As I complete my third year at Jenner & Block, I look upon taking a Seventh Circuit appeal as my defining experience as a lawyer. I felt ownership over work that mattered. Without the experience, I doubt I would have remained in the legal profession. I write this article to share what it was like to brief and argue the appeal, reflecting, along the way, about the lessons I learned and how I grew as an attorney.

I wanted more. I joined Jenner & Block in January 2011, and, one year later, overwhelmed by the hours requirement, I felt that I had fallen behind, not having acquired the skills that I perceived to be necessary for success as a lawyer. The bulk of my first year was spent reviewing documents and conducting fact analysis and legal research. I had not written any briefs. I had not taken or defended any depositions. In total, a few appearances at status hearings and the preparation of a single pleading comprised my “legal” experience.

In retrospect, I was wrong. What I now appreciate – after becoming more involved in cases and watching them progress – is that I am a better brief writer and case manager precisely because I spent that time reviewing documents and conducting fact analysis and legal research. It taught me critical skills: how to build a factual narrative and analyze legal issues.

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Too bad I didn’t come to these realizations earlier. In January 2012, I continued to feel insecure about my legal skills and future, which, I suspect, is the product of beginning my career during a recession. My ever-present concern was that I would become too expensive to continue to bill out for document review, fact analysis, and legal research; yet I would lack the experience to be trusted with brief writing and case management. I didn’t want to leave.

At some point that January, it dawned on me: I could guarantee a brief writing opportunity and an oral argument by taking a pro bono Seventh Circuit appeal. I knew that taking the appeal would mean a lot more work (and it was). But taking the appeal guaranteed me the chance to work through my insecurities, developing the skills I felt that I was missing. So I took it, with my only regret being not having taken an appeal earlier.

On January 17, 2012, I reached out to Barry Levenstam, the guru of appellate work at Jenner & Block, to inquire about taking an appeal. I went in blind, knowing nothing about the appellate process. Three days later, I sat in Barry’s corner office, nervous and intimidated by his stature. He called the Clerk’s Office at the Seventh Circuit, and the Clerk listed three criminal cases to choose from. One case concerned the theft of copper at a warehouse, while the other two were drug cases. Barry told me to review their dockets and pick one. He also told me to find a partner to supervise me.

I went back to my office and pulled each case’s district court and appellate dockets. I had little clue what to look for. Accordingly, I opened up docket entries on PACER somewhat haphazardly, incurring the 10 cents per page charge, and read. Only later did I learn that I should have been looking for pre-trial motions that were denied, for these were ripe grounds for an appeal. This has been a routine experience for me in law: only as I see a case progress do I learn what I should have done differently in retrospect. I did not have an interest in drug cases, so, primarily on that basis and not the potential strength of the appeal, I selected the theft case, United States v. Wolfe, No. 11-3281.

Gregory Wolfe was convicted of bank theft and interstate transportation of stolen goods, and the United States District Court for the Northern District of Indiana sentenced him to be imprisoned for 88 months on each count, to run concurrently. Wolfe’s conviction arose from his purported role in the theft of 391,941 metric tons of copper, valued at approximately $2,947,348.00, from a warehouse in Gary, Indiana where he worked. The copper was traded on a commodities exchange, the London Metal Exchange, and owned by JPMorgan Chase Bank.

As far as finding a partner supervisor, I solicited recommendations from more senior associates at work. I wanted someone with a reputation for teaching young attorneys how to write, which I view as the most important skill for young attorneys to acquire. I wanted someone who would guide my strategic choices and refine my analysis, but who would spare me the pains of micromanagement. I wanted this to be my appeal. I found that my pleasure at work came when I had ownership over meaningful work, not when I was given discrete tasks with a predefined work product. The recommendation I received from multiple associates was Michael (“Mike”) Brody.

I now had an appeal and a supervisor. My next tasks were to introduce myself to the client, Gregory Wolfe, and identify issues to raise on appeal. To identify issues to raise on appeal, I simultaneously proceeded along three courses: I asked trial counsel for problems he identified before and during trial; I requested and reviewed the pre-trial motions and transcripts;
and I reviewed a treatise on criminal appeals in the Seventh Circuit (Federal Criminal Practice by Timothy A. Bass) to understand what issues can even be raised on appeal.

It would not have struck me to reach out to trial counsel but for the sage advice of Barry and Mike. Trial counsel, after all, was intimately familiar with the case and the disputed rulings below.

As an aside, in Angel of Death Row, Andrea Lyon, a former Cook County Public Defender, emphasizes the importance of trial counsel laying the foundation for appeal, and how the Cook County Public Defenders’ Office began requiring trial counsel to preserve the record for appeal by routinely bringing certain motions and objections at the trial stage, even knowing that some certainly would be denied. I understood this point in an academic way. But I did not appreciate its importance until I began preparing the appeal. Because of the onerous plain error standard for errors not raised at trial, it is more difficult to prevail on appeal in the face of omissions by trial counsel.

I read, re-read, and read again the pre-trial motions, trial transcript, and sentencing documents and transcript to spot issues. Legal issues do not come nicely packaged; they are jumbled in a mess of facts. And with that, and having no background in criminal law, I felt anxious. What if I missed the winning legal argument? That could be the difference between a seven year sentence and freedom. But Mike reassured me, echoing Lyon’s point: The primary role of appellate counsel is to advance issues raised below, not to try to find new issues.

With that advice in mind, I created a comprehensive list of the motions and objections before, during and after trial, as well as anything else that struck me as problematic (informed by my background reading of Federal Criminal Practice). I evaluated the strength of each argument, ultimately conferring with Mike when choosing which arguments to include in the brief. We settled on two arguments: prosecutorial misconduct during closing and the district court’s miscalculation of the amount of copper purportedly stolen by Wolfe during sentencing. The former could overturn the verdict and the latter could reduce Wolfe’s sentence by more than one year under the Sentencing Guidelines.

Now, it was time to write. Until recently, I have found writing to be unsatisfying. My interest in college was math-driven classes, such as economics and statistics. I am fond of the certainty that comes with one correct answer. I thus avoided essay writing, which struck me as nebulous. Yet here I am, a lawyer: writing is one of the primary tools of my trade and, consequently, one of the best measures of my competence.

After more than a month of writing – mostly staring at the screen, generating a new sentence or two every few minutes – I circulated the draft opening brief. I thought it was good. Was I in for a surprise.

Barry circulated the first comments to the draft brief. In his email to me, he led with the “good” news: “[T]here do appear to be some cases worth relying on for the voucher issue.” It was downhill from there.

Barry identified four broad areas for improvement. The Statement of Facts left “too many questions unanswered, and [was] written very choppily.” The structure of the brief was difficult to follow due to, for example, my failure to sign post; tell the reader where you are going, and then go there. My deployment of cases needed dramatic improvement. String cites with parenthetical sentence fragments are not the way to persuade. With limited exceptions, as Barry emphasized, using string cites is like telling the judge: “See, I have done some research. Please look at it.” More important is to emphasize the point of the cases such that the judges and clerks will notice and consider them. Last, to cap it off, I had a knack of undermining and understating my own points.

I set to work revising, and, at some point in my fury of rewriting, Barry’s advice clicked. Good legal writing is telling a story, and stories do not flow when littered with unnecessary formality (e.g., “Plaintiff, by and through undersigned counsel”), footnotes, block quotes, and parenthetical sentence fragments. Case citations serve to amplify the story and provide context; they are not an end in themselves. I learned from Mike the persuasive power of brevity. I remember him cutting hundreds of words in a
near-final version of the brief because, in his words, there was no reason that the two arguments needed to be 14,000 words long (the maximum length for an opening brief).

Finally, on May 21, we filed the opening brief. I thought the first stage was done. Again, I was in for a surprise.

One month later, on June 21, the Supreme Court decided *Southern Union Co. v. United States*, 132 S. Ct. 2344 (2012). It held that the Sixth Amendment requires that the jury and not the judge determine all facts that comprise a criminal fine. I doubt that I would have ever known about that case but for a phone call from Mike that day. Without Mike’s issue spotting, we would not have filed an amended opening brief, in which we analogized *Southern Union* to Wolfe’s restitution order. Wolfe’s restitution order was not supported in full by the jury verdict. This argument ultimately formed the basis of our cert. petition – though unsuccessful, I am confident that the Supreme Court will take up the issue someday. For those who are skeptical of the value added by lawyers, note that good lawyers do make a difference.

I recently read an article advising lawyers to read more cases, thereby developing a background knowledge and intuition for the law. I see the rewards of this practice in Mike. He regularly sets aside time to read cases – unlike me, who rarely read a case that wasn’t part of a research assignment. As a result of this dedication, Mike sees issues and legal developments he otherwise would not know about. He has, over the years, developed a vast reservoir of knowledge – an internal treatise – to draw from when spotting legal issues. I observe in Mike the qualities I strive to emulate: to read cases for pleasure, to understand how the law is structured and is developing, and to deploy that knowledge to shape the law. Be not just a spectator; be a lawyer.

Then came the government’s brief and my reply brief. There were few further lessons worth mentioning. I found that once I began grasping the structure and flow of legal writing – there is almost a rhythm and sound to it – the briefing went far more quickly.

**September 19, 2012.** I cherish this day. It marks the day when I developed confidence that I could become a fine lawyer. It was the day when I gave my first oral argument.

I woke up. I put on the navy blue Brooks Brothers suit my father-in-law bought me as a wedding present – my lucky suit. I got into the office around 7:00 a.m. I reviewed the materials in my oral argument binder one more time. In truth, I mostly stared at the paper, turning one page after another as I dreamed about the imminent oral argument. In this waking dream, I did not envision particular question and answer exchanges with the judges. Rather, I dreamt of outcomes: the judges being amazed by an insightful answer I just gave – whatever it was. I could only hope.

I walked over to the courthouse with Mike, acutely aware of how slow time was moving. We went to the 25th floor. I signed in for the oral argument, and, per Mike’s advice, stood in the empty courtroom, taking it in. The three judges sit on a raised bench directly in front of the podium. It is as if counsel speaks up to the Gods. The counsel tables and visitor benches are nowhere in sight. I would be on an island, beckoning a higher power. Oh God.

Mike and I sat on the visitor benches. I was scheduled as the third case that morning – meaning that my agonizing wait would be still longer. Mike listened to the first batch of oral arguments. I fixated on the floor, pondering why my head had emptied itself. I began asking myself questions about the case record to jog my memory: Why was the government’s misconduct during closing outcome determinative? Blank. Why was Supreme Court’s decision about criminal fines in *Southern Union* analogous to the restitution issue here? Blank. “That’s no good.” I thought to myself. Those three words played in a loop in my mind. Yet I did not panic. I just prayed.

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Mike periodically gave me advice about the judges on our panel, a welcome interlude from my “that’s no good” mantra. “Judge Bauer is a former prosecutor.” Maybe that’s not good. “Sometimes his voice is soft.” I certainly know that’s not good. I usually watch movies with subtitles on. “Judge Bauer’s question whether one attorney had been a trial lawyer was a dig at the attorney’s flowery prose.” Ouch. I don’t even know the insults from the compliments. “Judge Kanne is not saying much today.” I can work with that. “Judge Wood will be an active questioner. She may be inclined to our client’s position.” Don’t screw that up.

Game time. The clerk called *United States v. Wolfe,* and Barry, Mike and I moved to the petitioner’s table. They sat down. I did too – but only for a moment. Moment over. I was at the podium, on the island, with my binder opened up to the “Introduction” page and a gusset folder containing the briefs and record on the table to my left. Judge Kanne introduced me and asked me to begin.

For the first time in nearly two years as an attorney, I felt alive. As I stood at my island, I felt at peace, as if the eight years I spent immersed in policy debate and my Second City improv classes were meant to prepare me for this very moment. I listened, not only hearing the questions asked, but deciphering the motivation behind them. I answered both. I felt purpose, that I was meant to be a lawyer, not a management consultant or an engineer. I felt part of a perfect moment.

Then it was over. Judge Bauer remarked during oral argument that “time passes fast when you’re having fun, I suppose.” I agreed, responding: “Time is passing quite fast for me too.”

Three months later, the Seventh Circuit issued its decision, denying Wolfe’s appeal in its entirety. *See United States v. Wolfe,* 701 F.3d 1206 (7th Cir. 2012). We pursued a cert. petition, but, in June 2013, that too was denied.

The result was disappointing, but after pondering and more introspection, I was confident I did the best that I could. Was all that time and effort worth it? Undoubtedly, yes. Gregory Wolfe deserved a chance to make his case, and I enjoyed making it for him. Looking back, the reason I enjoyed the appeal is that I felt ownership over my work and it was work that mattered. To me, those two factors make all the difference.