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Erie County Court Judge Thomas P. Franczyk and attorney Christopher O'Brien

Q&A with Judge Franczyk and lawyer Chris O'Brien, co-directors of the trial advocacy programs

Erie County Court Judge Thomas P. Franczyk and attorney Christopher O'Brien, of the Buffalo law firm O'Brien Boyd, co-direct the Law School's trial advocacy programs. *UB Law Forum* recently spoke with these key figures in the school's programs to develop litigation and oral advocacy skills.

UB Law Forum: *These moot court experiences are about litigation skills. But most lawyers don't do litigation, do they?*

O'Brien: One thing that I know from practicing as a trial lawyer is, once you try a case, you never again view a set of facts the same way. Once you try a motor vehicle case, it affects how you do your client intake, it affects how you do your depositions, it affects your pleading, it affects all aspects of it, because now you're thinking, what's going to happen if I have to try this case?

Franczyk: You have to be ready, willing and able to try a case if you don't get a satisfactory offer in a civil case or a satisfactory plea in a criminal case. I think a lot of academics misunderstand or misapprehend the whole point of the exercise. It forces a law student or a lawyer to evaluate a whole set of facts in light of the law and be ready to try the case if necessary to show your opponent you're ready, willing and able to do it. And those are the lawyers who

generally get the best results.

Even if you don't go to trial, it's a valuable set of skills to have. And the insurance companies and the other lawyers know if you're the type of lawyer who can back up his or her demands with skills in the courtroom. That's what we teach these students. And they generally are the ones who get the best and have the most successful result.

UB Law Forum: *What skills do participants in these experiences come away with?*

O'Brien: Let's take a look at someone who's going to practice tax law, who gets involved in trial technique and then moves on to a trial competition. And a client comes in and tells them about what their issue is, what their problem is. They're going to be thinking, let's see, one day I might wind up in the U.S. Tax Court about this. And if I'm going to wind up there, I'd better know what the law is. Now, I've already been taught the law from my law professors in tax, but now what I'm going to be doing is applying that law to a certain set of facts. So I'm going to ask questions that otherwise I might have missed. At the same time, I'm going to be sizing up the client's credibility. No matter what type of law you're doing, it impacts right from the start with your initial interview of a potential client and your case analysis.

Franczyk: The skills that we try to

teach are to help the students to think not only intellectually but to think strategically, in terms of getting the best possible result for their client. We structure the course around a fact pattern that they will ultimately be trying at the end of the semester. We teach them first and foremost how to read that case, critically, analytically, thoughtfully, in terms of not just the law and the elements of proof, but what are the themes and theories of the case? How are we going to appeal to a jury on a human level?

Then we teach them the nuts and bolts of trial lawyering. How to give an opening statement in terms of how to connect with the jury. How to develop themes and theories of the case that will connect with the jury. How to give a proper direct examination so that you can elicit the witness' story in a compelling way. How to do the mechanics of getting an exhibit into evidence. How to lay the foundation for an expert to be able to give their opinion in the courtroom. How to cross-examine a witness, which is probably the most difficult thing. Then how to put it all together in a closing argument in a compelling way that doesn't just rehash the facts but argues the cause that you're trying to get the jury to buy into. So it's a combination of law, strategy and trying to understand and communicate with people.

UB Law Forum: *Can new lawyers really be fully ready to practice on day one?*

Franczyk: This is as close as they can get. What they're doing in mock trial settings is as true to life as you can get.

O'Brien: I tried my first case as a plaintiff when I was just about five years out of law school. Nobody had taught me how to break down witness statements and prepare witnesses and the best way to construct a cross-examination. I wound up going through 10 years of continuing legal education seminars. These students are getting all of that CLE before they ever leave the Law School. I think they have a tremendous advantage over students from other law schools. Part of it is that we've had a great deal of support from Dean Mutua's administration and with the help of Dean Ewing, saying that we want this to be done and we're going to focus on it and we're going to hold you accountable.

Franczyk: They've clearly made it a priority.

For a full transcript of this conversation, visit www.law.buffalo.edu/links/04-2011.reportTrial.asp.