

How to control your mother: A tip on writing persuasively

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One of the most important writing techniques I use I learned from my mother, although, as those of you who have read this column should know by now, not in any of the ways that you would typically expect.

You would think, for example, that I would have picked up lots of helpful pointers as a result of being raised by an elementary school teacher who was a reading and writing specialist, but that's way too easy and definitely not it. In fact, for reasons that I still don't quite understand, my mother made it a point of not helping me with my homework out of an apparent concern that her teaching style might create some kind of conflict that would confuse me and interfere with my learning, and so she left me completely at the mercy of my father, a radar defense system engineer whose idea of leisure reading is a book on advanced mathematics principles.

I may not have learned much about writing in those formative years, but I can pretty much guarantee that no other second-grader at Wellwood Elementary knew how to count to 10 in binary numbers or use logarithms on a slide rule to calculate how long it would take Spot to cover the distance between Dick and Jane.

I'm sure this explains a lot to those of you who know me, but today's column is about how to write persuasively, not how to raise a neurotic child and assure he'll need therapy for life. Which brings me back to my mother. She may not have taught me much about writing during my childhood, but, once I passed the bar, she trained me to use one of the most invaluable skills that I now routinely apply when writing an argument.

The training opportunities occurred each time I called my mother on the phone and the following exchange would take place after she picked up the receiver:

My mother: "Hello?"

Me: "Hi, Mom."

My mother: "Oh I am so glad you called! I was just about to call you! You'll never believe who I saw at the mall today! Remember so and so? Well, blah blah blah blah blah blah blah. ..."

By the time she had finished, I usually would have forgotten why I called — or I simply would have run out of time — because, as my kids have come to learn for themselves, Grandma can talk. I mean, really talk. I'm somewhat of a slow learner and so it didn't dawn on me until years after speed dialing was invented that virtually every one of these phone conversations began the same way, with the result that I would rarely accomplish my objective in calling her in the first place.

That is, until I learned that calling my mother requires disciplined adherence to an unwavering principle: I started it, so I get to decide where it's going. And this is precisely the same approach that every lawyer needs to take when writing a legal argument.

Make your argument before addressing what your adversary asserts. Brief writers frequently get sucked into an argument by setting up a counter-argument that simply responds to the various points raised by the other side. Lawyers also often

feel the need to immediately attack some outrageous contention that their opposing counsel has made. These approaches result in a very disjointed product that lacks a coherent theme, and, worse, highlights your opponent's position rather than your own. As a general rule, try to avoid succumbing to the temptation to blast the other side or the court below until after your position has been fully developed.

Argue your point, not theirs

As with all rules, this one has its qualifications and exceptions. First, applying this rule does not mean that you should postpone any and all discussion of what the other side says until you have presented your argument. In fact, when you write an appellee's or respondent's brief, it is critical that you hone in on the specific errors that the other side has identified because, otherwise, your briefs will appear as two ships passing in the night. When your opponent says something that goes straight to the heart of the controversy, consider starting off with that as a means of focusing the court. Just be sure, however, that what you argue is your point, not theirs.

Second, I do not mean to suggest that you should ignore everything the other side or the lower court says until the end of your brief. If an argument consists of several sub-arguments, you should make sub-argument A, then address the other side's response with respect to that argument, and then take the same approach with your sub-argument B.

Third, although you should avoid allowing the format and structure of your brief to be dictated by the other side or the lower court's opinion, you can use specific points that they raise as transitional devices for advancing your argument and expanding your analysis. For example, after making your main argument, consider using a sentence that says something like, "The Circuit Court erred, therefore, in holding that ____, " and then follow up that sentence with an explanation why the holding you just described was wrong.

This writing technique applies even when you are drafting a reply brief, the object of which is to "reply" to the other side's contentions. Stay away from a point-counterpoint approach and, instead, use your theme to respond to those contentions. Just be conscious of the reply brief's central goal, which is to respond to the other side's argument. While the reply brief should refrain from adopting a they-say/we-say format, it should not be a mere regurgitation of the same points advanced in the principal brief. The opposing brief may not dispute some of those points, and may ignore or mischaracterize others. Your job is to bring this to the court's attention in a way that convinces it to uphold the position you advocate.

If you use this technique, I can't guarantee that you'll win your case. But I can guarantee that you will get to say what you want. Just ask my mother. She'll tell you. And a whole lot more.

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