

**U.S. Court of Appeals
for the
Ninth Circuit
Appellate Advocacy Seminar**

**September 28, 2017
Billings, Montana**

Writing Persuasive Appellate Briefs and Tips for Oral Argument

PRESENTED BY

The Honorable Sidney R. Thomas

(Chief Judge, Ninth Circuit Court of Appeals)

Kyle Gray (Holland & Hart)

Tony Gallagher (Federal Defender for the District of Montana)

**Tips for Writing
a Persuasive
Appellate Brief**

REMEMBER YOUR ARE WRITING AN APPELLATE BRIEF IN THE 21ST CENTURY



DIVERSITY



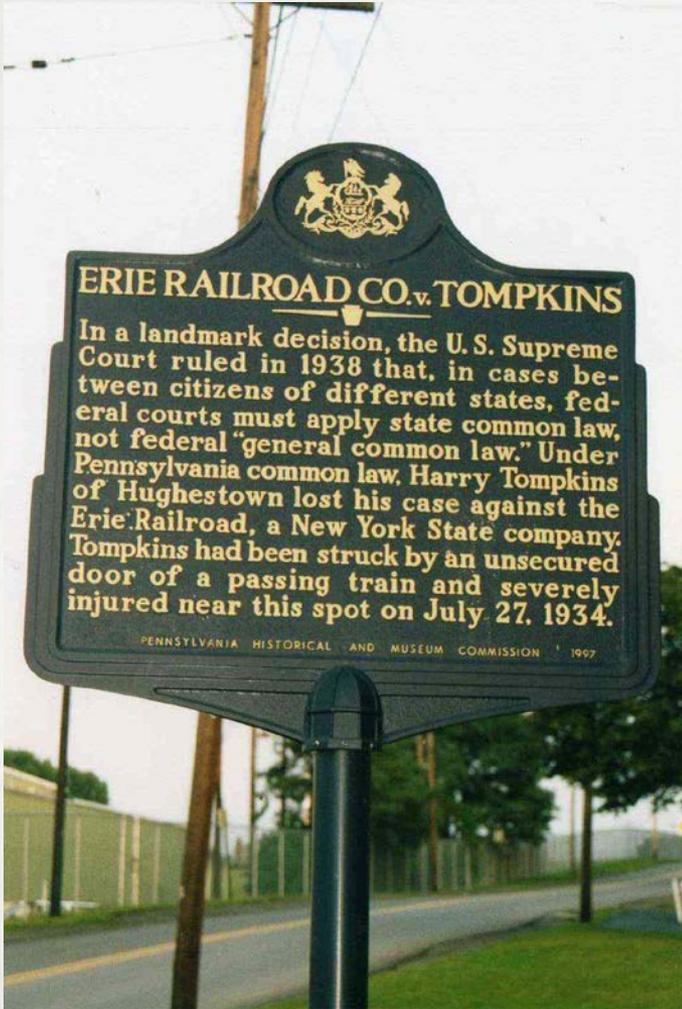
Not Aerie

DIVERSITY

Not Eerie



DIVERSITY

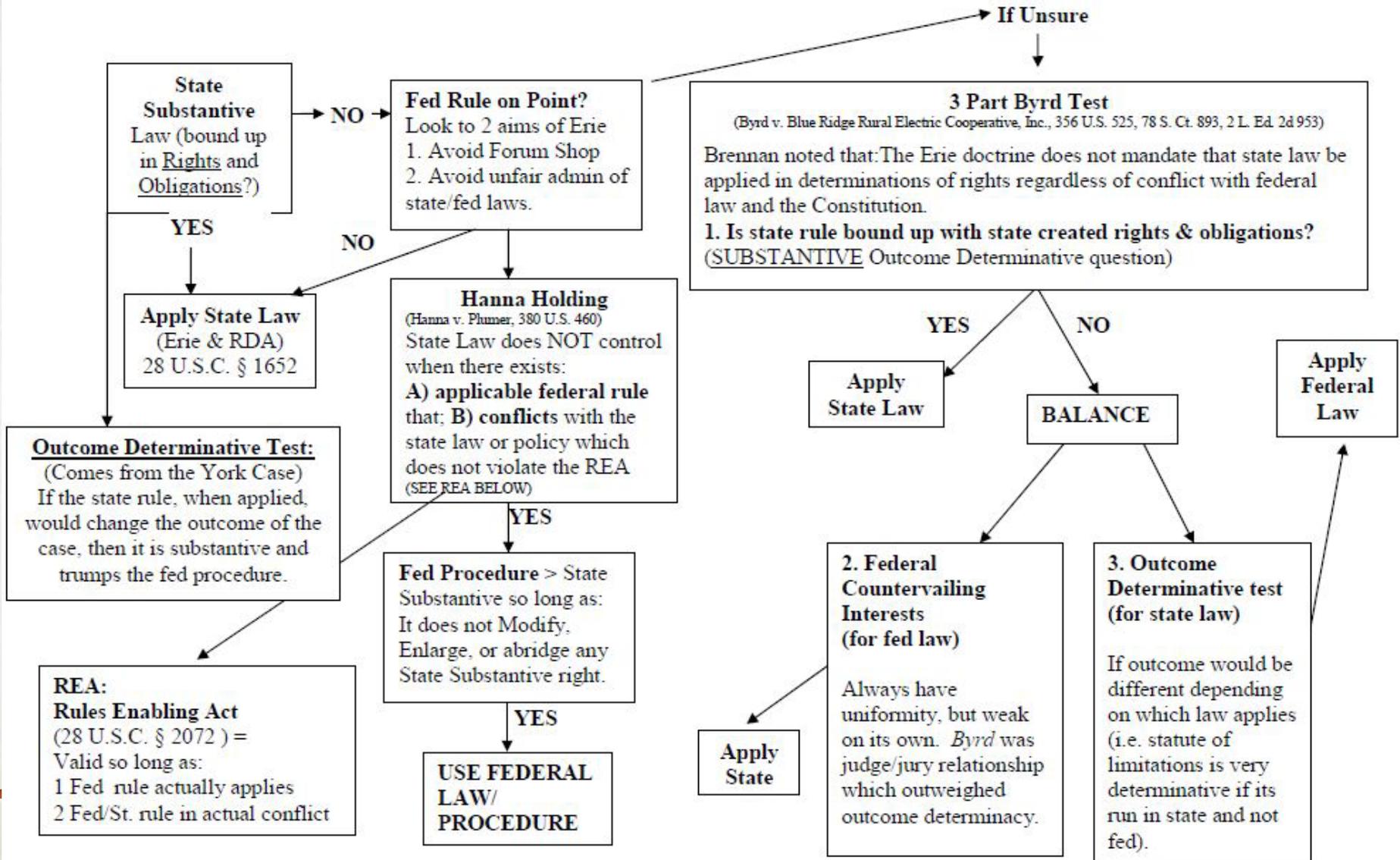


But *Erie Railroad Co. v. Tompkins*,
304 U.S. 64
(1938)

BUT DIVERSITY IS COMPLICATED

Erie Doctrine Flowchart:

The discouragement of forum shopping and avoidance of inequitable administration of the laws



FOLLOW THE RULES



PAY ATTENTION TO THE STANDARD(S) OF REVIEW



STANDARDS

STRUCTURE

Edgar Dale's Cone of Experience

People generally remember...
(learning activities)

People are able to...
(learning outcomes)

10% of what they read

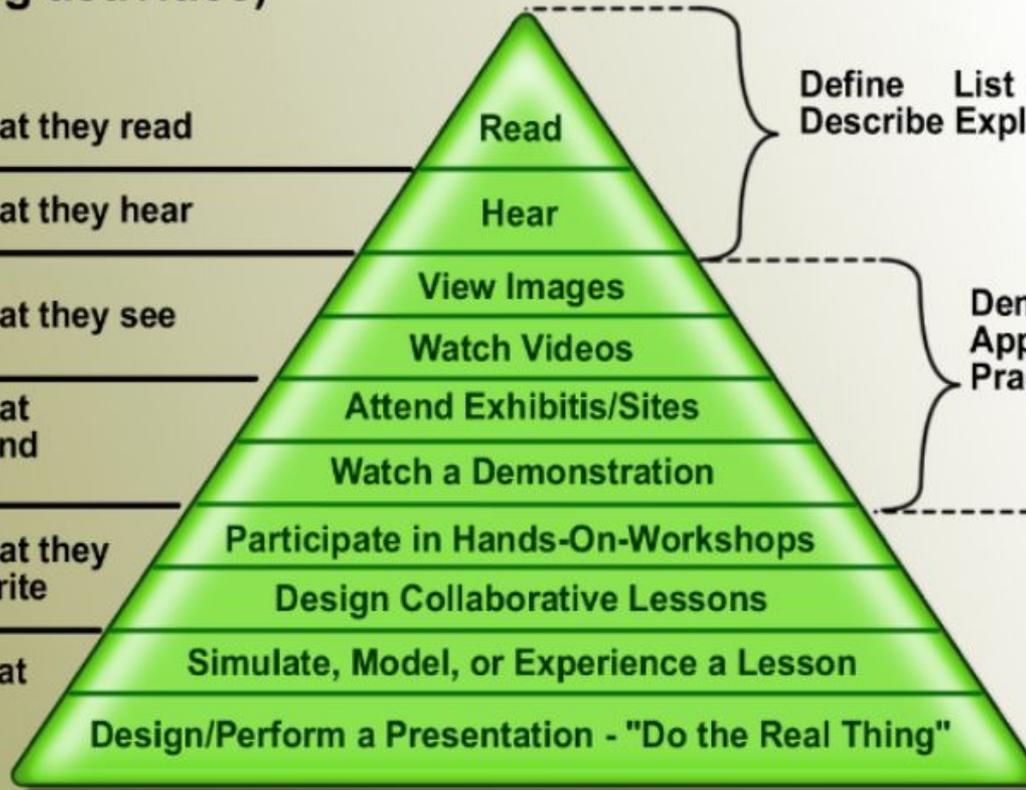
20% of what they hear

30% of what they see

50% of what they see and hear

70% of what they say and write

90% of what they do.



Define List
Describe Explain

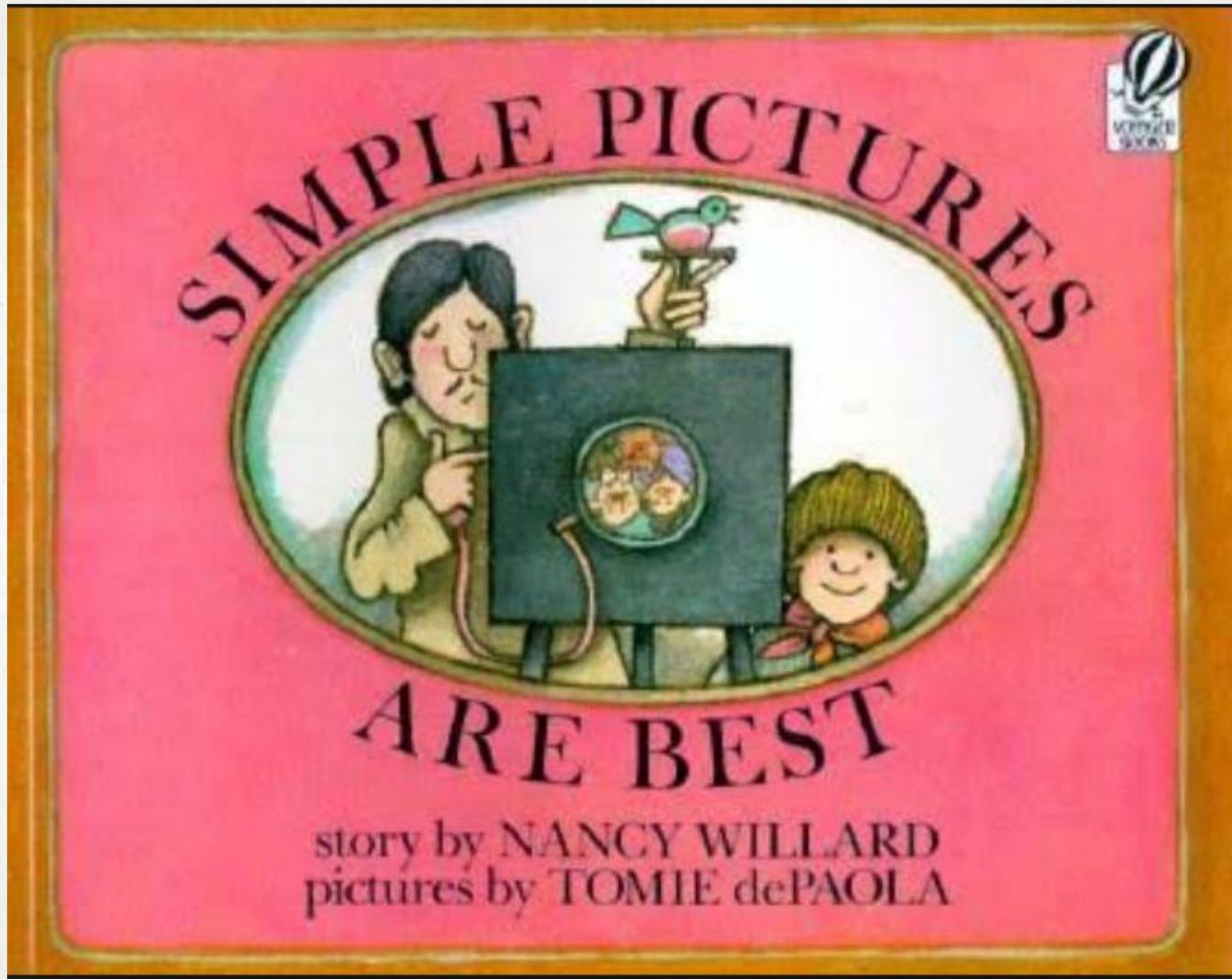
Demonstrate
Apply
Practice

Analyze
Define
Create
Evaluate

AMICUS CAN BE YOUR FRIEND



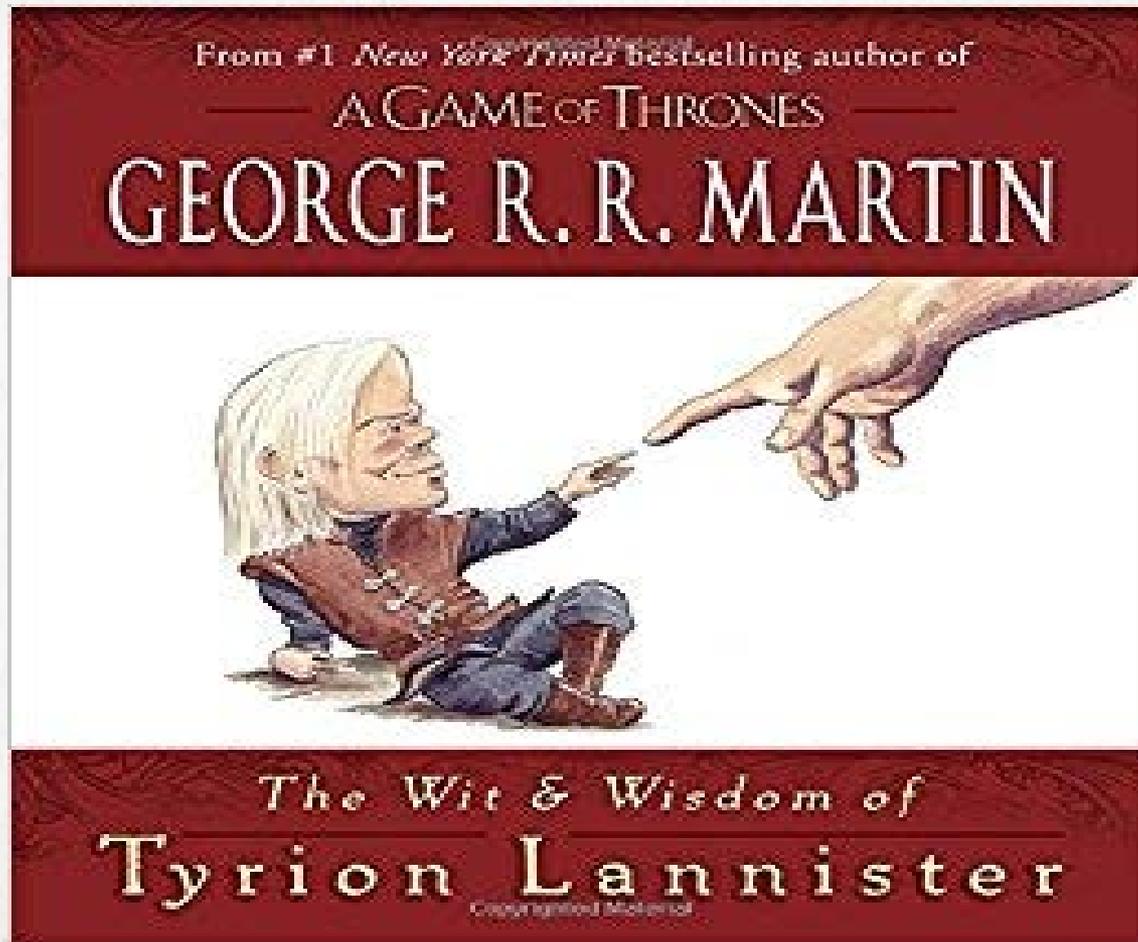
KEEP IT SIMPLE



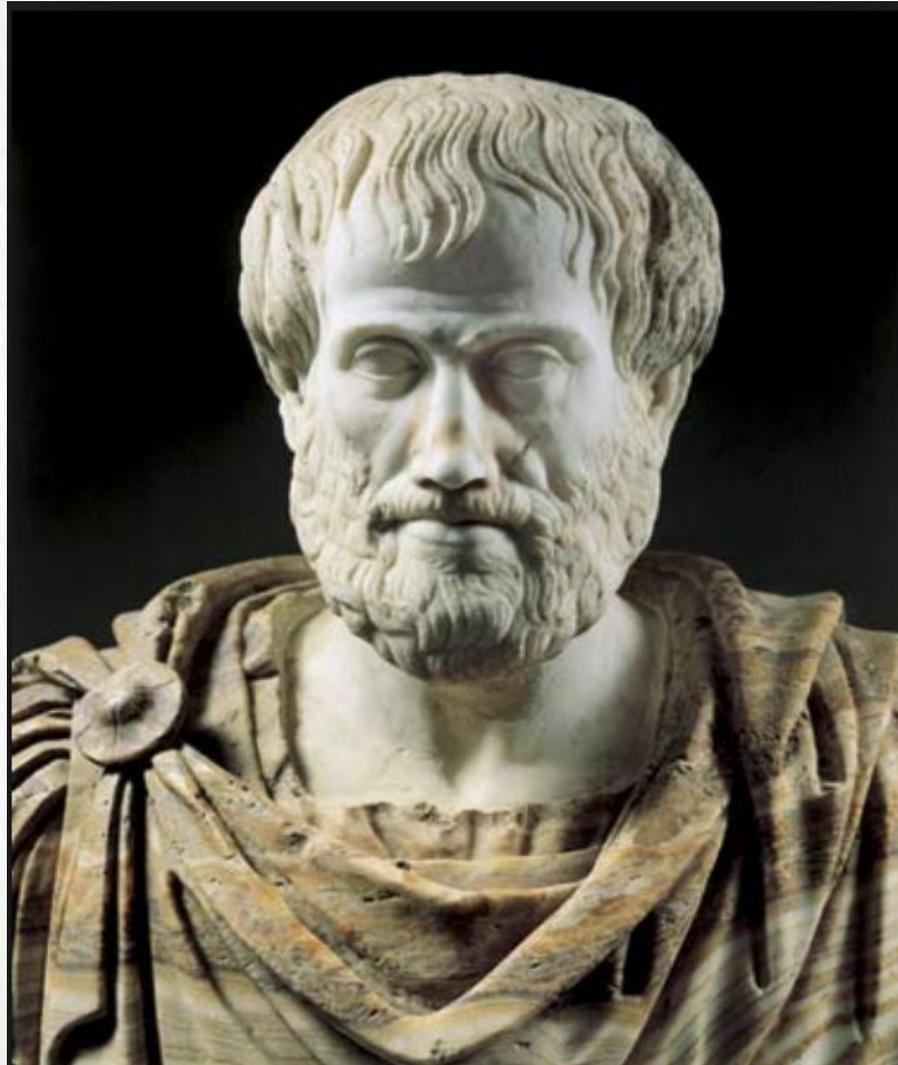
DON'T BE AFRAID TO BE DIFFERENT (WITHIN REASON)



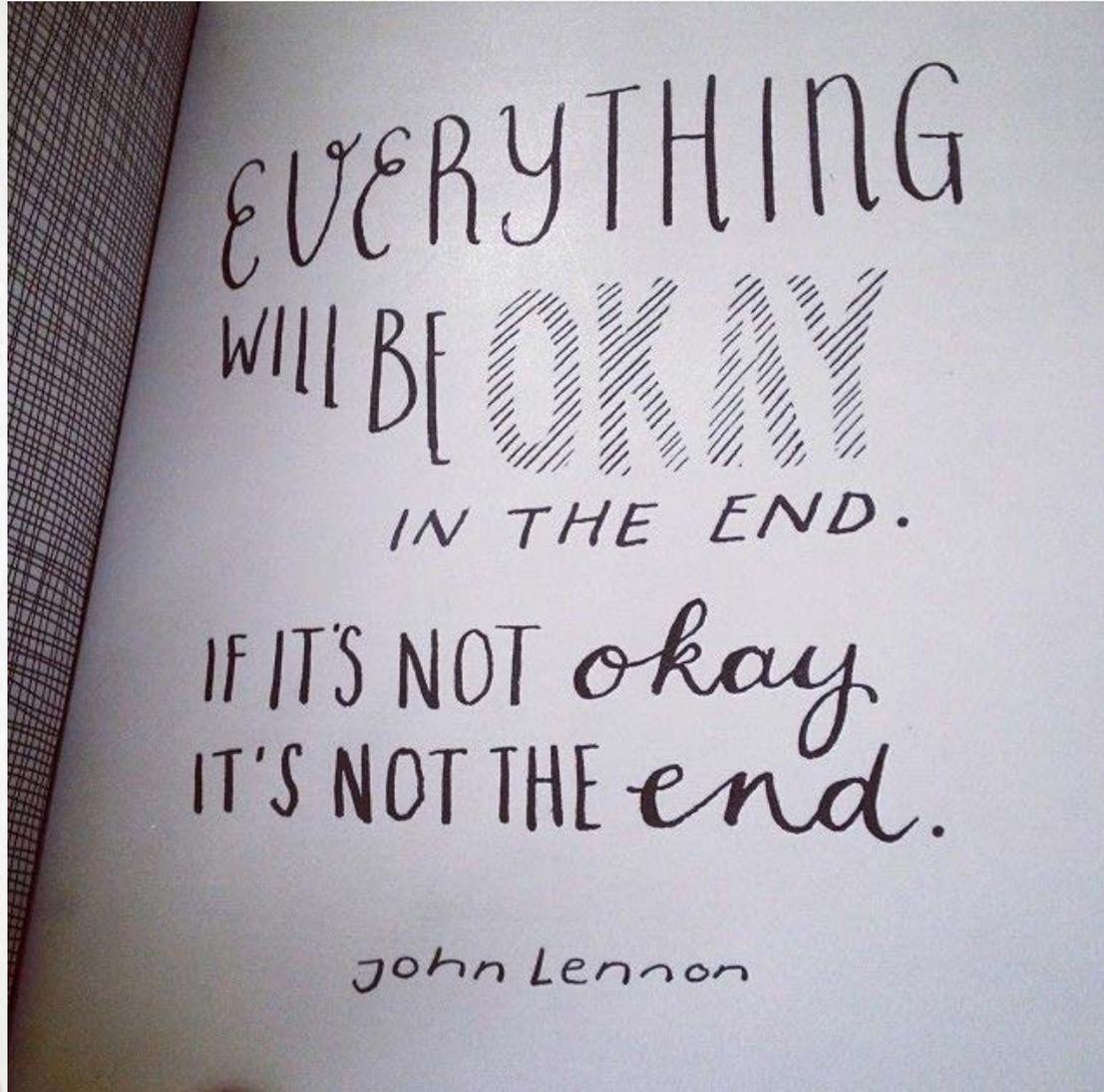
MASTER THE METAPHOR; QUOTE CORRECTLY; ANALOGIZE EFFECTIVELY



WRITE LIKE ARISTOTLE



DO NOT BLOW THE CONCLUSION



Tips for Oral Argument

ORAL ARGUMENT STARTS WITH WRITING THE BRIEF

It was a dark
and stormy night.

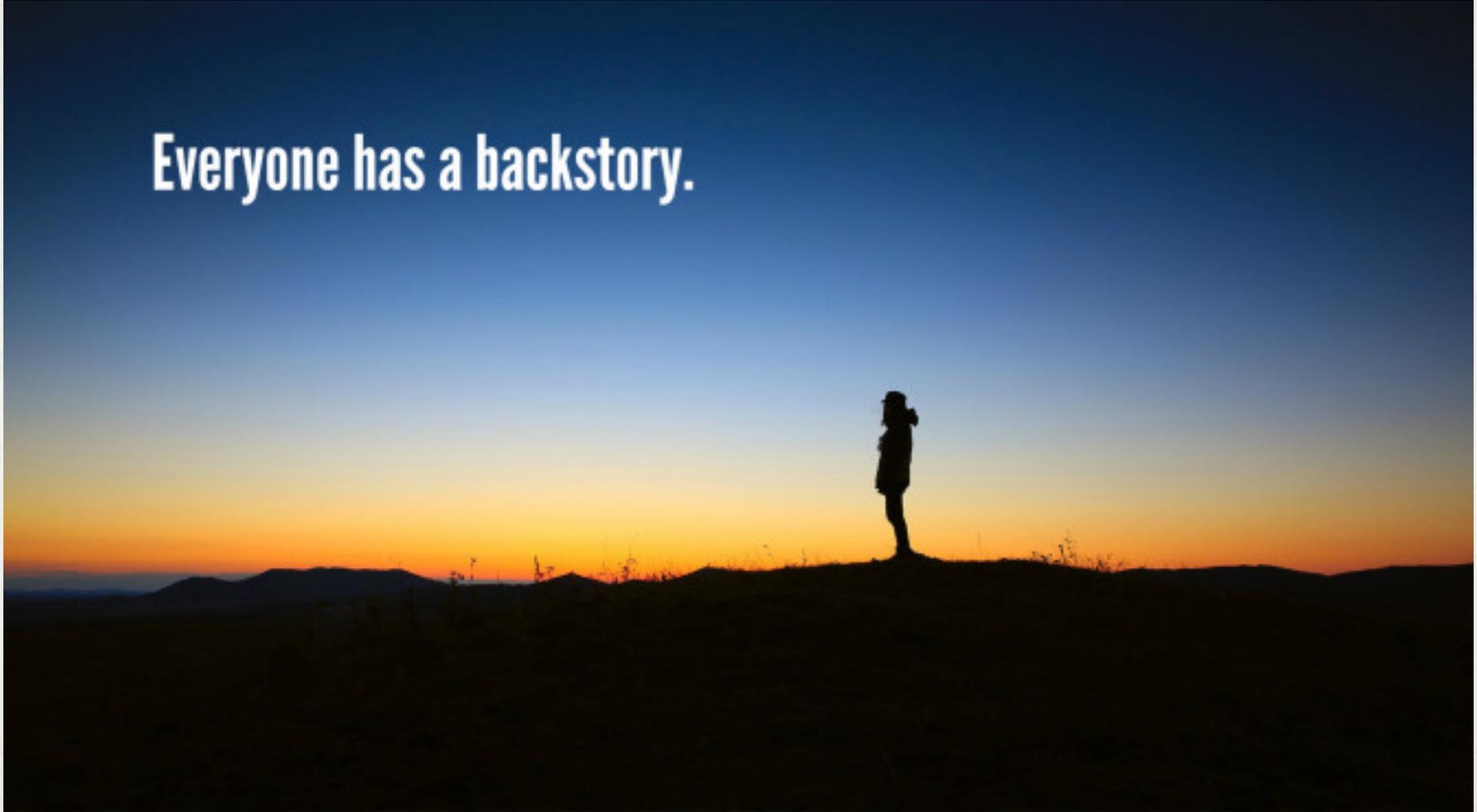


DOUBLE-CHECK JURISDICTION AND RESEARCH

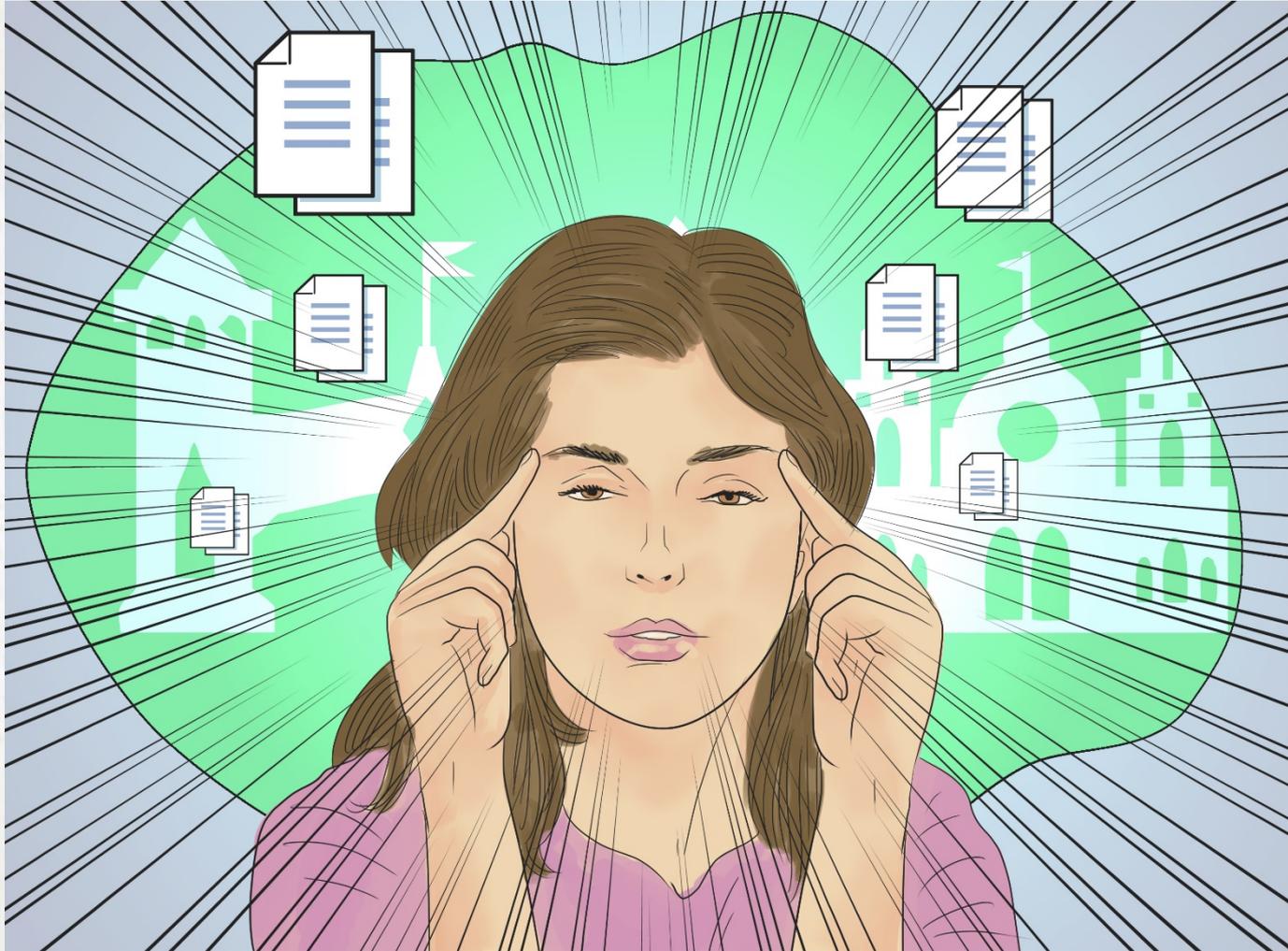


KNOW THE BACKSTORY

Everyone has a backstory.



CAREFULLY SCRIPT - AND MEMORIZE - YOUR OPENING



BUT, AS APPELLEE, BE FLEXIBLE



ROAD MAP YOUR ARGUMENT



REMEMBER THE BIG PICTURE



**DON'T ARGUE. PERSUADE.
DON'T DEBATE. DISCUSS.**



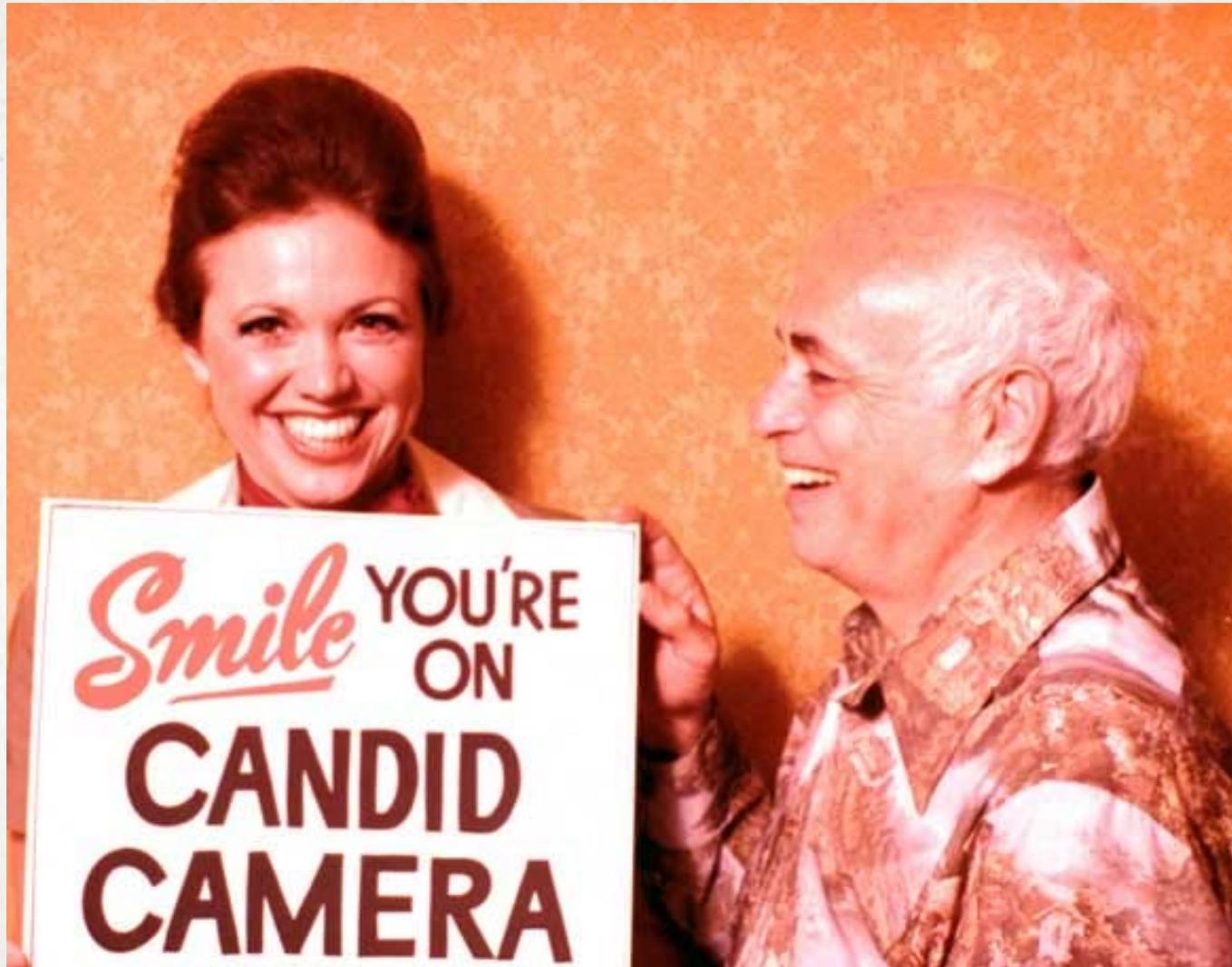
BE REALISTIC



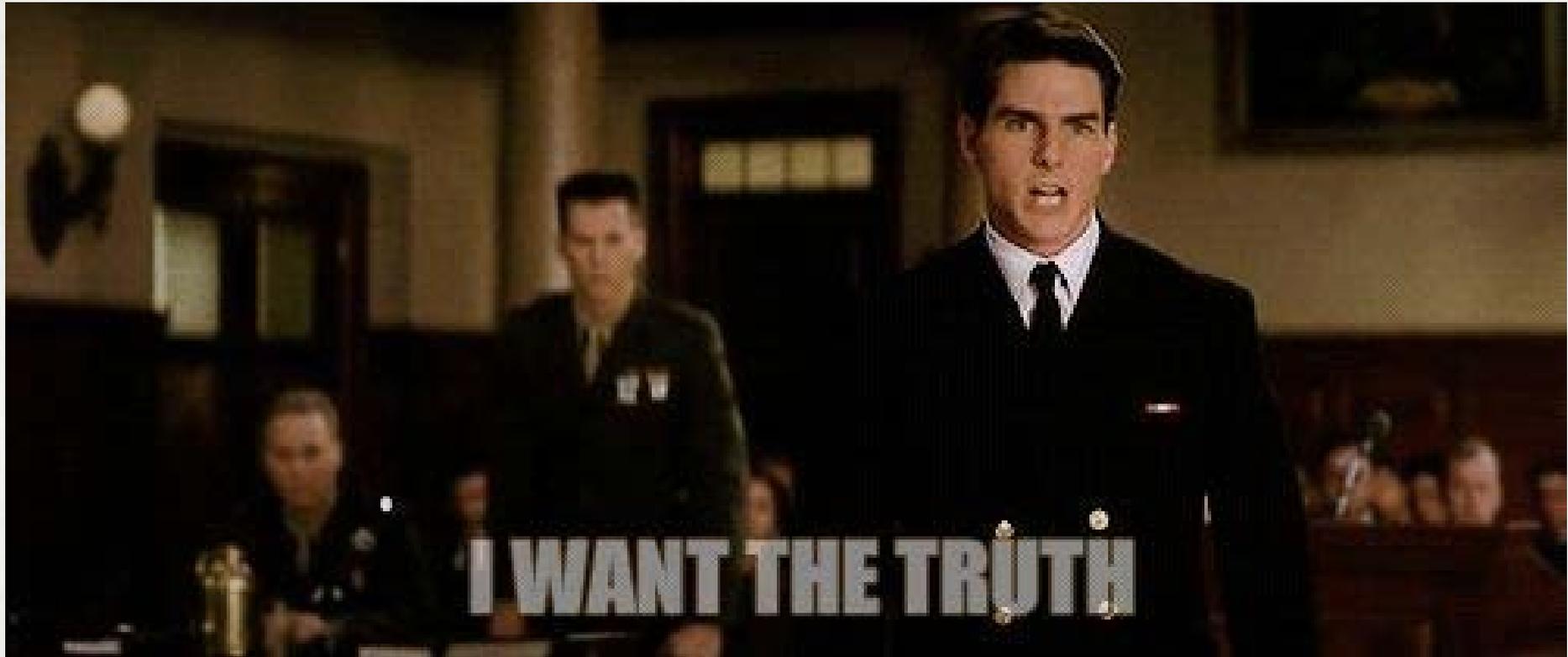
BE PREPARED - BEYOND THE BRIEFS AND THE RECORD!



BE CANDID



BE RESPONSIVE



STYLE AND DEMEANOR



WHILE YOUR OPPONENT ARGUES



**WHEN THE BENCH IS COLD, SAY WHAT
NEEDS TO BE SAID, THEN SIT DOWN.**



QUESTIONS?

Thanks for your attention