Participants in case competitions gain experience they couldn't elsewhere, which potential employers understand—especially if they've been there.

"Flight Simulators" for Future Litigators

ED FINKEL

During the 2011–12 school year, more than 1,500 students from 170 of the 201 ABA-approved law schools participated in at least one of the four client skills and moot court competitions sponsored by the ABA's Law Student Division. These encompass arbitration, negotiation, client counseling, and appellate advocacy.

Students learn how to write, think, act, and otherwise advocate for a client in the chosen scenario—an arbitration hearing, a session around the negotiation table, a law office consultation in which the students interview a client and discuss how they would proceed forward with the matter at hand, and a hypothetical appeal to the US Supreme Court that starts with a 40-page brief before arguing the case, respectively.

Mock judges and team coaches, many of whom once participated in moot court as law students—whether through the ABA or the many law schools, state and local bars, and other legal organizations that sponsor such competitions—say they function as the oral argument version of writing for law review, providing experience that students cannot otherwise obtain.

"Young lawyers get many opportunities to write, clerking and working as an associate in a firm," says Sheila M. Finnegan, US District Court Judge in the Northern District of Illinois, who has judged final rounds of the ABA's appellate competition the past couple of years. "There are far fewer opportunities for young lawyers to argue in court and to have significant client contact. The ones that do have strong oral communication skills come across as confident, or in control. Moot court is an opportunity to build those skills."

A former litigation department co-chair at what's now Mayer Brown LLP, Finnegan says young associates who can't speak with poise sometimes get passed over at key moments. "We'd be picking associates to participate in a client pitch, to present a case," she recalls. "They want to see the whole team. There are some lawyers you just wouldn't pick because they're not good on their feet."

"The benefit is the skill training," adds Jeffrey C. Brooks, Preis & Roy director of advocacy and professional practice, who oversees moot court teams at Louisiana State University. "The cherry on the sundae is if you advance, if you win. If you come back with a trophy, that's phenomenal." But either way, from an employer's perspective, "These are the people who are coming at you with experience," he says. "You don't have to train them. You don't have to show them how to go to court."

BENEFITS FOR STUDENTS

Edmond E. Chang, also a US District Court judge in the Northern District of Illinois, who judged the ABA's appellate championship round the past two years, says the experience is very different from anything students have had, even those who have participated on debate teams, because of the constant interruptions with questions from the "hot bench" atmosphere that competition judges create.

"It's a very unequal conversation," he says. "You can read about oral arguments, your teacher can tell you about it, but unless you get up and do it—that's the only way to improve. It's a special corner of legal education that practice is what makes perfect." Students who reach the championship round are pretty close to perfect, Chang

adds, echoing other judges. "They are so polished," he says. "The arguments they deliver are as good as most of the arguments I've seen delivered in real cases."

The crucible that competitors must face serves them well throughout their careers, says William Love, who recently started a firm that handles healthcare and small business law, and who has judged competitions for a couple years. "You have real-world lawyers come in and ask, 'Is this legal theory practical? Do you fully understand the argument being presented? Do you understand why this red herring is a red herring?'" he says.

Rob Sherwin, director of advocacy programs at Texas Tech University School of Law, coaches 8 to 10 teams each year in addition to overseeing the school's overall effort. He sees three primary advantages for students: legal training, résumé building—and good fun.

"These competitions are a simulated environment; of course, the benefits of a simulated exercise only go so far," he says. "They're nevertheless very important. It's like putting flight students in a flight simulator." Sherwin adds that while legal clinics can provide valuable experience as well, "they're not working on incredibly complex cases. They can't. They're third-year law students. In a simulated environment, not having to worry about anyone committing malpractice, we can let them cut their teeth."

The negotiation competitions give students a chance to practice those skills, increasingly important particularly in areas like matrimonial law, says Gerald W. Vandewalle, chief justice of the North Dakota Supreme Court, who has judged ABA competitions off and on for several years. "The number of bench trials is going down," he says. "If you're in settlement negotiations, and you don't have those skills and the other side does, you're in trouble."

In negotiation, these skills include familiarity with facts and flexibility in deviating from plans or adapting strategy.

EMPLOYER ADVANTAGE

The foot-in-the-door that participating in competitions provides when going out on the job market shouldn't be underestimated, Sherwin says. "The legal employment market right now is just so competitive," he says. "Students need anything they can to set themselves apart from other students, particularly those students who aren't at the top of the class." The big firms that hire those top students probably are mostly interested in grades, Sherwin adds, but smaller firms that tend to focus on non-elite students "really value students' advocacy experience."

Brenda H. Feis, partner at Stowell & Friedman, Ltd., certainly understands why. "It's such a relevant exercise to being a good lawyer," she says. "Any litigation firm worth its reputation would want someone who could perform at that level. I think it's extremely valuable, in the same way that law firms justifiably look for law review students, litigation firms ought to look for people who demonstrably have excellent oral advocacy skills."

"Employers look for that little extra," adds Judge Charles P. Kocoras, US District Court for the Northern District of Illinois. "Within the legal context, that something extra is writing for the law review or participating in a competition. To actually succeed in a competition is something else."

The experience gives students valuable feedback and a sense of what they want to do as a career—and perhaps what they don't want to do, says George Van Cleve, visiting professor in law and history at Seattle University School of Law, who has judged the appellate advocacy competition.

"This is a good way to find out two things: whether you want to be an appellate advocate . . . and the other is you get a chance to see how good you are at it," says Van Cleve, who worked for the US Department of Justice for 25 years and in private practice as a commercial litigator. "You find out what experienced judges and experienced practitioners think of the quality of your work. Getting a candid assessment outside the direct law school classroom of the quality of work you're doing is a very valuable thing."

And there's one other benefit Sherwin cites: "It was the most fun and fulfilling thing in my law school career," students often tell him. He adds, "They get to travel to great cities, eat at great restaurants. It's not fun like college. But law school is not just three years of blood, sweat, and tears."

HOW JUDGES JUDGE

Judges say their evaluations often hinge on how well and how far, in a variety of ways, students show that they have gotten beyond their book learning to fully inhabit a case and a set of arguments.

"Anyone can regurgitate the facts and the law," says Alan Farkas, co-chair for aerospace at SmithAmundsen Aerospace, who has judged ABA competitions for about a dozen years. "The most skilled appellate practitioners will [transition] between the concepts and be able to present things in a way that the judges had not previously thought of, and do so in a way that's persuasive. Somewhere in there is skilled, somewhere in there is art, and somewhere in there is innate ability."

"I'm listening for the heart of what I should care about in this case," says Caren D. Thomas, a solo practitioner who has judged both the arbitration and appellate advocacy competitions, including the final rounds of the latter. "Many times, what they're weak in is a sense of narrative and a sense of story. They have to find in that story something they can connect to and believe in on a gut level. . . . They don't understand that the technicalities are fine, and they have to master them, but then they really have to be storytellers and commit to the story they're telling."

Participants who excel in appellate advocacy are able to think on their feet, understand the substantive content of the argument, and have thorough knowledge of the record—the problem provided to competitors on which they write their briefs and present oral arguments.

Teamwork is also important to Thomas. "This isn't the Olympics. It's a team sport," she says. "That's also a huge lesson. They are so focused on individual achievement. For a lot of their professional life, there will be a team."

Love wants to see that students have delved deeply into the case and fully understand the context beyond the ability to recite the facts and the law. "Most competitors have a tendency to list cases,

cite cases, give sound bites," he says. "I'm looking for a flexibility of mind where they evaluate the cases on the fly . . . according to the questions I've asked."

Related to that, Van Cleve listens to how well students respond to their opponents' arguments. "What really distinguishes public advocacy is when you look at the other side's case and can tell what is wrong based on the best argument the other side has," he says. "That's how I judge whether somebody has really mastered their case. . . . Most student advocates are focused on just getting up and getting through their case. They don't take it to the next level."

QUESTIONS FROM LEFT FIELD

In negotiation competitions, VandeWalle is interested to see how well competitors protect and prioritize their client's interests. He figures it's best "not to give the baby away with the bath water, but also not to turn down an offer that really, substantively, meets the demands of the client. It depends so much on the facts of the case, the ability to discern what's significant and what isn't."

Kocoras wants to see how students respond to questions out of left field. "Even if in truly objective fashion [the question] isn't worth a damn, that student can't say that," he says. "It's interesting to see how it's handled and finessed by the student. That's part of the art form, too—giving the judge an answer without saying, 'You know, judge, that's the stupidest question I ever heard.' "

"You go through law school, and the rules are the rules, and everybody's going to follow the rules," Thomas adds. "Except that life doesn't work that way. Sometimes we hit an arena where the person who has the power screws up, makes the wrong decision, does something that's unfair. How do you roll with that and not lose your confidence, not assume that, 'I must have screwed up'?"

Poise and well-coordinated teamwork are also high on the list for Steve Ellenbecker, associate at the Gloor Law Group. "I like people who don't have to look at their notes, who know the case law so well regardless of the question that the notes are there mostly as a security blanket," he says. "I look for teammates who complement one another—one might be more passionate, one might have a better command of the law. And people who know enough about the other person's issue when the judge inappropriately or not asks a question [that the teammate researched]. In a real courtroom, you can't say, 'That'll be handled by someone else.'"

Lastly, Ellenbecker echoes comments of others about a strong narrative. "They're taught that you've got to focus on the law," he says. "They forget that they're representing a little boy who needs special education. Sometimes, that's all you have to hang your hat on."

The experience gives students valuable feedback and a sense of what they want to do as a career—and perhaps what they don't want to do.

GEORGE VAN CLEVE, PROFESSOR AND APPELLATE ADVOCACY COMPETITION JUDGE

COACHING TECHNIQUES

Coaches prepare their teams intensively, building up practice frequency and intensity. At Washington University School of Law, for example, adjunct professor Mark Zoole—a solo practitioner who primarily handles federal civil rights cases—starts twice a week for 90 minutes at a time, gearing up to four to five times per week as the tournament dates near.

During three-hour practices held three to four times a week, teams at Louisiana State—where 50 or 60 students typically try out, of whom one-third to one-half are selected—walk through evidence, cross examinations, opens, and closes, Brooks says. Coaches bring in theater students to play the role of witnesses during cross-examinations, "which is fun to watch," Brooks says. "It's good for the theater students because they're acting. When [law students] finally get to the competition, they say, 'Oh, I've spent months doing this.'"

At Texas Tech, where teams practice on average two or three hours, three to four hours a day, coaches videotape students and then review their technique almost like athletic coaches would,

COMPETITIONS CAN LEAD TO JOB OFFERS

It's not unheard of that a judge or coach extends a job offer, however informally, to a team participant whom the judge or coach has met through moot court.

Wendy Humphrey, assistant professor of legal practice at Texas Tech University, a judge in some competitions and a co-coach in others, once hired a participant on Texas Tech's negotiation team when she served as a partner in a civil litigation firm. "On paper, so many law students look so similar," she says. Competition experience "shows they have a little bit of an edge over the average law student."

As a civil rights attorney in New York City's Law Department, Jeffrey C. Brooks remembers his interest was always piqued when a moot court competitor applied for a position. "I thought, look, this is someone we don't have to teach," he says, adding that he's seen attorneys approaching his students at Louisiana State University, where he oversees moot court teams. A typical comment: "That was awesome. You should think about working for me."

Brenda H. Feis, partner at Stowell & Friedman, Ltd., says she would definitely consider hiring many of the students she sees as a moot court judge. "If I had an opportunity, and I had an inkling that any of those students were available, I would definitely consider that. I was just blown away by how first-rate they were," she says.

Sheila M. Finnegan, US District Court judge for the Northern District of Illinois, remembers one competitor who stood out while she was judging a competition in her days as co-chair of the litigation department at what's now Mayer Brown LLP. "I walked up afterward and said, 'If you ever want to work in Chicago, call me,'" she recalls.

RESOUNDING RESPONSE

After sending out an e-mail asking past and current judges to share their thoughts and opinions on Law Student Division competitions, we received more than a hundred responses. A big thank you goes out to all of them for their continued support, encouragement, and involvement.

Sherwin says. "We look at all facets of the students' skills, whether it's speaking, legal reasoning, preparation—we go through all of that to where, a week or two before the competition, we feel we're competition-ready."

Wendy Humphrey, assistant professor of legal practice and a co-coach of negotiation teams at Texas Tech, starts by making sure that competitors know the facts and the law "inside and out," she says. "That really is the starting place for having an effective negotiation." That means doing outside research given that negotiation problems are often based on current events. And then there's the chess match aspect of it all: "Part of being prepared is trying to anticipate what the other side's facts could be, and practicing, practicing, practicing different variations."

LAST-MINUTE HURDLES

Occasionally, teams lose a member or face other challenges at the last minute—whether due to illness, death in the family, or a case of nerves. Like many coaches, Zoole, lines up an alternate "so we're ready to go" if any such contingencies arise. "Somebody breaks their leg that morning, or somebody has a relative who dies," he says. "It's happened maybe five times out of 100 in my career, but it's happened."

It didn't prevent anyone from participating, but Louisiana State students at one recent competition got rear-ended on the Long Island Expressway 15 minutes before their round started, Brooks says. "The students just sucked it up, went in, and competed," he says, adding that he's experienced students getting sick on the plane or who have had scheduling conflicts with family weddings or graduations.

"The competitions are very flexible and good about that sort of thing, as long as it's not looking like you're trying to bring in a ringer—a person who's won 15 other competitions," Brooks says, adding that the ABA is especially accommodating.

Teams at the University of Oklahoma College of Law have never dropped out of a competition, but team members have been replaced, says Connie Smothermon, director of competitions. "One guy's wife had a baby," she says. "One woman whose husband was deployed and leaving immediately clearly didn't want to spend her time practicing and traveling."

As a law student, Humphrey had to compete solo on a negotiation team at the ABA competition in 2001 because her partner was arrested the night before—yet she finished tenth in the nation, perhaps partly because opponents had no way to divide and conquer. "You don't have the issue of talking over one another or contradicting one another—it's all just you," she says. "Playing both roles, you have to respond to everything. . . . I was able to tease them that I had great teamwork." ■

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CORRECTION

In "'Flight Simulators' for Future Litigators," September 2012, page 26, the article mistakenly states that George W. Van Cleve worked for the US Department of Justice for 25 years. Mr. Van Cleve did work for the US Department of Justice (in addition to other federal agencies and on Capitol Hill) and was in private practice in Washington, D.C., as a commercial litigator, for a total D.C. career of about 25 years. *Student Lawyer* regrets the error.