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Running your case through the lab

By Michael R. Panter

Hon. Michael R. Panter (Ret.) is a senior mediator at ADR Systems of America LLC. He previously served in the Law, Family and Municipal Divisions of the Cook County Circuit Court. He was a trial lawyer for 30 years. Share responses and comments at mikepanter.com.

James A. Clark loves helping some of the city's top trial lawyers prepare their cases. By day, Jim's a 37-year attorney at Schiff Hardin LLP, he's also director of the Litigation Lab skills course at DePaul University College of Law and a lecturer for the University of Chicago Law School's litigation laboratory seminar.

I founded Litigation Lab before I went on the bench, and Jim took it over and really ran with it. Litigation Lab is booming, and many lawyers owe him big time for the amazing advice they got from his students.

Jim had been teaching litigation strategies at DePaul for about 25 years when we met, and I asked if he'd be interested in taking over my new class. He was skeptical at first, like everyone else, since no one had ever put together a class like it.

Amazing, isn't it? Every other profession has an apprenticeship program of some sort, but we still can't turn out lawyers who are practice-ready. Jim has litigated virtually every kind of case at Schiff, and he caught on to the idea very quickly. He's a born teacher who originally went to law school only to improve his teaching credentials. Frankly, he's taught me a lot.

"I have found that this is the way law school ought to be taught, at least partially," Clark said. "It gives the students a very practical approach to litigation. It transitions them from law student to lawyer. They see the way lawyers actually do things. They get a good introduction to the practicalities of litigation and that helps them when they start practice. The students are hungry for this. They want this practical education."

"We bring in practicing lawyers who bring cases just for one or two workshops with the students," he said. "It ranges. The lawyers can do whatever they want, within reason, as long as they understand the interactive nature of what we're doing. They sometimes ask us to be a focus group; sometimes they ask us to critique their cases. Quite often now, they bring witnesses, and we work with witnesses."

"We can tell their clients things that they can't tell them themselves. The lawyers get so close to their cases that they are unable to see the flaws in the case. When it starts anew at Lit Lab, the students are very good at calling them out on problems, on also giving them suggestions for how to improve the case. We literally have some of the best lawyers in Chicago."

Because the program promises confidentiality, Jim won't tell who comes to Lit Lab.

"But I can tell you that they're very high-profile lawyers, many of them with high-profile cases" he said. "Some of them are just beginners that want the help of law students, and we'll take whatever comes in. We have more applicants than we have room for them, but we're always looking for good lawyers with good cases that can be workshopped by our students."

Jim is very selective about his students, as his is one of the most popular classes at DePaul. On every case, students are carefully screened for conflicts, and Jim makes very sure they understand the importance of complete confidentiality.

He only wants students who are the first to volunteer. He enforces the "no bent elbow" rule. No tentative opinions, no equivocation. He wants to make lawyers who have strong opinions. The students bond very tightly with each other and with the presenting lawyers. Many students end up working for presenting lawyers.

"After the students are screened and promise confidentiality to the lawyer, the lawyer picks what he or she wants done in Lit Lab, and it could be anything," he said. "Often, it is a focused approach to the case. Sometimes it's different than that. We've sat as a moot-court panel. We have worked with witnesses, we've talked about settlements, we've tried to help them understand the strengths and weaknesses of their theories. The lawyer then selects what issue he or she wants to do, and how he wants to present the matter to the class. Usually, the lawyer shares with us pretrial materials; sometimes depositions, sometimes disclosures and discovery; sometimes nothing.

"The students read a great deal of material. I warn the students that this is an untraditional class, and the resume says specifically 'This is a lot of work.' I only get the gunners in my classes because it's popular, but it's also known as a lot of work. One of my students described it as 'An insane amount of work and worth every minute.' The students often spend the weekend reading 400, 500 pages of material to get ready for class the next week. We always give them something called the preclass questionnaire, which is a very brief questionnaire that forces them to focus on the case and assures that they read the material. It's really just a general survey of what they think of the case, and it forms the discussion for in class.

"Then we have the in-class portion, where the lawyer comes. Quite often, the lawyer brings somebody else, and they present the case in what we call a 'clopening,' which is a combination of opening and closing statement. The students can critique that, or they just use it as information for what we do next. Sometimes, we work with those theories. Sometimes we work with witnesses. We're always surveying the students over the course of the class to see what they think of it.

"It is not unusual for the students to start a class one way, saying 'I think this will be a defendant's verdict,' and end a different way, because we workshop because we have massaged the theories. They say 'If you do it that way, then I would feel differently about it.' It's not unusual for the lawyer to change his or her theory for the case. It's very gratifying when the lawyer comes in promptly before trial, but decides he needs to change his theory for trial.

"After class, ... It used to be called 'the journal,' and is now called the 'post-class memorandum,' which is a more intensive and academic explanation of some portion of the case. In class, or shortly after it, we work with the lawyer to ask what he or she wants the students to do. Because we've got another case coming up the next week, students have to work very quickly to get their post-class memorandum done. Sometimes, we're working up against a deadline that the lawyer has. In other words, if he needs help with preparing for a motion, the motion may be coming up the next week, so he

gets advice from us within three or four days. Again, the students are working very hard.”

There is no cost to the lawyers, and on top of everything, the lawyers walk out with Continuing Legal Education credit.

“The lawyers get a very different perspective on their case. They get an objective view of their case. Sometimes the lawyers don’t even tell us what side they represent. They come in and they don’t get what they expect,” Clark said.

He has seen lawyers with “perfect” cases rethink and decide to settle and he has had lawyers with not so great cases become enthusiastic, go to trial and win. One of the rewarding stories involved a criminal case from a public-interest law firm that required the students to really dig deep to find the true story. At trial, the clients were acquitted of all but minor charges thanks to the students’ advice.

Litigation Lab is a fantastic program for lawyers and students alike.

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