

Persuading Judges in Writing: Tips for Lawyers (And how technology can help)

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Introduction

In this short article,¹ I explain how a good writing style can help lawyers to persuade judges.² I then provide some practical tips.

I have compiled these tips after reading Michael Smith's excellent book, [Advanced Legal Writing](#).³

The main persuasion processes Smith describes come from classical rhetorical theory.

In classical rhetorical theory, the three processes of persuasion comprise logic, emotion, and credibility.⁴

Your writing style can affect all these persuasion processes. And specialist editing software such as [StyleWriter](#)⁵ can help you to use a persuasive writing style, quickly and easily.

A. Written persuasion provides the best opportunity to persuade a judge

American lawyers have used trial briefs and appellate briefs for a century or more.⁶ And even courts with strong oral traditions have shifted to written advocacy.

The Australian [High Court](#) provides an example.⁷ According to Justice [Michael Kirby](#), in shifting to written argument:

"Australian courts have changed, probably forever, the precise skills of advocacy that they enlist".⁸

England, too, has "now moved so far in the direction of core arguments always being in written form"⁹ that Justice Lightman has said:

"[A]dvocacy ... today ... transcends its traditional form of oral presentation in court and includes and finds critical expression in written forms in which expertise is called for of the advocate and which can have a decisive effect on the outcome of a case ... Counsel now requires expertise at least as much in preparing [written skeleton arguments] as in making oral submissions."¹⁰

According to Andrew Goodman, written advocacy in England (and Australia and America) now provides "an essential tool" that "enables you to damage your opponent without even opening your mouth".¹¹ Written persuasion offers a "unique opportunity, not to be wasted".¹²

B. Your writing style can affect all three classical persuasion processes

Your writing style can affect all three classical persuasion processes.

First, if you do not write clearly, then your audience will not understand the *logic* of your argument.¹³ And, in legal writing, logic persuades judges most.¹⁴

Second, writing style affects your reader's *emotions*. Well-written prose makes readers happy, but a poorly written document forces the reader to struggle through the document.¹⁵

For lawyers, "well-written prose" means a writing style that captures the judge's attention and helps the judge to get the lawyer's point.¹⁶ Specifically, lawyers please judges by writing clearly¹⁷ and by organising their material.¹⁸

Third, writing well and eliminating "trivial" errors boosts your *credibility*.¹⁹

Smith says credibility involves: "good moral character", "goodwill", and "intelligence".²⁰

"Good moral character" includes zeal, respect, candour, truthfulness, and professionalism.²¹

Whereas good character refers to one's *general* moral makeup, "goodwill" refers to one's disposition to a *specific* audience²² (for example, a judge or opponent).

The "intelligence" traits that relate to writing style include paying attention to detail, organising an argument, articulating an argument, and empathising with the reader.²³

C. Advocacy experts suggest some specific tips

Judges and lawyers have suggested some specific, practical tips for writing persuasively. I have collected some of these tips below, framing them around Smith's persuasion strategies and the three classical persuasion processes.

Rather than memorising these tips, try using specialist editing software that automatically scans for many of the tips.

UK company [EditorSoftware](#) provides the best specialist editing software I have found, called [StyleWriter](#).²⁴

When I used EditorSoftware's [StyleWriter](#) on this article, it suggested cutting the unneeded intensifier "very", the wordy phrase "important to note", and overlong sentences. I explain these writing flaws in the following tips.

Tip 1. To show what Smith calls goodwill and good moral character, write politely. Scorn, insult, sarcasm, and offensive language:

"are not the stuff of which real persuasion is made. The argument is not convincing because the reader soon recognizes its artificiality".²⁵

Uncivil language lacks candour; it comprises "a form of bad manners".²⁶

Tip 2. To evince credibility, avoid grammatical and punctuation errors. As American Judge Patricia Wald has said:

"You cannot imagine how disquieting it is to find several spelling or grammatical errors in an otherwise competent brief. It makes the judge go back to square one in evaluating the counsel."²⁷

Tip 3. To evince credibility and good character, avoid words like "clearly" and "obviously". Australian [High Court](#) Justice [Kenneth Hayne](#) has explained:

"The statement of an issue is not made more persuasive by simply sprinkling it with intensifying epithets like 'clearly', 'flagrantly' or 'obviously' or ... conclusory legal statements like 'in clear breach of its contractual obligations'."²⁸

Words like "clearly" and "obviously" signal weakness rather than strength.²⁹ They also lack candour and fairness.³⁰ And if you have to emphasise the obviousness of something, then you insult the judge's intelligence.³¹ Even more important, if you mistakenly call a complex idea, or an ambiguous rule, or a nuanced judgment, "clear" and "obvious", then you lose credibility.³²

Tip 4. Understate rather than overstate. You need more skill and intelligence to understate than overstate. In the "Art of Brief Writing", former lawyer and author, the late F Trowbridge Von Baur, said:

"[I]t is relatively easy to overstate a point with generalities and adjectives. However, to understate an argument, specific and close reasoning are required. An argument that can be understated will tend to be sound ... An understated argument has a unique if intangible power of persuasion."³³

For example, do not change "three" to "many"; "dog" to "ferocious beast"; or "corporate officers" to "self-seeking moguls".³⁴ Similarly, consider deleting words like "very". It seems paradoxical, but deleting intensifiers like "very" *strengthens* your writing.³⁵

Tip 5. Think carefully about using hedge words like "probably" and "possibly". Most commentators suggest hedge words weaken your writing.³⁶ On the other hand, hedge words may sometimes *help* your credibility, depending on your audience. For example, some psychological research suggests that qualified statements persuade people who know your area of expertise (such as judges) more than unqualified statements persuade these people; but the reverse applies for people who do not know your area of expertise (such as lay jurors).^{36a}

Tip 6. To achieve clarity and what Smith calls positive "medium mood", use short words, short sentences, and short paragraphs.³⁷ The less involved the language, "the easier it is to read and to follow a thought".³⁸ Moreover, it requires more skill, thought, and intelligence to condense an idea than to write a lengthy discourse.³⁹

Tip 7. To make your writing easy to read, avoid:

- unnecessary legalese and other jargon;⁴⁰
- clichés;⁴¹
- throat-clearing phrases (for example, "It is significant that", "It is important to note that");⁴² and
- other needless words.⁴³

Here, [StyleWriter](#) helps a lot. The software scans for jargon, clichés, and needless words, among other flaws (see StyleWriter's [Plain English Checklist](#)). The software then suggests replacing these flaws with plain English alternatives.

Conclusion

Do not underestimate writing style as mere "cosmetics".⁴⁴ Good writing style helps you to persuade judges by boosting your credibility and by helping the judge to get your message. "Good writing style" means short, simple, understated prose. Software such as [StyleWriter](#) provides a quick and easy way of improving your writing style. And if you can improve your writing style, then you can increase your powers of written persuasion.

* LLB(Hons)(ANU), Project Manager, [Research One Pty Ltd](#). Research One provides research for lawyers in Australia and internationally. The company also operates sister websites called [Write Better English](#) and [Win More Cases](#). Thanks to Sarah Green, Trischa Baker, Esther Oswald, and Daniel Pascoe for their comments on earlier drafts.