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Your Written Work: Capturing the Judge's Attention

Hon. Mark A. Drummond – October 27, 2017

I know how to lose weight. I would do research the old-fashioned way. I'd grab a file that needs some legal research. I'd then go to an old law library with only books in it—no online research allowed. I would start with a statute or a case and see where that leads me.



Now, if I physically conducted legal research as I do now online I would be jumping up every few minutes like a jackrabbit running from one bookshelf to the next. I would burn a lot of calories.

These days, it is hard for me to remember a time when I read an entire case through before jumping to another case. I am constantly clicking on links and finding myself five or six windows past where I started. To be clear, online research is a blessing. However, in my opinion, online research is also a curse. I believe it has diminished my ability to focus and concentrate on one case.

In a previous column, I outlined how many times people are distracted during the day by some electronic device. On average, we are distracted 150 times per day. Given these distractions, combined with shrinking attention spans, should we consider how that affects our written submissions to the court? How can we make sure the court will read our submission from beginning to end? To answer these pressing questions, let's begin with some suggestions on the structure of our submissions to the court. Across the pond, they actually call these "skeleton" arguments.

"I couldn't agree with your 'premise' more," says the Hon. Nancy F. Atlas, Houston, TX, cochair of the ABA Section of Litigation's

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Federal Practice Task Force. "There is no substitute for an executive summary of the arguments to come; informative headings throughout the motion or brief are key; and, in a complex case, a table of contents and an appendix quoting the key provisions in dispute are handy."

An oft-told story is that of the compelling sermons by a certain minister. He said he gave the sermon not once, but three times. "I tell 'em what I'm gonna tell 'em, then I tell 'em, then I tell 'em what I told 'em," or so the legend goes.

"Shorter is better. Use headings. Use bullet points," says Steven F. Molo, New York, NY, cochair of the Section's Trial Attorney Advisory Board. "Be succinct in parenthetical descriptions (but use them)." A great structure—beginning with a summary and followed by succinct bullet points—aids and focuses the reader's attention.

I cannot count the number of times that I have read a motion for summary judgment that began with a page and a half of the standards for granting a motion for summary judgment. I became licensed to practice law in 1980. Thirty-seven years later, the standards for granting a motion for summary judgment remain the same. I do not need to be reminded of those standards. Beginning a motion with the standards is a waste of the valuable tool of primacy.

"Use the power of arrangement, using the doctrines of primacy and recency," advises Paul Mark Sandler, Baltimore, MD, cochair of the Section's Litigation Institute for Trial Training. "I once began a response in opposition to a motion for summary judgment with 'This is a case of a careless landlord. He was careless because he could care less about the tenants who lived in his building.'"

A beginning like that captures your attention. It is much better than a page and a half about the standards for denying a motion for summary judgment. So we start with something that grabs the attention of the judge so she wants to read more. We then create a summary for the judge that gives her the view from 30,000 feet followed by a concise structure that is easy to follow. Now we have the structure of our "skeleton" argument. In the next column, I will discuss the best way to put some meat on those bones.

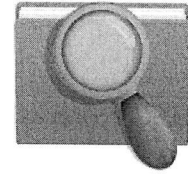
Hon. Mark A. Drummond is an associate editor for *Litigation News*.

Resource

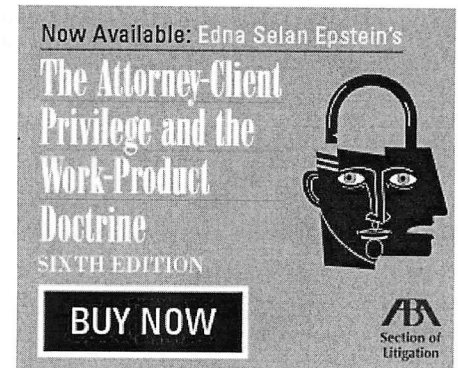
- Mark A. Drummond, "Is Technology Changing Our Brains?," *Litigation News*, Vol. 40, No. 3 (Spring 2015) at 16.

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