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Chi-town AAAL Conference – Part One

Article By:

Litigation Practice at Pierce Atwood

I have just returned from a meeting of the American Academy of Appellate Lawyers in my old stomping grounds, Chicago. It was particularly engaging in terms of subject matter (as well as giving me the opportunity to eat a REAL pizza again). Here's part one of my take-aways.

Storied justice

The first session was about appellate brief writing as storytelling, with the speakers two lawyers who write bestselling fiction in their spare time – Ronald Balson (in private practice, writing historical fiction) and David Ellis (a justice in the intermediate state court of appeals, who writes thrillers with James Patterson). Apparently, they don't sleep. (Justice Ellis says he gets up and writes from 3:30 am until 7:30 am. Yikes.)

I've always thought that the rules for fiction and legal writing overlapped greatly (insert here joke about judges often thinking briefs are fiction). Obviously, there are differences – first and foremost, we must stick to the facts – but the speakers confirmed my belief that in both types of writing you should find a hook at the beginning, then do your best to keep the reader engaged so s/he'll keep reading.

The hook is key because people's attention is greatest in the beginning. Grabbing the reader involves a likeability element for your client (or at least the principle her or her case is advancing). Engaging involves making the text as clear and easy to follow as possible. Justice Ellis, consistent with his James Patterson relationship, emphasized the need to keep everything short – short sentences, short paragraphs, short "chapters," with lots of white on the page. This "shorter is better" view extends even to using snappy transitional words – not "Additionally" but "and." Not "however"; use "but." A good model to follow, he said, and I firmly agree, having blogged on this before, are the opinions from Supreme Court Justice Kagan.

Also an important element (which Justice Kagan is good at) is distillation – understanding and advancing the simple, cohering point of your position. CJ Roberts when in practice would take a record and figure out how to distill the matter into five words. Fiction writers are supposed to have an elevator pitch – if you meet an agent in an elevator and have 90 seconds to get them to want to read your book, you should have that short pitch memorized and good to go. It's a useful step to take in writing a brief, too, because it helps you draft keeping in mind the bottom-line point you are trying to

make. Identify the elevator pitch for your client and go from there.

Don’t use acronyms, jargon and assume the judges know what you are talking about. Don’t talk down to them, but use plain English to explain things. Judges are typically inclined to be readers and like to learn things. They also have massive amounts of reading they have to do. You want to get your manuscript out of the slush pile, and read through-and-through. So treat them like any other human, and tell them a good story.

Illinois appellate panel

The next session had a discussion from a panel of Illinois appellate judges on legal writing. Since we’ve covered many of their points in previous blog entries, I’ll focus only one they made – don’t end with a whimper, either in the briefing or argument. BANG.

Lincoln lawyer lunch

The luncheon speaker gave a great presentation about Abraham Lincoln as an appellate lawyer. He de-bunked some of the myths about Honest Abe (e.g., Lincoln argued an equal number of cases against as on behalf of railroads), and apparently he fluffed filing a few briefs on time (then threw himself on the mercy of the court, which worked).

Interestingly, the few briefs they have in his hand echo his speech drafts, with very few cross-outs. The speaker said Lincoln was a slow thinker, so when he wrote something down, it had all been thought through. I wonder whether that would prove the same today, when he’d have a computer allowing easy revision.

Mixed judge panel

The next session included a variety of appellate judges from the state and federal benches – two Seventh Circuit judges, and Illinois Supreme Court Justice, etc.

One topic discussed was the reduction in number of appeals (as well as litigation). Appeals are down 40% across the board in Illinois. Various factors were discussed for this phenomenon, but one point made was that for many years, the court system had no competition for dispute resolution. Now it does. Hence, the court system needs to think about what value added it has to offer.

The judges came from a dizzying array of different backgrounds –prosecutor/private practice/public defender/trial judge/professor – and they were asked what experience they had before they became appellate judges that most affected their perspective or was useful to them as appellate judges. The answer that struck me most was from the judge that said it was growing up working in her mother’s beauty parlor – learning to listen, hard work, and how to persuade.

In terms of opinion writing, one point they made was that the opinion is essentially the only place a judge can explain his or her thinking. Their ability to speak outside that forum is very circumscribed. So it’s important for this reason for the judge to spell out clearly in his or her opinion why the court reached the decision it did, as well as to give closure to the parties.

This blog entry has already gone on too long for Justice Ellis’ keep it short approach, so let’s stop here for now.

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