

# New Lawyer Column:

## *Motion Buffet*

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By **Scott L. Goldman**



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I thought it would be intimidating to write my first motion. Fortunately, I was too scared to be intimidated. I had just been assigned to a complex federal case, which had been going on for years, and knew next to nothing about the esoteric subject matter about which I was going to write. Writing that motion was all-consuming. I thought about it at work, during dinner, and while playing Nintendo Wii with the kids. The motion even

infiltrated my dreams. (I suppose if you are writing a motion in a dream, it should be characterized as a nightmare.) It was an arduous few days, but I got it done. The partners did not vote to hang it on the lobby wall. At the same time, no one mistook it for a practical joke. Most importantly, we won the motion.

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Over the next six months on the case, I wrote or cowrote close to twenty more motions, oppositions, replies, and appellate briefs. During the eight-week trial, I sometimes wrote three motions a week and, at one point, had only several hours to start and finish a motion. The steady stream of briefs varied greatly, by type, format, length, and subject matter, which ranged from the main contentions in the case to more narrow, even peripheral, issues. I made it through the motion buffet, as I now call it. Like any buffet, it was exasperating, fascinating and, by the end, exhausting. I did not, of course, turn into a master legal writer in half a year, but I greatly improved, both in substance and efficiency. As I look back on it, I was able to implement some of my experience as a former film executive and take away several helpful lessons.

— **Embrace Rewrites** —

As a former executive in the film industry, I was involved with developing screenplays that were rewritten countless times. While rewrites can be frustrating, I learned to see revisions as a positive step toward a better result, not a sign of failure. When other attorneys offer comments on a draft or rewrite your work, it is important to embrace those comments or changes and not get defensive about them.

In fact, I found comparing my draft with a subsequent draft by a more experienced attorney as the single most effective teaching tool for improving my advocacy writing. In a sense, it allows a rare insight into where your thought process ends and a more experienced attorney's thought process begins. I would carefully compare my draft with the final version, taking note of what was altered, what was taken out or kept in, even down to a single word choice. While the process can be humbling as the constant refrain of "Why didn't I think of that?" runs through your mind, it is rewarding when it pays off as you do "think of that" on your next assignment.

— **Tell a Good Story** —

In one of my first film industry internships, I read scripts and then wrote a logline, or a one-line summary. I had to reduce a 110-page

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script to one line, while conveying the premise, the genre, and the protagonist and his or her journey. Later, as a development executive, I worked with writers on developing scripts, many times based on books or true stories. We had to take complicated, convoluted stories and structure them for film or

television without losing their critical elements or emotional resonance. Both of these experiences turned out to be invaluable for

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writing motions because I was learning how to find the core of a story and then to structure those stories effectively and efficiently.

Advocacy writing is about telling a cohesive story. It is important to be clear about the main story you are trying to convey and to be mindful of it as you write the entire motion. I lost sight of this advice when I wrote a summary judgment motion in which I carefully, maybe even convincingly, laid out every single one of our possible arguments. I had the instinct — as less experienced writers sometimes do — to unload everything in the arsenal. The problem is that this method can give the minor arguments the same

billing as the main one. While there can be subplots in a motion, as in a film, you do not want them to distract from or overshadow the main story. By always focusing on your main story, or strongest argument, you will be in better position to choose what storylines or arguments should be included and how much weight they deserve. As one partner advised me, what you choose to take out of a motion is just as important as what you put in it.

#### — Strike the Right Tone —

When criticizing the other side’s arguments, it is tempting to craft the most devastating comeback with bombastic rhetoric, clever analogies, and maybe even an Abraham Lincoln quote. At times, frustrated by disingenuous arguments, I found myself resorting to that kind of attack. While it is certainly important to make your arguments stand out, highfalutin or overly harsh language can be counterproductive. When I worked at Creative Artists Agency, a large talent agency, they were not impressed by a writer who submitted a screenplay in a box full of candy. The writing should speak for itself. If anything, the candy signaled that the writing was subpar enough that a reader needed chocolate to get through it. If an argument is solid, there is no need to dress it up. Instead, the time should be spent on making sure the argument is backed up legally and laid out clearly.

As the motion buffet wound down, I sat in the courtroom during closing arguments. It was the first time I was able to see the trial. In the impressive federal courtroom, I watched the trial in action with all of its moving parts. It was only at that moment did I fully realize the impact of my motion writing. Hunched over a computer in my office for months writing, it was easy to overlook. I was contributing to one of those moving parts.

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