

Thank You, Your Honor

By Nathaniel Bruno

The best oral argument will always be, “Thank you, Your Honor.” That phrase is the one used by deft counsel who realize the judge has made their case for them, and that adding more layers to the discussion will only complicate things.

As lawyers, resisting the urge to rattle off carefully-practiced “winning” material is contrary to our very nature, and to the prevailing notion that the best talkers make the best counsel. But the art of oral argument is recognizing the moments when saying nothing at all is the most compelling and confidence-inspiring advocacy.

I have been reminded of the value of appropriate silence throughout my career as a litigator. I will never forget witnessing an oral argument in which a senior partner was intent on sharing with the court his erudite knowledge of the legislative history underlying a prominent statute. The judge had already announced from the bench that the opposing party’s motion was unconvincing and that he planned to rule in favor of the senior partner’s client. Perhaps trying to score an even more powerful knockout, the senior partner would not give up on “educating” the court about the legislative history. The judge interrupted twice to inform the senior partner the court had an ample staff of clerks to research legislative history, and that the judge was prepared to rule. But the senior partner forged ahead with his dramatic mono-

logue. Finally, you could have heard a pin drop when the judge angrily cut in and asked the senior partner, “Counsel, are you attempting to snatch defeat from the jaws of victory?” That question finally elicited the appropriate closing, “Thank you, Your Honor” — which should have been the only thing the senior partner said in the first place. It was a stark reminder to take victories however they come and not worry about sounding smart.

In another case, the client our firm represented favored a certain outcome on a motion, but for various reasons wanted to avoid taking a position on the record unless necessary to swing the decision our way. With a tentative ruling in our favor, and sensing friendly leanings from the judge, I managed to stand through two hearings biting my tongue while counsel for the other parties fought it out. It was remarkably hard to do! We each tend to think we have the perfect point that will right all wrongs and prove the unassailable merits of our client’s position. But when you can allow the judge to organically grow into seeing the case your client’s way, as opposed to beating the judge over the head with argument, that judge’s decision will carry more conviction. My forbearance in that instance was rewarded with the exact ruling my client desired. I walked away again marveling at the value of appropriate silence.

Of course, a word-frugal oral argument can only be utilized following cogent, concise briefing that clearly states the relief your client seeks and only the very best reasons why. Those types of clean, persuasive briefs are the ones that set up pre-oral argument victories and “Thank you, Your Honor” arguments. And certainly, many issues are nuanced and require clarifying oral argument to amplify your client’s main theme. In those instances, the best oral arguments I have seen are directly responsive to questions, brief, avoid extraneous details, admit unavoidable weaknesses, and always bring the court back to the client’s key objectives and best points.

But those situations aside, less is usually more. To slightly modify a famous quote of St. Francis of Assisi, attorneys should “be zealous advocates always, and if necessary, use words.” Hopefully, those words may simply be, “Thank you, Your Honor.”



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