needed skills

Patricia Madsen <patsact@hotmail.com>

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To: Sinner, Andrea <Andrea.Sinner@americanbar.org>

For three years, I was a domestic relations magistrate; for eight, a misdemeanor-level judge; for more than I care to admit, a practicing attorney. In each capacity, I encountered many lawyers who forget that cases are about the facts, including the fact of what their clients can obtain from the system. On reflection, I realize that law school consistently demeans facts in favor of ever more sophisticated analyses of theories that might apply to the facts. The result: lawyers forget to look into the facts, forget to shape arguments with them, forget to conclude arguments with what it is they want the judge to do.

Start law students at the very beginning of school with facts. Have them take intake statements from potential clinic clients and even before they research the pertinent law, predict an outcome. Give them hypotheticals to live with for a year, and here too, predict an outcome. Then provide them periodically with new witnesses, contradictory evidence, lost records, found records, key people who vanish and do not leave forwarding addresses -- the frequent reality of real cases. Have them engage in periodic reanalysis and reassessment. At the end of the year, have them look at the difference between what they thought mattered at first, and what emerged as important.

Maybe have them engage with a trial transcript and appellate briefs, then compare that material with the statement of fact in an appeal of the case, and notice that an appellate court, in controlling which few facts to publish out of a multiplicity, generally chooses facts that support its legal analysis. Compare and contrast with the negotiation, arbitration and trial levels of solving a problem. Are the facts that matter to an appellate court the facts that matter most to clients and therefore lawyers trying to negotiate a settlement?

Do it however you can, but help lawyers realize that for non-professors, the facts come first. They don't come without legal tools for analysis, but they come first.

Bonus points for training budding lawyers to: (1) pronounce their names clearly enough for an old judge to understand who she is dealing with, and (2) remember to ask the judge to do something that would be helpful to their client.

Pat Madsen, Denver