Kass, *Ryan's Terrible Bargain Finally Claims His Career*, Chi. Trib., Aug. 9, 2001, at News 2; John Kass, *Rock-Turning by Lassar Stops Short of Rich Vein*, Chi. Trib., May 7, 2001, at News 2; John Kass, *Bauer Sentence Still Leaves Debt to Entire Family*, Chi. Trib., Apr. 26, 2001, at News 2; John Kass, *Many, Too Many, Questions for Ryan and Pals*, Chi. Trib., Apr. 19, 2001, at News 2; John Kass, *More Notes to Bush Insist on Prosecutor Who's Independent*, Chi. Trib., Feb. 2, 2001, at News 3; John Kass, *Ryan's Pride: Never Even Been Charged*, Chi. Trib., Jan. 30, 2001, at News 3; John Kass, *Willises Merely Want Ryan To Do Responsible Thing*, Chi. Trib., Jan. 26, 2001, at News 3; John Kass, *Couple Hurt Most by License Scandal Plead for Justice*, Chi. Trib., Jan. 25, 2001, at News 3; John Kass, *Governor's Past Merits Scrutiny More than Jackson's*, Chi. Trib., Jan. 19, 2001, at News 3; John Kass, *Children's Deaths Should Haunt Illinois for a Long Time*, Chi. Trib., Jan. 18, 2001, at News 3; John Kass, *Questions, Questions: Help for Oprah as Bush Comes Calling*, Chi. Trib., Sept. 18, 2000, at News 3; John Kass, *APB Goes Out for Good Samaritan Who Saved Officer*, Chi. Trib., May 9, 2000, at News 3; John Kass, *Sometimes Only Voice Being Heard Is that of Money*, Chi. Trib., Mar. 16, 2000, at News 3; John Kass, *In Spite of Scandal, Daley and Ryan Have a License To Deal*, Chi. Trib., Feb. 3, 2000, at News 3; John Kass, *Negative TV Ads? Ryan Has Absolutely No Room to Complain*, Chi. Trib., Oct. 14, 1998, at News 3.

cause a jury to base its decision on something other than the established propositions in the case.'" *Carter v. Hewitt*, 617 F.2d 961, 972 (3d Cir. 1980) (quoting 1 J. Weinstein & M. Berger, *Weinstein's Federal Evidence* § 403.03, at 403-15 to 403-17 (1978)). Here, there can be no question that evidence relating to the tragedy is inflammatory and will likely arouse the emotions of a reasonable jury — thus inciting the danger that the jury will be "induce[d] . . . to decide the case on an improper basis, [most likely] an emotional one, rather than on the evidence presented." *United States v. Vretta*, 790 F.2d 651, 655 (7th Cir. 1986) (internal quotation marks omitted). Even though there is no connection whatsoever between Ryan and the accident, if this evidence is admitted, it could create the danger of unfair prejudice because of the unfounded implication that Ryan was somehow involved with or responsible for the tragedy. Such prejudice would run afoul not only of the Federal Rules of Evidence, but of Ryan's constitutional right to a fair trial.

In short, there is simply no legitimate purpose for which the government could offer evidence or comment on the Willis accident, other than to attempt to inflame the jury's passions against Ryan. This case is not about licenses-for-bribes, and introducing any reference to the Willis accident will likely confuse jurors about what actually is charged in the Indictment. Because any evidence regarding this accident is both irrelevant to the question of Ryan's guilt and would have an unfairly prejudicial emotional impact on the jury, any evidence, comment or argument regarding the Willis accident should be precluded. *See United States v. Macias*, 930 F.2d 567, 572 (7th Cir. 1991) (approving of evidence that was "non-inflammatory in nature, reducing any risk that the jury's emotion would be stirred by such evidence and that they would, as a result, be compelled toward irrationality and the defendant thus prejudiced").

WHEREFORE, Defendant George H. Ryan, Sr. respectfully requests that this Court enter an order barring the government from mentioning or introducing evidence relating to the Willis accident.

Respectfully submitted,

GEORGE H. RYAN, SR.

One Of His Attorneys

Dated: September 6, 2005

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CERTIFICATE OF SERVICE

I, an attorney, certify that I have served RYAN'S MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OR ARGUMENT RELATED TO THE WILLIS ACCIDENT upon the parties listed below at the addresses shown by messenger this 6th day of September, 2005.

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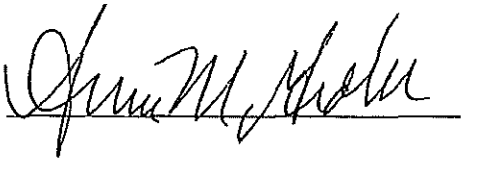

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