

The Art of Appellate Advocacy - Preparing for argument

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By ANDREW H. BAIDA,
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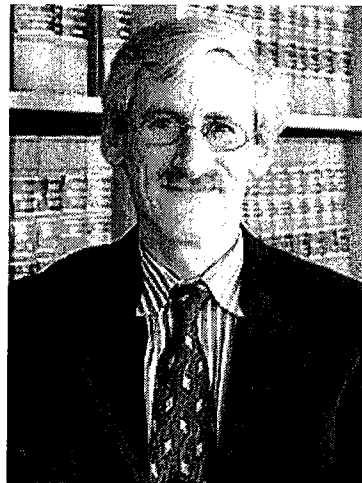
During the course of writing this column over the last year and a half, I have often pondered my own version of the philosophical question, "if a tree falls in the forest and there is no one there to hear it, does it make a sound," by asking myself, "if I write an article and there is no one who says anything about it, has anybody read it?" Although I didn't think of this question due to the feedback I received when I first started the column, I began musing about those sad fallen trees when the novelty wore off and the initial comments waned.

Before I create the wrong impression and possibly talk myself out of my regular monthly space on page 3B, I hasten to add that I'm not talking about deafening silence. Like last spring, for instance, when I wrote an article gently making the subtle suggestion that some judicial opinions might benefit, possibly, from the same type of page limitations that apply to appellate briefs.

OK, I wasn't so gentle or subtle, but the point is that I didn't need to guess whether anyone read that one. Someone even sent me an unsolicited agenda for last month's meeting of the Standing Committee on Rules of Practice and Procedure, which had scheduled for discussion "a policy issue concerning the length of appellate opinions."

As the months have passed, however, I have heard progressively less from others about the contents of these articles, even from former stalwarts such as my mother, who now calls me not to comment but to ask whether it's the second or third Friday of the month when my column is supposed to appear in this newspaper (it's the second Friday, mom, unless it gets bumped for an arguably more readable and definitely more profitable full-page ad).

None of this may seem to have anything to do with today's subject — which returns to John Davis' 10 Commandments of appellate advocacy — but I've realized, after arguing an appeal last month and finding myself in the midst of getting ready for another, that preparing for oral argument can be just as isolating an experience. It may not be as bad as falling alone and hard in the wilderness, but it ranks right up there with spending a lot of time writing something that maybe even your own mother won't read.



Andrew Baida

