

**NATIONAL DEFENDER TRAINING PROJECT
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APPELLATE ADVOCACY PROGRAM**

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**PERSUASIVE
LEGAL WRITING**

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LAW AS LITERATURE: SOME SUGGESTIONS FOR EFFECTIVE APPELLATE WRITING

I. Remember that good legal writing has two goals:

- A. Persuasion
- B. Clarity

II. Persuasive Writing

A: Know what your theory of defense is for the appeal. Having an appellate theory of defense will allow you to consciously decide what is important to your case. This is crucial to writing your brief, because you can choose your words intelligently only if you know what you are trying to accomplish with them. For example:

1. What facts are you trying to emphasize?
2. What facts are you trying to downplay?
3. What emotions are you trying to elicit in the reader?
 - a. Disbelief.
 - b. Frustration over an injustice.
 - c. Anger.
 - d. Sympathy.

B: **Write about facts.** In most cases, there is little debate over the law. The real issue is whether the facts of your case fit within the relevant legal boundaries.

1. The statement of facts should be used to persuade, not just provide background information. Emphasize those facts which advance your argument.

2. Use facts to create the mood in which your brief will be read.

a. If you want the reader to feel sympathy for your client, select facts and use language which will make him or her appear sympathetic.

b. If you want the reader to be outraged over the unfairness of the trial judge, lead off with a factual description of the worst things the judge did.

2. When you discuss legal principles, be sure that you quickly follow up by explaining what about the facts of your case makes those principles relevant.

3. Do not just cite case law for general legal principles. Find, cite and discuss precedents which are factually analogous to your case.

C: Use active, not passive language.

Active: She went to the office at 9:00 A.M.

Passive: She had gone to the office at 9:00 A.M.

Active: He took the money from the drawer.

Passive: He had taken the money from the drawer.

D: Use graphic language to support your case.

Dull: The officers forcibly entered the room.

Graphic: The police smashed through the door.

Dull: She threatened appellant with a gun.

Graphic: She held a gun to appellant's head.

or: She stuck a gun in appellant's face.

BUT: Be sure that you only use graphic language where it will help you. Don't use it to enhance the prosecution's case.

E: Use dull, conclusory language when describing facts you want to minimize.

ex: Dull (but good): Appellant held a gun.

Graphic: Appellant brandished a 9mm automatic.

Dull (but good): Appellant was found with the complainant's personal property.

Graphic: Appellant was grasping the victim's wedding ring and life savings.

F: Avoid cop-talk.

1. Using institutional police language legitimizes the behavior of the police.

2. Using institutional police language suggests that everything that happened in your case was normal and routine.

3. Remember that institutional police language is designed to give the impression that your client is guilty.

ex: Cop-talk: They apprehended an alleged perpetrator.
Normal speech: They arrested somebody.

Cop-talk: They proceeded to the vehicle.
Normal speech: They went to the car.

G: Use language that humanizes your client.

1. Refer to your client by his or her name.
2. Don't always refer to your client as "appellant" or "defendant."
3. Try to include factual details which make your client seem to be a decent

person.

ex: Instead of: Ms. Smith was on her way to work.

Humanize: Ms. Smith was walking to her job at Ace Motors, where she had been a salesperson for three years.

Instead of: Mr. Jones went home.

Humanize: Mr. Jones went to his apartment on Laurel Road, where he lived with his wife and three children.

H. Don't obviously sugar-coat things.

1. If your theory of defense allows you to admit that the crime occurred, you don't have to minimize the seriousness of the crime.

2. Avoid unrealistic and unbelievable claims that your client is a wonderful person.

3. Avoid assertions that are so trivial that the court will automatically dismiss them.

III. Clear Writing

A. In general, shorter is better.

1. Short sentences enable you to communicate in a way that is easier for most people to understand.

2. If a sentence is too convoluted or difficult to understand, try to divide it into two or three separate sentences.

B: Decide how you are going to organize your story. **Remember: You don't have to tell the story in the same way the police told it in their reports or the prosecutor told it at trial.**

1. Every story can be told in various sequences and perspectives. For example:
 - a. Chronologically, according to the events of the incident.
 - b. Chronologically, according to the events of the trial.
 - c. From the perspective of individual characters.
2. Select an organizational form which best compliments your argument on appeal.
3. Once you have chosen a perspective from which to tell your story, try not to flip back and forth between other organizational forms.

C. Avoid meaningless language. Many words have specific meanings, but are instinctively used by lawyers as filler, when they have nothing of substance to say. Some of these words are:

- a. Clearly
- b. Merely
- c. Obviously
- d. Generally
- e. Certainly

D: "Would a non-lawyer understand this?"

1. Whenever possible, have a non-lawyer read your brief. Ask him or her questions about the clarity and organization of your facts and arguments -- then listen to the answers and make changes accordingly.
2. This is an excellent test for deciding whether your writing is clear enough.
3. This test also forces you to make your argument sufficiently factual.