

The Chair's Farewell Message - My Parting Shots

by Susan Fox

In the last Chair's Message of the bar year, it is customary, obligatory even, to reflect and bask in one's accomplishments. The Appellate Section did have a great year. We successfully completed everything discussed in my last Chair's Message, and more. Thanks to all of you!

Okay. I'm done reflecting and basking.

Instead of prolonging the basking, I would like to devote the remainder of my moment in the spotlight to imparting some words of wisdom or rules to live by. Don't expect profundity. Here goes.

1. A lawyer who is polite to the judges but rude to opposing counsel is faking being a nice person.
2. I saw a board certified appellate lawyer's cell phone ring in oral argument. The lawyer apologized to the court and turned it off and resumed the argument. Then it went off again.
3. "With all due respect" is an insult.
4. Every time you read an opinion reversing a judgment, remember it's because appellant's counsel had the courage to take a stand against almost insurmountable odds.
5. You should never say opposing counsel's argument is ludicrous unless you can already see the judges laughing. By that time, you would kill the moment anyway.
6. Never be afraid to advance a new argument or theory: a single person who was the laughingstock of his community built the Ark, whereas a team of respected professionals built the Titanic.
7. The facts of a case are like fine wine. They start out as grapes, and it's up to you to stomp the heck out of them until they turn into something satisfying and compelling.
8. The strongest muscle is the



tongue; the strongest weapon is the pen. Use both carefully.

9. If life was fair, John Lennon would be alive and all the Elvis impersonators would be dead.
10. Lawyers who want to share their ideology with the court almost always cry foul if you share yours.
11. Once I saw an appellate lawyer who ambitiously described the many subjects he hoped to cover during his oral argument. The presiding judge dryly asked him: "Will you be entertaining questions?"
12. If appellate lawyers keep on using more and more abbreviations in their briefs, pretty soon they will read like text messages. Such as: "lol ur rly rly dum."
13. The secret of success at oral argument is sincerity. Once you can fake that, you've got it made.

14. Good judgment comes from bad experience, which often comes from bad judgment. Experience is something you don't get until just after you needed it.
15. Timing has an awful lot to do with the outcome of any petition, including a rain dance.
16. At oral argument, you are there to find out what the judges are thinking. Generally speaking, you aren't finding out when your mouth is moving.
17. Never attribute to malice that which is adequately explained by ignorance or stupidity.
18. Any legal problem can be overcome given enough time and money. Corollary: You are never given enough time or money.
19. At the heart of law is an essential tension between two seemingly contradictory attitudes - an openness to new ideas and adherence to precedent. The collective enterprise of creative thinking and skeptical thinking together keeps the law on track.

"Those are my principles. If you don't like them I have others."
--Groucho Marx

Thank you so much for the opportunity to serve as your chair. Please know that section meetings are a welcome place where your friends and colleagues await. See you in September!

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