

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS FROM THE LIBRARY

MEET MORTIMER LEVITAN

Who was Mortimer Levitan? I've not been able to find out much about him. Most of what I know you'll learn from the biographical note at the beginning of the essay that follows: that he was graduated from the University of Wisconsin in 1912, received an LL. B. from the Harvard Law School in 1915, and practiced law for many years as an assistant attorney general in Wisconsin. That's not much, but it tells me that he came to Harvard a couple of years before Felix Frankfurter joined the faculty and graduated just before Roscoe Pound became dean, that he entered the practice of law when Woodrow Wilson was president and that he was still at it during the Eisenhower years. By the time he wrote this essay, in fact, he must have been almost seventy, and his years of experience surely explain the wisdom in his words. (I suspect that the lighthearted tone was his from the start.)

In addition to a remarkable amount of sound advice, this relatively short "chat," as Levitan called it, is full of sage and pointed asides. He captures the elusive distinction between dicta and holding by suggesting that we separate "chatter sentences" from "crux sentences." He warns against the dangers of late briefs, misstatements of law or fact, and sloppy writing. He notes "the coyness of precedents" and admonishes us to hunt them down. He also gives here the best short definition for an appellate brief that I know of: "a cubbyhole just large enough to

hold the essentials, compactly and neatly arranged, of a sound legal argument.” He’s right of course, and I wish more of mine were built like that. .

I realize only as I write this introduction that I don’t remember when I first ran across *Confidential Chat on the Craft of Briefing*. But I do remember that I was struck then, as I am now, by the freshness of Levitan’s words: Save for a few references to typewriter ribbons and the like, this essay could have been written last month. It doesn’t feel half a century old, and I’m betting that it won’t in fifty more years feel a hundred. Like all the best advice, Levitan’s is timeless.

And so I invite you—courtesy of the Wisconsin Law Review, to which we are grateful for reprint permission—to pull up a chair and learn a little something from Mortimer Levitan about turning words into arguments and arguments into briefs.

DPM
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