

Brevity Is the Soul of Law

SHAKESPEARE WROTE IN *HAMLET* THAT “BREVITY IS THE soul of wit,” and this observation holds true for legal persuasion as well. Brevity is—or at least should be—the soul of law.

Years ago I wrote what I thought was a very clever, if somewhat long, brief in a patent case. Patent briefs can be rather dull, so I fancied myself quite creative for opening mine with the refrain of a then-popular country tune, “What Kinda Gone.” I thought the lyrics made my key argument—that even ordinary terms in the patent at issue had many different meanings.

Making his point with a quote as well, my opposing counsel opened his responsive brief with a line often attrib-

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As lawyers, we have a lot to say and somehow think the longer our briefs, the more persuasive they will be. It is as if we believe that attorneys are still paid by the word, as was historically the practice in Europe. It is our collective tendency toward repetition and verbosity that forces courts to impose word and page limits.

But when it comes to persuasive legal writing, less is more. This is particularly true at this time, when courts are operating with limited budgets and exploding dockets.

An effective advocate can succinctly communicate an entire argument—be it a simple discovery dispute or a com-

plex theory of trial—in just a few pages. Indeed, if you don’t get to the point in the first page or two, you have likely already lost the court’s attention. But can an entire message be communicated in just six words? Apparently so.

I recently came across *Not Quite What I Was Planning: Six-Word Memoirs by Writers Famous and Obscure*—a book of life stories told in just six words. The book originated from a project by the

online magazine *Smith* asking readers to share the story of their lives in a single sentence. Some are amusing, others poignant, but all are just six words.

The book includes entries from well-known personalities such as comedian Stephen Colbert (“Well, I thought it was funny.”), Arianna Huffington (“Fearlessness is the mother of reinvention.”), and Nora Ephron (“Secret of life: marry an Italian.”).

Other six-word insights in the collection come from everyday folks. “I still make coffee for two” was penned by a 27-year-old who had just been dumped. One wonders about the life of the man who went with: “Thank god the suicide attempt failed.” Or the career of the woman who wrote: “Bar-rister, barista, what’s the diff, Mom?”

And my favorite? Legend has it that when challenged to write a full story in just six words, Ernest Hemingway responded: “For Sale: baby shoes, never worn.”

I have since come across other examples of powerful messages communicated in just six words. Winston Churchill is famous for his admonition during a 1941 wartime visit to a school: “Never give in, never give in.” Other accounts have him saying “Never, never, never, never give up.”

Although it’s a bit longer, the most famous speech in American history—The Gettysburg Address—is remembered not only for its powerful message, but for its brevity. In less than 300 words, Abraham Lincoln reiterated our founding principle of human equality and declared the Civil War a struggle for the preservation of the union that would ensure our continued democratic form of government. Lincoln appreciated that less communicates more.

Surely we as professionals trained in legal persuasion should be able to do the same, right? We are taught to distill cases to a human story that can be understood by laypersons on a jury, or even a child. Still, I wondered if I could capture my most memorable cases in just six words.

“Freedom for Christian Armenian woman from Iran.” Oops, that’s seven words. I tried again: “Daughter killed; escaped Iran; granted asylum.” But six words didn’t seem to do justice to my client’s story. An elderly Christian Armenian woman from Iran and her journalist-daughter, who reported on the repressive regime’s violence against fellow journalists, were arrested in the middle of the night by police. Only

my client was released; her daughter never made it out alive. After years of fighting her immigration asylum case through the U.S. courts, my client prevailed before the Ninth Circuit Court of Appeals.

I tried another one. “Don’t assume market power from patents”—the U.S. Supreme Court’s holding in my first patent case, which traveled to the highest court and back. After nine years of fierce litigation, the plaintiff dismissed the claims it once had valued in the hundreds of millions. Lots of lessons learned.

“*Popeil v. Foreman Rotisseries*: notch or hole?”—my second patent case. A series of patent cases, actually, which turned on whether a notch is a hole. Really. (Does “v.” count as a word?)

I gave it one final try. This time I knew exactly the right six words, without hesitation: “Marilyn Monroe belongs to the world.” So concluded the Ninth Circuit decision that finally ended my years-long court battle over

her post-mortem right of publicity.

Writing six word memoirs is a fun exercise, but how do we actually achieve brevity? There are countless ways to condense or “declutter” our written advocacy—here are just a few:

- Avoid meaningless introductions. There is no need to start your brief by reminding the court of what is clear from the caption of your document. Get to your point, and quickly. Keep your introductions to a page or two at most.

- Don’t include extraneous information—be it facts or case law. Statements of fact tend to be loaded with irrelevant data. But consider, for example, whether a specific date is important: Does it matter if a complaint was filed in May or July? Or if a contract was signed on Tuesday or Thursday? Another good place to look for extraneous information is footnotes. If it wasn’t sufficiently important to include in the text, it is probably unnecessary. Your briefs should not look like your law review note.

- Avoid redundant language—breaching “a contract’s provisions” is the same as breaching a “contract.” And don’t repeat yourself. If you make an argument powerfully, you don’t need to reiterate it. If you find yourself writing, “as explained above,” you’re repeating yourself. Don’t.

- Avoid string cites. Pick your strongest case or two; don’t waste the court’s time with all the others. And avoid legalese at all costs. Eliminate all *heretofores* and *hereafters* and any other vestiges of Old English.

Of course, even with these tools, legal arguments cannot be distilled to just six words. But brevity is a worthy goal in any legal context—whether you are writing, standing before a jury, or arguing on appeal. So I end this article with six final words of advice from Franklin D. Roosevelt: “Be sincere, be brief, be seated.” 🗣️

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