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Halloran Sage Blog Entries

Halloran Sage Appellate Group 2020 - 2021 "Appeal Talk" Entries

Posted by Laura Zaino on September 2, 2021

Bittersweet Defeat is a Textbook Case

Hanks v. Powder Ridge Restaurant Corporation et al., 276 Conn. 314 (2005). It is, for any "Friends" fans out there, the one where I snatched defeat from the jaws of victory. It was my second argument before the Connecticut Supreme Court and I argued to a panel of 5 justices. I was pleased with my brief and the argument went well. I thought I had a decent chance of convincing the Court to affirm summary judgment in my client's favor where the plaintiff had signed a "Waiver, Defense, Indemnity and Hold Harmless Agreement and Release of Liability" before he injured himself while snow tubing. And I did – until the Court decided to consider the case en banc and held, in a 4 to 3 decision, that such releases run afoul of public policy and are unenforceable in Connecticut. The three dissenting justices were on the original panel of 5.

It was a particularly disappointing way to lose. The fact that three justices agreed with my arguments took some of the sting out but, at the same time, it was only three justices and still a loss for my client.

This was initially the only lens through which I grudgingly viewed this decision. However, with time and more experience as an appellate nerd came an expanded focus. I was eventually able to see beyond the loss and appreciate that my arguments helped shape an important part of Connecticut's jurisprudence and they did so in a way that fostered a legitimate discussion.

I recently learned that this discussion is in fact ongoing, beyond Connecticut, in an arena I had not previously considered. A few months ago, a student from a west coast law school reached out with a few questions. She was studying Hanks in her torts class. Excerpts from both the majority and dissenting opinions were reproduced in her textbook, along with a witty cartoon, and she told me that her professor teaches this case to students across the country. Needless to say, as a former adjunct law professor myself, this furthers my appreciation for this case. And, for what it is worth, some of the students who have studied it apparently agree with the dissent!

Posted by Michael McPherson on August 25, 2021

Do Not Let the General Verdict Rule Foil Your Appeal

Litigants at the trial level must always be mindful of preserving any claims of error for a potential appeal. While savvy trial lawyers may know enough to distinctly raise their objections to the trial judge, an oft-overlooked rule could still stymie an appeal if not observed. Enter the "general verdict" rule. In Connecticut, under the general verdict rule, if a jury renders a general verdict for one party, and the party

raising a claim of error on appeal did not request jury interrogatories, an appellate court will presume that the jury found every issue in favor of the prevailing party. Thus, in a case in which the general verdict rule operates, if any ground for the verdict is proper, the verdict must stand; only if *every ground* is improper does the verdict fall.

The general verdict rule often arises when a defendant has asserted a special defense and then receives a general defense verdict. Absent jury interrogatories clarifying the basis for the verdict, how does the trial court know whether the jury found the plaintiff's prima facie case lacking or instead found that the defendant had proven its special defense?

To be precise, the Connecticut Supreme Court has stated that the general verdict rule applies to the following five situations: "(1) denial of separate counts of a complaint; (2) denial of separate defenses pleaded as such; (3) denial of separate legal theories of recovery or defense pleaded in one count or defense, as the case may be; (4) denial of a complaint and pleading of a special defense; and (5) denial of a specific defense, raised under a general denial, that had been asserted as the case was tried but that should have been specially pleaded." *Curry v. Burns*, 225 Conn. 782, 801 (1993).

The general verdict rule rests on the policy of conserving judicial resources at the trial and appellate levels. The Connecticut Supreme Court explained:

> On the appellate level, the rule relieves an appellate court from the necessity of adjudicating claims of error that may not arise from the actual source of the jury verdict that is under appellate review. In a typical general verdict rule case, the record is silent regarding whether the jury verdict resulted from the issue that the appellant seeks to have adjudicated. Declining in such a case to afford appellate scrutiny of the appellant's claims is consistent with the general principle of appellate jurisprudence that it is the appellant's responsibility to provide a record upon which reversible error may be predicated.
>
> In the trial court, the rule relieves the judicial system from the necessity of affording a second trial if the result of the first trial potentially did not depend upon the trial errors claimed by the appellant. Thus, unless an appellant can provide a record to indicate that the result the appellant wishes to reverse derives from the trial errors claimed, rather than from the other, independent issues at trial, there is no reason to spend the judicial resources to provide a second trial.

Id. at 790 (internal citation omitted).

Depending on the circumstances, trial lawyers sometimes do not request jury interrogatories as a matter of strategy. Any such calculus, however, should always include the potential consequences of a general verdict.

HALLORAN SAGE

Posted by Daniel Krisch on August 11, 2021

What is Parmesan cheese, exactly?

Though it's been more than two decades, I'll never forget that question, or the important lesson it taught me: A great appellate lawyer knows his client's business.

The question came #outofleftfield during oral argument in a trade secrets case. I was a law clerk at the time and thought it bizarre that one of the Justices (not mine) had interrupted counsel to ask a largely* irrelevant question. But what struck me — and what has stuck in my mind for twenty plus years — is that the lawyer struggled to answer the question. He didn't know! Or, at least, didn't know well enough to have a clear and concise answer at his fingertips. To be sure, that lapse probably didn't affect the outcome of the appeal — but it didn't help his argument. Moreover, it was a missed opportunity to (a) enhance his credibility with the Court by displaying expertise about his client's business, and (b) endear himself to his client by showing that he had taken the time to learn the #insandouts of his client's business.

So now I take the time to learn what my clients do — even if it's not relevant to their appeal — and I'm the better for it.

*The case involved the process for making Parmesan cheese, but its exact nature was not the issue.

Posted by Logan Carducci on August 4, 2021

To Appeal or Not to Appeal?

You're unhappy with the result of your trial. The judge has denied your post-trial motions. Now what? The decision to appeal or not to appeal from an adverse judgment is one of the most critical and overlooked stages of any case. Too often attorneys automatically file an appeal without first evaluating the substantive merits of their appellate arguments, the pros and cons of an appellate win, or the financial repercussions for their client. Before you proceed with your appeal, consider the following tips:

1. Determine your strongest appellate arguments, evaluate the applicable standards of review, and estimate the likelihood of success on appeal for each of these arguments. Although your client will likely ask for a percentage estimate, make sure you are careful about the numeric value you assign to your appeal. Remind your client that (1) there is no 100% chance of a "win" and (2) an estimate is not a guarantee.

2. Evaluate the downsides to both winning and losing the appeal. If you win, what are the consequences of the remand? Will you be subjecting your client to an entirely new trial when they simply want to challenge one part of the judgment? In dissolution actions, for example, it is important to remember that the trial court's financial orders are part of a "carefully crafted mosaic." Because of this, "when an appellate court reverses a trial court judgment based on an improper alimony, property distribution, or child support award, the appellate court's remand typically authorizes the trial court to reconsider all of the

financial orders." (Emphasis added.) Smith v. Smith, 249 Conn. 265, 277 (1999). By contrast, if you lose the appeal, will the decision establish binding appellate precedent for future cases on this same issue?

3. Consider the financial consequences for your client. At the very minimum, it is important for your client to understand the attorneys' fees associated with pursuing an appeal. Moreover, you should advise your client when they may face additional financial consequences for bringing an appeal, such as post-judgment interest under General Statutes § 37-3b.

As appellate counsel, you should make sure your client understands the probability of success on appeal and the risks associated with pursuing that appeal. Once you have conveyed these issues to your client, however, it is up to him or her to decide whether "to appeal or not to appeal."

Posted by Michael McPherson on May 19, 2021

You failed to preserve your appellate issue. Now what?

So you lost your case and you want to appeal, but there is a problem: you did not preserve the issue you now claim is error. What can you do? If you are in Connecticut state court, your first step should be to review the Supreme Court's decision in Blumberg Associates Worldwide, Inc. v. Brown and Brown of Connecticut, Inc., 311 Conn. 123 (2014). There, the Court reviewed and expanded the right of the appellate courts to decide issues that were not distinctly raised at the trial court or raised on appeal.

Here is a brief summary:

First, the appellate courts must address an issue that implicates their subject matter jurisdiction, whenever and however the issue is raised.

Second, the appellate courts may address a claim of "plain error." The plain error doctrine is reserved for "truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings." Blumberg, 311 Conn. at 149–50 (citation omitted).

Third, the appellate courts may address an unpreserved constitutional claim when the conditions set forth in State v. Golding, 213 Conn. 223, 239–40 (1989) have been met (a.k.a. "Golding review"). Among other things, under Golding, the record must be adequate for review and the claim must be of "constitutional magnitude alleging the violation of a fundamental right" that "clearly deprived the defendant of a fair trial." Blumberg, 311 Conn. at 150 n. 18 (citation omitted).

Fourth, the appellate courts, acting under their supervisory powers, may address an unpreserved claim that involves a matter of public importance. Id. at 150–52; see also State v. Simmons, 188 Conn. App. 813, 851–52, (2019) (recognizing that the Appellate Court, like the Supreme Court, has "supervisory power over the administration of justice").

Last, even if a party does not raise the issues identified above, the appellate courts have the discretion to address an unpreserved issue sua sponte if (1) extraordinary circumstances exist; (2) the factual record is

adequate to review the issue; (3) all parties have had an opportunity to be heard on the issue; and, (4) the party against whom the issue is to be decided is not unfairly prejudiced.

To be sure, a party should always try to preserve an appellate issue by distinctly raising it at the trial court. Likewise, parties on appeal should also raise the appellate issues in their preliminary papers and their briefs. See Practice Book §§ 63-4, 67-4, 67-5. The exceptions to these rules identified in Blumberg are narrow and almost all are reserved for, well, exceptional circumstances. See Diaz v. Comm'r of Correction, 335 Conn. 53, 59 (2020)("Exceptional circumstances exist when 'the interests of justice, fairness, integrity of the courts and consistency of the law significantly outweigh the interest in enforcing procedural rules governing the preservation of claims.'")(quoting Blumberg). Best practice is to properly preserve the issue and only rely on Blumberg and the exceptions raised therein as a last resort.

Posted by Laura Zaino on March 10, 2021

O A II: Songs That Did Not Make the Cut

Laura's last post included ten songs that you might find on her oral argument playlist. Now, here are ten songs you won't.

1. "Danger Zone"
2. "Lyin' Eyes"
3. "I Still Haven't Found What I'm Looking For"
4. "De Do Do Do, De Da Da Da"
5. "Don't Stop"
6. "Bad Connection"
7. "Don't Ask Me Why"
8. "Ramble On"
9. "Rude"
10. "I'm Goin' Down"

Posted by Daniel Krisch on March 5, 2021

Me, Appeals, and Videotape

(that's fair use, Mr. Soderbergh)

Watching my oral arguments is a humbling experience. In my head, I'm Denzel; on camera, I'm more Denzzzzz. Yet, it's necessary humiliation: Oral advocacy is an appellate lawyer's bread and butter; the only way to improve is to identify your flaws. This used to require a visit to CT-N's website. Happily, one of the pluses of COVID-life is that the Supreme and Appellate Courts hold arguments on Teams – and now stream them on YouTube: https://www.youtube.com/channel/UC5TXrtDyemrV5R6p73A-7Ug (Supreme); https://www.youtube.com/channel/UCUfu-XlYj2-1-UvI79hq8Qw (Appellate).

So watch yourselves, my friends. Painfully, but usefully, the camera doesn't lie: I speak too fast; I lisp at odd moments; I sometimes smirk superciliously; and I have the bizarre habit of touching the top of my head when I answer questions. If you haven't watched yourself argue an appeal, you'll find equally cringe-worthy stuff when you do. Once the cringing ends, though, you'll know – and, to borrow a phrase from Saturday mornings of my youth, knowing is half the battle.

Posted by Logan Carducci on February 26, 2021

Deference Does Not Equal Defeat

Appellate lawyers know the feeling of dread all too well. After a thorough review of the record and the appealable issues, a harsh reality emerges: the abuse of discretion standard applies.

This standard most often applies when the appellate courts examine evidentiary rulings, discretionary rulings on a procedural issue, or financial awards in dissolution actions. See, e.g., State v. Apodaca, 303 Conn. 378 (2012); Ill v. Manzo-Ill, 166 Conn. App. 809 (2016); Horey v. Horey, 172 Conn. App. 735 (2017). Under this standard, the appellate courts give every reasonable presumption in favor of upholding the trial court's decision. See Bobbin v. Sail the Sounds, LLC, 153 Conn. App. 716, 726-27 (2014), cert. denied, 315 Conn. 918 (2015).

When faced with such a deferential standard, attorneys often fear that the scale is tipped too far in the trial judge's favor and securing a victory is all but impossible. What these lawyers often forget, however, is that a trial judge's discretion is not unbridled: A court must exercise it "in conformity with the spirit of the law and should not impede or defeat the ends of substantial justice." (Internal quotation marks omitted.) Przekopski v. Zoning Board of Appeals, 131 Conn. App. 178, 192-93, cert. denied, 302 Conn. 946 (2011).

Consistent with these principles, our appellate courts have found an abuse of discretion where, for example, the trial court could have chosen different alternatives but "has decided the matter so arbitrarily as to vitiate logic or has decided it based on improper or irrelevant factors." State v. Williams, 146 Conn. App. 114, 138 (2013), aff'd, 317 Conn. 691 (2015). More recently, in Fleischer v. Fleischer, 192 Conn. App. 540 (2019) (successfully argued by the author), our Appellate Court held that it was an abuse of discretion for the trial court to dismiss an action for failure to prosecute with due diligence when lesser sanctions were available to the court.

So, the next time you're faced with the abuse of discretion standard, just remember: deference to the court does not equal defeat for your appeal.

HALLORAN SAGE

Posted by Michael McPherson on February 18, 2021

Briefing Tip - Do Not Avoid the Inconvenient Truth

Oftentimes on appeal a particular fact or relevant case is unfavorable—but not dispositive—to your argument. Your argument still works, so why address those facts or cases at all? Many lawyers may be tempted to avoid or gloss over these inconvenient truths, believing that their opponent or the court will do the same. Not likely. Pretending as though a harmful fact or unfavorable "on point" case does not exist—only to have your opponent exploit your omission—can lead to disaster. This is not unique to appellate advocacy. An attorney's credibility is vital and nothing undermines that credibility with the court more than the appearance of disingenuousness.

For example, say you are in state court and your issue is one of first impression under state law. There is, however, a federal district court case on point. The federal case is non-binding, so you may be tempted to ignore it, hoping that your opponent will do the same. That is exactly what the defendant did when it moved to strike the plaintiff's complaint in *Smith v. Jensen Fabricating Engineers, Inc.,* No. HHDCV186086419, 2019 WL 1569048 (Conn. Super. Ct. Mar. 4, 2019).

The plaintiff in *Smith* sued his employer for wrongful discharge and violation of Connecticut's Palliative Use of Marijuana Act, Conn. Gen. Stat. § 21a-408, et seq. The defendant moved to strike the complaint, arguing that the federal Controlled Substance Act (21 U.S.C. § 801 et seq.) and the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) preempted Connecticut law. Although the preemption issue was one of first impression in Connecticut state courts, a federal District Court of Connecticut had decided that issue. Because the federal case was non-binding, the defendant ignored it in its brief. The plaintiff and the court, however, did not.

Not only did the trial court reject the defendant's argument, but the court made a point of voicing its displeasure and the effect on defense counsel's credibility. The court's own words say it all:

> The Court is compelled to register its disappointment that the *Noffsinger* case is nowhere cited in Jensen's initial memorandum of law. Jensen is correct that *Noffsinger* is not binding on this court and, of course, there is nothing wrong with counsel reviewing relevant case law in a way that may be advantageous to his client, or in arguing that a case was wrongly decided. Nevertheless, to completely ignore (until cited by the plaintiff in his brief) a recently decided case, from a Connecticut-based federal judge, deciding the exact same issue as presented here, and where, at the time, that case was very nearly the only case directly on point; that only serves to undermine the credibility of counsel.

Smith v. Jensen Fabricating Engineers, Inc., 2019 WL 1569048 at *2 n.2.

A better strategy is to confront unfavorable facts and law head-on, which will give you the opportunity to frame or distinguish those issues before your opponent does. It will also show the court that you are a credible advocate who can be trusted to present an honest argument to guide the court in its decision. After all, judges want to make the right and fair decision. Help them (and yourself) by being forthright in your arguments.

Posted by Laura Zaino on February 10, 2021

Songs You Might Find on My Oral Argument Playlist

1. "Ready for It"	Because I will be prepared.
2. "A Matter of Trust"	Because I will not compromise my credibility.
3. "The Authority Song"	Because I will know the applicable cases, statutes, and rules.
4. "Breathe"	Because I will speak clearly and slowly.
5. "I'll Wait"	Because I will stop speaking when a judge asks a question.
6. "Listen to the Music"	Because I will listen to the questions I am asked.
7. "I Walk the Line"	Because I will answer the questions I am asked.
8. "That's All"	Because I will end my argument when there is no more to say, even if there is still time on the clock.
9. "Respect"	Because I will.
10. "I'm Still Standing"	Because I will have done each of these things.

Posted by Daniel Krisch on February 4, 2021

(Haiku) Appeal Lessons Learned

Read every transcript
Cover to cover first page to last
Because judges will

Words that don't exist
'Yabut' 'nobut' 'due respect'
Cull them from your brain

Credibility
Swift to vanish slow to return
Most precious asset

Road to perdition

Paved with evasive answers
Ad hominem barbs

Nervous up there friend?
Me too each time palms sweaty
Relax breathe deeply

Posted by Daniel Krisch on December 23, 2020

'Twas the Night Before Argument

(with massive apologies to Clement Clark Moore)

Twas the night before argument, when all through my head
No answers were stirring, my heart full of dread.
My outline was drafted with notes here and there
In hopes for no question to be unprepared.
Key cases were tucked all snug in a binder,
Highlights and stickies on the key parts to find, yah.
Trial counsel was ready to assist on the morrow,
Her court bag laden with notes I might borrow.
The prior day's moot had caused quite a clatter,
Left me grilled and skewered, no use being flattered.
The record I had read and re-read oh so oft,
I knew every citation (though you might scoff).
When, what to my tiring eyes should appear,
But a miniature bench, and seven robed seers.
Their faces wore frowns, their papers in stacks,
I knew in a moment they'd be on the attack.
More rapid than eagles their queries now came,
Thank god I didn't call anyone the wrong name!
Now Robinson! Now McDonald! Keller and Mullins!
On D'Auria! On Ecker! On Kahn (en banc-ns).
To the briefs and appendices, points big and small,
They hammered and hammered, 'til I feared I would fall.
Only long hours prepping kept me straight and true,
No point too obscure, the whole case I knew.
Out from my mouth the clear answers came,
No "yabuts," "nobuts," I brought my A-game.
Sooner than expected, a red light did blink,
My time had ended, and barely could I think.
Then I heard the Chief say, with warmth in his voice,

"Well-argued, counsel," and silently I rejoiced.
'Twas out of my hands, this appeal it was done,
Now eight to ten months to find out who won.

Posted by Logan Carducci on December 9, 2020

The Reply Brief: Overlooked and Invaluable

Many appellant's attorneys believe that the lion's share of the work is done once they file their opening brief. After spending hours researching the issues, pouring over the trial court transcript, and drafting the brief itself, the euphoria of sending the brief off to the printer is akin to crossing the finish line at an 800-meter race. What these attorneys often forget is that they still have one more crucial lap to go: the reply brief. The failure to file a reply brief, or to take advantage of its significance, is a critical mistake that can doom an appeal.

A common misconception among inexperienced appellate attorneys is that, when drafting a reply brief, they are limited to "replying" to any novel arguments or authority in the appellee's brief. In fact, many lawyers frequently question the need to file a reply brief at all given that the crux of their argument is already laid out in their lengthy appellant brief. When they do file a reply brief, it is often a myriad of defensive jabs at the appellee with no mention of the appellant's own argument or authority.

When used effectively, the reply brief becomes a crucial component of an appellant's argument. It is one final chance to put forth a concise statement of the issues and convince the Court that it should reverse the lower court decision. Notably, several appellate judges and justices have counseled young lawyers to place particular emphasis on the reply brief because that is where the Court will see the strengths and weaknesses of an appellant's position, including where the parties disagree and where the Court will need to step in to resolve the dispute. Some jurists even prefer to read the reply brief first when preparing for oral argument or to write a decision.

Because the reply brief could be the Court's first and most important glimpse into the issues on appeal, attorneys should resist the urge to "phone it in" at this final stage of briefing. Instead, they should cross the finish line with the same energy and enthusiasm as they put into their appellant brief.

Posted by Daniel Krisch on December 2, 2020

The Devil is in the Details

Appellate lawyers, so it is said, ride onto the field after the battle and shoot the wounded. Missing from that bon mot is a hard truth of appellate work: It is not easy to *find* the wounded in the clutter of a trial record; and so, the devil is in the details.

Great appellate lawyers know every bit of the record from the opening salvo to the final whistle. Intimate familiarity with facts not your own demands drudgery. You must:

- read every page of every transcript … then read them again;

- read all of the pleadings, motions, and rulings – not just the ones you think matter – and … then read them again
- examine every exhibit;
- take copious notes; and
- question the trial lawyer, even if you feel dumb, or like a pest (or both).

Though this is unglamorous work, it will spare you from having to utter those judge-maddening, grimace-inducing words, "I don't know, I didn't try the case."

Posted by Michael McPherson on November 25, 2020

Trial Tactics May Backfire—Beware the Invited Error Doctrine

Appellate courts have many rules when it comes to preserving an issue for appellate review. The failure to do it right at trial can make your subsequent appellate argument —no matter how strong or meritorious—dead on arrival. In the heat of trial, attorneys will often make strategic decisions or agreements that seem right at the time but may undermine an appeal. For example, trial counsel may consent to a judge's answer to a jury question or stipulate that the judge may decide the case based on the transcripts instead of hearing live testimony. Trial counsel also may ask the judge to apply certain legal principles or procedures.

There is nothing wrong with this, of course, but beware. Should you later change your mind and claim error on appeal, the appellate court likely will not hear it. This is known as the "invited error doctrine."

In Connecticut, the term "induced error" or "invited error" means "an error that a party cannot complain of on appeal because the party, through conduct, encouraged or prompted the trial court to make the erroneous ruling." Gorelick v. Montanaro, 990 A.2d 371, 379 (Conn. App. 2010). A party who induces an error, therefore, "cannot be heard to later complain about that error." Id. The invited error doctrine rests on the principles of fairness—both to the trial court and the opposing party—and will bar appellate review of induced errors. Id.

Both appellants and appellees should be aware of the induced error doctrine. The Connecticut Appellate Court, at least, has made it clear that it will not allow a party to "take a path at trial and then change tactics on appeal." Id. Appellants thus should avoid the inevitable damage to their credibility from raising errors they induced. Appellees, in contrast, should invoke the doctrine whenever it applies to scuttle the appellant's argument from the start.

An experienced appellate attorney can help trial counsel spot these and other potential appellate issues. The invited error doctrine is just one of many.

Posted by Laura Zaino on November 18, 2020

Roll with It (Counselor)

In August, after having to abruptly close their doors several months earlier, the Connecticut Supreme and Appellate Courts announced that live arguments would resume in September, albeit with several safety protocols in place. Although both courts will still allow fully remote or hybrid arguments where necessary, live arguments are to be the norm. Members of our group have since had live arguments in both the Appellate and Supreme Courts and we are gearing up for more. The landscape has changed somewhat, but adjusting to this new precedent is a small price to pay for being able to safely move our appeals toward a resolution.

In the Appellate Court, we must wear masks and keep them raised except while arguing (unless someone objects). Likewise, the judges, who are distanced on the bench, wear masks and only lower them to ask questions. There is not a shared podium and microphone for arguing counsel, but rather a separate podium and microphone at each counsel table. There are no water pitchers, but we may bring water bottles. Arguing counsel cannot sit with co-counsel at counsel table, but we may communicate via text. Several chairs have been removed from the gallery and those that remain are properly distanced. There are plastic partitions at the clerk's and marshal's stations and the courtroom is thoroughly cleaned between each argument - - each chair is sprayed, and counsel tables, podiums and microphones are wiped down. It is largely the same in the Supreme Court.

The live arguments we have had to date have gone off without a hitch. They were lively, productive and unhampered by the important safety protocols that now exist. We are grateful for the opportunity to argue in person, and while we look forward to the time when it is safe for this new precedent to be overruled, we will continue to press forward and roll with it until then.

Posted by Daniel Krisch on October 7, 2020

Be Clear, Be Plain, Be Done: Tips on Legal Writing

When Winston Churchill asked FDR for help during the Battle of Britain, he said: "Give us the tools and we will finish the job." Any lawyer who wants to be a better writer should tattoo that sentence into her brain: Churchill made his point in nine words – eight of them one syllable – and without the jargon and verbosity that mars most legal writing.

To emulate Churchill and become a better writer, follow these rules:

· Shorten your sentences – anything over two lines is suspect.
· Use the active voice – subject, verb, object, not the other way around.
· Avoid adverbs – doubly so for notorious crutches of doubt ("clearly, indisputably, obviously, plainly").
· Plain English > legalese/jargon/legal Latin.
· Clarity > creativity.

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