

Hello. This is Adrienne Brungess. I'm a Professor of Lawyering Skills at the University of the Pacific, McGeorge School of Law. The topic of this In Practice-cast is the persuasive value of an advocate's credibility.

An advocate's style can impact all three classical persuasion layers. I'm talking about Aristotle's Greek Theory of *logos*, *pathos*, and *ethos* as comprising the layers of persuasion. Logic and legal support tends to be the most persuasive for advocates in both writing and in oral argument. The emotional impact of a well written brief, creative prose, and clearly articulated emotional content, can also be persuasive and create the *pathos*, or the compelling interest that the audience should find in your favor. But what I'll focus on now is the *ethos*, or the credibility of the advocate's presentation.

Credibility in legal argument is extremely important to an advocate's success. And there are several methods that an advocate can use to enhance his or her *ethos* and credibility. For example, respect, candor, and zeal contribute to an advocate's perceived moral character, but these attributes can be lost or undermined by trivial errors made in the written or oral presentation or by use of techniques such as insult or sarcasm.

An advocate's tone, both in writing and in oral advocacy, should be polite and professional. Advocates should avoid personal attacks on parties, or counsel, and especially the court; and instead should focus on attacking arguments and authority. Lobbing insults, using sarcasm, or demonstrating scorn for the other side comes across as artificial and unprofessional, and can undermine the advocate's logic and the *logos* of the argument, which again, tends to be the most persuasive.

It's extremely important to an advocate's credibility to avoid grammatical and punctuation errors in the written form and to use proper sentence structure and articulate points clearly in oral argument. Consider how it might adversely affect an advocate's credibility with the court if the judge were to find spelling, grammatical, or other types of typographical errors in an advocate's written work product. It will reflect adversely upon the advocate and imply that the advocate has paid insufficient attention to details. In the oral argument, being able to clearly articulate a position with clear, concise sentence structure will also help enhance the persuasive value of the argument.

Additionally, an advocate should avoid relying on words such as "clearly" and "obviously" in effort to bolster the persuasive impact of an argument. The court will not find an advocate's argument more persuasive simply because the advocate has claimed it to be obvious or clear. Those types of conclusory legal statements tend to be ineffective and lack persuasive impact. Most judges indicate that reading or hearing words like "clearly" and "obviously" tend to signal weakness in the advocate's argument, rather than strength. And they frequently lack candor and honesty or total fairness with regard to the merits of the case. Additionally, if an advocate has to emphasize the obviousness of something, that might insult the judge's intelligence, or even more importantly, if an advocate mischaracterizes a very complex concept or rule as clear or obvious, it may affect that advocate's credibility and imply that he or she does not fully understand the concept at issue.

Additionally, advocates should be cautious about using hedge words such as "probably" or "possibly" as that can weaken the argument. Instead, an advocate should phrase the argument with competence and then back that up with the authority and the record.

Further, to ensure clarity and well-articulated arguments, an advocate should use shorter words, shorter sentences, and shorter paragraphs when articulating an argument to the judge. Less complicated language is easier for audience to read, receive, and understand. And the easier it is to understand an advocate's position, the easier it is to find as the advocate proposes. The more convoluted the concept, and the more complicated the advocate's presentation, the more difficult it is to persuade the audience that this position is correct.

This concludes this In Practice on the topic of credibility and *ethos* in persuasion. This again is Adrienne Brungess, Professor of Lawyering Skills at McGeorge School of Law in Sacramento. Thanks for listening.