

# FIFTEEN MINUTES OF FAME OR HOW TO MAKE SURE A SHORT APPELLATE ORAL ARGUMENT IS LONG ENOUGH TO WIN

**A**fter years of litigation, the appellate court schedules oral argument – finally, a chance to win in the higher (wiser?) court – but (to the client’s dismay) often for only 10 or 15 minutes. (Oral argument in the Supreme Court of the United States affords only 30 minutes to each side.)

Can busy appellate judges sift through the record and the issues and understand the competing arguments in such a short period of time? They can, if the appellate lawyer makes the judges’ job easier. In about 7-14 percent of appeals, lower court decisions are reversed. How can we get our clients in that winning group? Or, if they

were successful in the lower court, how can we help them hold on to that victory?

The answer is simple. First, don’t wait for oral argument. Make your case in the appellate briefs. Write a brief that anticipates and answers all the questions the court needs answered. Second, don’t waste time at oral argument. Zero in on the heart of the case and go directly there. Have a conversation with the court about why you should win. Be calm. Save the oratory and passion for a jury.

Success on appeal comes from confidence, conciseness, scrupulous candor about what happened below, and a thorough understanding of how the law works in your client’s favor. The appellate attorney has the benefit of having studied the facts, so an

important part of appellate advocacy is pointing the court to the places in the record that make a difference. To paraphrase Jerry Maguire, “help them ... help you.”

Appellate briefs are not merely the trial court memos, redux. The art of appellate brief writing is bringing the relevant facts to life for a panel of judges who can only “see” your client’s case by reading a cold record. Make your brief a page-turner, or, at the least, a good read. Aside from the substance, remember everything your English teacher told you, about grammar, punctuation, and style. The best writers have style (lawyers still swoon over Justice Benjamin Cardozo’s opinions 70 years later). Not everyone’s style is the same (Justice Stephen Breyer assiduously avoids footnotes; Justice Antonin Scalia is the master of the metaphor and the written riposte). When writing has personality and panache, in addition to solid legal reasoning, it is more likely to have an impact and to be persuasive to the readers.

An appellate lawyer’s most important tool is the red pen – for editing. Make sure that every word is accurate, that every word is the right word, and that every word is necessary. New York Times legal writer Linda Greenhouse recently described Chief Justice Roberts’ writing style as “direct, straightforward, free of legal jargon, the voice of a lawyer who made a living selling complicated ideas to busy appellate judges under tight time constraints.” Anyone practicing in Florida’s busy appellate courts would be well served to shoot for that same goal. Then, that 15 minutes of oral argument will just be icing on the cake. ☺



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