

Some non-dating advice

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Lawyers, you would think, would be relatively at ease with the law, especially after devoting three years or more of their lives to law school and having made the law their chosen profession, but it never ceases to amaze me how obviously uncomfortable some attorneys are in dealing with legislative and case authority in the briefs that they file.

These lawyers manifest their discomfort in various ways that are strikingly similar to nervous behaviors typically experienced on a first date. They abruptly change subjects, for example, by beginning the argument section of the brief with the verbatim text of a statute, without any attempt to transition or link the prior discussion.

Or they try to impress their audience, by using long block quotes or equally lengthy string citations to show how big and strong their arguments are. Or they engage in mindless chatter, by discussing ad nauseum the facts of a case they rely upon, or worse, that their opponents do.

Now, I'll be the first to admit that I might not be the best person to offer advice on dating for a lot of reasons, not the least of which includes going out with one woman who was so moved by something I said during one of our dates that she threatened to hit me in the head with a two-by-four. Sure, I've now been happily married to that woman for 20 years and counting, but my wife's threat of serious bodily harm in the early days of our courtship could be viewed by some people as a pretty good sign to ignore any suggestions I have about how to handle yourself on a date, at least if you know what's good for you.

On the other hand, if you're looking for ideas on how to avoid preventable risks, you've come to the right person, although not necessarily to the right place. You'll have to read Baida's Extremely Challenged Relationships Advice blog if you're interested in hearing about my Top 10 dating survival tips for not having your skull caved in. In this forum, however, I will confine my advice to how you can handle legal authority in your brief, not just to minimize any risks of mishandling that authority, but to actually improve your argument.

Building the relationship

The first substantive piece of advice I have to offer for today is for those of you whose appeal turns on the interpretation of a statute, regulation, ordinance or any other similar form of authority. The same advice applies to contracts, too. The best way to handle any of these sources of authority is to act in the same manner that normal people do when they start dating: by beginning slowly, getting to know one another, and building the relationship.

This means that you need to introduce your reader early on in your brief to the statute, regulation, or contract that lies at the heart of the controversy that the appellate court has been asked to resolve. By early on I mean pre-argument, i.e., in the statement of facts.

Too many writers in these kinds of cases hold off virtually all discussion of the applicable regulatory or contractual sections that are at issue until the argument section of the brief, which they begin either by using an introduction that

summarizes or describes the pertinent provisions in question, or by committing the cardinal sin of setting forth these provisions verbatim in a block quote at the start of the argument.

Block quotes anywhere in an argument should be avoided like a stalker for reasons I'll discuss in a moment, but beginning the argument with such a quote or introductory summary is too much and too fast, like a marriage proposal on a third date. Including the key language from the statute, regulation, or contract in your statement of facts lets the reader have a better understanding of how it fits into your case.

This approach also allows you to begin the argument by arguing your case with a forceful topic sentence that describes the central reason why you should win, rather than overwhelming your reader with information that puts the onus on him or her to figure out why the decision being appealed should be affirmed or reversed.

Focus on the one you're with

The comment that I just made about block quotes is my second piece of advice for today and just the tip of my iceberg of contempt for this type of writing. No matter how tempting it may be for the writer to use someone else's words and thoughts — which is all that a block quote from a case is — trust me when I say that this writing approach is hardly ever worth the reader's time. I learned this first-hand when I reviewed briefs on a regular basis and finally reached the point, after having read one block quote too many, that I swore I'd eat sardines for a month, regardless of the adverse effect that this might have on my relationship with Madame Two-By-Four, if I never had to read another one.

Long indented quotations are hard to follow, and not just because they are single-spaced and last for an eternity. They also offer very little incentive to be followed because they are almost always from another case and not yours, which is the only one that the judges have been asked to decide.

It's been a long time since I last visited the dating scene, but one enduring memory I have, and that most of you probably/hopefully do, too, is that going on and on about an ex- when you're with someone new will likely not result in a second date, so what makes people think that they'll get a positive reaction when they quote a case or statute that takes up three-quarters of a page or more?

Instead of turning your argument into the literary equivalent of a really boring date and bringing it to a screeching halt, consider breaking up the indented quotation into smaller double-spaced quotes that are linked by a narrative discussion and made part of, as opposed to sequestered from, the regular text of the argument.

Next month's article will offer more suggestions about dealing with authority in your argument. But feel free to contact me in the meantime should you encounter a crisis in your personal relationship and find yourself in need of some advice.

I'm obviously doing something right. I'm still alive.

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