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SALAD, A GLASS OF RED WINE, AND A DISCUSSION ABOUT HOW TO EFFECTIVELY ANSWER QUESTIONS IN APPELLATE ARGUMENT

Douglas S. Lavine*

I have always had a special place in my heart for Elrod Pennington, Jr. His father and I grew up together, went to college together, attended law school together, worked together as prosecutors, and were nominated to be trial judges the same day. I remember the day young Rod was born, thirty years ago. His father was delirious with joy and that joy never diminished. And how could I ever forget the day my old friend died, a month after watching me swear in his son? A widower, he had willed himself alive, through years of painful cancer treatments, to see that day. But he had made it, beaming during the entire ceremony, and then a month later, his task completed, he let go.

I am a bachelor, but Rod is like the child I never had. I have watched with interest as his legal career has unfolded. He has his father's smarts, charm, way with words, keen analytical sense, and a certain not-so-subtle arrogance.

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Like his father, Rod always thinks he is the smartest person in the room. But then, he often is. He landed a job as a prosecutor in the same office his father and I worked in so many years ago. His dad would have been so proud! Rod quickly rose through the ranks there and was recently asked to join the appellate section.

As I wait for him to join me at our regular Thursday-night dinner, I am looking forward to hearing about his first excursion into oral advocacy because I made a silent promise to myself—and to his father—that I would watch over Rod as he made his way in his career. I have done that, and sharing a profession has kept Rod and me close. He always calls me "Judge," half in jest, given the warmth of our relationship, but he is not afraid to disagree with me. He can take as well as he can give and I treasure our spirited conversations. Besides that, he has an unusual way . . . .

Oops, here he comes now. I'll pick this up later if I have the time.

. . .

– Rod! Over here! Sit down. How about a glass of wine? Beautiful night to eat outside on the patio. Dinner's on me.

– No, Judge. You promised last time that this one was mine! But I have to leave in about an hour to pick up a friend at the airport. Sorry.

– Fine. Listen, you can pay next time. Besides, I don't remember any promise. [Waiter, can we have some menus, please?] You look like the cat who swallowed the canary. What's going on?

– You know I had my first argument in the appeals court this morning. Hard case, but I think I knocked it out of the park . . . if I do say so myself.

– Your modesty is . . . striking. But give me the details.

– Well, you remember that this defendant's a bad guy: convicted of robbery in the first degree. But Charlie Neal took

the appeal, and Charlie's one effective appellate lawyer. He's arguing that the case should be reversed for prosecutorial misconduct because the prosecutor made some arguments that were way too aggressive when he was summing up at trial. Charlie's take is that the prosecutor injected his personal opinions into the case and suggested the guy should be punished just because he decided to go to trial.

– How did the argument go?

– Really well. I think. I mean, I'm new at this, but I managed to dodge every question the judges threw at me about the negative impact of the prosecutor's comments. Sure, the prosecutor went too far, but I didn't concede anything . . . even though the judges pushed pretty hard.

– So you bobbed a little, weaved a little, and emerged unscathed?

– Right! That's just how I see it, Judge. Not even a nick.

– Hmm. And you think you satisfied the judges' concerns about the case?

– Maybe not entirely, but I sure didn't concede anything. And I hammered the theme that it was a violent robbery and a strong case and the prosecutor's remarks couldn't have done any harm, anyway.

– Who was the prosecutor?

– Clarence Coleman.

– He's had some convictions reversed for prosecutorial misconduct, hasn't he?

– Yeah, but I'm betting this one will squeak by.

– Rod, don't take this personally, but I think you're being too confident. I think you have a fundamental misunderstanding

about the role of oral argument in an appellate court. And about what your goal should be. The goal isn't to *dodge* the tough questions; the goal is to *answer them* in a way that advances your cause.

– My goal is to win the case any way I can. Simple. Vince Lombardi's my guide: "Winning isn't everything, it's the only thing." Concessions make you look weak.

– [Waiter, we'll each have a glass of the Merlot, please.] Rod, of course your objective is to win. But the question is how do you *maximize* your chance of prevailing? By ignoring the judges' concerns? By dodging them? Or addressing them? By making believe, ostrich-style, that your case's weaknesses aren't there? Or by confronting them and minimizing the harm they do to you?

– Depends. If addressing a judge's concerns simply highlights my case's weaknesses, why should I do it? Why bring attention to my case's soft underbelly? It's all there in the briefs, so why harp on it at oral argument? With all due respect, Judge, you're talking like someone who hasn't actually argued a case in years.

– Two decades, actually, Rod. But let me make sure I understand your view. You think the purpose of your argument is to paper over your weaknesses.

– Absolutely. The more papering over, the better. Let the other side talk about my weaknesses. I want to distract the judges from my weaknesses by stressing my strengths.

– Then you figure that your audience—a group of appeals court judges—won't spot the weaknesses in your argument?

– Not if I can help it.

– You obviously don't have a very high opinion of the legal acumen of some of us on the bench, Rod.

– I'll take the Fifth on that one, Judge. I think it's time to order. [Waiter! Could we have those menus, please?]

– Have you ever bought a car?

– What? Bought a car?

– Have you ever bought a car?

– Well sure I have. And I know you remember my first car. Man, I loved that Jeep. But what does that have to do with appellate advocacy?

– What sorts of questions do you ask a car salesman?

– Well, I ask the standard sorts of things. You know: How's the mileage? How's it handle in the snow and ice? What kind of warranty can I get? . . . And of course I always ask about cost.

– And when you ask the salesman a question, what do you expect?

– What do you mean?

– I asked you, "And when you ask the salesman a question, what do you expect?"

– An answer. I know it'll be part baloney because he works on commission and wants me to buy the car, but I do expect an answer.

– Right. And how do you feel if you get the run-around instead of an answer? You ask what kind of mileage the car gets on the highway and the salesman tells you that "it does very well on the highway compared to other similar models." Is that helpful?

– You mean if I don't get any hard numbers, just fluff? That annoys me. Yeah, of course it does.

– Does that make you more likely to buy the car?

– Oh, I get it! When I get up to argue I'm like the car salesman—used car salesman, I suppose. Lawyers are like used car salesmen!

– No, but stick with me. When a judge asks you a question from the bench, he or she is in the same mindset you are in when you're thinking of buying a car. Your objective is to learn as much as you can about the car you're considering. The salesman's objective should be to accurately answer your questions in a way that will make you more interested in buying the car, *not* to annoy or exasperate you, which makes you less likely to buy the car. The salesman's job is to educate you, and your job is to *educate* the court, not to evade its concerns, but to *teach* the judges to see things your way.

– So you're telling me I should try to sell my argument to the panel?

– Don't make it sound so tawdry. Advocacy is a noble art. It requires all the intelligence and intuition and forensic skill you can muster up. And an understanding of what makes people tick, including judges. Judges are people too, you know.

– Yeah maybe. But I still say I'm better off if I can hide the weakest parts of my case by dancing around a little when I get a tough question.

– You still don't get it. Let me back up. [Waiter, can we have those menus, please?] Let me start with the basics. Why do judges ask questions?

– Oh, let's see . . . . To sound smart. To back a lawyer into a corner and then pulverize him. To hear themselves talk . . . . Want more?

– Clever, Rod. Judges do ask questions for a number of reasons. But believe it or not, they usually ask questions because

they want to better understand the case—the facts, the legal issues, the arguments.

– You mean sometimes there's no hidden agenda?

– Right. Sometimes there's no hidden agenda. The judge just wants information, assistance.

– Ok. Fair enough. But not all the time.

– Judges also ask questions to probe the weaknesses of an argument. To see if it will stand up to scrutiny, to get a sense of how far it can be pushed. To determine if accepting the argument will lead to absurd results. And, of course, judges ask questions to pin a lawyer down, to commit the lawyer to a position.

– You finally got to the real issue. I saw that when I was waiting for my case to be called this morning. Judges like to back lawyers into corners, get them to lock themselves in to some extreme formulation of their position, and then chop them off at the knees.

– You make that sound so violent! But we're not talking about *Game of Thrones*, Rod. We're talking about appellate advocacy. Judges need to have a clear sense of precisely what is being argued—precisely what is being argued by each side on each point—to decide the case, and to consider the potential impact that their decision might have on future cases.

– So when I'm arguing an appeal, am I supposed to be able to figure out *why* the judge is asking particular questions?

– Not necessarily, but over time, after you have argued lots of cases, you can sometimes get a sense of why a certain judge is asking a certain kind of question. And you can try to design your answer accordingly.

– To be honest, after my argument today, I just want to make sure that I'm accurate and persuasive and don't tip over my water glass or drop my notes when I'm up at the podium.

– Two decades as a judge and I can honestly say I have yet to spill water all over the bench! But have I ever tripped on my robe? . . . Afraid so. Listen—no one said that being a persuasive appellate advocate is easy. You need to be totally prepared; you need to know the facts and the law better than anyone else in the courtroom. But answering questions effectively is an underappreciated art. You can win or lose a case depending on the skill you bring to answering questions. Effectively and persuasively answering questions is the best way to build a connection with the judge, and, not incidentally, to enhance your all-important credibility.

– How so?

– Listen, Rod. The most important thing any lawyer brings to court is credibility. You should guard it like a scuba diver guards his air tank. It is precious. And once you lose it, it's lost forever.

– Right. Even law students know that. You hear it all the time. But what does credibility have to do with answering questions from the bench?

– Accurate, honest answers enhance your credibility. Answers that aren't accurate, or that try to hide the ball, hurt your credibility. I'm sorry to tell you that you almost certainly hurt your case this morning by dodging the judges' questions.

– Okay, okay, I give up. I could have done better. I *will* do better. So what is *the* cardinal rule about answering questions at argument?

– I was hoping you'd ask. Let's order and I'll give you my thoughts on persuasively answering questions. [Waiter?]

– [I'll have the caesar salad please. With grilled chicken, light on the dressing.]

– [And I'll have exactly the same thing as my young friend here.]

– So you were talking about how to answer questions . . . .

– Right. Let me begin with the golden rule of appellate advocacy concerning answering questions. Ready?

– You know me, Judge: I'm hanging on your every word.

– Here it is: Answer the question asked, answer promptly and persuasively, and keep the audience's perspective in mind.

– That's it?

– That's it!

– With all due respect, Judge, there's not much to that. I was expecting something much more cosmic.

– Simple is best, Rod. Let me break it down. First, answer the question *actually asked* by the judge. Don't restate it to make it more amenable to your position.

– Okay. Got it: Answer the question the judge actually asked.

– And answer *promptly*. By which I mean *immediately*. I cannot tell you how off-putting it is when lawyers just flat-out don't answer. Instead, they bob, they weave, they temporize, they avoid the point, they say they'll get back to it later, they say they're coming to it. I can't tell you how many ways there are to *not* answer a question and completely alienate the panel. It's essential to change places with the judges and then do what you would want the lawyer before you to do: Answer the question. Answer it *right away*.

– But come on, Judge, sometimes a lawyer is just trying to buy time to figure out what a question is really getting at. Most lawyers are afraid of giving a glib answer only to be later hoist on their own petard. . . . Say—what is a petard, anyway?

– A bomb used to blow in a door or breach a wall. To be hoist on your own petard is to be hurt by something you intended to use for hurting someone else.

– Whoa. Thanks. I'll remember that. But anyway, sometimes you have to delay your answer while you're figuring out what to say. Nobody wants to look stupid.

– I'm with you there. Absolutely no problem with a slight delay to give you a chance to think. The problem comes when you never really answer the question at all. Here's an example: I can't tell you how many times I have heard a lawyer, in response to a question from a judge, say "I'll get to that later in my argument, Judge," or "I will be dealing with that when I discuss such and so." Much better to just give the short answer with a succinct "Yes," or "No," or a "Yes, but. . ." or "No, but. . ." response. Much more satisfying to the judge who asked the question.

– What's so horrible about getting back to a question later on if answering it will interrupt the flow of your argument?

– Remember your goal. It *isn't* to maintain the "flow" of *your* argument. That's a solipsistic view of advocacy. The goal is to persuade the *judges* that your arguments should prevail. Judges don't care a lick about the "flow" of a lawyer's argument. They want answers to their questions, and they want them now. How do you think most judges are going to react to being told to wait, anyway?

– With impatience. And annoyance. Judges are used to being catered to.

– I'll ignore that remark because I know you can't mean me . . . . Remember, though, that when anyone asks a question,

they want a straight answer. Especially a judge whose job it is to analyze and decide cases. The judge who asks a question wants it answered immediately, not when it conveniently fits into the lawyer's pre-planned presentation.

– Okay. But . . . .

– Furthermore . . . .

– But sometimes judges interrupt with a question that comes out of nowhere. It really throws the lawyer off his stride. It makes him forget what he wanted to say.

– Rod, at the risk of being repetitive, oral argument isn't an opportunity for a lawyer to get through his script. Oral argument is a chance for a lawyer to get inside a judge's head and persuade her. Every time a judge asks a question, the lawyer is presented with a chance to persuade. Putting the judge off by delaying an answer is throwing away a valuable opportunity.

– But Judge, I learned today that I really don't like being interrupted by questions when I'm arguing.

– Then I commend to you the famous words of John W. Davis, one of the great appellate advocates of the twentieth century, who said

> Rejoice when the court asks questions. And again I say unto you, rejoice . . . [A] question affords you your only chance to penetrate the mind of the court, unless you are an expert in face reading, and to dispel a doubt as soon as it arises.[1]

– I still say a question throws me off my game.

– Well, Justice Robert Jackson, another great lawyer, made the same point in less elegant language: "I always feel that there should be some comfort derived from any question from the

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1. John W. Davis, *The Argument of an Appeal*, 3 J. App. Prac. & Process 745, 752 (reprinting original appearing at 26 ABA J. 895 (Dec. 1940)).

bench. It is clear proof that the inquiring Justice is not asleep."[2] Listen, I know it's hard to follow their advice, but Davis and Jackson knew what they were talking about. You have to train yourself to be *glad* when a judge asks a question. To be *thrilled.* To be *ecstatic.*

– What about my game plan? Questions throw me off my game plan.

– Forget your game plan. Jump all over questions. They offer you the best opportunity you have to persuade the court.

– Then let me ask you this: What makes a persuasive answer to a judge's question?

– Well, in no particular order: An effective answer is direct. It is responsive to the question asked, not to the question you wish had been asked. It is factually accurate but persuasive. It assists and educates the decisionmaker. It uses language precisely and frames the issues in a way that is advantageous to your client. It . . . .

– Wait. There's more?

– Much more! It demonstrates a deep understanding of your adversary's arguments and refutes them. It initiates a true dialogue—not a wooden exchange, but a true dialogue—between the judge and the advocate, two human beings trying to communicate with each other. And don't forget that an effective answer admits what the lawyer doesn't know and freely acknowledges mistakes if they have been made. It is crisp, civil, courteous, and professional.

– [Could I have more water, please?] Wow, that's quite a mouthful.

– Well, those are some key attributes of the *perfect* answer. And I'll admit that not every single question permits that kind of

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2.Robert H. Jackson, *Advocacy before the United States Supreme Court*, 5 J. App. Prac. & Process 219 (2003) (reprinting original appearing at 37 Cornell L. Q. 1 (1951)).

all-encompassing approach. Of course, as I said earlier, the effective advocate will be totally prepared for argument—sure that he has complete knowledge of the record, the cases, the other side's arguments, and so on. You need to be the best-prepared person in the courtroom. That's a given.

– So there's more to this than just getting up and being fast on your feet, I guess.

– Right. You have to switch places, mentally, with the judges, ask yourself what you would want to know if you were a judge, and consider what kinds of answers to your questions would be effective.

– I bet you see a lot of young guys like me making mistakes at oral argument, huh?

– Young, middle-aged, and old. I see brilliant advocacy and ineffective advocacy, day in and day out. In fact, I see some of the same mistakes over and over again. Here: This list could end up on David Letterman, so listen carefully. These are the nine biggest recurring mistakes.

– Why not ten?

– Because I have already harangued you about the biggest problem: the failure and refusal of lawyers to promptly answer the question asked. That is the number one mistake that I see over, and over, and over again. Maddening.

– Got it. No need to repeat that one, Judge.

– Okay. Let me start with some style pointers. First, when arguing to a panel, a lawyer should be visually and verbally inclusive when answering a question. Lawyers tend to make eye contact only with the judge who asked the question and to engage in a closed, one-on-one dialogue. This leaves the other judges feeling excluded.

– Oh, poor things!

– Seriously, Rod, you don't want the other judges on the panel to get the sense that you're addressing only the concerns of the judge asking the question. Persuading a panel of judges is like persuading a jury: It takes an understanding of group dynamics. I suggest that you make sure that you look at all the judges when you answer a question, including them all in the discussion.

– So the lesson is that judges have feelings too. Touching.

– Yes they do. It's never a good idea to be dismissive of a judge's concern or treat a question as if it is irrelevant or unimportant. There is no such thing as an irrelevant question from the standpoint of effective advocacy because the way you answer every question—even a silly or irrelevant question—can affect the outcome of the case.

– So if a judge asks an irrelevant question or a silly question, ...

– You need to learn to respond to every question in the same measured way. You may be *thinking* the question is unimportant, but never show that with your voice, your expression, or in any other way. This whole process is a very human one. It's human beings communicating with other human beings. Never forget that.

– Okay, I consider that to be number two on the list.

– Number three is this: Never denigrate or ridicule your opponent's argument.

– Even if it deserves to be denigrated or ridiculed? Even if it's just plain stupid?

– Right. You can dismantle an adversary's argument without personalizing it. Just rely on your knowledge of the facts and the law and your forensic and analytical skills. Be

professional. Don't succumb to the temptation to take cheap shots.

– Whew. You're asking a lot of me. After all, I grew up watching *Law and Order* and *Boston Legal.* The lawyers in those shows didn't follow Marquess of Queensberry rules. And who was the Marquess of Queensbury anyway?

– [Sigh.] John Douglas, a Scottish nobleman, was the ninth Marquess of Queensberry, who lived in the late eighteenth century. And the Marquess of Queensberry rules was a code of rules in boxing written by a man named John Graham Chambers. But they're associated with Douglas because he endorsed them. By the way, he played a role in the disgracing of Oscar Wilde. . . .

– Who?

– Forget it. Forget it. May I continue?

– Sure, but don't forget that clients want lawyers who will fight—no, *bleed*—for them.

– Yes they do. I'd want that too if I were a client. But a lawyer can't let a client's emotions dictate his conduct in—or out of—court. I guarantee that judges prefer lawyers who are professional and courteous to lawyers who act as if they are trying out for a part on some reality television show. Trust me on this one.

– Enough of the atmospheric stuff—give me something concrete, something I can dig my teeth into.

– Okay, number four: Never argue with the court. The key word is *argue.* You can firmly disagree with something a judge says, you can dispute things, and you should stand your ground when necessary. But when your instincts tell you that a position you are taking is contrary to a judge's fixed view, and you have unsuccessfully sought to change the judge's perspective, don't drift into an argument. Cut your losses.

– How do you do that?

– Lots of ways. Just shift to something else. Or just tell the judge asking the question that it looks like you and she simply have a different view on the issue—the case, the legal principle, whatever is being discussed. But once an exchange becomes argumentative, you run the risk of offending the judge or the panel.

– Are you telling me to be a wimp?

– No, I'm telling you not to be stupid by banging your head against the wall. Ready for number five?

– I suppose I have to be.

– Number five is this: If you don't know the answer to a judge's question, say so. Don't guess. Don't take a flyer. Just say that you don't know the answer.

– Admit that you're unprepared?

– I didn't say that. My point is that it is better to say that you don't know something than to give an answer that turns out to be wrong. That's a credibility killer. Sometimes you may not know something about the record; other times, you may not have the name of a controlling case at the tip of your tongue. Obviously, every situation is different. There's no one-size-fits-all response in advocacy.

– I guess not.

– Now number six is a big one, because if you trip over it, you'll often be led into a very dark and deep corner, a cul-de-sac, a place you don't want to go, a veritable . . . .

– I get the point, Judge.

– Number six is this: Always concede a point that must be conceded, but never concede away your case.

– That's nonsensical. It doesn't mean anything. That's like saying, "Never make bad arguments, only good ones."

– Au contraire, my young lawyer friend. It means a lot. It just takes a lot of forethought and judgment in advance of the argument.

– Who has time to think?

– Tell me you're joking, Rod, please! Thinking—mulling an argument over—is one of the most important things any advocate does before an argument. You know the drill: mock arguments, switching places with your adversary, shuffling notes around while you practice so you can nimbly adjust if the judges jump around from topic to topic, . . . There are lots of ways to get mentally prepared for an argument. But let me get back to number six.

– Please do.

– The reason this rule is so important is because so many lawyers hoist themselves on their own petard by refusing to concede points that they can't win, or that don't matter. Going into an argument, you should have a clear sense of what issues are not worth fighting about so you can gracefully, and strategically, concede them away.

– But it may not always be easy to tell.

– Well, you're right, but remember that a decision to concede a point can actually strengthen your credibility. You can use it as a jumping-off point to launch into the meat of your argument.

– You know, though, I'm afraid I'll be tricked into conceding something that will be fatal to my argument.

– As well you should be. Never concede your case away. Don't ever agree with a proposition that will put a dagger into the heart of your argument. But you have to develop an instinct

for which concessions are necessary and which are fatal. That comes with complete mastery of both the facts and the prevailing legal principles. And it gets easier with experience. But no matter where you are in your career, arguing over a point you are sure to lose is a huge waste of energy, risks your credibility, and is generally a very, very bad idea.

– You're making me nervous about ever doing another oral argument. I basically just want to avoid making a bad mistake.

– Come on Rod, where's that joie de vivre, that savoir faire?

– I didn't know you spoke French, Judge.

– Well, sort of. But let's turn to rule seven, the rule that has to do with mistakes. It's simple but often ignored: When you make a mistake, admit it.

– Are you trying to trick me or something?

– No, I mean just what I'm saying. When you make a mistake, don't try to hide it or give fatuous excuses. Just admit it. Just tell the court you made a mistake. Maybe a citation is wrong, or maybe you mistakenly cited a case for the wrong proposition. Maybe you made a factual assertion that is off base. Just admit it in oral argument. Or if you find out about the error after argument, send a letter to the court, with a copy to opposing counsel, explaining what the error is and apologizing for it.

– Sounds like common sense.

– Of course it is. The worst thing you can do is be defensive and self-righteous and deny that you made a mistake. That makes you look rigid and foolish. We all make mistakes. . . . I certainly made a mistake when I ordered this salad. Awful. Lettuce is soggy. Doused with dressing. Chicken burnt.

– I rather liked *my* salad.

– Maybe someone else made yours. But to finish my point, admitting a mistake freely is actually quite disarming. As long as you don't have to do it every two minutes.

– But let's suppose that . . . .

– Stop right there! You have once again given me the perfect segue into my next rule. It's about hypothetical questions, a particularly dangerous area for any appellate advocate.

– Really? But judges use them a lot. If they're so dangerous, why do judges do that?

– Well, we judges use hypothetical questions to flesh out an argument, to test its limits. Which means that sometimes the hypothetical can get long and confusing. So here are my two main rules concerning hypotheticals. First, never, *ever* answer a hypothetical question unless you understand it, and all of its constituent parts and assumptions.

– Obviously.

– Not so obvious to some lawyers. Second, always be sure, after or before addressing the question, to note the significant differences between the hypothetical and the facts of your case. But try to do it in a way that won't annoy the judge.

– Some judges seem annoyed by everything.

– [Sigh.] Number eight: Use your answers, whenever you can, to emphasize the key themes of your case. If you can answer the question in a way that lets you emphasize the main points of your argument—to circle back to the two or three things you want to keep hammering home—do it.

– Are you having dessert?

– No. I'm on a new diet. As usual . . . . [Waiter, can we have the check please?] Okay. Let's wrap this up with numbers nine and ten. Number nine is pretty pedestrian: Always try to provide the court with an alternative if it rejects your primary argument. You always want to present a fallback position that will still permit you to prevail.

– Common sense.

– Yes, but you'd be surprised to see how many lawyers don't do it. Now number ten really deserves a lengthy discussion because it's the ultimate goal of any good appellate argument, but since the check is coming, I'll keep it short. Here it is: Initiate a conversation—and by that I mean a real exchange—with the human beings sitting on the bench. Don't talk at them, talk with them. Engage them. Relish the give and take.

– I know from first-hand experience that having a conversation with the panel isn't easy for a young lawyer to do. I mean, after all, you people in black robes can be pretty intimidating.

– I hear what you're saying. I'm not suggesting that you should try to fake familiarity or a false intimacy with the judges. No. I am just saying that since judges are people too—didn't we establish that a while ago?—they actually sometimes enjoy the give and take of a good argument.

– Sometimes.

– Right. Sometimes.

– Where's the check?

– I took care of it, Rod.

– You are too sneaky.

– Sue me, Rod, sue me.

– By hook or by crook, the next one's on me.

– That's a deal, Rod. Hook or crook.

– Well, thanks for the advice, but I have to be totally honest: To get back to the first thing you said, if I can dance away from answering a damaging question, I will probably keep trying to do that.

– Rod, Rod, Rod. I'm disappointed—but not surprised—to hear that. I have a feeling that the only way you will learn to appreciate the wisdom of my advice is to be excoriated by a wide variety of judges a few hundred times.

– Well, Judge, you may just be right. Hey, thanks for dinner. Oh, and the advice.

– My pleasure, Rod. See you next time.

– Next Thursday night, same time, same place.

– I'm already looking forward to it.

– Thanks, Judge. And by the way, I know Dad says thanks, too.

. . .

I watched as Rod quickly walked away. He looked just like his father from behind. He got into his car, waved, and was off. It occurred to me that, like his father and me and generation upon generation of lawyers past, he would have to learn the hard way, one case at a time, through an unexpected win here, a crushing loss there. Experience would be his best teacher. There is no real substitute.