

Law

The Art of Appellate Advocacy

How to avoid the day when all bets are off

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The title for today's article about brief-writing tips was inspired by a less than inspiring remark my wife offered when we were discussing a cheery novel by Cormac McCarthy entitled "The Road." For those of you who have not had the pleasure of reading this delightfully uplifting book, "The Road," as the New York Times succinctly stated in its review, is a story in which "a boy and his father lurch across the cold, wretched, wet, corpse-strewn, ashen landscape of a post-apocalyptic world." "No Country for Old Men," which was written by the same author, depicts a veritable utopia by comparison.

The remark that my wife made was in response to my troubled reaction upon learning that the mother of the boy in "The Road" chose suicide rather than endure a soulless world in which the living dead eat their own or other people's babies to survive. As bothered as I was upon learning of the mother's decision to abandon her husband and child, I was even more distressed when my wife declared that if that was our world and if life as we now know it had been destroyed by a similar Holocaust-type event, then, as far as the two of us and our marriage were concerned, "all bets are off."

Some of you who have read my columns may be puzzled by the slack-jawed and stunned reaction I had when the person I've been married to for almost 23 years and had long considered to be the love of my life spoke those words.

After all, you may be asking yourselves, isn't this the same woman who once threatened to hit me in the head with a two-by-four (actually, it was more than once), who just a couple of years ago introduced me as her "friend" when she bumped into some guy she dated in college, and who as recently as last year brushed off my concerns about running the Boston Marathon in the middle of one of the nastiest Nor'easters in the history of New England by telling me that I had already paid for the nonrefundable application fee and plane ticket and so I might as well get my money's worth?

If you asked these questions, I would have to say yes, that would be the same woman. But unless you've been in this kind of relationship or have had firsthand exposure to the Stockholm Syndrome, I don't really expect anyone reading this article to understand the

profoundly emotional trauma I suffered upon hearing my wife tell me that there may be a day when all bets are off between us.

This is The Daily Record, however, not The Daily Angst, and there is little that I can do anyway to avoid the type of apocalyptic event that could doom my marriage.

There is, though, something I may be able to do to help you ward off the type of catastrophe that could doom your brief. So, to avoid the day when all bets are off for your legal argument, here are today's checklist items to consider when writing and editing the argument section of the brief.

Checklist item #27: Make sure your topic sentences have a direct connection with the sentence or the paragraph that precedes them.

I have previously suggested (checklist item #24) that brief writers use informative topic sentences to set up paragraphs so that the reader is not immersed in a sea of details without having the slightest idea of their relevance and how they fit into your argument's grand scheme. You should also use topic and transitional sentences to develop the argument by tying the new information set forth in each new paragraph to the old information that you just laid out for the reader in the preceding paragraphs.

Think of brief writing as a process that consists of walking the judge through your argument. In taking that walk together, be conscious of the need to make sure that the reader is neither surprised by the direction in which you are going nor lost by any sudden and unexpected turns.

Checklist item #28: Don't use long indented quotes. Their single-spaced format is taxing on the reader and presents an invitation to skim rather than read the contents. The enticement to do so becomes almost irresistible when, as is often the case with a lengthy block quote, it is cluttered with much more information than you need to make your point.

Break up long quotes by using the smaller applicable portions as part of your textual discussion in the more readable double-spaced format.

Checklist item #29: Don't inundate the reader with footnotes. Resist the temptation that often overcomes some members of the judiciary whose opinions tend to overwhelm the reader with footnotes. I once read an opinion that actually had two footnotes immediately adjacent to one another with no text in between: a footnote to a footnote. (The preceding sentence should probably be in a footnote, but that would defeat the point I'm trying to make here.)

Judges can get away with this because they are safeguarded by a legal doctrine that applies only to them called judicial immunity. Lawyers don't have this protection and run the risk of creating a very unpleasant situation if they give their judicial readers whiplash of the eye. So do yourselves a favor and keep the footnotes to a minimum.

Please also do me a favor and don't tell my wife about today's article. I don't think I'm ready for "Apocalypse Now."

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