

Motion practice principle No. 3: Get to the point!

By: Douglas H. Wilkins and Daniel I. Small ◉ April 4, 2019



The third of seven principles of motion practice.

So many interesting things to talk about, so little time. Don't fall victim to temptation. In both your written and oral argument, get to the point and stay there. It takes far more work, far more preparation, and far more discipline to maintain that clear focus, but the results will be far better.

Former President Woodrow Wilson understood that. When he was asked by a reporter how long it took him to prepare his speeches, he responded: "That depends on the length of the speech. If it is a 10-minute speech, it takes me two weeks to prepare it;

if it is a half-hour speech, it takes me a week; if I can talk as long as I want to, it requires no preparation at all. I am ready now."

So it is in litigation as well. Lawyers need to do the work necessary to be clear and focused. Judges don't want you to waste their time. They want to hear right away — briefly and clearly — each of the following:

- what the case is about;
- what the court will need to decide;
- what your position is: grant, deny (or other); and
- a phrase or two about why.

For instance, at oral argument, you might say:

"This is a dispute over the meaning of a contract. My client, the plaintiff, Widget Corporation, requests summary judgment on liability because the contract is not ambiguous; it required the defendant to deliver the goods by May 14, which never happened."

Have a main point (a "theory of the case"). Stick to it. Don't waste an opportunity to sell the court on your theory of the case by discussing red herrings.

Direct statements are welcome. Strip your argument (oral and written) of wind-up phrases, such as "it is our contention that." Speak in plain English when possible, rather than legalese (yes, even for judges). Speak as though you are talking to a person and trying to make that person understand why you should win. That is, in fact, what you are doing.

Don't lose your way. You know your case best, so it is your responsibility to avoid, and stop, irrelevant rabbit trails. Rabbit trails can open up in many ways: something you said that was off message, something the judge thought he or she heard and wanted to explore, something the other side brought up.

You may lose control of the argument if the judge starts to go down one of your ill-advised trails. Whatever the source, you are the one who has to bring things back from that trail. Get to the point and stay there.

It's no coincidence that this is our shortest article.

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