Volume 59 | Issue 1 Article 4

December 1956

The Practical Way to Prepare a Case for an Appellate Court

Campbell Palmer III

THE PRACTICAL WAY TO PREPARE A CASE FOR AN APPELLATE COURT*

*With Judicial Comments Thereon***

CAMPBELL PALMER, III***

MANY A GOOD trial lawyer has been thrown out of a lower court and was unable to have his case reinstated on appeal or he received a good substantial verdict which on appeal was reversed and lost. In many cases, this occurred because the experienced trial lawyer is a novice in appellate work. Justice Bernard Botein in his book, *Trial Judge,* stated: "There never was an infant prodigy trial lawyer." With equal positivity, I can state that not only are there no infant prodigy appellate lawyers, but that experience is of vital necessity for successful practice in appellate courts.

We all know that no good trial lawyer would think of looking up a title, even to his own home. We have also seen the futility of experienced corporate or business lawyers coming into a trial court, because it looks so easy, and making a complete fool of himself, to the detriment of his client's case. The same is true in appellate court cases.

Therefore, I make these few suggestions which may aid some of you in your appellate practice. The first thing I would recommend is that if you do not have the necessary experience in appellate work, you associate a good appellate lawyer with you in important cases.

Preparing Record

Whether you wish to do the work yourself or associate an appellate court lawyer, there are a certain few necessary funda-

---

* Delivered during the Melvin Belli Seminar at the NACCA Convention in Los Angeles, California, August 2, 1956.

** The author gratefully acknowledges comments, criticisms, and suggestions by the following: Judge Herbert F. Goodrich, U.S.C.C.A. 3d, Philadelphia, Pennsylvania; Judge Morris A. Soper, U.S.C.C.A. 4th, Baltimore, Maryland; Chief Judge Joseph H. Hutcheson, Jr., U.S.C.C.A. 5th, Houston, Texas; Judge James A. Riley, West Virginia Supreme Court of Appeals; Honorable John Lord O'Brian, Covington & Burling, Washington, D. C.

Grateful acknowledgment is made for the excerpts taken from the writing of the late John W. Davis of West Virginia and New York, who was a friend and mentor of the author. The author's father had the honor and privilege of making the nominating speech for Mr. Davis in the congressional convention which nominated him to his first term as congressman and whereby he was first selected in the first congressional district of West Virginia.

*** Member of the Kanawha County Bar.

mentals to follow. In the first place, you should have prepared a good record in the trial court. Many a good trial lawyer, particularly on the plaintiff's side, does not do this. By record, I am speaking at this time of that which is shown by the transcript of testimony only. Let me give you an example.

When the transcript is prepared you find that your key witness, speaking from a map and with a pointer, and talking where the jury and judge could plainly see to what he was pointing, has said this:

"I was standing here on this corner and I saw this car coming down this street and I saw this other car coming up this street and then I saw the light over here change colors and this guy here in this car came through the light and into the side of this car coming here, and they collided right at this point." Now in reading such a statement, which is all an appellate court judge can do, what idea does he have of how the accident happened? Your key witness has made a statement that is completely unintelligible. While it was fine when the jury was following his pointer along the map, that testimony is completely useless in the printed record.

Either after the witness has said this, or as he is going along, would it not be more effective for him to say: "I was standing on the southwest corner of the intersection of Jones Avenue and Smith Street, looking in a northerly direction. I saw the plaintiff's car coming south on Jones Avenue, and I saw the defendant's car coming from the west on Smith Street. There were light standards on each corner, and I could plainly see the one at the northwest corner. As the cars approached, the light turned green for Jones Avenue and turned red for Smith Street. And I saw the defendant's car come through the red light and hit the plaintiff's car in the northwest quadrant at this point." Counsel then states into the record that the witness has put a mark on the map at the point indicated, which he has circled and designated by the letter A, which map is introduced in evidence as plaintiff's exhibit No. 1.

Now, doesn't this give a clear picture of the accident to any person who has a chance only to read what the witness has testified?

This is but one example and if any trial lawyer will take the trouble to spend fifteen minutes with the court reporter, that court reporter will give him any number of other examples whereby he

can improve this record—that is, the transcript of evidence for appellate purposes, and without delaying the trial. So much for the trial of the case.

Preliminary Work

Since the laws in the various states are completely different on appellate procedure, and even the different circuit courts of appeal in the federal courts have different rules, promptly obtain a copy of the rules and familiarize yourself with the rules of that particular appellate court. Naturally, this will include the time limits within which you have to make each move to perfect your appeal, and they must be strictly observed, or an extension of time must be granted by written order within the time limit permitted. This is of utmost importance, because missing your time limit by one day can ruin an appeal and prohibit it.[1]

I will now talk of the appellant's side of the appeal, but the appellee should be sure that the same steps have been carried out in order to protect himself before the appellate court.

Promptly order a transcript of the record from the court reporter, making sure that he knows your time limits and will give it to you as soon as possible, and have one extra copy made for your own use.

Be courteous and helpful to and friendly with the deputy clerk. In every clerk's office there is a deputy clerk who handles papers and documents for appeal. Give that deputy clerk ample time within which to prepare your record and then sit down with the clerk and be sure that everything you want in the record is included and that excess papers and excess material which will not be needed on appeal are left out. Nothing makes an appellate judge madder than to have to wade through a voluminous record of papers that have nothing to do with the appeal and which will play no part in his decision. Therefore, see that they are excluded, but, at the same time, be sure that no important order, pleading, exhibit or document is left out.

If models or other exhibits, which can not be duplicated, were introduced in evidence, make arrangements with the lower court clerk or the upper court clerk to have those original exhibits sent to

[1] See State v. Workman, 91 S.E.2d 329 (W. Va. 1956).

the upper court. This is usually done by an order, sometimes by the lower court and sometimes by the upper court.

When you have the transcript of evidence, one thing is essential, because that transcript of evidence not only is filed with the clerk, but if the law requires it, see that the judge signs and certifies it, and that an order is entered making your transcript a part of the record for appeal. I have seen a case before an appellate court where the law required an order entered making the transcript of evidence a part of the record on appeal and the upper court threw the case out completely because of the lack of such an order; and the time for an appeal having passed, the case was dismissed.

In other words, know the procedural laws well, be courteous, helpful to and friendly with the clerks of the upper and lower courts so that they can help determine all the practical matters of interpretation of those rules; and be sure that you touch every base so that nothing on the technical side will hinder your appeal from being perfected.

Such advice may sound technical and uninteresting, but it is so necessary that too much emphasis cannot be placed upon it. Be sure the upper court has the record you want it to look at and has it within the proper time limits, or you simply have no case for appeal.

Naturally, every appellate court lawyer prepares his appeal in a different way. As for myself, I sit down with the transcript of record—that is, the copy I keep for myself—and go over it thoroughly, from one end to the other, marking it where I want to note particular testimony, and making notes.

I happen to be an old-fashioned lawyer who does his notes in longhand, setting down the name of each witness and those parts of the testimony which are most important, and the page number of the transcript upon which they can be found. This last is of great importance, because time after time you will need to refer to that page number. Therefore, be sure that you set down on your notes the page number where the testimony can be located. Then go through the exhibits and documents and make notes from them. Then you are prepared to start your real work.

The next thing I do is to dictate a set of facts. This set of facts is similar to the plaintiff's opening statement to a jury. I state

briefly, but thoroughly, in narrative form, just how the accident or other matter occurred from appellant's viewpoint. To me, this is the most important part of the appeal because cases are won on the so-called equities of the case, or the visceral reaction of the judges, as Professor Bohlen used to state. In other words, you are showing, by your statement of facts, that the ultimate right to win is on your side.

Then you set down the errors upon which you rely for reversal. The facts should be presented in such a manner that these errors stick out like stiff fingers on a sore hand. The facts should disclose the errors to show where you were mistreated below.[2]

Later, after you have set down all the errors you can think of, go back and figure how many of these are important. Nine times out of ten the errors on admission or exclusion of evidence and the presentation of evidence are completely unimportant. Just stop and figure if you were a busy appellate court judge how many of the errors that you are thinking about you yourself would want to consider, and then wipe out the useless ones. There should never be more than five points of error and naturally, it is best if only one is used.[3] But sometimes it may be better to put in an additional one or two for so-called trading purposes. In other words, let them overrule some, so as to give you the ones that you want to win on, and winning is your ultimate goal.

No one can tell any more about the working of the mind of an appellate court than one can tell of the working of the mind of a jury, and sometimes a point that you considered relatively unimportant will be the key point upon which the decision will turn. And this frequently happens.

Now, having all facts and errors before you, start your research on law. Every lawyer does this arduous labor differently, but I like to get all of the law together at once, including all of the nonessential cases, that is, those on the fringe.

The reason for that is that sometimes the words in an opinion in a case that is not in point may be of particular value. Or again,

---

[2] Judge Hutcheson underlines and emphasizes this sentence.

[3] Judge Riley suggests rereading the pleadings, and let them help determine what was the actual controversy in the court below. The pleadings are actually the place where the issues of disagreement are reached.

a case that does not seem to be in point may contain other citations which are very helpful.

Let me underline the next statement. *Do not rely upon digestors and their statements.* They are frequently and not unusually, incorrect, and in many instances the cases they cite as supporting are completely at odds with the statement they make. I know how annotators work and they rely upon young lawyers to help them, who go through several hundred cases a day. No competent lawyer can read that many cases and get any satisfactory results therefrom, and that includes annotators and their young assistants. Therefore, I suggest that every case you cite you look up and read for yourself.

Check every important case in Shepard's to be sure it has not been overruled or was not overruled on appeal, or that the court has not since changed its mind. It is very disconcerting to cite a case on point and to have your opponent cite one of several years' later date where the court has completely reversed itself.

Be sure that every case you use has a correct citation. Nothing disgusts an appellate court judge or his clerk worse than finding a wrong citation and having to hunt for half an hour to find the book or page where the case is.[4] You yourself would be put out, I am sure, if you were the judge.

Let me recommend several books that are helpful. I use the Negligence Compensation Cases Annotated, and it has a wonderful "Common Sense" index. Also the Commerce Clearing House books under the different insurance subjects such as automobile, fire, etc., are greatly helpful, as they give, under an extensive index, a brief part of each opinion. Again, the yearly digests of our own NACCA can be extremely helpful, as well as A.L.R., Am. Jur., and C.J.S.

I am not going to try to describe here how a lawyer should sit down and go through the various digests in order to get leads on his subject, because presumably lawyers know this, but let me suggest that before you finish, particularly in using the A.L.R., that you take its bluebook or index where only cases are cited without names or description of the latest three months, and check it for any recent decision or cases that you can use. In other words, investi-

[4] Again Judge Hutcheson and the other judges most strongly second this proposition.

gate and carefully prepare all of your law, authorities and information.

Now you have the background material of your facts, your points of error, and your authorities of law to support them. Next comes the job of combining them into a brief.

The word "brief" in legal meaning has come to mean any documents, of whatever length, filed with a court. It should, however, be exactly what it implies. A brief should be short, and the shorter, the better.[5]

However, I start out by dictating voluminously everything that comes to mind, putting in all of the cases and all of the points of law, and then go back over my dictation carefully and strike out the nonessential.

Writing of Brief

Again the rules of each appellate court should be referred to because most of them are sticklers for form, and particularly the United States Supreme Court. You must follow the forms that they suggest, not only as to the formation and context of the brief, but even as to the printing, the type of paper and the size of the print.

However, the first thing any court wants to know is "how the case arose". Therefore, briefly and succinctly inform the appellate court of the court below from which the case arose or where it originated, the type and form of action which was used, who was plaintiff and who was defendant below, the result of the jury trial, if any, what was the judgment of the court below, and the exact date that judgment was rendered. This can be done on half a page. Then the upper court knows what went on below, and can use this as the beginning of its written opinion.

Then give the court your facts, and in giving the facts, put page references to the record of transcript where each material fact can be found. In other words, if you state that the plaintiff had certain injuries or was killed, put the page number where those facts are set out so that the court can find them quickly and exactly. If you use quotations of witnesses, be sure they are exact and give

[5] Judge Riley strongly emphasizes this point. Many courts have a page limitation, usually of fifty pages on briefs, but most do not. Judge Riley says that briefs of one hundred to two hundred pages are not infrequent in his court, and are neither helpful nor enlightening.

the exact page of the record where the statement is found. If, on appeal, the record is printed, do not forget to transpose the page number from that of the typewritten transcript of testimony to that of the printed record. Therefore, if the appeal must be applied for on the original papers, I designate the page number as T22 (for transcript) and for the record if it goes up as final, or after it is printed in final form, I designate the page as R92 (for record).

Thus, you have given the court your story of the case and have backed it up with proof as to where that story can be found. Then tell the court why the decision was wrong below, that is, your points of error. Some courts suggest that you state such points as though they were syllabae in question form, so that if the court decides so to do, it could take the points of error and by putting them in positive instead of interrogative form, could use them as head notes. In that way the court knows that of which you are complaining.

Next, the court wants to know why as a matter of law you are right. Many lawyers put out a so-called skeleton form in which they set up their points and then list the authorities for them. The court's time is limited, and if the court is going to read your brief, why should it read your summation of points and the list of cases beneath them, when by reading the argument, it will get all of these points and get the cases and how they are presented in support of that point?[6]

A judge of a midwestern supreme court recently told me he liked the skeleton form, because in reading it he could quickly determine the useless points and then in the main argument could read only those remaining parts he considered worth while. So, if you want the judge to read your entire argument, as you have set it forth, leave out skeleton summations.

Therefore, go to the argument. And that again is a key part of the brief.

Take each of your points of appeal and without repeating the facts any more than is necessary, logically present your argument so as to sustain your contention that each of the errors you claim were committed below, was in fact, an error.

Cite your cases in support thereof and when necessary give a very brief resume of the facts upon which each case was decided,

[6] Judge Hutcheson's comment is, "I agree".

give the holding of the court and only such statements and opinions from the decision as are absolutely necessary.

If you have several points of error, it will be the logical sequence of your argument if you present your best point first, while the court's attention is fresh and follow with your other points.

After you have written and rewritten your brief and have it in final form, then send it to a competent printer. And be sure you ask for two proofs.

Have your brief in such shape that it will not require any major changes or revisions, because they are expensive, as the type has been set for printing the first time. But even though it has been proofread by the printer, do your own proofreading and check the brief very thoroughly, both as to contents and form. Be sure that your major headings are in large point type and your subheadings and each lesser point is in smaller point type.

Anything that is in the nature of a document, such as a lower court opinion, exhibits, letters, contracts, or other such matters, put in an appendix, which if your brief is not too large, should be included in the same manuscript cover, and if it is too large, have it in a separate volume.

Be sure that you prepare a proper index to your brief so that the court, as well as yourself can, by looking at the index, refer to the proper part of your brief at a moment's notice. This index, of course, will have to be completed after the brief is finished and paged.

An important part of the form of a brief is to make a table of cases and authorities cited, in alphabetical order. I usually have my secretary go through the proof and make a list of every case or authority cited, setting out the page number of the printed brief, where it is located, and then the last thing before the brief is printed, and after it has been paged, put that table in alphabetical form and opposite each case, put the page of the brief where the case or authority is cited.

Pay some attention to the color and material of the outside cover of the brief. A substantial paper, usually not white because it dirties so easily, but which will accept print well, is best. Personally, I like tan in a heavy rippled paper.

Then be sure that the number of copies of the brief which the court requires, which varies from court to court, is sent in sufficient time to get to the court before your closing date. I had a printer once send briefs to a court by 4th class mail during Christmas rush and they arrived late. Therefore, since the difference between 1st class mail and 4th class mail is considerable, be sure of your time limits before using other than 1st class mail. Promptly mail copies, with at least one extra, to opposing counsel, and I usually send one or more to the client who is footing the bill. They seem to like it.

Appellee's Brief

From the viewpoint of appellee, check with the rules of the court and the clerks, and be sure the proper record is before the appellate court. You may cause to be stricken any superfluous parts by filing a petition to do so and for diminution of the record, a petition so stating will require the full record to be presented.

Then I believe I can only say, follow the same procedure as that outlined for the appellant.

Be sure you put in your own set of facts, and don't just try to correct a set of facts of your opponent, because the brief may be read at different times and if yours is not full and complete, or only adds to his, that does not tell your story as you want it.

If the statement of errors is not to your liking, rephrase it so that the errors are set out as you prefer.

In writing your brief do not argue against the appellant's brief or his position, as this is a defensive attitude, but take the offense. Tell the court just how and why your position is right, and why you won the case below, and should win it on appeal. Then at the end of your brief, you may show why your opponent is not right in his contentions or that the cases he has cited are not applicable.[7]

Other than this, the same rules that apply to the appellant apply to the appellee *in toto.*

The Oral Argument

Before writing your brief and making your oral argument, review, as I do from time to time, that most wonderful discourse of

[7] Comment by Judge Hutcheson, "excellent".

Honorable John W. Davis, who was a former West Virginia lawyer, which he gave before the New York Bar some years ago. It was first printed, I believe, in *Success in Court* by Wellman, and later printed in a pamphlet called *A Case on Appeal,* one of the publications of the Committee on Continuing Legal Education, a joint committee of the American Law Institute and the American Bar Association. He discusses oral argument in a manner far better than I could ever do. But by all means make an oral argument. Justice Harlan, at the Judicial Conference of the 4th Judicial District, had in Asheville in June of 1955 shortly after he was elevated to the Supreme Court bench, gave most positive reasons why an oral argument was essential to complete a case. Even if you have an experienced associate counsel with you, if you the trial lawyer, are familiar with the brief and the record for appeal, then you help argue the case. All you need to do is make a jury argument with some law matters thrown in, to a considerably experienced jury with a legal background, who have no knowledge of your case, but who want to hear about it and render a just decision. The appellate court judges are not demagogues or Greek dispensers of cold legal light and philosophy, but are men with emotions, as well as intelligence, and you can and should consider them as such. Go ahead and make an intelligent closing jury argument to them.[8]

May I briefly summarize the points which I have herein set out. (1) In the trial court always prepare a record that will be

---

[8] There is a decided difference of opinion between those judges in the federal appeal courts who read the briefs before argument and usually the records, and the judges of the state supreme court and United States Supreme Court who are not familiar with the case and who have not read the records and briefs prior to oral argument.

Judge James Riley of the Supreme Court of Appeals of West Virginia, states: "There is nothing I like better than to hear an able trial lawyer make a good argument before me on the appeal of his case." Judge Goodrich states that while he agrees that an oral argument should be made, he does not believe a jury speech should be made, stating, "It is certainly true that judges are people with emotions. But I notice that when a court listens to a lawyer who is making a jury speech, we get restless and later on growl about it."

Judge Hutcheson states he believes this should be rephrased, because appellate judges don't like to have their emotions appealed to as though they had no capacity for reasoning. Since in their court they usually read the brief and sometimes the record in advance of the argument, he would suggest something like the following: "All you need to do is to convince the court that the trial judge did do a wrong, after all, it is the trial judge who is on appeal and the appellate judges want to hear about it and render a just decision, by affirming him if he did right and reversing the trial judge if he did wrong." He would suggest that the appellate judges are men with "controlled" emotions and that instead of making an intelligent closing jury argument, you should make an intelligent "convincing" argument to them.

helpful and useful on appeal. (2) Learn and know appellate court practice or associate with a good lawyer who does. (3) Learn and keep current with appellate court rules of procedure. (4) Have your record prepared early and filed with the clerk of the appellate court. (5) Carefully read your appellate record, make notes of important testimony and other matters, with the page number thereof. (6) Look up the law, all of it, and do not rely on annotators' statements. (7) Check and recheck your citations for exactness and be sure they have not been overruled.[9] (8) Prepare and state a set of facts that will be favorable to your contentions. (9) Set out your points of error as though syllabae in question form. (10) Start with a statement as to how the case arose or what went on in the court below. (12) In making your written argument, start with the best point, follow with the others, and cite supporting authorities. (13) Make your pre-draft of your brief very full and your final copy very brief. (14) When your final draft is finished, get a good printer, but check your proof carefully. (15) Make an index and table of cases and authorities and in them cite the page on which your subjects and cases are located in your brief. (16) Get your brief to the court in plenty of time, with copies to client and opposing counsel. (17) Always make an oral argument.[10] (18) Wait and pray.

The points or rules that Mr. Davis set out for oral argument are (1) Change places, in your imagination, of course, with the court. (2) State first the nature of the case and briefly its prior history. (3) State the facts. (4) State next the applicable rules of law on which you rely. (5) Always "go for the jugular vein." (6) Rejoice when the court asks questions. (7) Read sparingly and only from necessity. (8) Avoid personalities. (9) Know your record from cover to cover. (10) Sit down.

And since I never forget Mr. Davis' tenth and last commandment, I will put it into effect right now.

Comments

Judge James Riley talked with the author, and kindly stated he would not change any of this article as written, as he agreed with it throughout. However, like the other judges who were kind enough to comment, he reiterated

[9] Judge Hutcheson commends points 5, 6 and 7 and suggests their importance.

[10] Judge Hutcheson would add the following: "Stating facts and clearly and briefly what the court below did that you think was wrong if you are an appellant and right if you are appellee with equal brevity *why*."

that "going for the jugular" or getting down to the main point of issue was of the greatest importance. In his court, like practically all state supreme courts, the briefs and records are not read ahead of oral argument. Hence, it is important to relate "how the case arose", its lower court history, how it was there decided, and your complaints therewith, or the relief you want. His court tries the case, not the judge below, hence, an intelligent jury argument is not unwelcome.

Written Comments

JUDGE MORRIS A. SOPER:

"The speech you have written to be delivered in Los Angeles gives me a great deal of satisfaction since it takes the line that I thoroughly approve of. You have undoubtedly touched upon the most important points for the guidance of a lawyer in appellate work, and you have expressed them in such an interesting and picturesque way that I am sure the speech will be a success.

"There is an interesting discussion of the general subjects of advocacy in Lloyd Stryker's last book, which was published a few months before his death. Like you he was greatly impressed with the article by John W. Davis and quotes largely from him in the book. I think the title was 'The Art of Advocacy.'"

JUDGE HERBERT F. GOODRICH:

"I have delayed acknowledging your letter and enclosure of June 1st so that I could give it a thoughtful reading. I found it exceedingly interesting and containing very little on which I would differ with you.

"On page two you draw a very interesting contrast between the witness who is making a very bad record and the witness who is making a good one. Have you helpful hints to give a lawyer on how he can get the witness to use his words in a way that will make a decent record?

"Your admonition to counsel to make an oral argument is one I certainly agree with. I do not agree with you, however, that it should be a jury speech. It is certainly true that judges are people with emotions. But I notice that when our Court listens to a lawyer who is making a jury speech we get restless and later on growl about it. I think Mr. Davis, in that paper which you cite, had the right of it when he said the oral argument should, so far as possible, make The Court want to decide the question your way. . . ."

CHIEF JUDGE JOSEPH C. HUTCHESON, JR.:

". . . I think your article is an excellent one and, except in one or two points, I agree wholly with it.

"It may well be that my disagreement with your suggestion, that what is needed in the argument on appeal is a first class jury argument, is not sound, but my own experience and that of the appellate judges with whom I have

talked is that nothing disturbs an appellate judge more than the feeling that the arguer is trying to get on his blind side by making a jury argument, and in many cases I have seen that the lawyer was about to make a mess of his case, I have stated this from the bench.

"Because our practice is, and has been for many years, to read the briefs and, unless the records are long, the records in advance of the argument, we are pretty well acquainted with the case before the arguments commence, and, as I have told the lawyers many times from the bench, 'We know a good deal about your case. The only thing we don't know is how we ought to decide it, and we are looking to you for counsel and advice as to what we ought to do and how we should do it.'

"Out of my more than twenty-five years on an appellate court, where we are not trying the case but the trial judge, and our action on the appeal is determined by our reactions to his actions below, I have distilled this strong impression, that the appellate judges want to know from the appellant, and as soon as possible in the argument, what the judge did to him that he thinks was wrong and why he thinks so, and from the appellee why the attack is wrongly based. In other words, instead of hearing a Cousin Sally Dillard story about the case and then what happened and why it was wrong or right, we like to know at once where the pinch of the case is and then hear the pro and con for the respective views.

"I notice you speak often of John Davis. In the early thirties he made before our court the briefest and best oral argument I ever heard. Afterwards, when I came to know him well, I told him that when I saw his name on the brief, I had had an adverse reaction to his employment in the case, thinking that he had been brought into our circuit as a big name to impress us, but that when I heard his argument — brief, simple and direct, striking at once the jugular vein of the case, I settled back and enjoyed what I believe was perhaps the best presentation of a difficult case I was ever privileged to hear. . . ."

HONORABLE JOHN LORD O'BRIAN:

"I am returning herewith the copy of your paper 'The Practical Way to Prepare a Case for an Appellate Court". I have read this with much interest and am very sympathetic to the pragmatic way in which you have treated this subject.

"In my somewhat long experience at the Bar I have been frequently impressed by the number of cases of real merit which have been lost because of poor presentation. In my own practice the first consideration has always been insistence upon concise and super-accurate statement of the facts. My early training in arguments before the U. S. Supreme Court has led me into the habit of understatement and, consequently, an avoidance of superlatives either in briefs or in oral argument. Apparently you hold the same views but I do not think that the younger members of the profession can be warned too often against declamation in oral argument, loose statements of law, and exaggerated statements of fact. . . ."

Addendum

After writing the above article and delivering it before the NACCA Convention in Los Angeles, the writer attended a further legal meeting in Hawaii.

While in Hawaii, the writer paid a call upon the Chief Justice and Justices of the Supreme Court of Hawaii and the Chief Justice was kind enough to take the writer to the Chief Justice's chambers and at considerable length discuss the procedure in Hawaiian courts and particularly in the Supreme Court of Hawaii.

The writer was impressed by two procedures.

First, the entire record on appeal is typewritten, including the reporter's transcript of testimony and no record is left in the court below, and one copy only of the record is present on appeal, thus saving voluminous cost, particularly printing costs.

Secondly, the writer was very impressed by one procedure which, to his knowledge, has not been followed elsewhere. The Chief Justice advised that all final oral argument of counsel were taken on a tape recorder and when studying the briefs of counsel and record of the case, the judge, who was writing the opinion, frequently played back these oral arguments as an aid to him in deciding the case and in writing his opinion. May I respectfully suggest that both of these procedures are well worth studying by other appellate courts and particularly the latter procedure, to see if it could not be made available and used in other appellate courts.