

# PERSUASION 101

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## PERSUASIVE LEGAL WRITING

David D. Weinzweig

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## ***APPRECIATE YOUR AUDIENCE***

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An effective advocate understands the singular importance of his or her audience—state and federal judges. The persuasive advocate thus aspires to craft and present an argument and narrative that resonates with the tribunal.

## ***THE INTRODUCTION: ARREST THE LAZY EYE***

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A great introduction is fine art—crafted with great care and purpose. A first impression matters. Grab the reader. Command attention. Short. Concise. Pithy. Throw standard fare to the wind. Make it pop. Make it visceral. Make it compelling.

***BUT SEE ...*** This approach is not ideal if attention and interest would harm rather than help your cause. Consider the defendant corporation that prevailed on a motion to dismiss in the trial court and must now defend the decision on appeal to the Ninth Circuit. *That* answering brief might be written to discourage interest, deflect attention, and invite a cursory affirmance.

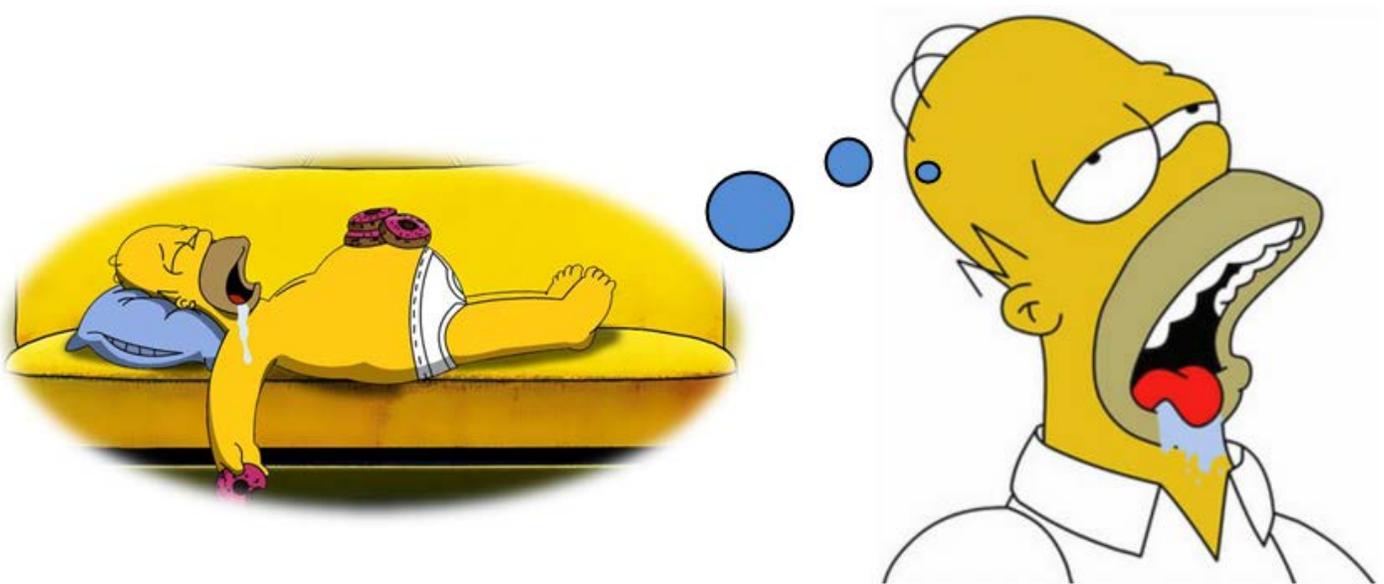
\*\* Never mislead or confuse.

***THE INTRODUCTION: YOUR FIRST SENTENCE SHOULD  
INFORM, SIMPLIFY, AND PERSUADE***

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The first sentence presents a unique and important chance to set the tone and persuade. Do not waste this choice real estate with archaic formalism, reflexive legalese, uninspired prose, or by parroting the motion's full title, which should be available in the caption. For instance:

**COMES NOW the Defendant Arizona Rock Growers Association, Inc. ("ARGA"), by and through counsel undersigned, and respectfully submits this Response in Opposition to Plaintiff International Tone Deaf Consortium, L.L.C.'s ("ITDC") Motion to Dismiss For Failure to State a Claim Pursuant to Rule 12(b)(6) or, in the Alternative, to Strike Pleadings under the Rule 26 (f) Case Management and Scheduling Order dated May 3, 2025.**



Depending on your goals, analysis, and strategy, you might use the first sentence to inform, introduce a persuasive theme, frame the dispositive issue, simplify the complex, explain what you want, engage hearts and minds, grab interest, discourage interest, command attention, or deflect attention. For example:

**INFORM AND SIMPLIFY**

“This lawsuit is about a contract.”

**SIMPLIFY AND INTRODUCE THEME**

“This lawsuit concerns the direct-to-consumer market for blue pencils in the United States and Acme’s bold and unlawful campaign to obtain and maintain its dominant position in that market.”

**I WANT THIS**

“Plaintiff moves the Court for a temporary restraining order and preliminary injunction prohibiting Defendant from conducting a commercially unreasonable auction of Plaintiff’s interest in three high-rise condominium towers on December 21, 2012.”

**FRAME DISPOSITIVE ISSUE**

“This case turns on a discrete and straightforward issue: Does the term ‘profession, business or employment’ include Plaintiff’s lucrative and ever-expanding real estate practice, which he continues to own and operate while pressing for disability benefits here?”

**INTRODUCE PERSUASIVE THEME**

“This case is about a serial litigant and four-time presidential candidate named John Doe who ignored federal requirements that

he first raise, press, and exhaust his claims for equal airtime with the FCC, and instead filed three lawsuits in three federal district courts against dozens of broadcasters who were never served.”

*More persuasive? Easier to read?*

“An opening line should invite the reader to begin the story. It should say: Listen. Come in here. You want to know about this. How can a writer extend an appealing invitation; one that’s difficult, even, to refuse?”

Stephen King, THE ATLANTIC (7/23/2013)

Consider five examples from these distinguished advocates:

- **WALTER DELLINGER**

1. “This case involves the largest punitive damages award ever upheld by a federal appellate court, \$2.5 *billion*.”<sup>i</sup>

- **SETH WAXMAN**

2. “This case concerns a patented invention fundamental to the Internet’s growth in the twenty-first century, but invisible to the average user.”<sup>ii</sup>
3. “Over the course of four decades, Rajat Gupta achieved a sterling reputation in management consulting, a field in which the signal professional demand is safeguarding clients’ confidential plans and strategies. His reputation for discretion and good judgment led some of the nation’s leading corporations to elect him to their boards of directors. And he pursued a life of extraordinary philanthropy, dedicating his wealth and time to causes great and small.”<sup>iii</sup>

- **CARTER PHILLIPS**

4. “Dow appeals from a \$1.06 billion judgment entered following a jury trial in an antitrust class action brought by industrial purchasers of polyether polyol chemicals (commonly known as polyurethane components).”<sup>iv</sup>
5. “Petitioners’ arguments seek to undo the consequences of this Court’s remand in *Portland Cement Association v. EPA*, 665 F.3d 177 (D.C. Cir. 2011).”<sup>v</sup>

- **TED OLSON AND DAVID BOIES**

6. “This case is about marriage—the most important relation in life,’ *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978)—and equality—the most essential principle of the American dream, from the Declaration of Independence, to the Gettysburg Address, to the Fourteenth Amendment.”<sup>vi</sup>

*What can you ascertain?  
Strategy? Purpose?*

## THE INTRODUCTION: HERE'S A MAP

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“A winning brief has to grab my attention at the earliest possible point, focusing me on the central nature of the case and the principal issues.” Hon. Kenneth Grosse, *Judges on Briefing Today*, 8 SCRIBES J. LEGAL WRITING 1, 10-11 (2001-2002).

Explain how and why you win in as few words as possible. Ask yourself: How would I tweet or text the argument? Lists are great. Two examples:

1	Plaintiffs lack standing to raise their equal protection claim for three independent
2	and equally dispositive reasons:
3	
4	• <b><u>Stigma does not meet Article III injury requirement.</u></b> Plaintiffs’ sole alleged
5	injury is stigma, which is insufficient to convey constitutional standing.
6	• <b><u>No genuine threat of prosecution.</u></b> Plaintiffs do not intend to engage in conduct
7	prohibited under the challenged statutes. Nor could they. Even if Plaintiffs or
8	their members intended to obtain a race or sex-based abortion, the statutes
9	expressly exclude pregnant females from liability.
10	• <b><u>No standing to assert generalized grievance.</u></b> Plaintiffs seek no more than to
11	vindicate their own value preference through federal courts, which is not
12	permitted. An intense dissatisfaction with government cannot substitute for
13	actual injury under Article III.
14	Defendants thus move the Court to dismiss the Complaint with prejudice for lack of
15	subject matter jurisdiction pursuant to Rule 12(b)(1), Fed. R. Civ. P.

\* \* \* \*

10	The central and dispositive question for the Court is whether the State of Arizona may
11	regulate and restrict its charter municipalities in their exercise of zoning and police powers.
12	The State is entitled to summary judgment on this legal issue for several reasons:
13	
14	• The State Law does not invade the province of charter municipalities, but merely
15	restricts powers delegated by the State to municipalities.
16	• The State Law preempts the Ordinance.
17	• The Constitution does not confer unilateral authority on charter cities to exercise
18	police and zoning powers without State interference.

### ***THE ARGUMENT: DON'T LET GO***

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Keep the momentum. Rhythm and pace. Break the mold. Make it fresh. Vary the length of sentences and paragraphs. Texture. White space. Vary placement of the subject and verb. End sentences with power and purpose.

### ***WORD SELECTION***

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Words are the tools of our profession. A carpenter selects tools based on the particular job at hand. He does not blindly reach into his toolbox and grab whatever is touched first. He would never pull a screwdriver to cut tile or grab a hammer to patch drywall.

So too, an attorney must select words based on the task at hand and goal in mind. Word selection must be thoughtful and purposeful. An effective advocate evaluates words based on their likelihood to persuade. Each word must serve a discrete purpose and add value. Consider the tone and objective. Simple words are preferable. Background noise is counterproductive.

## ***EXPLAIN WHY IT MATTERS***

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Your audience is comprised of generalists who necessarily hear a diverse assortment of cases and thus might not appreciate the consequences of a particular argument or position. Tell them. Examples:

- Plaintiffs' argument would cause substantial ripple effects, requiring at least 36 unrelated Arizona statutes to be declared unconstitutional.
- Plaintiff urges an unprecedented interpretation of home-rule authority under the Arizona Constitution that would imbue all charter municipalities with broad, unilateral discretion to regulate any issues arising on their streets and in their communities—whether or not the issue is common to other Arizona cities and without regard to general state laws.

Consider another example from attorney John Roberts:

Xerox's absolutist rule would open a gaping chasm in the Nation's antitrust laws. In the overwhelming majority of circumstances, an owner of intellectual property has the unquestioned right to decide to whom it will sell or license that property; but where, as here, the owner has impermissibly extended its legitimate monopoly in violation of the antitrust laws, it is subject to the laws that apply to other property owners.<sup>vii</sup>

## PICTURES AND CHARTS AND TABLES, OH MY

Advocates must consider and use all means of persuasion, whether conventional or not. Your job description is to move hearts and minds within ethical and evidentiary boundaries. Visual techniques are excellent persuasive tools if not overused.



Where a single communication, document, or picture is critical to your argument, it should be placed into the document. Besides arresting the lazy eye, screen grabs command greater attention and increase convenience. Judges often appreciate not having to find EXHIBIT 1 and then reread the relevant argument.

Consider this example:

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The defendants agreed to divide territories and fix prices. CEO Owens confirmed and flaunted the *per se* unlawful agreement in his October 2008 email to CEO Mills, which complained:

From: Mike Owens <mowens@monopolist.com>  
Date: Oct 13, 2008  
Subject: Our Agreement  
To: Peter Mills <mills@domination.com>

Peter: I'm not happy. We agreed that your company had the United States and we had Europe. Now I hear that you guys sold to someone in Europe and, even worse, at less than the price we settled on. Call me immediately!

Mike Owens  
9999 N. Central Avenue  
Phoenix, AZ 85012  
[mowens@monopolist.com](mailto:mowens@monopolist.com)

See Ex. 1, E-mail from Owens to Mills dated Oct. 13, 2008 (emphasis supplied).

To avoid confusion, advocates must inform their readers of additional emphasis, which can be accomplished in an introductory sentence (“As emphasized in this screenshot ...”) or by inserting “emphasis added” after the relevant citation.

Many screen-grab programs are available for Windows and Mac users. My favorite is Snag It. Above capturing the relevant screen, these programs allow advocates to emphasize or highlight important words or facts within the screen.

Charts and tables are excellent, too, but require greater thought and creativity. An advocate must consider what to present and how to



“In one opinion I criticized the bar for thinking that a word is worth a thousand pictures. The aversion to the visual ... is an excellent example of the flight from concreteness to abstractness that is such a pronounced feature of the legal profession’s style of thinking and writing.”

Hon. Richard Posner, *Legal Writing Today*, 8 SCRIBES J. OF  
LEGAL WRITING 35, 36 (2001-2002)

present it.

## ***THE CONCRETE KICKER***

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Turn abstract concepts into concrete impressions. Make abstractions easier to digest and understand with concrete words and details. Bring it home in one sentence. Two examples:

# **CONCRETE**

“Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

Plaintiff relies on written warnings from the Health Board to substantiate his alleged fear that the Board will prosecute him. His reliance is misplaced. The Board informed patients about two local prosecutors who had interpreted the Statute to prohibit particular conduct and warned that the prosecutors might pursue criminal charges based on their interpretation. An administrative board that warns patients about a criminal prosecutor’s threats of criminal prosecution is different from a board that threatens to pursue criminal charges itself—the former seeks to educate the public about prospective landmines while the latter actually plants the landmines.

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**LESS IS FAR MORE PT. 1—AN INVERSE RELATIONSHIP  
BETWEEN WORD COUNT AND SUCCESS**

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*As one judge explained: “Lawyers in their prolixity seem oblivious to the danger of thoroughly annoying the reader. Judges attempt to reach the correct result on the facts and the law. It is the job of the lawyers to explain why the judge should rule in their favor, and the clarity of the explanations does not increase proportionally with the length of the papers. It is much more important to distill the facts and the law and to understand and explain the critical issues than it is to bury the judge with paper. The longer and more convoluted the papers, the more likely it is that the truly significant points will be lost in the morass. Simply because cases and issues are complex is no excuse for failing to understand what the truly critical issues are, and to explain them concisely.” John G. Koeltl, Brevity, 30 LITIGATION 3, 4 (2003).*

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Lawsuits are not scored on word count. Your brilliant argument is worthless unless read and understood by the audience. “Repetition, extraneous facts, over-long arguments (by the 20th page, we are muttering to ourselves, ‘I get it, I get it. No more for God’s sake’) still occur more often than capable counsel should tolerate. Many judges look first to see how long a document is before reading a word. If it is long, they automatically read fast; if short, they read slower.” Hon. Patricia M. Wald, 19 Tips From 19 Years on the Appellate Bench, 1 J. APP. PRAC. & PROCESS 7, 9-10 (Winter 1999).

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**LESS IS FAR MORE PT. 2—THE COURAGE TO  
EXCLUDE**

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Great legal writing and persuasion require confidence and the courage to exclude. A confident writer inspires a confident reader. Grosse, 8 SCRIBES J. LEGAL WRITING at 10-11 (“A brief that demonstrates confidence on the part of the author creates confidence on my part both in the presentation and in the presenter.”).

“Easy writing makes damn hard reading.”

Nathaniel Hawthorne

An insecure advocate is susceptible to excess; afraid to omit this argument or that case for fear it might be

the winner. Bad legal writing represents the “[t]riumph of length over substance and hope over reality.” John G. Koeltl, *Brevity*, 30 LITIGATION 3, 4 (2003).

### **LESS IS FAR MORE PT. 3—THERE’S NO SUBSTITUTE FOR HARD WORK**

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Harder work = fewer words. Verbal excess often results from the failure to spend enough time and energy to understand and appreciate the facts

“I have only made this letter longer because I have not had the time to make it shorter.”

Blaise Pascal

and law. Only hard work enables the persuasive advocate to spot and amplify the critical issues and evidence.

“The primary cause [of verbal excess], I think, is failure to spend the time necessary to identify the critical issues and to think through how the facts and the law can be presented in the most intellectually persuasive way for the client. It is so much easier to just spray the factual and legal issues like water from a fire hose and let the judge wade through the flood. This is not in the interest of any lawyer or client, however, because when the judge does work it all out, it will appear that one side was hiding the ball, or at the very least did not think out the arguments.” Hon. John G. Koeltl, *Brevity*, 30 LITIGATION 3, 4 (2003).

“If I am to speak ten minutes, I need a week for preparation; if fifteen minutes, three days; if half an hour, two days; if an hour, I am ready now.”

Woodrow Wilson

Spending more time thinking out issues and honing arguments imbues lawyers with greater confidence that they have resolved the difficult intellectual issues. An advocate must analyze and prioritize arguments

so only the most persuasive are raised and not lost in the underbrush of irrelevance.

“If oral advocacy is an art, brief writing can be called a combination of art and science. When a case first lands on an appellate lawyer’s desk, it more often than not is a confusing and complicated jumble of facts, lower court rulings, procedural questions, and rules of law. The brief writer must immerse himself in this chaos of detail and bring order to it by organizing—and I cannot stress that term enough—by organizing, organizing, and organizing, so that the brief is a coherent presentation of the arguments in favor of the writer’s client.” Justice William H. Rehnquist, *From Webster to Word-Processing: The Ascendance of the Appellate Brief*, 1 J. APP. PRAC. & PROCESS 1, 4 (Winter 1999).

Hard work is also imperative on the back end. Rigorous and frequent editing is indispensable to eliminate repetition and delete unnecessary argument.

***RELAX AND COMMUNICATE***

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Informal prose is more persuasive than Latin.



“Language does not always have to wear a tie and lace-up shoes.”

Stephen King, *On Writing: A Memoir Of The Craft*

Do not be afraid to experiment. Find your voice. Persuasion and grammatical correctness are independent concepts with different and often conflicting ends.

A two or three-word sentence, for instance, is excellent to frame arguments and amplify themes. Be careful to introduce such sentences with clarity and sandwich them between informative, detailed prose.

Consider three examples from current U.S. Supreme Court Chief Justice while an advocate in private practice:

Thus, in the face of the plain text of the statute, its implementing code provisions, and the State's corrective statement in its petition for rehearing, the Ninth Circuit panel opted to retain its demonstrably erroneous interpretation of the ASORA's requirements.

***That was wrong.*** The principles that courts are not bound by stipulations of law, *see, e.g., Swift & Co. v. Hocking Valley Ry. Co.*, 243 U.S. 281, 289 (1917), and that estoppel does not typically run against the government, *see, e.g., Illinois ex rel Gordon v. Campbell*, 329 U.S. 362, 369 (1946), converge to make clear that the court should have decided the case under the correct view of what the ASORA provides.<sup>viii</sup>

\* \* \* \*

The question is whether application of the ASORA itself—the challenged law—requires such a finding. ***It does not.***<sup>ix</sup>

\* \* \* \*

Instead, the government had simply stepped out of the way of religion.

***So too here.***<sup>x</sup>

Nor should you fear the one-syllable opener, which increases pace and persuasion. Consider another example from Chief Justice Roberts:

**Yet** that contention is belied by Intel’s own statement of the law. **Nor** is there any evidence in the record that Fairchild ever explicitly or implicitly ratified the purported license of the Clipper Applications to Intel.<sup>xi</sup>

Lest you think this approach is novel, Bryan Garner has shown otherwise:



**William Shakespeare, *Hamlet***

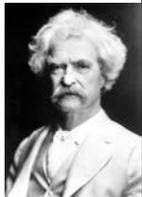
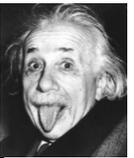
(ca. 1601)

475 But with the whiff and wind of his fell sword  
Th’unnervèd father falls. Then senseless Ælium,  
Seeming to feel his blow, with flaming top  
Stoops to his base, and with a hideous crash  
Takes prisoner Pyrrhus’ ear. **For** lo, his sword,  
480 Which was declining on the milky head  
Of reverend Priam, seemed i’th’ air to stick.  
So, as a painted tyrant, Pyrrhus stood,  
**And**, like a neutral to his will and matter,  
Did nothing.  
485 **But** as we often see against some storm  
A silence in the heavens, the rack stand still,

**Albert Einstein, *The Mechanics of Newton***

(1927)

No doubt the great materialists of ancient Greece had insisted that all material events should be traced back to a strictly regular series of atomic movements, without admitting any living creature’s will as an independent cause. **And** no doubt Descartes had in his own way taken up this quest again. **But** it remained a bold ambition, the problematical ideal of a school of philosophers. Actual results of a kind to support the belief in the existence of a complete chain of physical causation hardly existed before Newton.



**Mark Twain, *Taming the Bicycle***

(ca. 1880)

you are falling. It is hard to believe this, when you are told it. **And** not merely hard to believe it, but impossible; it is opposed to all your notions. **And** it is just as hard to do it, after you do come to believe it. Believing it, and knowing by the most convincing proof that it is true, does not help it: you can’t any more *do* it than you could before; you can neither force nor persuade yourself to do it at first. The intellect has to come to the front, now. It has to teach the limbs to discard their old education and adopt the new.

By this time you have learned to keep your balance; and also to steer without wrenching the tiller out by the roots (I say tiller because it *is* a tiller, “handle-bar” is a lamely descriptive phrase). **So** you steer along, straight ahead, a little while, then you rise forward, with a steady strain, bringing your right leg, and then your body, into the saddle, catch your breath, fetch a violent hitch this way and then that, and down you go again.

**But** you have ceased to mind the going down by this time; you are getting to light on one foot or the other with considerable certainty. Six

**James Madison, *The Federalist No. 52***

(1788)

Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured. **But** what particular degree of frequency may be absolutely necessary for the purpose does not appear to be susceptible of any precise calculation, and must depend on a variety of circumstances with which it may be connected. Let us consult experience, the guide that ought always to be followed whenever it can be found.

The scheme of representation as a substitute for a meeting of the citizens in person being at most but very imperfectly known to ancient polity, it is in more modern times only that we are to expect instructive examples. **And** even here, in order to avoid a research too vague and diffusive, it will be proper to confine ourselves to the few examples which are best known, and which bear the



## ***VERBS ARE ESSENTIAL***

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Verbs breathe life and energy into legal writing. As tools go, verbs are the jackhammer of an advocate; used to seize attention and to communicate strength and power. Make it pop. Make it vivid. All other words (i.e., subjects, objects, and modifiers) depend on the verb. Verbs are akin to the steering wheel. Compare these paragraphs. **Which is more compelling?**

### **FIRST COMPARISON**

General Taylor issued a formal decree that authorized the rebels to eliminate his adversaries. The rebels implemented the decree.

General Taylor directed his rebel forces to find, torture, and murder his rivals and enemies. The rebels did so, sweeping from town to town, searching from house to house—leaving chaos, murder, and destruction in their wake.

**SECOND COMPARISON**

Smasher Inc. has engaged in unlawful practices and anticompetitive conduct in restraint of trade.

Smasher Inc. has long fashioned itself as a champion of consumers and an outspoken advocate for open and robust competition. It has emphasized, in particular, the importance of informed consumers who understand their alternatives. Indeed, in its protracted battle with regulators, Smasher often decried the conduct of entrenched business interests that zealously guarded their pecuniary self-interest at the expense of meaningful consumer choice and greater competition.

It was all a ruse. This lawsuit is about Smasher's bold and unlawful crusade to obtain and then maintain its dominate position in the relevant market. Notwithstanding its carefully crafted image, Smasher has battled to censor and impede the universe of information that can be passed on to consumers and conspired to ensure that consumers never taste the fruits of competition.

Consider two more examples from these distinguished jurists:

Justice Robert Jackson. “[The advocate] will **stock** the arsenal of his mind with tested dialectical weapons. He will **master** the short Saxon word that **pierces** the mind like a spear and the simple figure that **lights** the understanding. He will never **drive** the judge to his dictionary. He will **rejoice** in the strength of the mother tongue as found in the King James version of the Bible, and in the power of the terse and flashing phrase of a Kipling or a Churchill.”

Justice Ruth Bader Ginsburg. “Readers of legal writing, on and off the bench, often work under the pressure of a relentless clock. They may lack the time to **ferret** out bright ideas **buried** in complex sentences, overlong paragraphs, or too many pages. Strong arguments can **escape** attention when embedded in dense prose. Lucid, well-organized writing can contribute immeasurably to a lawyer’s success as an advocate and counselor.” *Garner on Language and Writing* at xiii (2009) (emphasis added).

Mix it up. Sprinkle alternative verbs that convey the same meaning. Thus: “The statute *provides* this. The statute *directs* that. The statute *commands* that. The statute *states* that.”

**IT'S HALLOWEEN: BEWARE OF ZOMBIE NOUNS AND BURIED VERBS**

“[B]uried verbs ought to be the sworn enemy of every serious writer.”  
 Bryan A. Garner, *A Dictionary of Modern Legal Usage* 123 (2d ed. 1995).  
 A zombie noun or buried verb is a verb transformed into a noun. For instance:



VERB	NOUN
To investigate	Investigation
To attract	Attraction
To conclude	Conclusion
To object	Objection



Zombie nouns tend to distract and confuse. Henry Hitchings, *Those Irritating Verbs-as-Nouns*, N.Y. TIMES, March 30, 2013 (“Writing packed with nominalizations is commonly regarded as slovenly, obfuscatory, pretentious or merely ugly.”).

You should use verbs rather than nouns to decrease word count and increase punch. Just as blood attracts sharks, zombie nouns attract excess words:

ZOMBIE NOUN	BASE VERB
Plaintiff conducted an investigation.	Plaintiff investigated.
Her blood served as an attraction to three great white sharks.	Her blood attracted three great white sharks.
It constitutes a violation.	It violates.
Defendant made an objection.	Defendant objected.

**BUT SEE ...** Zombie nouns can be effective to summarize what has been earlier described. Consider this example: “Buyer acquired the securities

from Seller in June of 2015. The acquisition triggered federal reporting guidelines.”

### **ADVERBS ARE NOT YOUR FRIEND**

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“**Adverbs are not your friend.** I believe the road to hell is paved with adverbs, and I will shout it from the rooftops.”

STEPHEN KING,  
ON WRITING: A MEMOIR OF THE CRAFT

**Unpersuasive.** Show the reader. Let readers reach their own conclusion based on a concrete factual foundation. Do not reach a conclusion for the readers. Do not characterize. The reader should arrive at the desired conclusion after navigating your offering. “*Clearly,*” “*obviously,*” and “*undoubtedly*” will not bolster a weak argument.

The same is true with many adjectives. Make no mistake: Naked adverbs and adjectives, offered without support or explanation, will not help the cause. Compare:

The jury awarded an outrageously unjustified windfall of \$2.2 billion in punitive damages.

*vs.*

The jury awarded \$2.2 billion in punitive damages, which is over 300 times the compensatory damages awarded and over 75 times what the trial court found was the total, fully compensated loss to all private economic interests.

**Empty calories.** Adverbs distract from the message and offer no value. You might intend to convey the intensity of your feelings, but the court is distracted and likely annoyed. Run from screaming adverbs. Can you hear the noise?



"The Statute is **blatantly** racist and **grossly** unconstitutional."

**Shockingly**, Plaintiff requests relief for self-inflicted damages."

**No shortcuts.** Adverbs often indicate an unfinished product. The persuasive advocate spends the time and energy required to persuade. Adverbs should never be used as a shortcut for advocates who lack the time or ammunition to make their argument. There are no literary shortcuts to substitute for facts, law, or logic.



**Roadmap to mental impressions.** Naked adverbs often highlight an opponent's weakness, representing red-flags to problematic issues and arguments. Naked adverbs often represent the last gasp of an advocate who cannot persuade.

*BUT SEE ...* Adverbs may be used to enhance or color an argument or appeal once the hard work is finished. But remember that adverbs are akin to promises in this context. When used to characterize a fact or argument, the persuasive advocate must demonstrate or establish the fact or argument. Compare:

Compared to adults, adolescents are **obviously** less able to resist temptation.

By virtue of their developmental deficits and their legal minority, adolescents are **inherently** less able to resist the influence of peers and environment; they lack the control over themselves and over their lives that adults possess, and are therefore not as fully responsible for their own actions as adults.<sup>xii</sup>

The Court **clearly** cannot pierce the corporate veil because the doctrine is **obviously** inapplicable.

Plaintiff has not shown any basis to pierce the corporate veil. Among other things: (1) Plaintiff entered into the contract with Parent, not Subsidiary; (2) the contract expressly excludes all sister and related entities; (3) Parent did not even acquire Subsidiary until three years after Parent and Plaintiff entered the contract, (4) Parent and Subsidiary have separate bank accounts, and (5) Parent and Subsidiary have independent directors and bylaws. These undisputed facts **plainly** demonstrate that Parent and Subsidiary are separate companies with separate corporate identities and separate property.

Even still, the advocates most entitled to use adverbs for this purpose often use them least.

*BUT SEE ALSO ...* Adverbs are often used to emphasize importance. When so used, the persuasive advocate is careful to explain why something is important.

**EXERCISE.** What is missing from these sentences?

Significantly, Plaintiffs failed to answer the complaint on or before August 29, 2015.

Answer: \_\_\_\_\_

Critically, Petitioners offers only intentional tort case law.

Answer: \_\_\_\_\_

## **AVOID STRING CITATIONS**

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Surplus authorities and string citations are not persuasive. A single, on-point case is far more effective than a string of marginal authorities. Pick the seminal or most persuasive case and stick with it. Doing so exudes confidence and enhances communication. Consider **this** string citation:

String citations are ineffective and distracting. Hon. John M. Duhe Jr., *Judges on Briefing Today*, 8 SCRIBES J. LEGAL WRITING 1, 7 (2001-2002) (“Nor does it convince me for the writer to string out every cite he can find to support a point. A single, well-reasoned precedent is enough.”); Hon. Arthur Gilbert, *id.* at 9 (“If one citation will do, a string of them will detract more than help it.”); Hon. Harold A. Kuskin, *id.* at 17 (“Multiple footnotes, string citations, citations from foreign jurisdictions that are marginally relevant, and ‘learned’ discussions of legal principles not in dispute are all boring, distracting, and ineffective.”); Hon. E. Norman Veasey, *id.* at 25 (“If there is only weak authority for an argument, long string cites will not successfully disguise that fact.”); Hon. William C. Whitbeck, *id.* at 26 (“[C]iting ‘as much law as possible’ is a truly dumb idea. It is, of course, the relevant law that is important, and string citations to every published case touching on the subject not only are aesthetically displeasing, but also make the judge’s job harder. This is not a good idea if the brief-writer actually wants to win.”); Hon. Roger J. Miner, *Twenty-Five “Dos” for Appellate Brief Writers*, 3 SCRIBES J. LEGAL WRITING 19, 24 (1992) (“Where there is one authoritative case in point, don’t give six. Ban all string citations.”).

*BUT SEE ...* String citations might be proper in limited circumstances to achieve a particular end. An advocate, for instance, might want to explain that all federal circuits have reached the same conclusion on a particular issue.

While in private practice, for example, Chief Justice John Roberts used a string cite of 32 state and federal court decisions as support for *this* sentence:

***Every*** court to have considered an ex post facto challenge to a sexual offender registration and notification law—including the Ninth Circuit in this case—has concluded that the laws were intended to serve valid regulatory, rather than punitive purposes.<sup>xiii</sup>

## ***ZEALOUSLY GUARD YOUR CREDIBILITY***

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Persuasion is impossible unless an advocate is credible. “Of prime importance, a brief should be trustworthy. If authorities are inaccurately described, the judge will lose confidence in the reliability of the brief and its author; if the judge reads on at all, she will do so with a skeptical eye.” Justice Ruth Bader Ginsberg, *Judges on Briefing*, 8 SCRIBES J. LEGAL WRITING 1, 10 (2001-2002).



"I'm sorry, Your Honor. I promise  
never to get caught again."

## ***PROOFREAD WITH A PASSION***

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Motion practice must be cleansed of clerical and grammatical error. No excuses or exceptions. It is not enough to present the most persuasive argument. “[P]roofread with a passion. 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. It says-worst of all-the author never bothered to read the whole thing through, but she expects us to.” Hon. Patricia M. Wald, *19 Tips From 19 Years on the Appellate Bench*, 1 J. APP. PRAC. & PROCESS 7, 22 (Winter 1999).



## **MINIMIZE BLOCK QUOTES**

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Long block quotations are often unnecessary and rarely persuasive. A far superior alternative is to **extract and weave**. An advocate first extracts the key phrases or sentences from the source and then weaves the extracted material into argument and text with quotation marks and attribution. “Excessive quotation leaves little space for persuasion. Paraphrase!” Hon. Roger J. Miner, *Twenty-Five “Dos” for Appellate Brief Writers*, 3 SCRIBES J. LEGAL WRITING 19, 23 (1992).

If unavoidable, introduce a block quote and explain its importance. Mark L. Evans, *Tips For Writing Less Like a Lawyer*, 7 SCRIBES J. LEGAL WRITING 147, 152 (2000) (“If you must use a block quotation, tell the reader why she is being asked to wade through it. Otherwise, her eye is likely to skip right over the quotation.”).



### **Example**

Judge Alex Kozinski has implied that he does not read extended block quotes and suggested a better path:

Block quotes . . . take up a lot of space but nobody reads them. Whenever I see a block quote I figure the lawyer had to go to the bathroom and forgot to turn off the merge/store function on his computer. Let’s face it, if the block quote

really had something useful in it, the lawyer would have given me a pithy paraphrase.

Kozinski, *The Wrong Stuff*, 1992 B.Y.U. L. REV. 325, 329 (1992).

### ***OMIT SURPLUS AND TRIM FAT***

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Sentences have two kinds of words: working words and glue words. Working words communicate the meaning of a sentence. Glue words are used to bind working words, forming a grammatically proper sentence.

Glue words perform a vital function for advocates to communicate, transforming a telegram into prose. Too much glue is harmful to the ultimate goal, which is to communicate.

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“A well-constructed sentence is like fine cabinetwork. The pieces are cut and shaped to fit together with scarcely any glue.”

Richard C. Wieck, *Plain English for Lawyers*

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**EXERCISE.** Trim excess from these common phrases:

Due to the fact that	
In accordance with	
At that point in time	
In order to	
In all likelihood	
In the immediate future	
A substantial majority of	
At such time as	
A small number of	
At this point in time	
I am of the opinion of	
In spite of the fact that	
The question as to whether	
Owing to the fact that	
In the event that	
Along the lines of	
For the purpose of	

“Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences.”

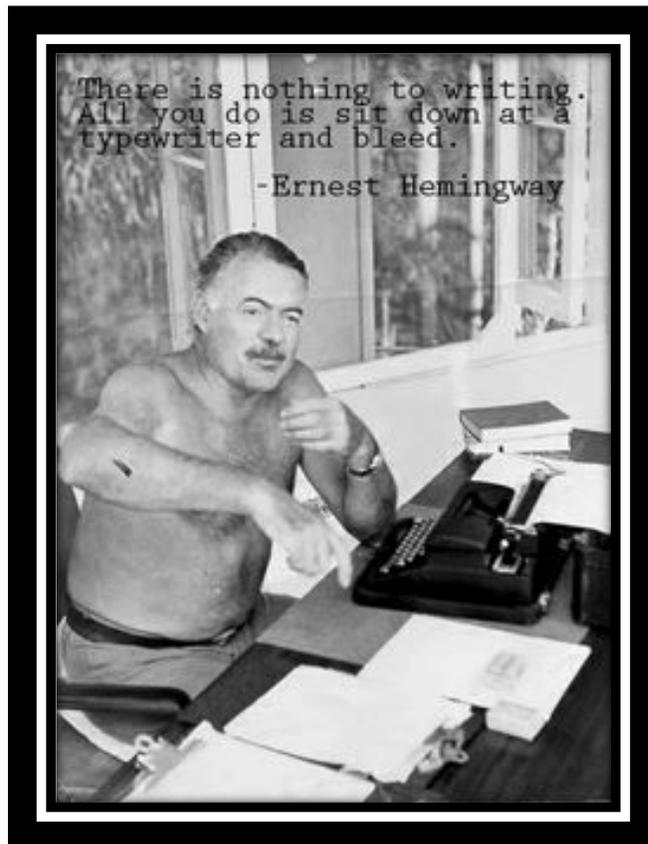
Strunk and White, *The Elements of Style*

## ***RECITE FACTS WITH PURPOSE AND PACE***

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A persuasive advocate recounts the relevant facts with purpose, specificity, and style. Facts must *both* inform and persuade. Targeted detail and specifics can inspire confidence, facilitate pace, and set the tone.

Facts must be thoughtfully selected and thoroughly supported with the ultimate goal of persuasion firmly in mind. Entertain and persuade. We're all frustrated novelists.



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- <sup>i</sup> Brief for Petitioners at 14, *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2007) (No. 07-219).
- <sup>ii</sup> Brief for Respondents, *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, 134 Sc.D. 2111 (12-786).
- <sup>iii</sup> Brief of Defendant at 1, *United States v. Gupta*, 747 F.3d 111 (2d Cir. 2013) (12-4448).
- <sup>iv</sup> Brief of Appellants at 1, *In re Urethane Antitrust Litigation*, 768 F.3d 1245 (10th Cir. 2014) (No. 13-3215).
- <sup>v</sup> Final Brief of Industry Interveners at 1, *Sierra Club v. E.P.A.*, 749 F.3d 1055 (D.C. Cir. 2014) (No. 13-1112).
- <sup>vi</sup> Brief of Appellees at 1, *Perry v. Schwarzenegger*, 628 F.3d 1191 (9th Cir. 2011) (No. 10-16696).
- <sup>vii</sup> Reply Brief for Appellant at 2, *In re Independent Service Organizations Antitrust Litigation*, 203 F.3d 1322 (Fed. Cir. 2000) (No. 99-1323).
- <sup>viii</sup> Brief for Petitioner at 36, *Smith v. Doe*, 538 U.S. 84 (2003) (No. 01-729).
- <sup>ix</sup> *Id.* at 40.
- <sup>x</sup> Brief of Appellant at 11-12, *Ehlers-Renzi v. Connelly School of the Holy Child, Inc.*, 224 F.3d 283 (4th Cir. 2000) (No. 99-2352).
- <sup>xi</sup> Brief of Appellant at 44, *Intergraph Corp. v. Intel Corp.*, 241 F.3d 1353 (Fed. Cir. 1999) (No. 00-1048).
- <sup>xii</sup> Brief for Respondent at 9-12, *Roper v. Simmons*, 543 U.S. 551 (2004) (No. 03-633).
- <sup>xiii</sup> Brief for Petitioner at 23 n.11, *Smith v. Doe*, 538 U.S. 84 (2003) (No. 01-729).