WHERE THE ROAD FORKS: THE ART OF CREATING AND TELLING A CLIENT’S STORY AT TRIAL COURT VERSUS APPELLATE COURT

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Storytelling

Two components of presentation

1. Textbook and attorneys’ input on storytelling in trial court versus appellate court

2. How to convey to students the differences between storytelling in trial court versus appellate court
Part 1

TEXTBOOK AND ATTORNEY INPUT ON STORYTELLING IN TRIAL COURT VERSUS APPELLATE COURT
What do textbooks offer us?

- Only has two pages on trial-level briefs
- Case theory discussion focuses on appellate brief
- Oral argument chapter focuses on appellate oral argument

Part Five. The Shift to Advocacy

Chapter 14. Introduction to Brief-Writing
Chapter 15. Point Headings
Chapter 16. Writing a Fact Statement
Chapter 17. Writing a Trial-Level Brief
Chapter 18. Writing an Appellate Brief
Chapter 19. Using Legal Theory to Sharpen Your Arguments

Part Six. Style and Formalities

Chapter 20. Citations and Quotations
Chapter 21. Paragraphs, Sentences, and Style

Part Seven. Oral Advocacy

Chapter 22. Oral Argument

Appendices.

Appendix A. Sample Office Memorandum
Appendix B. Sample Trial-Level Brief
Appendix C. Sample Appellate Brief
Appendix D. Sample Letters
Appendix E. Cases
“Briefs to a Trial Court” chapter

- Focus on the applicability of legal rules rather than policy
- Emphasize that fairness requires a decision in your client's favor
- Be brief
- Write for the court

What do textbooks offer us?

“Briefs to an Appellate Court Chapter”

- Focus on the claimed errors of the lower court
- Base your argument on the appropriate standard of review
- Emphasize that a decision in your client's favor would further the policies underlying the law
- Explain how a decision in your client's favor would foster harmony or consistency in the law

Audience, purpose, argument changes between courts

Part E: Briefs

Chapter 21. Elements of a Brief
Chapter 22. Structure of the Argument
Chapter 23. Persuasive Writing
Chapter 24. Point Headings
Chapter 25. Statement of Facts for a Brief
Chapter 26. Briefs to a Trial Court
Chapter 27. Briefs to an Appellate Court
All attorneys are not the same, so when choosing an attorney...

TAKE A CLOSE LOOK.

- Who is your audience?
- Knowing the difference between “jury proof” and “legal proof”
  - Focus groups
Style changes from trial court to appellate court

- Choose what works for you
- Trial court style can be “theatrical”
- Be conversational with appellate judges/justices
  - Don’t view them as adversaries
  - Expect and plan for questions
Storytelling Consistencies

Following a case from trial court through one or more appellate courts

- Your theme may remain the same even though your audience has changed
- Argument needs to be unique from the brief
- Don’t view the judge(s)/justices as adversaries
  - Questions aren’t necessarily a bad thing
- Focus the judge(s)/justices on your theme/big picture
The difficulty of transitioning from trial court to appellate court on the same case

- Mixing up facts from the trial court vs. the record
- Limit yourself to the record – work from your “box” of materials
How to Convey to Students the Differences Between Storytelling in Trial Court versus Appellate Court
Custom publishing also allows you to add your own resources to the textbook

Give yourself **plenty of time** if you decide to custom publish.
If your persuasive course is currently all appellate work or all trial work, why should you go to the effort of making this change?

Include a graded oral argument for the trial motion and appellate brief.

Many legal writing programs are only two semesters so there isn’t an opportunity for us to introduce students to the difference between trial versus appellate work in later semesters.

If we don’t introduce students to the differences and allow them to practice these differences, who will?

Have a persuasive semester that includes a trial motion and an appellate brief.

Have the students use the same problem for both
In Class Panelists

**Attorney Perspective**
Invite two or three attorneys from the community who have argued in trial court and appellate court

**Judge/Justice Perspective**
Invite two or three judges/justices
✓ Have a mix of trial court and appellate court judges
✓ You may want to have some state and some federal, too

Provide the panelists with a list of topics/questions that will be discussed

Either ask them to go through the topics/questions on their own or serve as a moderator
Require observation of both trial court motions and appellate argument if possible in your community.

- Make it a graded assignment so they take it seriously.
- Provide them with a critique form to fill out for each set of arguments.
- The form should ask them questions they should be pondering regarding their own arguments.
- Require students to observe oral arguments.

| Answer the Following Questions for the **First** Attorney Who Argued¹ |
| 1 = strongly disagree; 2 = somewhat disagree, 3 = somewhat agree; 4 = agree; 5 = strongly agree |
| Circle your response |
| 1. The argument was well organized. | 1 | 2 | 3 | 4 | 5 |
| 2. The attorney used legal authorities to support the arguments. | 1 | 2 | 3 | 4 | 5 |
| 3. The attorney was respectful of the court | 1 | 2 | 3 | 4 | 5 |

List some persuasive skills used by the attorney.

1. 
2. 
3. 

General Comments (required):
May it please the court

Lawyers have a sense of humor?

Ms. Kagan argued 6 cases before the U.S. Supreme Court in 2010 before being appointed to the U.S. Supreme Court. She was the only female of the forty-four Solicitor Generals who have served throughout history.

