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Writing persuasively

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Giving lawyers advice about how to write a persuasive legal argument may strike some as a particularly poor use of time, but not me. I may not have learned much as the parent of two teenagers who ignore their father's pearls of wisdom on a regular basis, but my many experiences in dealing with a bored and seemingly unreceptive audience have taught me, in addition to the art of how to waste time, that sometimes something I say actually sinks in. It may not happen often — OK, it hardly ever does — but the few times that it has are enough to inspire me to keep coming back for more rejection and ridicule about what an idiot I am.

Most humans, and that would include attorneys, are much more polite than my children, especially the 17-year-old who typically responds to advice I give her by either rolling her eyes when she thinks I have no idea what I'm talking about or grunting when she's forced to acknowledge that maybe I do, so my trepidation about the reaction to today's column is significantly lower than it usually is when I'm in an advice-dispensing mode. I'm also feeling emboldened by an MSBA/MICPEL program I presented last month on today's subject when not a single person left the room — and if you were thinking that no one was in the room, you would be wrong — so here goes.

There are many ingredients in the recipe for creating a persuasive legal argument, but one stands alone from all the rest. Unlike baking powder, baking soda, self-rising flour, eggs or yeast, this item has no substitute and must be included in the mixing bowl if you have any hope of not producing the equivalent of a cake-making catastrophe by writing a flat argument. Many of us have heard the expression, "if you don't have the facts, pound the law; if you don't have the law, pound the facts; and if you don't have either, pound the table."

Well, you can pound away all you want, but if you don't have the ingredient that I'm talking about, your argument is going nowhere fast.

This ingredient can be summed up in one word: rhythm. Good arguments have it. Bad ones don't. It's that simple.

No matter how good your facts or cases are, do not delude yourself and allow them to "speak for themselves" — whatever that means — because they don't mean squat and will do bupkis for your argument if it lacks rhythm.

Rhythm is somewhat difficult to define, as are other fairly elusive concepts, but we know it when we see it. It is that beat, that cadence, that *je ne sais croissant* (I promise no more baking metaphors) quality that connects each sentence with the next and ties paragraphs together so effectively that you're practically snapping your fingers and nodding your head in agreement as the writing catapults you forward to the end of the argument.

## **Into the groove**

I never read the book or saw the movie, so I have no idea how Stella got her groove back (or even who Stella is, for that matter), but the most simple and effective way to establish the tempo that every good argument needs is to begin with an opening sentence that advocates your case rather than some generally applicable legal principle. To see what happens by doing the latter instead of the former, consider the following introductory paragraph in the argument section of a Fourth Circuit brief I wrote before I acquired the vast wisdom that I possess today:

Under the Rooker-Feldman doctrine, the federal courts have no jurisdiction over challenges to state-court decisions in cases arising out of judicial proceedings, including challenges that allege that the state court's action was unconstitutional. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983). The sweep of the doctrine is broad and bars the lower federal courts from hearing constitutional claims that "are inextricably intertwined with questions ruled upon by a state court," even if "the state court wrongly decided the issues before it." Allstate Insurance Co. v. West Virginia State Bar, 233 F.3d 813, 816 (4th Cir.2000). The lower court acted properly in applying the Rooker-Feldman to this case and dismissing Mr. Dajani's challenge to Maryland's red-light camera law, because his claims arise out of a state court traffic citation that this Court lacks authority to review.

As a result of beginning this paragraph with an abstract principle of law, the argument wanders off into the nana land of federal jurisdiction, loses the reader in the murk, and makes no attempt to persuade anyone of anything until the last sentence. Simply moving that sentence to the front of the paragraph establishes the rhythm that it lacks at present. More importantly, the lesson to be learned today is that such an approach forces the writer to continue the tempo by building the argument with forceful sentences, as the following revision illustrates:

The lower court acted properly in applying the Rooker-Feldman to this case and dismissing Mr. Dajani's challenge to Maryland's red-light camera law, because his claims arise out of a state court traffic citation that this Court lacks authority to review. The Rooker-Feldman doctrine bars those claims because the federal courts have no jurisdiction over challenges to state-court decisions in cases arising out of judicial proceedings, including challenges that allege that the state court's action was unconstitutional. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983). This Court should affirm because, as the District Court correctly recognized, the sweep of the doctrine is broad and prohibited it from hearing the type of constitutional claims at issue here that "are inextricably intertwined with questions ruled upon by a state court," even if "the state court wrongly decided the issues before it." Allstate Insurance Co. v. West Virginia State Bar, 233 F.3d 813, 816 (4th Cir.2000).

These modest changes show how creating rhythm can significantly transform your argument.

But that's enough from me for today. As fascinating as I'm sure all of this has been, you'll have to wait until next month's column for more exciting tips on how to write persuasively. If you need to write an argument in the meantime, you might want to play a little Ella Fitzgerald for some real inspiration. Of course, I could also sing "just give that

rhythm everything you got” because “it don’t mean a thing if it ain’t got that swing.” But that’s probably not the kind of inspiration any of us need.

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