

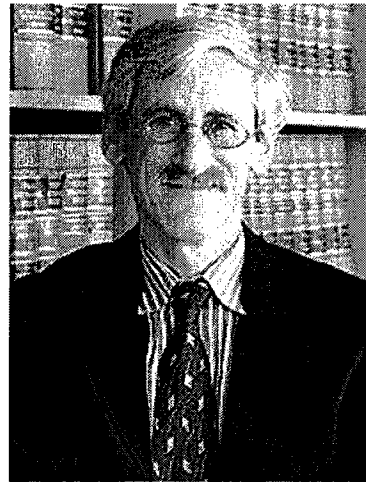


## **The Art of Appellate Advocacy - Writing for attention**

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Although it may seem unfair to some, I have a definite brief-writing advantage over most of you as a direct result of having a child who has the attention span of a moth. But before any of you who are parents get your hopes up or delude yourselves into thinking that you, too, have a leg up on any of your adversaries, please understand that I am not talking about your average case of Attention Deficit Disorder. ADD, as those of us in the know know it, is a label that is often overused and misapplied, to such an extent it probably could encompass a large majority of MSBA families. And that's before taking their kids into



account. No, I'm talking about a level of distractibility so extreme that the rest of these amateurs look like they have the concentration and focus of The Thinker.

As the proud parent of a kid whose attention is more non-existent than deficient, I have learned first-hand the critical importance of being very specific and tenacious when attempting to capture and maintain the attention of a person with lots of things on his or her mind. For example, the simple command to "do your homework" may work in some households, but my child's mother and I have discovered it is much more effective to instruct him, with periodic reminders, that before he can IM his friends on the computer, he must complete problems 1 through 30 on pages 264 through 265 of his pre-algebra textbook, parts A through D of the science ditto, the questions at the end of chapter 27 of his world cultures textbook, etc.

My on-the-job-training as a parent of an attention-challenged child has not only taught how to get and keep my kid's attention when it comes to completing his homework. It has also underscored for me the importance of using a comparable approach in the written advocacy arena when seeking to accomplish the equally formidable task of attracting and not losing the judge's attention.

I do not mean to suggest that the judges who read appellate briefs or trial court memoranda are similarly situated to the child that I have just described. Although

there may be a similarity or two, please believe me when I say that I have absolutely no interest in going down that road. My only interest is to pass on advice about a writing tool that, in my experience as both a writer and editor of lots of briefs, can significantly improve the quality of your written work. That tool is the topic sentence.

Topic sentences that grab hold of the reader by defining and shaping the argument provide one of the key differences between a mediocre brief and an effective one. A good argument begins with a topic sentence that, as I suggested in last month's column, tells the reader the central reason why you should win the appeal. That reason represents the heart of your argument and should be devoid of fluff. You are not likely to advance the ball very far by informing the reader in your opening sentence that reversal is required because the circuit court erred in granting summary judgment in favor of the other side. That's not much better than instructing the distractible offspring to do his homework. Don't set yourself up for failure. Tell the judges as specifically as possible what your agenda is.

In setting forth that agenda, consider the following suggestions. First, it is not necessary to pack everything in at the beginning of your argument. Too much information at one time can be overwhelming and quite traumatic for the reader. Envision the look of sheer and utter terror that the homework-oppressed child experiences upon learning about the multiple assignments that are due the next day, and you'll get a sense of what I mean. Try to strike a balance between too much and too little and be selective in deciding how much to include at the outset of your argument.

Second, in looking for that balance, remember that one good topic sentence at the beginning is not enough to make an effective legal argument. There's a lot more to it than wham bam thank – well, you know the rest. Persuasive writing is a process that involves taking the reader by the hand and walking the judge through your argument with a succession of topic sentences that build upon, weave together, and reinforce a central theme. Break that theme into manageable subparts and use a topic sentence to cover each one.

Third, develop your theme with topic sentences that describe your argument rather than the facts that support your legal position. A paragraph that begins with a recitation of a fact — even an important one — is more likely to bury your reader in minutiae than it is to persuade the judge that your argument is meritorious. Cases turn on facts, but the writer needs to let the reader understand why the facts in your case compel a decision in your favor, so set up the key facts with topic sentences that make their relevance clear.

As a person with a possible case of OTSD — that's Obsessive Topic Sentence Disorder to the uninformed out there — I have plenty more to say about the value of this important writing tool, but I realize that the subject of topic sentences is probably about as appealing to you as my child's homework is to him. So, rather than risk losing the few remaining readers who have gotten this far in today's column, I'll conclude with just one more suggestion. Working on topic sentences may be about as interesting as doing homework, but think about how many times you were told as a kid that you'd better do your homework if you want to do well. And that whining won't do any good. So just do it. I guarantee that your briefs will be better.

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