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## Good writing many times can be difference between a win or loss

One of the most daunting tasks for many attorneys is to face a blank sheet of paper — or, nowadays, an empty computer screen with an endlessly blinking cursor — and compose a persuasive and compelling argument that will win the day for the client.

Although you have everything figured out so perfectly in your head, when it comes down to actually writing it all out, you may become overwhelmed and find it hard to know where to begin when faced with assembling stacks of transcripts, exhibits, case law, rules and statutes into a cohesive and persuasive argument — all with a fast-approaching deadline.

Indeed, it is only by placing your argument in written form that you can see problems with what you had previously thought out. The best legal writing clearly sets forth the relevant facts and applicable law, compares and contrasts those facts to that authority and methodically leads the reader step-by-step through the analysis to the final conclusion.

An argument that is well-researched, well-written and easy to follow will greatly improve your chances of persuading the court and achieving a victory. Remember, you are the expert with respect to the facts and law in your case. Your role is to use that expertise to help the court

understand what is at stake in the dispute and to persuade the court to arrive at the outcome you desire.

Here are a few general tips to keep in mind to help draft an effective and compelling argument.

### Tell your story

Everyone loves a good story, including your reader: The judge who will analyze your argument and determine the outcome of your case. Legal writing guru Bryan Garner interviewed members of the U.S. Supreme Court to learn what they found most helpful when deciding cases. (See, [lawprose.org/bryan-garner/garners-interviews/](http://lawprose.org/bryan-garner/garners-interviews/))

Their comments regarding effective legal writing apply with equal force to arguments made in both the trial court and in the courts of review.

In noting the importance of telling the story of the case, Chief Justice John G. Roberts Jr. observed: “When the case is new, you want to learn what it’s about, and there’s nothing better than a well-written brief, and it kind of carries you on. You want to learn more. You want to see what the other side has to say. But it can also be quite a downer to pick up a bad brief in a case, and you know you’re not getting the right



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story, you know you’re not getting the full story, you know there’s more to it than that and it’s a struggle to get to the result.”

The ability to clearly convey your client’s story depends

upon the logical organization of the relevant material within the framework of the theme of your case. Set forth the relevant background material and enhance the credibility of the argument by making specific citation to the evidence supporting your position — i.e. to specific pages of the transcripts or to trial exhibits — so that the court may easily find it and confirm its validity.

Then, analyze these facts within the context of the controlling authority, explaining why the court should rule in your favor. Don’t run from bad facts or adverse law; address these items head-on and explain why the court should still rule for your client. So, tell your story ... and tell it well.

### More is not necessarily better

When drafting an argument, scrutinize every line and ask: Why is it included? Is it necessary? What confusion or misunderstanding might it cause? Can it be better written? An argument should express ideas as accurately, briefly and clearly as possible, leaving little room for unintended interpretations or guesswork on the part of the court.

With that being said, also do not fall into the trap of believing that a longer presentation is a better one

— oftentimes, the opposite is true. In Roberts’ words: “I have yet to put down a brief and say, ‘I wish that had been longer.’ So while I enjoy [reading briefs], there isn’t a judge alive who won’t say the same thing. Almost every brief I’ve read could be shorter.” Focus on what is most important and cut out portions that are unnecessary and which may detract from your central focus.

#### **Start drafting early**

Although this seems counter-intuitive, a longer argument may be a result of waiting until the last minute to begin drafting and then running out of time. Mark Twain perfectly captured this

concept when he said: “I didn’t have time to write a short letter, so I wrote a long one instead.”

Writing a succinct argument covering all key points requires more effort than writing a longer one that is not focused, edited nor polished. In the initial drafts, most of us succeed in only getting our ideas out of our head and onto paper, oftentimes in an imprecise and wordy narrative that requires extensive revision and editing to say exactly and only what we intend.

As we journey through the drafting process, new research and progressive reasoning may also require several changes in the direction of the writing. Therefore,

remember Abraham Lincoln’s sound advice: “Leave nothing for tomorrow which can be done today.”

#### **Bad writing can lose a strong case**

Finally, be aware that what appears to be a slam-dunk winning case may nevertheless be lost if you cannot clearly convey the strength of your position. As Roberts cautions: “[I]f it’s bad writing, we may not see that you’ve got a strong case. It’s not that, oh, this is poorly written, so you’re going to lose. It’s that it’s so poorly written that we don’t see how strong the precedents in your favor really are, because you haven’t conveyed them in a succinct way.

“Or we don’t see exactly how the statutory language works together to support you, because you haven’t adequately explained that. Or even simple things: You haven’t put it in there. You’re telling us about why it should be read this way when we haven’t even seen it yet.

“I’ve seen briefs like that. You know the statute should be read [like] this . . . Well, for goodness sakes, what does it say? Let’s start with that. . . . And if the lawyers don’t write clearly enough to convey the arguments, it’s going to be very difficult for us to get the case right.”

No clearer words can be spoken to underscore the importance of crafting a clear and compelling argument.