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Lessons from Competitive Debate

By Ryan Lawrence

High school and collegiate competitive debate is strange. At its highest levels, debaters outpace auctioneers as they argue matters such as law, public policy, and philosophy. Much of what is said is prewritten and read straight from the page. To the casual observer, a debate round would be dizzying and look almost nothing like what one would expect. It is about the furthest thing you can imagine from two political candidates on the debate stage trying to chalk up as many sound bites as possible.

It would seem that an activity that has abandoned persuasive public speaking has little to contribute to the would-be lawyer, or to practicing litigators. Not so. When fanciful rhetoric goes unrewarded and competitors are judged mainly on the merits of their arguments the result is a fantastic training ground for making the types of arguments litigators must make on a daily basis.

Experienced litigators frequently make mistakes that young debaters are taught to avoid. Here are just a few:

1. Inefficiency

Common wisdom is that good writing begins with strong nouns and verbs. Debate is a timed activity, and debaters quickly learn that to succeed they must get the most out of each syllable. Flowery rhetoric just wastes time.

Attorneys have page limits (and often time limits) too. More importantly, the goal of any brief or oral argument is to convince a judge who is deciding the issues on the *merits* to adopt your client's position. Yet we tend to junk up our briefs with meaningless introductions and conclusions ("Come now Plaintiffs so and so, by and through their counsel …."). Introductions and conclusions should be concise and substantive. Legal prose is littered with nominalizations, *e.g.* "Defendant was in compliance with" as opposed to "Defendant complied." Sometimes one page or more is dedicated to uncontested and uncontroversial issues like the standard of review.

Of course, succinctness has its limits. But we can all do better to use our briefing space and argument time wisely.

2. Repetition

Debate is structured as a set of alternating speeches, which typically have shorter time limits as the debate progresses. Novices tend to just repeat themselves throughout the debate. Really, the later speeches should be used to respond to what the other side just argued, such that by the end of the debate each argument has been responded to, those responses have been addressed, and so on and so forth. In this way, the judge is not left with just an argument and a response, but instead has the benefit of a back-and-forth that helps reveal which position is better supported.

Absent the use of sur-replies, our typical briefing structure does not provide for much of this back-and-forth. The opening brief makes some arguments, the opposition refutes those arguments and typically raises some of its own, and assuming the movant gets a reply brief, it responds to the arguments in the opposition. Sometimes that is enough development of the positions, but frequently not.

Lawyers should attend oral argument prepared to continue the debate. Instead, many lawyers simply repeat the arguments made in their briefs. Most judges and clerks seem to agree that this is completely unhelpful. Indeed, many jurisdictions have stopped holding oral argument on most motions.

The problem of repetition at oral argument is exacerbated by the tendency for the moving party (which also filed the last brief) to speak first. But even in such cases, the movant can avoid a wasteful rehash of its brief by instead using the opportunity to favorably frame the issues for the judge. Identifying which issues are the most critical—and which arguments are key to deciding those issues—can help to move the oral argument in the right direction.

3. Poor Issue Selection

With limited time available, debaters typically cannot continue to address every argument as the round progresses. Instead, debaters learn to focus on the most important arguments, and explain why those arguments are dispositive.

Attorneys, too, can benefit from resisting the urge to make every possible argument or to press every argument that was made. With limited space or time to make your case, it is important to construct a strategy that will allow you to emphasize a few key points and explain why those arguments form a sufficient basis for the judge to rule in your favor.

Of course, the above advice is general, sometimes inapplicable, and certainly subject to debate.

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