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Initial Case Analysis for Trial Teams

This post is from Wes Porter. Wes teaches trial advocacy, evidence and white collar crime at Golden Gate University School of Law in San Francisco. If you are involved in coaching trial teams, please take the time to comment on Wes's approach to case analysis.

The fall mock trial season is upon us.

The trial competitions' fact patterns come in, we select our trial teams and advocacy teachers and trial team coaches begin to meet with their trial teams. In recent years, the most dramatic change to my approach with trial teams, and with our adjunct professors and trial team coaches, has been with these initial meetings and the instructor's role. I have abandoned my former approach in favor of an approach which benefits students more down the road in practice, than in the impending mock trial competition. I am interested in thoughts and comments about your initial meetings with trial teams.

I start from the premise that (i) the review, analysis and organization of a "case file" as an advocate and (ii) "brainstorming" case theory and potential themes are critical advocacy skills. These are skills that may not translate into tangible results in competitions, but they are equally worthy of our attention in training future advocates. Stated differently, we should not allow ourselves, other instructors or even more seasoned (read: more confident, more vocal) students to review, analyze, organize and "brainstorm" for our student competitors. Like all other aspects of our skills training, we must communicate our expectations to our students and provide modeling and critical feedback about their performance. Lastly, we must impress upon our competitors the relative importance of this skill as compared to the glitz and glamour of the significant cross exam and closing argument, to which they will all want to fast forward. In practice, without the hard work with the file and early "brainstorming" about case theories and potential themes, the dramatic closing or "big" cross exam will never see its fullest potential.

What are our expectations from all mock trial team competitors in these initial meetings? And what are the teaching points that we hope the students can gain from "their time" with a file before we become involved?

I have three expectations / teaching points for these initial meetings: review, report and review again.

First, review: we expect students to spend their own time with a new case file reading, re-reading, structuring, dissecting, analyzing and "brainstorming" case theories and potential themes before their instructors and teammates are involved.

Second, report: we expect our students to communicate independently their hard work with the file and their own persuasive ideas (the good, bad and ugly) about their case presentation.

Third, review again: we expect student to return to the file with different perspectives and ideas after these initial meetings.

To these ends, after assigning attorney roles, I used to require closing arguments during these initial meetings. A closing, as we all teach, should demonstrate a careful review of the file, persuasive organization of the facts and the semblance of a case theory and theme. Sometimes they did. Most often these initial closings reflected poorly organized speeches about some of the facts and little true consideration about the case. I abandoned the "closings approach" a few years back.

In my new approach aimed at these same pedagogical goals, I, and our other instructors, play supervising attorney or senior partner conducting an initial case review. I read the file, but I do not use what I know other than to ask questions of the advocates. For instance, I require the party with the burden to set out the claim or charge, their case theory, anticipated witness testimony, other evidence, possible themes and evidentiary issues. I do the same for the opposing attorneys. I only ask questions. To inquire about potential themes we may ask, how will you explain that to jurors so they understand it? I ask questions that lead to more questions, research, meetings and, most importantly, a purposeful, re-view of the file.

These initial meetings should gain a slight reputation in the mock trial program. That is, if done right, the level of review it takes to be "ready" for an initial meetings with the supervising attorney, I believe, is more significant than giving a preliminary, shoddy closing and more beneficial to the students in practice. When students repeat as trial team competitors, the quality of the reporting at these initial meetings improved exponentially. I know I can analyze, organize and "brainstorm" a file and my case. We owe it to our students to teach them how to do it as well. I look forward to learning about other approaches for these initial meetings.