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A Rhetorical Exercise: Persuasive Word Choice†

By STEPHEN E. SMITH*

“The choice of appropriate and striking words has a marvellous power and an enthralling charm for the reader.”¹

PERSUASION CAN SPRING FROM MANY FONTS: a sound argument, a sympathetic set of facts, even the good grooming of an oral advocate.² In writing a legal brief, word choice is an important persuasion tool. Through word choice, legal writers may characterize a party’s behavior, clarify a scene, or recast an interaction. For example, it is very different to describe an utterance as “offering a choice,” or “issuing an ultimatum.”

This was recognized early on in the history of rhetoric. Aristotle described the power of word choice: “[one can] call a crime a mistake, or a mistake a crime. We can say that a thief ‘took’ a thing, or that he ‘plundered’ his victim.”³ Similarly, Aristotle notes “somebody calls actors ‘hangers-on of Dionysus,’ but they call themselves ‘artists’: each of these terms is a metaphor, the one intended to throw dirt at the actor, the other to dignify him.”⁴

So too, students must practice both “throwing dirt” and “dignifying.” As practice, I have my class experiment with a series of words. I write a word on the board with the words “pro” and “con” written on either side of it. On the “pro” side, students are asked to list synonyms (defined broadly and roughly) that have positive connotations. On the “con” side, students do the same with negative connotations. In both instances, students are directed to

† Adapted from the Author’s presentation, Practical Uses of Classical Rhetoric in the Contemporary Legal Writing Classroom, given at the Western Regional Legal Writing Conference, Stanford Law School 2014.

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1. LONGINUS, ON THE SUBLIME 56 (H.L. Havell trans., Macmillan & Co. 1890) (c. 3d Century).

2. These three examples correspond to Aristotle’s three appeals: logos, pathos, and ethos. ARISTOTLE, RHETORIC 25 (W. Rhys Roberts trans., Random House, Inc. 1954) (c. 367–322 B.C.E.). See EDWARD P.J. CORBETT & ROBERT J. CONNORS, CLASSICAL RHETORIC FOR THE MODERN STUDENT 18 (4th ed. 1999) (discussing Aristotle’s three methods of persuasion).

3. ARISTOTLE, *supra* note 2, at 169.

4. *Id.*

not use their various electronic devices, but to call upon their own vocabulary and understanding of words.

One of the words used in this exercise is “said.” An inert, boring little word—a default term that is often better off replaced since there are many alternatives. Authors may convey confidence by replacing it with “asserted,” or express distaste by replacing it with “whined.” The class will discuss alternatives like “insisted.” How does the reader feel about someone who “insists”? Are we impressed by their conviction—a “pro”—or annoyed by their refusal to let go—a “con”? How about “shouted” versus “whispered”? Where does “insinuated” fit? “Affirmed”? “Admitted”? As a class, we investigate the additional baggage each alternative word carries. Along with their core meanings, most words have a set of additional suggestions, innuendoes, and penumbras. This exercise encourages students to explore and use alternative word choices effectively in their writing.

Other words used in this exercise include “tried,” “dog,” “quickly,” and “accurate” (which can lead to approximations such as a “pro” of “careful” or “con” of “pedantic”). Many words will work for this “pro” and “con” exercise; thus, students are given the opportunity to consider connotation.

Of course, the discussion of *possible* alternative word choices must lead to a discussion of *useful* word choices.⁵ “Style to be good must be clear.”⁶ Legal writers should avoid the archaic and idiosyncratic, and favor words that are “current and ordinary.”⁷ In the course of selecting apt words, legal writers must still provide concise, accurate descriptions of the facts and law of cases. There are limits to what an advocate can do. Some word choices are too florid and self-conscious to warrant selection, such as using “beseech” as a substitute for “ask.” Advocates need to consider the purpose for word choices. It is to persuade, not to distract. Accordingly, our words “must also be appropriate, avoiding both meanness and undue elevation.”⁸

There are ethical restrictions on word choice as well. Legal writers may be able to ethically re-characterize a “warning” as “advice,” but must consider whether the same is true if we call a “loan shark” a “community banker”—or vice versa. Legal writers must pay attention to whether they are crossing a line from simply offering a favorable perspective on a situation, or

5. Stephen E. Smith, *The Poetry of Persuasion: Early Literary Theory and its Advice to Legal Writers*, 6 J. ASS'N LEGAL WRITING DIRECTORS 55, 56 (2009), available at <http://www.alwd.org/lcr/archives/fall-2009/smith/> (touching on the impact of word choice issues).

6. ARISTOTLE, *supra* note 2, at 167.

7. *Id.*

8. *Id.*

misrepresenting that situation.⁹

Longinus states “beautiful words are the very light of thought.”¹⁰ Words are, at least, a conveyance of thought, and a basic tool of persuasion. Inspired by the jumping-off point Aristotle provides, professors can share this tool with law students and motivate them to make word choice a part of their advocacy.

9. See, e.g., *Schlafly v. Schlafly*, 33 S.W.3d 863, 873–74 (Tex. App. 2000) (“Our adversary system contemplates that each party’s advocate will present and argue favorable and unfavorable facts in the light most advantageous to his client; it does not contemplate misrepresentation or mischaracterization of those facts. While a lawyer may challenge the legal effect of unfavorable facts, he may not represent them to the court.”).

10. LONGINUS, *supra* note 1, at 57.