

## JOHN RHODES' TOP TEN

(The Top Ten Things to Remember in a Ninth Circuit Appeal)

- 1) PRESERVE ISSUES IN THE TRIAL COURT
- 2) FILE THE NOTICE OF APPEAL ON TIME
- 3) SCOUR THE RECORD
- 4) BRAINSTORM WITH DC COUNSEL AND THE CLIENT
- 5) INCLUDE ALL RELEVANT FACTS IN THE STATEMENT OF FACTS (THE GOOD , THE BAD AND THE UGLY)
- 6) IDENTIFY LEGAL ISSUES AND STANDARDS OF REVIEW
- 7) BALANCE FACTS AND ARGUMENTS (IF IT'S A FACT INTENSIVE APPEAL, E.G., TRIAL OR SUPPRESSION HEARING, REALIZE THAT SOME ARGUMENTS AND CASELAW NEED TO BE SAVED FOR THE REPLY BRIEF DUE TO WORD LIMITS)
- 8) MAKE SURE ISSUES/ARGUMENTS ARE PRESENTED IN OB SO THEY ARE NOT WAIVED
- 9) REMEMBER HIERARCHY OF AUTHORITY (USSC, 9<sup>TH</sup>, OTHER CIRCUITS, DISTRICT COURTS, STATE COURTS)
- 10) TRY TO ANTICIPATE GOVERNMENT RESPONSE TO SET-UP REPLY BRIEF
- 11) REPLY TO ALL GOVERNMENT ARGUMENTS AND POINT-OUT FACTS, LAW, AND ARGUMENTS THE GOVERNMENT DOES NOT RESPOND TO