Denver Law Review

Volume 19 | Issue 5 Article 2

January 1942

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Recommended Citation
Wiley Rutledge, The Appellate Brief, 19 Dicta 109 (1942).

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The Appellate Brief

BY WILEY RUTLEDGE*

My job as a judge is to read briefs and to write opinions. Yours as lawyers, in part, is to write briefs and read opinions. We therefore approach briefs, and perhaps also opinions, from different viewpoints and with different attitudes. You are committed to advance to one side. We, presumably, are impartial and disinterested. Your job is to make your brief, and through it your case on appeal, more convincing than the other fellow's. Ours is to stand between you. And by that I do not mean merely "to try the record and the briefs." It is, rather, regardless of the respective merits of the briefs, to find the truth and right of the case so far as not only they, but the record and the law, permit. For after all, it is not the lawyers, but the clients, whose interests we try. And for that reason we must be on guard lest a too excellent presentation blind our eyes to the merit of a cause poorly or less ably presented on the other side. We read the brief, therefore, and particularly at first, not with suspicion, but rather always with a question. These differences in approach have important consequences for the preparation of the brief, as well as for its consideration. Some will be noted as we proceed.

ORAL ARGUMENT

There is a clear difference between the function of the oral argument and that of the briefs. Lawyers, and clients, place much emphasis, and properly, on the former. The function of the oral presentation is controlled by two factors. One is its brevity. The other is the preparation with which the judge comes to it. That is determined, of course, by whether he has read the briefs, or them and the record, before the argument. If he has not done so, and unless the case is very simple, the argument can perform generally two functions.

One is to give the judge a bird's-eye view of the important facts. In this there is frequent failure. Often the argument becomes so clouded in a hodgepodge of basic facts and intricate factual detail, much of it irrelevant, that the judge who has not previously dug out the essential ones, can't see the forest for the trees, the bushes, and the trailing arbutus. For him, this kind of argument is a total loss.

The other function, closely related to the first, is to bring out clearly the controlling issues in the case. This, in my judgment, is more than half the battle. But often it, too, is lost at the argument because the lawyer brings so many points to the court's attention. The result is he

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gets it for none. And occasionally the argument serves rather to confuse than to clarify the issues, not merely because of their number, but because the lawyer has not thought his case through to the real questions involved. If he had done so, there would not be so many. If the attorney succeeds in getting to the court a clear picture of the essential facts and in drawing out the real issues, his argument is a success. That is true whether he wins or loses. Occasionally he will be able to add to this something beyond casual reference to the authorities. In simple cases he can do even more, and give full discussion of those cases which are in point or very closely approximate. But in the main, not much can be done, especially by appellant's attorney, toward thorough discussion of previous decisions. In that situation, therefore, the time which remains after stating the facts and elucidating the issues is better devoted to discussion of them on controlling principles, with reliance on the brief for detailed substantiation.

An entirely different type of argument could be had, even in the short time allowed, if all the judges should come to the hearing thoroughly prepared on the facts and the law by previous reading of the record and briefs, and study of the issues and authorities. Then the statement of the facts could be omitted or highly skeletonized. The greater portion of time, on both sides, could be given to analysis of issues, discussion on principle, and argument from authority. In some instances the court might itself indicate which of the issues it regarded as controlling or doubtful, and thus secure emphasis where most needed. Such an argument would be something more than the "bird's-eye" type, as to both facts and law. It would place appellant and appellee at more equal advantage. Some might object that it would cause the court to come to the argument with prejudgment or predisposition, but in any event there would be opportunity for correction. And it is doubtful whether this effect would be more pronounced than under the "bird's-eye" type.

But presumably the latter is the more prevalent, and therefore the one for which, in general, preparation must be made. And this has some consequences for the brief.

RECORD

The proper purpose of an appeal is to secure a decision "whether or not one or the other of the parties has been ill used under the law."[1] This should be modified to say "so ill used under the law that the judgment should be reversed." For not every error is prejudicial or sufficiently so to require reversal. The purpose of the record on appeal is to tell the

[1]Stone, *The Scope of Review and Record on Appeal*, at page 4, found in JUDICIAL ADMINISTRATION MONOGRAPHS, Series A, No. 16, prepared under the Auspices of The Special Committee on Improving the Administration of Justice of The American Bar Association.

appellate court what happened at the trial and other previous stages of the litigation. It is to present "an authenticated story of the action and trial between Joe Doe and Richard Roe from their coming into court until their appeal to the higher court."[2] But, except rarely, it need not tell everything. It should tell enough, and seldom more than enough, to bring before the appellate tribunal a general view of the case as background or setting for the issues and a clear comprehension of the facts or incidents with respect to which it is claimed prejudicial error was made. With the practice, recently adopted here and previously in the Third and Fourth Circuits, concerning printing of the record,[3] much of the formerly existing difficulty in this respect has disappeared. The appendices, together with the statements of fact in the briefs, generally give an adequate picture to the previous phases of the litigation. The bar has cooperated splendidly in this. Some have gone farther by submitting cases upon agreed statements of fact. These greatly relieve the burden of the court. I trust the day has passed when, as was true with at least one case heard before the new rule took effect, the judges had to wade through ten thick volumes of printed record and index, most of which set out the rambling kind of testimony which has become admissible in some administrative proceedings. This is not intended to imply that I think the technical rules for admission of evidence in court should apply to such cases. Quite the contrary. Some of the rules for exclusion are still too rigid for use even in court. And as to others, there are valid reasons for excluding certain types of evidence from use by juries which have no sensible application when facts are determined by experts, many of whom are lawyers. In other words, equity long anticipated the wider opening of the doors of proof which has become characteristic of the administrative tribunal, and the reasons are substantially identical in both cases. But when, on appeal, the attorneys throw the whole mass of administrative evidence at the reviewing court, without regard to the relative importance of different parts in relation to issues having real possibility of prejudice and with no effort at condensation or elimination, the court, to speak mildly, has some cause for complaint. It is part of the lawyer's job, if he wants real and favorable consideration for this case, and his client's, to have not only consideration, but some mercy, for the court. When he designates and prints such a mass of irrelevant material he is simply loading or unloading on the court's shoulders a job he is too lazy, too busy, or too lacking in perspective to do. Yes, we do read the record—and the briefs.

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[2] *Ibid.*

[3] Rule 17 of the General Rules of the United States Court of Appeals for the District of Columbia provides in part: "Unless ordered by this court, it shall not be necessary to print the record on appeal or on petition for review of or enforcement of an order, except that appellant shall print as a part of the appendix to his brief the pertinent pleadings and pertinent docket entries, the judgment or order appealed from or sought to be reviewed or enforced, together with any findings of fact, conclusions of law and opinion or charge of the court, board or commission."

But occasionally we do it muttering through our teeth things we could not say aloud in Sunday School. This, however, is the rarer case. If it still exists, it is more perhaps in relation to appeals from administrative determinations than in regard to judicial proceedings, with the possible exception of some patent cases. In the latter there appears to be still a tendency, not only to set out the testimony in full, but to clutter the record with references and exhibits without any effort at elimination of irrelevant parts, particularly of applications. So much by way of what I hope may be called a "parting shot" at a practice which is disappearing.

This criticism must be guarded. It is better to overload the record than to leave out something vital. And at times that occurs. The lawyer, if he must err in this respect, should do so on the side of his client, rather than that of relieving the court. But this is a different thing from throwing in everything on the chance the court itself may fish out something the lawyer may miss. It is this shotgun practice toward which the criticism is aimed.

BRIEF

And now for the brief. What is it supposed to do, how should it do it, and what should it not do? There are both "do's" and "don'ts."

The term "brief" arises, perhaps, from the English practice in which it refers to the statement or summary given by the attorney or solicitor to the barrister for the latter's use in the trial of the cause. Hence, the barrister is "briefed." But obviously it has acquired a different meaning and function in our practice. We are not discussing trial briefs.

Laying aside the formal requirements of the rules, the brief has several functions. Its basic one is to get to the court your picture of the facts, analysis of the issues, and application of the law. If it does this, you win. I should like to consider each of these phases separately to some extent, and at the outset with reference to the "do's."

The Facts

First, then, your picture of the facts. The case is greatly simplified for all when the facts, or the essential ones, are not disputed. The agreed statement is appropriate for this situation. There are also many cases in which factual difference is limited to a few things—the bulk of the evidence is not controversial. In such cases, an agreed statement, so far as it can go, likewise is helpful. I suspect it would be as much so to the lawyers as to the courts, if in every case they should approach the appeal in the spirit of the question, "How much can we agree upon?" rather than "How much can we fight about?"

But when the facts are highly and generally in dispute, whether because of conflicting evidence or because of conflicting inferences and interpretations, the factual function of the brief becomes important. It is

so in any case where there is not either formally or substantially an agreed statement. This, in several respects.

In the first place, the appellant's attorney (or appellee's, if necessary) can set forth a connected statement of the essential facts. Here the brief can perform a "bird's-eye" function. And it is a valuable one, especially when the record or appendix is long and complicated. Since the more detailed facts appear of record, the brief-writer does not fear that by failing to mention those he regards as immaterial or subordinate he will prejudice his client's cause. So he can freely and truly summarize. And this often, and especially when well done, may be the most helpful, if not also the most important part of the brief. It cuts the brush away from the forest. It lifts the judge's vision over the foothills to the mountains. It enables him to read the record with an eye to the things which are important, in other words, intelligently, in true perspective.

Secondly, this phase of the brief gives opportunity for placing emphasis—that is, where you think it should be. What are not the facts in bird's-eye view, but the most important facts? What are the Long's Peaks as distinguished from the Bear Mountains and the Flagstaff Mountains? Here perhaps I should ask what are the Great Smokies or the Alleghenies and what the Blue Ridge?

Again, what are the true facts? The jury and the trial tribunal have the major function here. But there are times when appellate tribunals must exercise some judgment on this. Perhaps it is most important in the matter of inferences and interpretation. How are proven facts to be regarded? What other facts may be drawn, permissibly or rightly, from them?

Finally, and this is related to all the foregoing, what color shall be given to the facts? There are times when color, which is more than emphasis, more than the bare fact in proof itself, gives meaning concealed or dimmed without it. In what light is this or that fact to be regarded? How is it affected by this or that other one or by the general complex? The brief gives the legal painter his chance, but it is a dangerous one if he attempts to apply color which is not on the palette of the case. To change the figure, it can be a boomerang.

One thing more. The brief, as Justice Brandeis showed, is the instrument for bringing to the court's attention and knowledge facts not of record, but of which it may take judicial notice. You have no idea how vastly ignorant judges may be of facts they know judicially. There is a wide difference between judicial knowledge and actual knowledge. And in some, perhaps only a few, cases these are the crucial facts. I hope this will not bring down in our laps a deluge of Brandeis briefs. But there should be more of them, and they need not all be long ones.

Mechanically, I have only one suggestion in respect to the factual portion of the brief, and that is for accurate reference to the appendix (or record) for every statement of fact. It is worth that if it is worth making. And it is a great time saver for us.

The Analysis of the Issues

I turn now to analysis of the issues. On this it is hard to generalize. But I regard it as next in importance to stating the facts accurately, sufficiently and succinctly. If the real issues are not drawn out, or this is done only confusedly, the remainder of the brief becomes almost a total loss, except for the possibility that some case or other authority may be cited accidentally which gives light on them.

I do not know how to tell you how to analyze. Quite possibly I cannot do it myself. Certainly I am no master of it. But I think I can recognize true analysis when I see it and its absence when I don't. In a large percentage of our briefs we have excellent analysis. But there are still too many in which it is only half or two-thirds done. There are a very few in which it amounts to less than that.

Two dangers may be selected for comment. First, overanalysis. When I find a brief which sets up from twelve to twenty or thirty issues or "points" or "assignments of error," I begin to look for the two or three, perhaps the one, controlling issue or issues. Somebody has got lost in the underbrush and I've got to get him—or the other fellow—out.

In one case the basic question was whether the court had jurisdiction of the cause in the fundamental sense. The issue was raised in such form that if jurisdiction were lacking, all of the proceedings, including numerous orders entered over a period of several years in the suit and in collateral proceedings in other jurisdictions would have been "null and void." The determination of this issue controlled practically everything in the case. But one could not tell this from the brief of the attacking party. When I first read it the impression was that the trial court was not only filled, but saturated, with error. There were apparently a score of major issues, as to each of which egregious error had been made. They affected the service of process, the appearance of the opposing attorneys and their authority to appear, the authority of agents to act for principals, the validity of dozens of transactions, orders, etc., etc. To read that assignment made one feel that error, whole error, and nothing but error had been committed, so help you the appellant. Moreover, each error appeared to be separate and distinct from the others, an independent ground for relief unrelated to anything else in the case. I went to work on the mountain, wondering how the trial court could have managed to pile up error so variously

and universally. The law of averages gave every indication of having been exploded. It turned out that all the errors came down to one—did the court have jurisdiction to do what it had done? It did.

That kind of brief I would label the "obfuscating" type and, if you know judges, it is distinctly not the kind to use if you wish calm, temperate, dispassionate reason to emanate from the cloister. If obfuscation was not intended, the only other explanation is that the attorney did not know the difference between a legal result and its consequences. Each of his "errors" was merely another, but well-disguised, way to state a particular consequence of the view that the court was wanting in jurisdiction.

I strongly advise against use of the obfuscating type of brief, consciously or unconsciously. Though I have called this overanalysis, it really is a type of underanalysis.

In the second place, a fairly commonly incurred danger is that of concentrating so fully and completely on your own picture of the facts and issues that you miss the big one or can't see the merit of the other fellow's. Occasionally this is done by the lawyers on both sides. The result is an argument in hiatus, and the gap may be the hole where the big issue is hiding.

Perhaps I can illustrate the point with a recent case. A and B were arrested for robbery. They were tried and convicted on evidence which included confessions made out of court, identifications by the victim, etc. But at the trial it was proved, over objection, that the defendants had "pleaded guilty" at the preliminary hearing. Then they had no counsel, nor were they warned they might have counsel or that they not speak or, if they should do so, their statements might be used against them. Later, at arraignment, the courts' assigned counsel, not guilty was pleaded and full defense on the merits was made. The appeal was taken *in forma pauperis*. The only question on appeal was whether the plea of guilty made at the preliminary hearing was properly admitted in evidence at the trial.

The prosecution asserted that admissibility was controlled by the law of voluntary or extrajudicial confessions. The defense claimed violation of the right of counsel and of the privilege against self-incrimination. On the prosecution's theory, there was no compulsion sufficient to destroy the probative value of the plea, regarded as a confession of guilt. On the theory of the defense, a serious question arose whether the privilege had been violated. There was no controlling authority. But analogies from Supreme Court decisions were close, on both sides, and conflicting. The government relied heavily on cases holding that statements not amounting to a confession or admission of guilt, made under circumstances similar to those existing when the

plea was made, were admissible. The defense relied on a decision excluding a plea of guilty made at arraignment. Our case stood exactly between the two lines of Supreme Court decisions. Both analogies were close. In the absence of the other, each probably would have ruled our decision. But there they stood thumbing noses at each other—and with our case in between.

The point in regard to the briefs is this: Each brief was admirable —on its theory. Each cited pertinent authorities, perhaps all of them. Each drew its analogies closely. Each was a lawyer's work of art. But there was one respect in which each failed. Neither discussed on principle why its basic theory of the case, rather than that of the other, should apply. What I wanted to know, and for me it was the controlling issue, was why the rule of evidence rather than the privilege, or *vice versa*, should be applied in and should control this case. But the arguments largely skipped this question, namely, what considerations dictate that this body of law rather than that one be applied. And because the authorities most controlling were so approximate the pending case on both sides, and so directly contradictory in analogy as to the outcome, this was almost wholly a question of principle, perhaps somewhat of history, as distinguished from one of authority merely.

So much for analysis, though possibly one thing more should be added. If your case should present several issues regarded as important, it aids when you indicate which you think are the more important. Again, this is a matter of emphasis for the brief.

The Argument

I turn now to the third function, the application of the law—in other words, your argument proper. Given the facts, given right and true analysis, two functions remain, argument on principle and argument on authority.

Having been so long a teacher, I suppose I have a predilection for principle, though that does not imply a contempt for authority.

But I find enlightenment in the former respect absent more frequently than in the latter. Perhaps my major criticism of briefs, apart from that relating to analysis, would deal with the lack of discussion on principle. Some cases are so clearly ruled by authority, directly in point and controlling, that discussion of principle is superfluous. But these are not many. I have been surprised to find how many appealed cases present issues not directly or exactly ruled by precedent. That is as it should be. The novel case is the one most appropriate for appeal, and the bar, on the whole, appears to exercise excellent discrimination in selecting such cases for appeal. In a large percentage of the cases, therefore, there is room for discussion and thought as well as for ci-

tation. Discussion on principle has direct relation to analysis of facts. If that is clearly and fully made, the former will follow almost automatically. What we want to know is why this case, or line of cases, should apply to these facts rather than that other line on which your opponent relies with equal certitude, if not certainly. Too often the why is left out. The discussion stops with the assertion that this case or line of cases rules the present one. Assertion is not demonstration. And beyond the amount necessary for statement of position and emphasis it may weaken or indicate that you are doubtful of your position. "The lady doth protest too much." The argument which stops at this point gives us the lead you wish us to follow. But it is bobtailed, nevertheless. The lead may be the wrong one, or we may think it such. Your reasons for thinking it the right one may keep us out of error, if perchance we can be saved. In a close case, where the authorities pertinent by analogy are conflicting and especially when they are equally pertinent and numerous on both sides, the discussion of the underlying principles as related to the present application counts heavily to swing the scales. In this connection, I shall have a suggestion to make later, concerning the use of legal periodicals.

Finally, I come to the authoritative function. I shall state this as briefly as possible.

1. When available the cases in point—on all fours—are the ones we want. If they are available, your way, and in quantity to settle the law,[5] citation and discussion of others wastes your time and ours.

There is one exception. That is when the law is settled the wrong way and you think you can play legal Don Quixote successfully. This has become a legal sport more popular in recent than in former years. But it is still a mountain-climbing sport and when one tries to climb perhaps anything goes, principle, law review articles, Brandeis briefs, whatnot. The climb is not recommended for everyday exercise.

2. When the case is not ruled by precedent, then precedent by analogy must take over the functions of persuasion and decision. And this is where much waste occurs. The cases most approximate are the ones we need. But approximation is always a matter of judgment and degree. It is the old question of "when is far too far?" When using cases by analogy (as well as otherwise) and relying heavily upon them, it is always wise to give, in your own words, a brief *and* accurate statement of the facts. Half or more of the meaning of the case you discuss is lost, unless you do this—or unless your opponent has done it sufficiently for you.

[5]There is not time for digression to discuss pet theories of *stare decisis*. But one decision doesn't always give set to the law. Perhaps it seldom does. It was nearly fifty years before the law as to the scope of interstate commerce and Congress' power over it assumed sufficient stability to be reliable as precedent in matters of federal power to regulate business activities, particularly in manufacturing.

For instance, if your case is a civil one, involving a question of paternity, and an issue is the use and admissibility of blood tests, citation of criminal cases excluding such tests without showing that they are criminal cases will not aid you. We will find it out. And when we do your argument may be weakened more by the discovery than if you had made it for us in the first place. We become, I think quite naturally, more critical of all the authorities you cite. Blood tests may be one thing in a bastardy proceeding, another in a civil suit for damages for drunken driving, and still another for criminal prosecution for the latter. It makes the brief clear to know which is involved when it discusses some case in order to rely upon it.

3. Referring again to what I have said about discussing principle, and recalling also the shots I have taken at law teachers and law reviews, I suggest now quite seriously the more frequent and general citation of law review materials. By this I mean the notes and comments as well as the leading articles. I am not unconscious of the rumor which I heard shortly after coming on the court that the Court of Appeals had six copies of the Harvard Law Review and one copy of the Code of the District of Columbia. The slander is false. We have two copies of the Code.

But back from the Code to the law reviews. When material pertinent to your problem can be found, and it will seldom be lacking now, the legal periodicals have several distinct advantages, and I mean for citation in the brief for the purpose of winning on appeal.

First, if a leading article or a good note or comment is in point on your case, or on an issue it presents, it will cite more pertinent cases than the average busy lawyer is likely to find through the digest or Corpus Juris. Its strictly authoritative value is first-rate. But this presupposes you cite periodical material with the same discrimination you do cases; in other words, it is the articles in print, or closely so, which are helpful. For your assistance in locating them, the Index to Legal Periodicals is available.

Again, an article or comment in point does something more than any single case can do. A case is an incident in the history of a principle or principles. It indicates, but it does not define or comprehend a trend. It is merely a link in a chain. A good article gives one, in addition to good citations, the history of an idea, the background of an institution, the evolution of a principle, and lines of discrimination for its application. In a recent case in which case authority was scarce, and involving difficult questions of administrative law and procedure, I found more help in about three law review articles than in all the case law and the statutes. They gave me the legislative history of the agency and the administrative history of its functioning. These I could not

have secured from the strictly authoritative materials. Nor could I have secured them otherwise than as I did without weeks of investigation which I did not have to give to it and perhaps would not have felt free to make had time been available.

Finally, though other advantages might be mentioned, law review materials, especially leading articles and notes, give superior analysis of problems and discussions of their legal disposition on principle. The "professor" still gets the raspberry. Too often still it is more rasp than berry. The "college boy" editor or author still supplies sport for the practical man of the law. But the professor is by way of becoming respectable in law, somewhat as his European colleagues were before academic freedom, and with it the great influence of the universities, disappeared from the continent. And, regardless of whose "hot dogs" they may be, the college-boy lawyers are showing, and show us every day, briefs and oral arguments as able as any we read and hear. Prejudiced as I may be in their favor, I commend their product for your favorable consideration and use. It will help you win cases if you learn, first to respect and then how to use it.

Miscellaneous Suggestions

I have a few "do's" and a few "don'ts" further to mention in closing which may assist you to see something of the judge's point of view.

1. Be brief, that is, concise—but not too brief. By this I mean be as brief as you can consistently with adequate and clear presentation of your cause.

2. Be candid. That applies to both facts and law. Nothing, perhaps, so detracts from the force and persuasiveness of an argument as for the lawyer to claim more than he is reasonably entitled to claim. Do not "stretch" cases you cite and rely upon too far, making them appear to cover something to your benefit they do not cover. Do not try to dodge or minimize unduly the facts which are against you. If you can't win without doing this—and it is seldom you can by doing it—your case should not be appealed. It is equally bad to give evasive answers to questions at oral argument. Conversely, few things add strength to an argument as does candid and full admission, whether as to facts or law, of the factors which are clearly against one. When this is made, we know that the lawyer is worthy of full confidence, and every sentence he utters or writes carries force from the very fact that he makes it.

3. It helps to break the monotony of the printed legal page to add a bit of life to it now and then. I do not refer merely to the facts of life like those in *Spencer v. United States*. Recently a brief characterized an opponent's argument as "splitting a legal hair the wrong way." That

gave me a kick for a day. Now and then there is a bit of unconscious humor. Recently this appeared, quite seriously, in a patent brief:

> "All the prior inventors who worked on [this problem] missed this important solution discovered by appellant. If one or two or a few inventors had missed the solution, that would not be convincing, but when hundreds of inventors missed the solution and when, in fact, all the inventors prior to appellant missed the solution, it would certainly seem unfair and unjust to penalize appellant for discovering the solution by denying him a patent."

In the same brief the absence of a fan (used in the prior art) from appellant's mechanism was emphasized by the Patent Office. To this his lawyer replied:

> "No patent is ever granted for *not* doing something. A man to secure a patent must set out how the result he is attempting to get *is* secured. He is not supposed to set out how it is *not* secured. As to telling the public how they cannot secure the result of the inventor, [that] does not benefit the public. The law contemplates that the public * * * shall know what should be done to secure the beneficial result of the applicant's invention and not to know what they should not do to secure it. This is plain common sense and, it is thought, requires no citation." (Italics supplied.)

That one helped for a week. I do not recommend that you supply this brand of "life" in the brief, but it will be accepted with thanks if the other cannot be supplied.

Now for a few "don'ts," some already touched upon.

First, as to quotations from prior opinions. I almost said, "don't." But that would be going too far. Generally, omit the long ones. We, too, can read the opinions, particularly if they are cited. And, again generally speaking, leave out the abstract ones. By that I mean quotations from opinions usually are meaningless, or nearly so, unless accompanied by thumbnail sketches of the important facts of the case. Meaning then becomes concrete and definite. "Thumbnailing" is an art.

Again, avoid overstatement and repetition, except for the proper uses of emphasis. Frequently we are able to understand the statement after the third reiteration, that is, if it is understandable.

Finally, avoid as much as possible stilted legal language, the "thereins," "thereofs," "whereinbefores," "hereinafters," and what-have-you's. Use English wherever you can express the idea as well and as concisely as in law. A healthy respect for the robust Ango-Saxon appeals to me more than does the Latin, whether or not it is Anglicized.

The home-grown product in this case is better than the imported one. But law has its vocabulary and that has its proper uses. Technical legal terms and phrases often shorthand ideas otherwise to be stated only with circumlocution and loss of meaning. Then one should "talk like a lawyer." But the abuse comes when good, simple English will do the work of the term of art just as well. The readability of Holmes and Cardozo is due, in part, to their mastery of the native tongue and subjugation of the acquired language of the law.

In closing, I should say that the real way to talk profitably about briefs would be to exemplify them. The brief, and its merit, are always relative to the particular case. Cases, and therefore briefs, are as varied as the subject matter and the lawyers who try cases and write the briefs. But exemplification being not practical under the circumstances, I have given you general observations, each of which should be qualified in relation to particular applications as your sound judgment dictates. After all, you write the briefs. On the whole, you do an excellent job. It is the rare brief that leaves us uninformed, confused (more than before we read it), or irritated. Happily, the general effect is one which makes us proud to be members of the profession, though now somewhat apart from its most active life. Through you as lenses we see the causes of your clients. If we fail to see them truly, more often than not it is our vision, not the lens, which is defective. But in unison, vision and lens reflect the picture of the life they serve and, may we hope, guard to some extent from the dangers which sweep over and throughout a storm-tossed world. That the service may be done in justice requires that it be done, by each of us, in humility. Without that, no man can rightly be judge, or counsel, in another's cause. For you, too, are judges of the people, without whom few causes would come to us for decision in such form that their rights and liberties would be vindicated and protected.

The New District Court Rules Now Available

The new rules for the Denver District Court which were adopted by the judges of the court on February 7, 1942, have been printed, and an ample supply of the rules are now on hand. The clerk, Major J. B. Goodman, Jr., states that attorneys may procure as many copies as are desired by calling for them at his office.