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Logical fallacies have no place in legal argument

By Donald P. Eckler
Donald "Pat" Eckler is a partner at Pretzel & Stouffer focusing on professional liability defense, insurance coverage litigation, and general tort defense. He is the legislative chair of the Illinois Association of Defense Trial Counsel. His views are his own and not those of his firm or its clients.

The cornerstone of civilization is the rule of law. It is a necessary, but not sufficient, condition that allows the abject poverty and squalor that was the vast majority of humanity's birthright for thousands of years to be replaced by ever-increasing prosperity enjoyed by a still wider proportion of humans.

Logic is the guardrail of the rule of law, and when its tenets are violated the system is not well served.

In a recent oral argument before the Illinois Supreme Court in an insurance coverage matter regarding the interpretation of a mechanical device exclusion in an automobile insurance policy and whether the exclusion applied to a grain augur, counsel representing the respondent (who was injured as a result of a traumatic amputation of his right leg above the knee in an accident involving the grain augur) began his argument with an argumentum ad passiones:

"We have the privilege of representing Kent Elmore in this case. Kent is here. I understand he drove his three-wheel motorcycle up from Effingham County today. It was a brisk ride."

He followed that with an introduction of his son seated in the gallery, mentioning he is the state's attorney of Clay County.

While the Republic will not fall, the law is not served by such arguments that do not focus on the issues at hand that apply logic and legal reasoning. This is especially true with regard to purely legal issues like the interpretation of a policy of insurance that was and is at issue in *State Farm v. Elmore*.

As Justice Michael B. Hyman recently wrote for the majority in the *General Casualty Company of Wisconsin v. Burke Engineering Corporation*, 2020 IL App (1st) 191648, ¶ 4, wherein he found that there was no insurance coverage for claims arising out of alleged conduct in concealing the release of contaminated well water to the residents of the Village of Crestwood:

"After more than a decade of litigation, we realize that this is a disappointing result for the residents of Crestwood. In applying insurance law, though, the amount of harm is not, and should never be, taken into consideration. Otherwise, the law becomes unpredictable, totally arbitrary, and dependent on the whim of the individual judge, all of which is repugnant to the rule of law."

Advocates should refrain from making, and courts should not allow themselves to be swayed by, arguments to emotion, because one of the chief purposes of the civil justice system is to remove the litigants from the resolution of the dispute and to subject the facts to neutral principles which the parties and the public at large can trust. In the absence of applying consistent, independent modes of analysis, the system cannot properly function.

Corollary to that is the use of ad hominem, which is an insidious form of logical fallacy as it undermines the civil justice system itself. Civility among counsel has long been sought by the courts, as personal attacks do exactly the opposite of the purpose of having advocates, and not litigants, work to resolve disputes, by removing the personal. Whether it is subtle in the form of aggrandizing one's own experience over one's opponent, or challenging the motive for an opponent's position, such arguments do not address the merits of the issues presented.

Still another fallacy that should be avoided, not because it attacks the system, but because it is antithetical to getting at the truth, are arguments based upon the post hoc ergo propter hoc fallacy.

Just as the rooster does not cause the sun to rise, so too in the absence of evidence of force sufficient to cause an injury or a comparison of studies before and after the accident that show an actual injury, the plaintiff's mere complaint of pain after an accident does not necessarily mean that the accident caused an injury that resulted in the pain.

It could be claimed that the defense of the common law system itself is a logical fallacy as that legal system relies on argumentum ad verecundiam (appeal to authority). However, the internal logic of the system is to give consistent results necessary for the operation of the system and is not a logical fallacy. Kevin W. Saunders, "Informal Fallacies in Legal Argumentation," 44 S.C. L. Rev. 343, 353 (1992-1993).

Whether it is an argumentum ad ignorantiam (argument from ignorance), petitio principii (begging the question), argumentum ad nauseam (repeating the argument until no one cares anymore), argumentum ex silentio (argument from silence), ignoratio elenchi (missing the point), ipse dixit (bare assertion), or any number of a range of logical fallacies, they should be avoided.

Logical fallacies are often seductive in their simplicity and convenience, but whether in court or in public discourse, proper reasoning should dominate.
