

Humility—A Path to More Persuasive Legal Writing

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It infuriates me to be wrong when I know I am right. —Molière¹

Humility is [t]he highest virtue, the mother of them all. —Tennyson²

A morning walk

That morning, a crisp breeze blew off Lake Michigan as I walked to North Hall. The sun beamed as students walked by nodding their heads—*hello*.

That morning, my 11:30 appointment was with the Lake Forest College’s new President. I teach English at the college. The meeting was at her invitation. An email blast some months earlier merely said that the President wished to meet with any staff or faculty who wished to meet with her. I made an appointment.

That morning, I happened to be carrying this humility article in my briefcase having tweaked the near final draft earlier that day. Then it struck me. Ask the President why she was meeting with me, or any of the other scores of employees she met with. Certainly, more pressing matters demanded her time.

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† Lake Forest College student Ido Zimbleman served as a research assistant for this article. His insights and contributions proved invaluable. Thank you, Ido.

¹ Quoted in KATHRYN SCHULZ, *BEING WRONG: ADVENTURES IN THE MARGIN OF ERROR* 3 (2010).

² Alfred Lord Tennyson, *The Holy Grail*, in *IDYLLS OF THE KING* [1859–1885] (available at <https://d.lib.rochester.edu/camelot/text/tennyson-the-holy-grail>).

That morning, we sat at a small round table for a bit.³ The office was bright. We talked about the college, our personal academic journeys, a little this, a little that. Kids. As the meeting wound down, I told her about this article. I said that it seemed to me a humble gesture for THE college president to take hours and hours and hours over the first months at a new job to meet with *any* staff or teacher who wished to so meet. “Why?” I asked.

“On-boarding for me is a short window,” she said. “I just want to know from the people on the front lines—the ones who teach and interact with the students. I want to learn from them.”

To learn from them—a scholar with decades of experience and an alphabet of higher education degrees—wanted to learn from others. And in that moment, the sun shone a bit brighter.

I smiled, that morning.

Introduction—arrogance hampers effective legal writing

Confidence epitomizes most lawyers; over-confidence some; arrogance a few. While confidence may inspire,⁴ overconfidence presents a hazard,⁵ and arrogance, well arrogance just totally turns off any audience.⁶ As trial lawyer Zach Wolfe puts it: “A pompous or arrogant lawyer is usually a less persuasive lawyer.”⁷

On a more macro scale, as Leo Tolstoy observed, the real danger of arrogance is that “an arrogant person considers himself perfect. This is the chief harm of arrogance. It interferes with a person’s main task in life—becoming a better person.”⁸

Confidence and overconfidence stand at one side of a spectrum (least to most) of a lawyer’s view of the correctness of their belief, and

³ Interview with Jill M. Barren, MD, President, Lake Forest Coll., Lake Forest, Ill. (Apr. 18, 2023).

⁴ See James Gray Robinson, *10 Tips for Lawyers to Establish Self-Confidence and Client Compassion*, ABA J. (July 19, 2022, 10:25 AM), <https://www.abajournal.com/voice/article/how-attorneys-can-claim-their-power/>; see also Joseph Folkman, *How Self-Confidence Can Help or Hurt Leaders*, FORBES (Feb. 12, 2019, 5:54 PM), <https://www.forbes.com/sites/joefolkman/2019/02/12/how-self-confidence-can-help-or-hurt-leaders/> (“High confidence leaders were rated as being more inspiring.”).

⁵ See Jane Goodman-Delahunty et al., *Insightful or Wishful: Lawyers’ Ability to Predict Case Outcomes*, 16 PSYCH. PUB. POL’Y & L. 133 (2010).

⁶ See generally Stan Silverman et al., *Arrogance: A Formula for Leadership Failure*, 50 INDUS. & ORG. PSYCH. 21, 25 (2012) (“Individuals who are arrogant at work make interpersonal interactions difficult, create an uncomfortable and potentially stressful work environment for others, and have poor performance ratings.”).

⁷ Zach Wolfe, *Do Narcissists Make Better Lawyers?*, FIVE MINUTE LAW (Jan. 14, 2019), <https://fiveminutelaw.com/2019/01/14/do-narcissists-make-better-lawyers/>.

⁸ LEO TOLSTOY, *PATH OF LIFE* 110 (1909).

the lawyer’s projection (written or spoken) of that view onto their audience. On the opposite end of the spectrum from arrogance sits the character trait of pusillanimity⁹—more commonly called self-deprecation, cowardness, servility, or timidity. This form of self-deprecation is an equally odious quality to arrogance for a lawyer to possess and project. As the late Colorado Supreme Court Justice William Erickson observed, “Advocacy is not for the timid or meek.”¹⁰

Some call the deep form of lack of confidence “humility.” That is wrong. Self-deprecation and humility are different characteristics, and profoundly so.¹¹ While the former derives from low esteem,¹² the latter is rooted in restraint and the “realistic assessment of one’s own worth and a willingness to give credit where it is due and to listen to others.”¹³ The word humility comes from the Latin word *humilitas*, which translates as “grounded” or “from the earth.”¹⁴

From those roots we can see how “humility does not demand timidity, self-effacement, passiveness, or quietness, although it does urge circumspection, patience, respectfulness, and considered attention to others.”¹⁵ Viewed this way, humility lies on the spectrum at the “mid-point between two negative extremes of arrogance and lack of self-esteem.”¹⁶ Most simply, the essence of humility is “treating other things—especially other people—as if they really matter.”¹⁷

Unfortunately, lawyers rarely possess humility or, if they do, even more rarely exemplify it. As one soon-to-be lawyer put it, “When one

9 Bruce C. Frohnen, *Augustine, Lawyers & the Lost Virtue of Humility*, 69 CATH. U. L. REV. 1, 4 (2020).

10 William H. Erickson, *A Book Review with an Eye to Ethics*, 81 MICH. L. REV. 1191, 1192 (1983).

11 Sang-Yeon Kim & Erin S. Parcell, *Construct-Validating Humility: Perceptions of a Humble Doctor*, 13 FRONTIERS PSYCH. 1, 4 (May 17, 2022), <https://www.frontiersin.org/articles/10.3389/fpsyg.2022.882622/full>.

12 Alessandra Tanesini, *Intellectual Servility and Timidity*, 43 J. PHIL. RSCH. 21 (Nov. 13, 2018), <http://imperfectcognitions.blogspot.com/2018/11/intellectual-servility-timidity.html>.

13 Frohnen, *supra* note 9, at 4. The Supreme Court cited its view that “[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life” as the basis to dismiss Myra Bradwell’s claim that Illinois’s denial of a law license was unconstitutional. *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872). While the case holding was wrong, and disavowed, see *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 896–97 (1992), the sentiment that a “timid” lawyer is not an effective one remains, see J. Gary Gwilliam, *Lessons from Losing: How to Beat Defeat*, PLAINTIFF MAG. (Nov. 2008), <https://www.plaintiffmagazine.com/recent-issues/item/lessons-from-losing-how-to-beat-defeat> (“A true trial lawyer is not timid and uncertain.”).

14 *Humility*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Humility> (last modified Apr. 26, 2024, 2:04 PM).

15 Brett Scharffs, *The Role of Humility in Exercising Practical Wisdom*, 32 U.C. DAVIS L. REV. 127, 162 (1998).

16 Dusya Vera & Antonio Rodriguez-Lopez, *Strategic Virtues: Humility as a Source of Competitive Advantage*, 33 ORG. DYNAMICS 393, 395 (2004).

17 Scharffs, *supra* note 15, at 162. One could place narcissism furthest to the right of the spectrum of one’s view of the correctness of his or her own beliefs. Narcissism is “one of several types of personality disorders—is a mental condition in which people have an inflated sense of their own importance, a deep need for excessive attention and admiration, troubled relationships, and a lack of empathy for others.” Mayo Clinic, *Narcissistic Personality Disorder*, PATIENT CARE & HEALTH INFO. (Apr. 6, 2023), <https://www.mayoclinic.org/diseases-conditions/narcissistic-personality-disorder/symptoms-causes/syc-20366662>. As a mental illness, and not a choice, narcissism is not germane to this article.

thinks of common traits in lawyers, I would venture to say that humility is at the very bottom of that list—if it even makes the list at all. But maybe it should.”¹⁸ The absence of humility in the legal profession is a problem, and McGill University’s Phil Lord argues that the remedy starts with cultivating a sense of humility in law students.¹⁹ He is right about starting with law students, but that does not mean we practicing lawyers cannot change. Humility can be learned.²⁰ And that skill should be manifested in persuasive legal writing.

Why? Let’s step back. Lawyering is a profession in distress for a couple of big, and related reasons. First its practitioners, us lawyers, are mostly unpopular.²¹ Second, us lawyers are mostly unsatisfied with our profession, especially lawyers in their early career.²² As outlined in the landmark report from the National Task Force on Lawyer Well-Being, lawyers suffer high rates of burnout, depression, and suicide.²³ These twin interconnected realities of low public opinion and low practitioner satisfaction are not just a problem for lawyers (which is problem enough), but these realities are a problem for society.

Both public respect for lawyers and lawyers embracing what they do are critical to a functioning legal system and to achieving justice.²⁴ No article can begin to unpack the sources of these crises or rattle off solutions. Rather, here, I suggest one added tool to the lawyer’s toolbox—humility—although it is better described as a mindset than as a tool.

¹⁸ Roma Gujarathi, *Intellectual Humility: Could I Be Wrong?*, BC LAW: IMPACT (Mar. 31, 2022), <https://bclawimpact.org/2022/03/31/intellectual-humility-could-i-be-wrong/>.

¹⁹ Phil Lord, *Cultivating Humility*, 55 THE LAW TEACHER 364 (2021).

²⁰ *Infra* section II.

²¹ The 2023 Gallup Poll of Honesty and Ethics in Professions places lawyers in the bottom third. See *Honesty/Ethics in Professions*, GALLUP (Dec. 2023), <https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx>.

²² Debra Cassens Weiss, *Survey Finds Decline in Lawyer Well-Being, Particularly for Early-Career Respondents*, ABA J. (June 30, 2021, 10:56 AM), <https://www.abajournal.com/news/article/survey-finds-decline-in-lawyer-well-being-particularly-for-early-career-respondents>.

²³ Am. Bar Assoc. Nat’l Task Force on Law. Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, INST. FOR WELL-BEING IN LAW (Aug. 14, 2017), <https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf>.

²⁴ See John J. Parker, *A Profession Not a Skilled Trade*, 8 S.C. L. REV. 179, 179 (1955) (“The practice of the law is a profession—not a business or a skilled trade. While the elements of gain and service are present in both, the difference between a business and a profession is essentially this: the chief end of a trade or business is personal gain; the chief end of a profession is public service. Of the three learned professions, . . . it pertains to the minister to teach, to the physician to heal and to the lawyer to give peace and order to society.”); see also Stephen Breyer, Assoc. Justice, University of Pennsylvania Law School Commencement Remarks, Academy of Music, Phila., Pa. (May 19, 2003) (transcript at https://www.supremecourt.gov/publicinfo/speeches/viewsspeech/sp_05-19-03) (“The rule of law that this system reflects has served us well in protecting our liberty. It is a national treasure. But as John Marshall said, the ‘people made the Constitution and the people can unmake it.’ Its continued existence depends upon our willingness, and our ability, to make certain that the next generation of Americans participates in our democratic, governing process and understands the Constitutional importance of doing so. Your contribution to the transmission of those values, through teaching, through example, through participation in public life, is also a form of public service.”).

Conceit is off-putting,²⁵ and conceited people tend to be stressed, depressed and anxious.²⁶ By contrast, people warm up to those who convey humility,²⁷ and people who are humble are generally more satisfied with who they are and what they do than those who are not humble.²⁸ Lawyers ply their trade with words—either spoken or written. Humility should hold a central role in both arenas. Humility in legal oration is a topic for another day (and maybe another article). This article examines humility in legal writing. Writing with such a mindset and in such a manner can help, maybe a little bit, to lessen the distress in which our profession is mired and also render lawyers more effective.

Turning now to writing with humility, we lawyers should not write as if we are Paul Simon’s metaphorical boxer who hears “what he wants to hear and disregards the rest.”²⁹ Rather, legal writers should write with a good dose of humility, as Chief Justice John Roberts advises. Responding to a student’s question after a speech at Northwestern University Law School, Roberts noted the Supreme Court receives hundreds of briefs, all the same, that say, “my client clearly deserves to win,” and then he noted a better way:

When you come across a brief that begins more or less like “this is kind of a tough case and there are good arguments on the other side. We think we should prevail, though, because this is the important argument and we recognize this but here’s why they shouldn’t carry the day.” That, you immediately develop sympathy with that because that lawyer is putting him or herself in your position. Because your job [as a judge] is to recognize there are good arguments on both sides and try to come up with the best solution. That lawyer recognizes that, and boy, I tell you, you read that brief a lot more carefully than the one that says guess what? “This is an easy case. I should win.”³⁰

A Washington Post article³¹ about Roberts’s speech inspired Vermont Law School Professor Gregory Johnson to write one of the few articles

²⁵ Jessica Wortman & Dustin Wood, *The Personality Traits of Liked People*, 45 J. RSCH. PERSONALITY 519 (2011).

²⁶ Nelson Cowan et al., *Foundations of Arrogance: A Broad Survey and Framework for Research*, 23 REV. GEN. PSYCH. 425, 435 (2019) (author manuscript available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8101990/>); see also David Owen & Jonathan Davidson, *Hubris Syndrome: An Acquired Personality Disorder? A Study of US Presidents and UK Prime Ministers over the Last 100 Years*, 132 BRAIN 1396 (2009).

²⁷ Ai Ni Teoh & Livia Kriwangko, *Humility and Competence: Which Attribute Affects Social Relationships at Work?*, 19 INT’L J. ENV’T RSCH. PUB. HEALTH 1, 9 (May 14, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9140553/>.

²⁸ See *infra* notes 82–83.

²⁹ SIMON & GARFUNKEL, *THE BOXER* (Columbia Records 1969).

³⁰ John Roberts, *Role of the Chief Justice*, C-SPAN (Feb. 1, 2007), <https://www.c-span.org/video/?196510-1/role-chief-justice>.

³¹ Robert Burns, *Chief Justice Counsels Humility*, WASH. POST, Feb. 6, 2007, at A15.

arguing for more humility in legal advocacy.³² Rather than a single trigger, my impetus for advocating for some humility in legal writing arose from just getting tired, tired, tired of all the rancor and aggressiveness in legal writing recast as zealous advocacy.³³ It is not effective. I agree with Louisiana appellate lawyer Raymond P. Ward, who said, “If there is one virtue that makes a good legal writer, it is humility.”³⁴

This article argues that possessing and demonstrating intellectual humility in persuasive legal documents serves to make those documents *more* persuasive. To establish the thesis’s validity, we will first explore humility as a character trait, and its power. We unpack the connection between humility of the speaker/writer and their credibility in the minds of their audience with respect to an argument. This article then turns to the role credibility plays in enhancing the persuasiveness of that argument, and how humility is viewed and studied now as a communication construct and not just a virtue. Finally, we tie these threads together showing that realizing intellectual humility and writing in a way that communicates sincere anti-arrogance as *confident humility* in persuasive legal writing makes writing more persuasive.

I. Intellectual humility: its study, source, power, and nexus with credibility

A. The study of intellectual humility and its evolutionary roots

For more than 100 years, religion stood as the primary—if not exclusive—locus for the exploration and application of humility, where it was seen as a virtue.³⁵ Recently, scholars have broadened that focus to explore how humility can be more than a virtue. It is also a character trait. As such, humility is a product of both Nature and the environment. Most important, for the purposes of this article, humility can be learned.

Humility has two aspects. First, humility is evidenced by “personal hallmarks.”³⁶ These character traits include a calm accepting concept of self not hypersensitive to ego threats, an acceptance of personal strengths and weaknesses, and an openness to new information.³⁷

³² Gregory Johnson, *Credibility in Advocacy: Humility is the First Step*, 39 VT. B.J. 22 (2013).

³³ Kathleen P. Browe, *A Critique of the Civility Movement: Why Rambo Will Not Go Away*, 77 MARQ. L. REV. 751 (1994).

³⁴ Raymond P. Ward, *Humility*, CERTWORTHY 7, 7 (Winter 2003), <https://raymondward.typepad.com/newlegalwriter/files/Humility.pdf>.

³⁵ *Matthew* 18:4 (Jesus says: “Therefore, whoever humbles himself like this child is the greatest in the kingdom of heaven.”).

³⁶ Joseph Chancellor & Sonja Lyubomirsky, *Humble Beginnings: Current Trends, State Perspectives and Hallmarks of Humility*, 7 SOC. & PERSONALITY PSYCH. COMPASS 819, 823 (2013).

³⁷ *Id.* at 823–26.

Second, humility is a relational trait that plays out not only in how we look in the mirror, but what we see out the window. These “relational hallmarks” include an appreciation of others and an egalitarian view of seeing others as having the same “intrinsic value and importance as oneself.”³⁸

This broader study of humility is part of a growing area of scholarship called “positive psychology.”³⁹ Traditionally, psychology focused on identifying and helping to remedy human maladies. By contrast, positive psychology focuses on human strengths, virtues, and talents.⁴⁰ Primary topics of positive psychology include gratitude, forgiveness, and humility—what can be characterized as *other-oriented* behaviors.

Other-oriented behaviors boast evolutionary roots.⁴¹ First, there is the “social oil” hypothesis that asserts humility is adaptive because it acts as a buffer to “reduce relational wear and tear.”⁴² Second, there is the “well-being” hypothesis that contends that humility fosters better relationships because humility enhances a personal sense of goodness and contributes to the quality of romantic relationships.⁴³ Finally, there is the “social bonds” hypothesis⁴⁴ positing that humility helps “build coalitions and alliances and create secure low-level stress environments with preparedness to care, support, and invest in others.”⁴⁵ In this way, humility is a prosocial behavior building trust between individuals and within groups.⁴⁶

Broadly, humility involves an accurate view of one’s own abilities and a recognition of others’ value.⁴⁷ There are several types of humility,

38 *Id.* at 826–27.

39 See generally HANDBOOK OF HUMILITY: THEORY, RESEARCH, AND APPLICATIONS (Everett I. Worthington, Jr., Don E. Davis & Joshua N. Hook eds., 2016) [hereinafter HANDBOOK OF HUMILITY].

40 See generally CHRISTOPHER PETERSON & MARTIN SELIGMAN, CHARACTER STRENGTHS AND VIRTUES: A HANDBOOK AND CLASSIFICATION (2004).

41 See generally Paul Gilbert & Jaskaran Basran, *The Evolution of Prosocial and Antisocial Competitive Behavior and the Emergence of Prosocial and Antisocial Leadership Styles*, 10 FRONTIERS PSYCH. 1 (June 25, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6603082/>; see also Darcia Narvaez, *Humility in Four Forms: Intrapersonal, Interpersonal, Community, and Ecological*, in HUMILITY ch. 5 (Jennifer Cole Wright ed., 2019), in THE VIRTUES (Oxford U. Press); Daryl R. Van Tongeren et al., *Humility*, 28 CURRENT DIRECTIONS IN PSYCH. SCI. 463 (2019); Aiden P. Gregg & Nikhila Mahadevan, *Intellectual Arrogance and Intellectual Humility: An Evolutionary Epistemological Account*, 42 J. PSYCH. & THEOLOGY 7 (2014).

42 Van Tongeren et al., *supra* note 41, at 464.

43 See Rachel C. Garthe et al., *Humility in Romantic Relationships*, in HANDBOOK OF HUMILITY, *supra* note 39, at 221.

44 Van Tongeren et al., *supra* note 41, at 464.

45 Gilbert & Basran, *supra* note 41, at 3.

46 Matthew A. Humphreys, *Mechanisms of Humility’s Influence on Prosociality* (May 3, 2019) (Ph.D. dissertation, University of Maine), <https://digitalcommons.library.umaine.edu/etd/2962>.

47 See generally June Price Tangney, *Humility: Theoretical Perspectives, Empirical Findings, and Directions for Future Research*, 19 J. SOC. & CLINICAL PSYCH. 70 (2000).

including cultural humility,⁴⁸ generational humility,⁴⁹ and intellectual humility, the focus of the balance of this article.

Intellectual humility focuses on the intellectual domain and is part of a suite of intellectual virtues that also includes modesty, selflessness, respectfulness, and open-mindedness.⁵⁰ A spate of intellectual vices, opposite these virtues, includes vanity, arrogance, pride, dogmatism, and closed-mindedness.⁵¹ Such virtues and vices do not generally coexist in an individual. This article focuses on promoting intellectual humility and thus avoiding these intellectual vices.

Simply, intellectual humility means realizing and manifesting that “I might be wrong.” There are more robust definitions, a good example of which is offered by Hillsdale College philosophy professor Ian M. Church. He defines intellectual humility as “the virtue of valuing one’s own beliefs as he/she ought”⁵² and counsels that “intellectual humility is best thought of as a virtuous mean between intellectual arrogance and intellectual servility.”⁵³ In this way, intellectual humility sits like Goldilocks on that middle bed. While the intellectually servile suffer from too little confidence, the intellectually arrogant suffer from too much. Neither serves the possessor well.

Too little confidence generates negative outcomes. Depression and anxiety can plague individuals with low confidence.⁵⁴ At the most extreme, lack of confidence can be a contributing factor to eating disorders, criminal behavior, and suicide.⁵⁵

Too much confidence also generates negative outcomes. For, example, in one study, researchers showed that recreational basketball players overconfident about their shooting ability enjoyed the game less.⁵⁶ On a more serious level, overconfidence causes people to take unjustified

48 See generally Joshua N. Hook, *Cultural Humility: Measuring Openness to Culturally Diverse Clients*, 60 J. COUNSELING PSYCH. 353 (2013).

49 See generally Joshua Jauregui et al., *Generational ‘Othering’: The Myth of the Millennial Learner*, 54 MED. EDUC. 60 (2020).

50 Mark Alfano & Emily Sullivan, *Humility in Social Networks*, in THE ROUTLEDGE HANDBOOK OF PHILOSOPHY OF HUMILITY 484 (Mark Alfano, Michael P. Lynch & Alessandra Tanesni eds., 2021) [hereinafter PHILOSOPHY OF HUMILITY].

51 *Id.*

52 Ian M. Church, *The Doxastic Account of Intellectual Humility*, 7 LOGOS & EPISTEME 413, 424 (2016).

53 *Id.* at 413–14; see also Ian M. Church & Justin L. Barrett, *Intellectual Humility*, in HANDBOOK OF HUMILITY, *supra* note 39, at 63.

54 See Dat Tan Nguyen et al., *Low Self-Esteem and Its Association with Anxiety, Depression, and Suicidal Ideation in Vietnamese Secondary School Students: A Cross-Sectional Study*, 10 FRONTIERS PSYCH. 1, 3–4 (Sept. 27, 2019), <https://www.frontiersin.org/articles/10.3389/fpsy.2019.00698/full>.

55 Kali Trzesniewski et al., *Low Self-Esteem During Adolescence Predicts Poor Health, Criminal Behavior, and Limited Economic Prospects During Adulthood*, 42 DEV. PSYCH. 381 (2006).

56 A.P. McGraw et al., *The Affective Costs of Overconfidence*, 17 J. BEHAV. DECISION MAKING 281, 284–88 (2004).

financial risks as they reject helpful information.⁵⁷ In war, overconfidence can have fatal consequences;⁵⁸ just think George Custer. At the extreme, those saddled with too much confidence can succumb to the ultimate level of overconfidence—something called the Dunning-Kruger Effect.⁵⁹ This occurs where one’s own incompetence masks his or her ability to recognize their own incompetence.⁶⁰ What about lawyers and this type of overconfidence?

B. Lawyers and intellectual humility

It turns out lawyers suffer “from a pervasive Dunning-Kruger problem.”⁶¹ When we are intellectually arrogant, we are less open “to revising our beliefs in light of new evidence, and . . . more likely to be led to errors in our inquiries.”⁶² Clients suffer. The profession suffers. Society suffers. It seems a bit of a paradox that lawyers are plagued with arrogance when you realize the Socratic Method employed in law schools works to instill a sense of intellectual humility.⁶³

But too little confidence is also bad for lawyers. Those who suffer from low self-confidence fare poorly for themselves and their clients. Undervaluation of one’s knowledge and understanding can be manifest in what social psychologists call the Imposter Syndrome.⁶⁴ Imposter Syndrome is characterized by a high level of self-doubt⁶⁵ and can infect legal writers, particularly novice ones.⁶⁶ As Professor Sara L. Ochs writes,

⁵⁷ Syed Zain ul Abdin et al., *Overconfidence Bias and Investment Performance: A Mediating Effect of Risk Propensity*, 22 *BORSA ISTANBUL REV.* 780 (July 2022), www.sciencedirect.com/science/article/pii/S2214845022000151.

⁵⁸ Nicholas Light & Philip Fernbach, *The Role of Knowledge Calibration in Intellectual Humility*, in *PHILOSOPHY OF HUMILITY*, *supra* note 50, at 414; see also Rosa Hendijani & Babak Sohrabi, *The Effect of Humility on Emotional and Social Competencies: The Mediating Role of Judgment*, 6 *COGENT BUS. & MGMT.* 1, 5 (July 20, 2019), <https://www.tandfonline.com/doi/full/10.1080/23311975.2019.1641257> (“Overconfidence bias has been proposed as one of the main predictors of catastrophic phenomena such as wars, business failures, and stock market bubbles.”).

⁵⁹ Andrew Aberdein, *Intellectual Humility and Argumentation*, in *PHILOSOPHY OF HUMILITY*, *supra* note 50, at 326. See generally Justin Kruger & David Dunning, *Unskilled and Unaware of It: How Difficulties in Recognizing One’s Own Incompetence Lead to Inflated Self-Assessments*, 77 *J. PERSONALITY & SOC. PSYCH.* 1121 (1999).

⁶⁰ Errol Morris, *The Anosognosic’s Dilemma: Something’s Wrong but You’ll Never Know What It Is (Part 1)*, *N.Y. TIMES* (June 20, 2010), <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2010/06/20/the-anosognosics-dilemma-1/>.

⁶¹ Bryan A. Garner, *Why Lawyers Can’t Write*, *ABA J.* (Mar. 1, 2013), https://www.abajournal.com/magazine/article/why-lawyers_cant_write/.

⁶² J. Adam Carter & Emma C. Gordon, *Intellectual Humility and Assertion*, in *PHILOSOPHY OF HUMILITY*, *supra* note 50, at 335.

⁶³ Megan C. Haggard, *Humility as Intellectual Virtue: Assessment and Uses of a Limitations-Owning Perspective of Intellectual Humility* 4 (Dec. 2016) (Ph.D. dissertation, Baylor University), <https://baylor-ir.tdl.org/handle/2104/9925>.

⁶⁴ Aberdein, *supra* note 59, at 326.

⁶⁵ Sara L. Ochs, *Imposter Syndrome & The Law School Caste System*, 42 *PACE L. REV.* 373, 379 (2022).

⁶⁶ Ivy B. Grey, *How Imposter Syndrome Leads to Bad Legal Writing (and Seven Tips to Fix It)*, *PERFECTIT BLOG* (Apr. 19, 2020), <https://legal.intelligentediting.com/blog/how-imposter-syndrome-leads-to-bad-legal-writing-and-seven-tips-to-fix-it/>.

“This insidious feeling, conceptualized as ‘imposter syndrome,’ can often cause us to question our arguments, our writing styles, and even our self-worth. And these imposter feelings can frequently manifest in unconfident writing.”⁶⁷

Back to Goldilocks. Too far to the right on the certainty spectrum and one is over-confident; even arrogant. Too far to the left of the certainty spectrum and one is bathed in self-doubt. Neither is effective at convincing an audience. It is the intellectually humble person who finds themselves in the center—neither too sure nor too doubting. And that is there where legal writers should strive to be—in every aspect of their practice. Today that space stands largely vacant.

Within the legal profession, humility finds limited residence with some judges where it is viewed as an “adjudicative virtue.”⁶⁸ Famously, Justice Felix Frankfurter counseled that Supreme Court justices should bring “humility and an understanding of the range of problems and of their own inadequacy in dealing with them. . . .”⁶⁹ Deference and judicial restraint serve as examples of this virtue in practice.

But humility is more than just an adjudicative virtue.⁷⁰ As Edinburgh University law professor Amalia Amaya argues, humility plays important roles in the effective functioning of professional organizations like law firms and government agencies. Amaya highlights how humility is “essential to achieve excellence in legal practice.”⁷¹ In these settings, the presence of humility enhances group deliberation by favoring inclusiveness and a discussion of a broad range of ideas.⁷² Amaya also shows how a novice lawyer with a good dose of humility will more likely grow into a better expert lawyer than will a novice lawyer who lacks humility.⁷³

Finally, Amaya contends argumentation (the guiding practice of litigation) is conducive to humility.⁷⁴ Amaya points out humility and argumentation are synergistic, but only if the lawyer approaches argumentation with the proper mindset. Being “aggressively adversarial, abusive, and fiercely competitive, rather than enhancing humility, . . . encourages pedantic attitudes in the ‘winners’ and may seriously damage

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⁶⁷ Sara L. Ochs, *Embracing Confident Writing*, 85 BENCH & BAR, July/Aug. 2021, at 46, 46 (2021).

⁶⁸ Amalia Amaya, *Humility in Law*, in PHILOSOPHY OF HUMILITY, *supra* note 50, at 451–53. See generally Scharffs, *supra* note 15.

⁶⁹ Felix Frankfurter, *Chief Justices I Have Known*, 39 VA. L. REV. 883, 905 (1953).

⁷⁰ Amaya, *supra* note 68, at 451.

⁷¹ *Id.* at 455.

⁷² *Id.* at 455–56.

⁷³ *Id.* at 456–57.

⁷⁴ *Id.* at 459–60.

the self-confidence of the ‘losers.’”⁷⁵ Win some/lose some. Rather than an obstacle, being a humble lawyer makes both winning and losing a learning process to the benefits of our clients and the judicial system.⁷⁶

To that point, attorney Kimberly Shields was called out in an online article by a client, Daniel Wheeler, as a lawyer who exemplifies “the winning quality of humility.”⁷⁷ Humble lawyers are hard to find, not because they do not exist, but because they don’t brag, as Wheeler pointed out. Therefore, he counseled that the way to know if a lawyer possesses humility is to interview them.⁷⁸ So I called Ms. Shields, a litigation partner at a Bay Area law firm.

Ms. Shields represents clients in professional liability defense matters. She explained that people have always considered her a good listener, a characteristic she finds valuable as a lawyer.⁷⁹ A core principle of her practice is the view that prolonged litigation serves no one’s best interest. To avoid this hazard, Ms. Shields told me about a practice of hers—a practice epitomizing humility.⁸⁰

Ms. Shields explained that after she first analyzes a case, she sends the opposing counsel a letter aimed at settlement. Ms. Shields ends every such letter with an invitation. More or less, Ms. Shields writes “please let me know if there is anything in my analysis of the case that is missing or mistaken, or anything in my understanding of the facts that is incorrect.”⁸¹ In other words, she asks her opponent to *let me know where I am wrong*.

Ms. Shields explained that nine out of ten clients, and nine out of ten opposing counsel, are receptive to her entreaty. In some cases, she has learned something from opposing counsel, and in a few cases, she has changed her mind. More than that, however, Ms. Shields finds this approach opens meaningful dialogue. A conversation rather than a confrontation, she explained, that best represents her client.

While lawyers are advocates, they are also educators. We learn when we invite someone to comment or critique or correct. Armed with knowledge we become better lawyers; we become better advocates. Humility opens the door to learning.

⁷⁵ *Id.* at 460.

⁷⁶ Gwilliam, *supra* note 13.

⁷⁷ Daniel Wheeler, *Hire Litigators for Humility; Fire for Arrogance*, LINKEDIN PULSE (Oct. 11, 2021), <https://www.linkedin.com/pulse/hire-litigators-humility-fire-arrogance-daniel-wheeler/>.

⁷⁸ *Id.*

⁷⁹ Virtual video interview with Kimberly Shields, Shareholder, Murphy Pearson Bradley + Feeney, on Zoom (May 2, 2023).

⁸⁰ *Id.*

⁸¹ *Id.*

C. Benefits of intellectual humility—personal and organizational

Individuals and organizations both benefit by possessing and exhibiting intellectual humility. On an individual level, a summary of studies shows that intellectual humility is positively correlated with open-mindedness, agreeableness, improved decisionmaking, and higher motivation to learn, and even that students with intellectual humility are “more receptive to assignment feedback and earn higher grades.”⁸² Humility is also associated with forgiveness, generosity, and physical health.⁸³

Testing a person’s level of humility—or where they sit along the continuum—presents a problem. The problem lies in the reality that most testing for intellectual humility is based on self-reporting, a notoriously unreliable way to measure a personality trait. Recent scholarship, however, has established that intellectual humility may be measurable on an objective basis called the General Intellectual Humility Scale.⁸⁴

Regardless of the method of measuring, “intellectually humbler people are better able to differentiate between strong and weak arguments, even those arguments that go against their initial beliefs.”⁸⁵ This aspect of intellectual humility holds strong currency with lawyers. Knowing a weak argument from a strong argument is an essential legal advocacy skill. As Chief Justice Roberts told a reporter, he takes “more seriously” the argument that admits to the court that “[t]his case [presents] a difficult, close question, and there are good arguments on both sides.”⁸⁶ Intellectual humility persuades.

In addition to advantages for the individual, intellectual humility bestows profound group and organization benefits. These benefits include promoting social cohesion “by reducing group polarization and encouraging harmonious intergroup relationships.”⁸⁷ Intellectual humility is also positively correlated with forgiveness, emotional diversity, and empathetic concern.⁸⁸

⁸² Tenelle Porter et al., *Predictors and Consequences of Intellectual Humility*, 1 NATURE REV. PSYCHOL. 524, 530–32 (June 27, 2022), <https://www.nature.com/articles/s44159-022-00081-9#citeas>.

⁸³ Tenelle Porter, *Intellectual Humility, Mindset, and Learning* 6 (May 2015) (Ph.D. dissertation, Stanford University), <https://coa.stanford.edu/publications/intellectual-humility-mindset-and-learning>.

⁸⁴ Charles Westbrook, *The Validity of General Intellectual Humility Scale as a Measure of Intellectual Humility* 13–17 (Jan. 7, 2022) (Ph.D. dissertation, Georgia State University), https://scholarworks.gsu.edu/cps_diss/160/.

⁸⁵ Porter, *supra* note 82, at 531.

⁸⁶ Tony Mauro, *Roberts on Brief-Writing: ‘Be Concise’*, NAT’L L.J. (Sept. 24, 2014, 2:31 PM), <https://www.law.com/supremecourtbrief/almID/1202671205545/>.

⁸⁷ Porter, *supra* note 82, at 530.

⁸⁸ *Id.*

The power of humility for groups is evident in leaders of all stripes: corporate, political, military, and athletic. In 2001, Jim Collins, a management consultant and former Stanford professor, published the results of a five-year study of business leaders. In an article entitled *Level 5 Leadership: The Triumph of Humility and Fierce Resolve*,⁸⁹ Collins demonstrated in corporate leadership “the most powerfully transformative executives possess a paradoxical mixture of personal humility and professional will.”⁹⁰

Collins highlighted corporate leaders like Darwin Smith, who took over as the chief executive of Kimberly Clark in 1971 and turned a “stodgy old paper company” into “the leading consumer paper products company in the world.”⁹¹ Collins showed how Smith, who was described as “awkward” and “unpretentious,” harnessed his humility, and coupled it with fierce resolve to transform the company he led.⁹² Collins highlighted other corporate leaders including Coleman M. Mockler,⁹³ CEO of Gillette, George Cain,⁹⁴ of Abbott Laboratories, and Charles R. “Cork” Walgreen III,⁹⁵ each of whom combined humility with resolve to transform the companies they led.⁹⁶

Collins credited what he calls the “window and mirror” as the reason these leaders succeeded so magnificently. Collins explained how these leaders looked out the window to apportion credit—even undue credit—while simultaneously looking in the mirror to assign responsibility, and they never cited bad luck or something external when things went poorly.⁹⁷ Collins’s research showed humble behavior stands in stark contrast to the personality traits of other less successful executives who “frequently looked out the window for factors to blame but preened in the mirror to credit themselves when things went well.”⁹⁸

Humility also serves political leaders. George Washington and Abraham Lincoln both possessed and exhibited humility.⁹⁹ So too did

⁸⁹ Jim Collins, *Level 5 Leadership: The Triumph of Humility and Fierce Resolve*, 79 HARV. BUS. REV. 66 (2001). See generally MERWYN A. HAYES & MICHAEL D. COMER, *START WITH HUMILITY: LESSONS FROM AMERICA’S QUIET CEOs ON HOW TO BUILD TRUST AND INSPIRE FOLLOWERS* (2010).

⁹⁰ Collins, *supra* note 89, at 66.

⁹¹ *Id.* at 68.

⁹² *Id.*

⁹³ *Id.* at 70–71.

⁹⁴ *Id.* at 72–73.

⁹⁵ *Id.* at 73–74.

⁹⁶ See generally Vera & Rodriguez-Lopez, *supra* note 16 (discussing the benefits of an organizational leader possessing and expressing humility).

⁹⁷ Collins, *supra* note 89, at 74.

⁹⁸ *Id.* at 74–75.

⁹⁹ See generally DAVID J. BOBB, *HUMILITY: AN UNLIKELY BIOGRAPHY OF AMERICA’S GREATEST VIRTUE* (2013).

Benjamin Franklin and Frederick Douglass.¹⁰⁰ Franklin wrote in his autobiography how humility was part of his core being:

In reality, there is, perhaps, no one of our natural passions so hard to subdue as *pride*. Disguise it, struggle with it, beat it down, stifle it, mortify it as much as one pleases, it is still alive, and will every now and then peep out and show itself; you will see it, perhaps, often in this history; for, even if I could conceive that I had completely overcome it, I should probably be proud of my humility.¹⁰¹

World leaders like Gandhi and Nelson Mandela led with humility. Military leaders Ulysses Grant¹⁰² and Dwight Eisenhower both led with humility. Eisenhower famously said, “[A]lways take your job seriously, but never yourself.”¹⁰³ More recently, retired Army Gen. Martin E. Dempsey said in 2015 while serving as Chairman of the Joint Chiefs, “I think that humility is the trait that allows subordinates to enter into that trust relationship” and concluded those who are humble are “more approachable, more genuine and more trustworthy.”¹⁰⁴

In sports, humility holds currency. While Muhammad Ali famously said, “[I]t’s hard to be humble when you’re as great as I am,”¹⁰⁵ there is no more successful sports figure than coach John Wooden (664-162 record and ten NCAA championships). Wooden said, “Talent is God given. Be humble. Fame is man-given. Be grateful. Conceit is self-given. Be careful.”¹⁰⁶

In studying humility in coaching, researchers found humble coaches are successful not merely because of their experience or competence, “but because of their ability to build emotional bonds with their athletes[, which] suggests that humility enables coaches to establish secure, trusting relationships, exert a positive influence on their players, and build a

100 *Id.*

101 AUTOBIOGRAPHY OF BENJAMIN FRANKLIN ch. IX (Frank Woodworth Pine ed. 1915) (e-book), <https://www.gutenberg.org/files/20203/20203-h/20203-h.htm>.

102 See Matt Lively, *To Lead, Be Humble—Ulysses S. Grant*, THE STARTUP BLOG (Aug. 19, 2019), <https://medium.com/swlh/to-lead-be-humble-ulysses-s-grant-b3374233a99f>.

103 Dwight D. Eisenhower, Address at the New England “Forward to ‘54” Dinner, Boston, Massachusetts (Sept. 21, 1953) (quotation at <https://www.eisenhowerlibrary.gov/eisenhowers/quotes>). See generally Lt. Commander Steven R. Moffitt, *Humility Is for Leaders*, 146 PROCEEDINGS 1405 (Mar. 2020), <https://www.usni.org/magazines/proceedings/2020/march/humility-leaders>.

104 Rick Maze, *War College Lessons for Everyone: Success Requires Patience, Humility, Clear Communication*, ARMY MAG., Aug. 1, 2018, at 36, 37.

105 Quoted in LEIGH MONTVILLE, STING LIKE A BEE: MUHAMMAD ALI VS. THE UNITED STATES OF AMERICA, 1966–1971, at 5 (2018).

106 Ho Phi Huynh, Clint E. Johnson & Hillary Wehe, *Humble Coaches and Their Influence on Players and Teams: The Mediating Role of Affect-Based (but Not Cognition-Based) Trust*, 123 PSYCHOL. REPS. 1297, 1297 (2020).

productive team.”¹⁰⁷ While research shows that humility works for these leaders for various reasons—at the heart is that possessing and exhibiting humility enhances trust in those who these leaders lead.¹⁰⁸

D. Sources of intellectual humility and how to improve it

While the benefits of intellectual humility are clear, what are the factors that influence the development of intellectual humility in individuals? Specifically, can those lacking in such a trait acquire and enhance it? Like many personality traits, intellectual humility is a product of both genetics and nurture, including parenting, culture, and learning.¹⁰⁹ Interestingly, however, education can have opposing effects on intellectual humility. Education fosters confidence in one’s knowledge and can thereby enhance arrogance. On the other hand, the more people learn the more they “see how much they do not know, and the more complicated, nuanced, and endless knowledge becomes.”¹¹⁰

Perhaps this is the trap in which lawyers find themselves. Lawyers are highly educated experts trained to function “in an adversary system based upon the presupposition that the most effective means of determining truth is to present to a judge and jury a clash between proponents of conflicting views.”¹¹¹ These ingredients may seem to leave little room to encourage, foster, and deploy humility.

But that small room can be enlarged. A person can “boost” their intellectual humility.¹¹² Several studies demonstrate how. These studies, summarized by Professor Tenelle Porter and her colleagues, show that writing out detailed explanations of your position can foster intellectual humility. Two other studies show some connection between learning about intellectual humility and enhancing it.¹¹³ According to Duke University’s Mark R. Leary, “there is every reason to assume that [intellectual humility] can change.”¹¹⁴ In making this point, Leary notes that people change views or behaviors when they perceive such change is beneficial.

¹⁰⁷ *Id.* at 1314.

¹⁰⁸ See generally Cam Caldwell, Riki Ichiho & Verl Anderson, *Understanding Level 5 Leaders: The Ethical Perspectives of Leadership Humility*, 36 J. MGMT. DEV. 724 (June 17, 2017), <https://doi.org/10.1108/JMD-09-2016-0184>.

¹⁰⁹ Mark R. Leary, *The Psychology of Intellectual Humility* 9–10 (2018), <https://www.templeton.org/wp-content/uploads/2018/11/Intellectual-Humility-Leary-FullLength-Final.pdf>.

¹¹⁰ *Id.* at 11.

¹¹¹ Monroe H. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469, 1470 (1966).

¹¹² Porter et al, *supra* note 82, at 532 fig.3.

¹¹³ *Id.* at 531–32.

¹¹⁴ Leary, *supra* note 109, at 12.

Curiosity nurtures humility.¹¹⁵ Curiosity, at its core, is about asking questions. Curiosity can lead to humility because the more we learn and explore, the more we realize that we don't know. Turn to TV for the proof. The fictitious soccer coach Ted Lasso defeated an arrogant adversary in a game of darts. That adversary, Rupert, didn't bother to find out if Ted had ever played darts before challenging him to a match. As Ted Lasso prepared to throw the winning dart, he commented to Rupert the value of "be[ing] curious, not judgmental,"¹¹⁶ for if Rupert were curious, he would have asked Ted about his dart game experience, instead of judging him off the bat as an American who didn't play the game. It turns out that Ted *had* played a lot of darts in his youth. Rupert lost.

In the end, the benefits of intellectual humility are many including improved relationships, fostering positive interaction, and improving one's own decision-making.¹¹⁷ The point of this article is to demonstrate the benefit to possessing and expressing intellectual humility in legal (and all persuasive) writing, and by doing so, this article provides a path for the change it advocates.

II. How to develop and demonstrate humility in legal writing

A. Humility in the practice of law

We employ an adversarial system to resolve disputes justly. This system is based on the view that the best way to find truth and achieve justice is a competitive process played out before a judge or jury to determine the facts and accurately apply the law. Lawyers are metaphorical warriors in this competitive truth-finding/justice-achieving process. Zealous advocacy stands then as a foundational principle on which the system is built.¹¹⁸

But advocating a position *requires* understanding the strengths of the other lawyer's arguments and the weaknesses of your own—in other words, intellectual humility. As critical thinking theorist Richard Paul puts it,

¹¹⁵ Brian Resnick, *Intellectual Humility: The Importance of Knowing You Might Be Wrong*, Vox (Jan. 4, 2019), <https://www.vox.com/science-and-health/2019/1/4/17989224/intellectual-humility-explained-psychology-replication>.

¹¹⁶ TED LASSO: THE DIAMOND DOGS (Apple TV television broadcast Sept. 18, 2020) (transcript available at https://www.imdb.com/title/tt11193418/?ref_=tt_ch).

¹¹⁷ Resnick, *supra* note 115.

¹¹⁸ Monroe H. Freedman, *Henry Lord Brougham and Zeal*, 34 HOFSTRA L. REV. 1319, 1324 (2006).

We must feel *obliged* to hear [views we oppose] in their strongest form to ensure that we do not condemn them out of our own ignorance and bias. As this point we come full circle back to where we began: the need for *intellectual humility*.¹¹⁹

Brooklyn Law School’s Heidi Brown argues that a remedy for bad legal writing is to instill intellectual humility in 1L legal writers.¹²⁰ She cites Supreme Court Justice Felix Frankfurter, who wrote “the indispensable judicial requisite is intellectual humility,”¹²¹ and Judge Kenneth M. Ripple, who noted that “the [legal] writing process requires certain humility of mind and spirit. There must be an openness to the possibility that something ‘won’t write out’ because it does not make sense and that a substantive course adjustment is necessary.”¹²²

Brown argues that legal writing professors should take this advice by emphasizing to students that writing is thinking, and that students should develop an internal dialogue as they write.¹²³ This approach to writing, she contends, will help law students to “grow both in humility and confidence.”¹²⁴ McGill University Law Professor Phil Lord goes further, arguing that all law “professors should consciously attempt to show humility” to make students comfortable to “be vulnerable and become more self-aware.”¹²⁵

But not only do law students need to write with a “certain humility,” to use Judge Ripple’s words, but all lawyers need to understand writing with humility and appropriately demonstrating that humility makes them *better* legal writers. Below are some suggestions on *how* to humblize your writing—both by adjusting your attitude and by recrafting the text of the

¹¹⁹ Richard Paul, *Critical Thinking, Moral Integrity and Citizenship: Teaching the Intellectual Virtues*, in KNOWLEDGE, BELIEF AND CHARACTER: READINGS IN VIRTUE EPISTEMOLOGY 170 (Guy Axtell ed., 2020) (as quoted in Aberdeen, *supra* note 59, at 327).

¹²⁰ Heidi K. Brown, *Breaking Bad Briefs*, 41 J. LEGAL PRO. 259, 289 (2017). This idea of instilling humility in to-be professionals has been applied to future pharmacists, see Ike de la Pena & Jesse Koch, *Teaching Intellectual Humility is Essential in Preparing Collaborative Future Pharmacists*, 85 AM. J. PHARM. EDUC. 1007 (2021), future dentists, see Xan R. Goodman, Ruby L. Nugent, *Teaching Cultural Competence and Cultural Humility in Dental Medicine*, 39 MED. REFERENCE SERVS. Q., 309 (2020), and researchers, see generally Kelly G. Manix, *Educating Future Researchers with an Eye Toward Intellectual Humility*, 15 INDUS. & ORG. PSYCH. 135 (2022).

¹²¹ Brown, *supra* note 120, at 292 (citing *Am. Fed’n of Labor v. Am. Sash & Door Co.*, 335 U.S. 538, 557 (1949) (Frankfurter, J., concurring)).

¹²² *Id.* at 291 (citing Kenneth F. Ripple, *Legal Writing for the New Millennium: Lessons from a Special Teacher and a Special “Classroom”*, 74 NOTRE DAME L. REV. 925, 926 (1999)).

¹²³ *Id.* at 292.

¹²⁴ *Id.*

¹²⁵ Lord, *supra* note 19, at 372; see also Barbara A. Noah, *Teaching Bioethics; The Role of Empathy & Humility in the Teaching and Practice of Law*, 28 HEALTH MATRIX 201, 215 (2018) (stating that “[o]ne effective way to teach [law] students’ humility and empathy is to model these qualities” as a teacher).

document. But first it is important to understand *why* humility in legal writing improves the effectiveness of that writing.

B. Why: nexus of intellectual humility and credibility (trust)

In the simplest terms, “people worth trusting admit to what they don’t know.”¹²⁶ As a corollary, those who don’t (or can’t) admit they are wrong or what they don’t know prove untrustworthy.¹²⁷ Why? Because trust is intertwined with vulnerability.¹²⁸ Citing Annette Baier’s seminal work,¹²⁹ the editors of an entire volume of the *International Journal of Philosophical Studies* dedicated to the interrelationship between trust and vulnerability nailed it:

Annette Baier famously argued that a distinguishing mark of trust, as opposed to mere reliance and other attitudes in its neighbourhood, is that to trust is to accept vulnerability to another’s will. In trusting someone you put yourself in their power to some extent, and in doing so, risk being harmed if they do not take seriously the ethical demands of having that power.¹³⁰

“Practicing vulnerability,” argues Professor Nathalie Martin, “helps us connect with others and build trust.”¹³¹ But for lawyers trust more than just connects us; trust grounds the entire practice of law. Judges need to trust lawyers.¹³² The same holds true for juries, other lawyers, clients, and the public at large. All must have trust in what the lawyer says and writes.¹³³ Trust is not only an asset for a lawyer,¹³⁴ but a foundational trait necessary to do the job.

¹²⁶ Mattias Skipper, *The Humility Heuristic or: People Worth Trusting Admit to What They Don't Know*, 35 SOC. EPISTEMOLOGY 323, 323 (2021).

¹²⁷ Marius Leckelt et al., *Behavioral Processes Underlying the Decline of Narcissists' Popularity Over Time*, 109 J. PERSONALITY & SOC. PSYCH. 856, 866 (2015).

¹²⁸ Katie Miller, *Intellectual Humility, A Necessary Precondition to Building Trust in Court*, 12 INT'L J. CT. ADMIN. 1, 13 (2021).

¹²⁹ Annette Baier, *Trust and Antitrust*, 96 ETHICS 231, 235 (1986).

¹³⁰ Maria Baghramian, Danielle Petherbridge & Rowland Stout, *Vulnerability and Trust: An Introduction*, 28 INT'L J. PHIL. STUD. 575, 575 (2020), <https://www.tandfonline.com/doi/full/10.1080/09672559.2020.1855814>.

¹³¹ Nathalie Martin, *The Virtue of Vulnerability: Mindfulness and Well-Being in Law Schools and the Legal Profession*, 48 SW. L. REV. 367, 373 (2019).

¹³² Joseph W. Quinn, *A Judge's View: Things Lawyers Do That Annoy Judges; Things They Do That Impress Judges*, available at <https://www.oba.org/en/pdf/JudgesView.pdf> (last visited May 8, 2024) (“Never lose sight of your role in the courtroom: it is to persuade. And, to persuade, you must have the trust of the court. If the judge does not trust you, only the manifestly clear issues will fall your way”).

¹³³ See generally Sissela Bok, *Can Lawyers Be Trusted?*, 138 PENN. L. REV. 913 (1990).

¹³⁴ W. Bradley Wendell, *Informal Methods of Enhancing the Accountability of Lawyers*, 54 S.C. L. REV. 967, 972 (2003).

To be trustworthy, lawyers must learn to admit what they do not know—they must be humble. In persuasive writing, humility generally, and intellectual humility specifically, serve two purposes in enhancing trust. First, exercising intellectual humility promotes “effective epistemic self-trust.”¹³⁵ In simplest terms, those with intellectual humility know what they know. This contrasts with the arrogant writer who *overestimates* their intellect and knowledge, and the servile writer who underestimates their intellect and knowledge.¹³⁶

The intellectually humble person is more open to self-improvement and exploration, and more likely to accept criticism. Similarly, those writers plagued with excessive self-doubt reflect that in their writing and thus serve neither themselves professionally nor their clients representationally.¹³⁷ In the end, the intellectually humble person can trust themselves more in their final position than can the arrogant or servile writer.

But more important, the epistemic self-trust of intellectual humility when projected in the writing increases the credibility of the writer in the eyes of others. While self-trust relies on one’s view of themselves, a reader must gauge competence of the writer, and can do so only based on the text.¹³⁸ Trusting a legal writer stands as a pillar of persuasion—at least a sub-pillar of ethos (credibility). The other classic pillars of persuasion, logos, and pathos are not addressed here. The three features of ethos are intelligence, character, and good will, according to Professor Michael Smith. Each serves to build trust between writer and reader.¹³⁹

More broadly, trust can be seen a three-way relationship—a person trusts another for some thing or end.¹⁴⁰ Trust is more than reliance—reliance is predicable behavior while trust involves a “cooperative relationship.”¹⁴¹ A lawyer getting the audience to trust their assertions is essential to convincing them to adopt the lawyer’s argument—to get them to your “yes.”

According to recent research, a key to creating or enhancing trust—to find the right spot on the spectrum from self-aggrandizement to self-deprecation—is evidencing humility cues. While no study has been

135 Katherine Dormandy, *Intellectual Humility and Epistemic Trust*, in *PHILOSOPHY OF HUMILITY*, *supra* note 50, at 297.

136 *Id.*

137 Ochs, *supra* note 67, at 46.

138 Dormandy, *supra* note 135, at 297–99.

139 MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* ch. 7 (3d ed. 2013) (discussing ethos); *see also* J. Christopher Rideout, *Ethos, Character, and Discoursal Self in Persuasive Legal Writing*, 21 *LEGAL WRITING* 19 (2016).

140 Dormandy, *supra* note 135, at 292.

141 *Id.*

conducted on lawyers, much less legal writing, other studies offer findings that we can apply to lawyers.

For example, Professor Sang-Yeon Kim and Professor Erin Sahlstein Parcell joined forces to look at humility as a communication construct rather than a personality characteristic of virtue.¹⁴² This study examined a doctor's advice, providing two random groups with varying introductory dialogues from the doctor.¹⁴³ The study showed that arrogance does not improve an expert's credibility (or likability either). Self-depreciating cues (the other end of the spectrum) outperforms arrogance because such cues make people more likable, but self-deprecation reduces perceived expertise. The research showed that not too full of yourself, and not too wishy washy, but rather the middle ground of confident humility is where maximum credibility and likeability lives.¹⁴⁴ Goldilocks.

There are two aspects to being a humble legal writer, one internal and the other external. Legal writers must approach legal writing with humility. Armed with this attitude, the legal writer can write more humbly. But humility cannot be faked. While projecting the appearance of a good character trait like humility is important to foster ethos, "insincerity, if revealed, has disastrous consequences."¹⁴⁵ With this caution, we turn to the hows of humility and legal writing—how to internalize humility and how to demonstrate it to the reader.

C. How to *internalize* humility in legal writing

At its most basic level, humility is about the way we view ourselves. As Rick Warren put it, "true humility is not thinking less of yourself; it is thinking of yourself less."¹⁴⁶ Putting this view to writing means that understanding writing is a never-ending process, that encouraging comments, edits, and suggestions from others, and that working on a humble mindset are each central to that process.

1. Understand the never-ending need to improve your writing

No writer is ever good enough. No one. No writing is perfect. None. Barbara Kingsolver, a pretty good writer, advises all writers to approach their task with "the humility to keep trying until you've gotten it right."¹⁴⁷

¹⁴² Kim & Parcell, *supra* note 11, at 4.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Melissa H. Weresh, *Morality, Trust, and Illusion: Ethos as a Relationship*, 9 LEGAL COMM. & RHETORIC 229, 268 (2012).

¹⁴⁶ RICK WARREN, *THE PURPOSE DRIVEN LIFE* 265 (2012).

¹⁴⁷ Barbara Kingsolver, *5 Writing Tips: Barbara Kingsolver*, PUBLISHERS WKLY. (Oct. 12, 2018), <https://www.publisher-weekly.com/pw/by-topic/industry-news/tip-sheet/article/78305-5-writing-tips-barbara-kingsolver.html>.

She is correct. Humility forces you to write, revise, edit, and rewrite until you get it right, not perfect but right. A never-ending process of improving writing makes writing better because good writing is recursive¹⁴⁸ and iterative.¹⁴⁹ Legal writing is no different—it too is recursive and iterative.¹⁵⁰

Recursive means writing presents as a process, not a product. Iterative means with every draft the writer hones the message for the audience. These processes involve pre-writing, writing, revising, rewriting.¹⁵¹ At each stage, the writer is almost certainly going to discover improvement in some or all the prior processes. This kind of writing stimulates thinking. The more writing is treated as a recursive process, the more thinking happens and the better the written product. Writers move back and forth between the stages and continually improve the text.

As one scholar put it, because writing is a recursive process that calls upon the writer to “see” many things at once, revision must serve as more than the last stage on an assembly line where the writer corrects errors. Recursive writing “encourages exploration of new paths to success and empowers writers to make informed decisions and to revisit those decisions.”¹⁵² Revision is literally “re-vision”—the process where the writer becomes the reader and sees the writing with new eyes.¹⁵³

Arrogance wears blinders. Arrogance sees writing only as a product; something the writer creates rather than a journey of learning the writer undertakes. Legal writers must be humble writers who know writing is a recursive process from pre-writing to final brief. It is a process that stimulates thinking in ways that the writer was unaware when he or she first sat down with pencil and paper, or more likely today to just type away. Vladimir Nabokov is reported to have said “My pencils outlast their erasers.”¹⁵⁴ Writing, erasing, and writing and erasing makes writing better.

148 Linda Flower & John R. Hayes, *A Cognitive Process Theory of Writing*, 32 *COLL. COMPOSITION & COMM’N* 365, 366–67 (1981).

149 See PETER ELBOW, *WRITING WITH POWER: TECHNIQUES FOR MASTERING THE WRITING PROCESS* 47 (1998) (“There is no good reason why you must try to produce something in your first cycle of writing that resembles the form of what you want to end up with.”).

150 Tamar Ezer, *Teaching Written Advocacy in A Law Clinic Setting*, 27 *CLINICAL L. REV.* 167, 174 (2021).

151 Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 *U. PITT. L. REV.* 719, 722 (1997); see also Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader*, 14 *LEGAL WRITING* 291, 304 (2008).

152 Christopher M. Anzidei, *The Revision Process in Legal Writing: Seeing Better to Write Better*, 8 *LEGAL WRITING* 23, 52 (2002).

153 *Id.* at 25.

154 *Id.* at 23 (citing THOMAS COOLEY, *THE NORTON GUIDE TO WRITING* 87 (W.W. Norton & Co. 1992)).

2. “Get over yourself”: be open to criticism and seek advice from others

Your writing is not the product of genius, and you should submit your work to others and accept constructive criticism.¹⁵⁵ This is the essence of intellectual humility—the recognition of the value of the opinion, views, and input of others. This applies to writing. Stephen King advises to “skip as much of the self-illusion as possible.”¹⁵⁶

What we write can always be improved by criticism and advice of others. “A clear sentence is no accident. Few sentences come out right the first time, or even the third time.”¹⁵⁷ The same is true for paragraphs, sections, and the entire brief! A humble approach to writing is the highest form of professionalism, says Wake County North Carolina District Judge Ashleigh Parker Dunston.¹⁵⁸ She learned this lesson early in her career.

Two years out of law school, the then Ms. Dunston served as a North Carolina Assistant Attorney General when a senior lawyer in the division asked her to review his appellate brief.¹⁵⁹ Puzzled, she asked the more experienced lawyer *why*. He responded that her review and criticism “offered a different perspective” on the case. She would help “expose holes” in his argument he told the young attorney.¹⁶⁰ She did as asked. The senior lawyer grew to be a mentor to Ms. Dunston and an inspiration to her on the importance of humility. Not being open to criticism, and not seeking advice in your arguments, Judge Dunston explained years later, is the “epitome of a terrible lawyer.”¹⁶¹

In sum, humility is the recognition you might be wrong and that your writing needs improvement. In legal writing, “humility” is the recognition “that all writers, even the best ones, need editing.”¹⁶² As Judge Lebovits puts it, “the humble seek advice from others . . . welcome suggestions, adopt good ones, and learn from them.”¹⁶³

155 Ward, *supra* note 34; Gerald Lebovits, *Sin and Virtue in Legal Writing: Vanity and Humility*, 79 N.Y. ST. BAR ASS'N J., Mar./Apr. 2007, at 59, 64.

156 Quoted in Elizabeth Ruiz Frost, *Good Writing Comes from Hard Work, Stephen King Says: Tips from A Master Storyteller*, 80 OR. ST. BAR BULL., July 2020, at 15.

157 Gerald Lebovits, *Legal-Writing Myths*, 16 SCRIBES J. LEGAL WRITING 113, 119–20 (2014–15) (citing WILLIAM ZINSSER, *ON WRITING WELL: THE CLASSIC GUIDE TO WRITING NONFICTION* 9 (7th ed. 2006)).

158 Ashleigh Parker Dunston, *Humility Is the Highest Form of Professionalism*, WAKE CTY. BAR ASS'N BLOG (Sept. 30, 2019), <https://www.wakecountybar.org/blogpost/727449/332106/Humility-is-the-Highest-Form-of-Professionalism>.

159 Interview with Ashleigh Parker Dunston (Mar. 20, 2022).

160 *Id.*

161 *Id.*

162 Joseph Kimble, *The Straight Skinny on Better Judicial Opinions*, 9 SCRIBES J. LEGAL WRITING 1, 20 (2003–04).

163 Lebovits, *supra* note 155, at 59.

3. Other suggestions on how to internalize (cultivate) humility

Being self-centered is a motivation where “you” come first. Being arrogant is where “you” project an air of superiority. Because those who care about themselves often possess and project superiority, these concepts are related. They are not the same. This article seeks to help lawyers be more humble—less arrogant—in their how they act and how they write. This article is not arguing that lawyers are self-centered (although some may be, just like any some member of any group may be).

Most lawyers are not self-centered: rather, in most cases, lawyers care about their clients and helping to solve their problems. Whether it is the system of zealous advocacy, the pressures of the “law business,” society, or some other reason, whether lawyers care or not, lawyers generally lack humility. That absence of humility pervades the profession, and as argued throughout this article, that is a problem.

Just reading this article starts the path to recognition of the problem. This realization opens the door to consideration of a few suggestions on how to cultivate humility. One step on the road to solving that problem is the aim of this article.

Humility is a mindset and not a skill. And it will make being a caring lawyer more effective. And because it is a mindset, there is no one-size-fits-all recipe to setting your mind to “humble.” Research shows that teaching and practicing virtues, like humility, can lead those virtues to becoming part of your character.¹⁶⁴ Internalizing humility is a progression. First, there must be a recognition of the problem—arrogance in lawyering in general and legal writing in particular. Second, there must be a commitment to do something about it. And finally, those willing to do something need to create a system that promotes humility to take hold, grow, and flourish, in other words, to cultivate a humility mindset.

On a broad scale, research has shown that humility can be cultivated by in by early life experience, by a spiritual practice in many faiths, and by meditation.¹⁶⁵ A further discussion of those means to cultivate humility exceeds the scope of this short article. Even so, there are some small things we can do to cultivate humility. For one, we can try to realize our smallness “such as seeing the earth from space, as one tiny blue dot in the vastness of the universe or standing on the edge of the Grand Canyon.”¹⁶⁶ As Professor Jennifer Cole Wright puts it, these are a type of “revelatory encounter with—and the shifting and quieting of—our natural centered-ness.”¹⁶⁷

¹⁶⁴ See generally THE THEORY AND PRACTICE OF VIRTUE EDUCATION (Tom Harrison & David Walker eds., 2019).

¹⁶⁵ Jennifer Cole Wright, *Humility as a Foundational Virtue*, in HUMILITY, *supra* note 41, at 180–82.

¹⁶⁶ *Id.* at 182 (citing Lisa Gerber, *Standing Humbly Before Nature*, 7 ETHICS & THE ENV'T 39 (2002)).

¹⁶⁷ *Id.* at 182.

We can look for some guidance to the ancient Stoic philosophers who preached humility.¹⁶⁸ Modern Stoicism builds on these ancient thinkers like Seneca and Marcus Aurelius.¹⁶⁹ A practice employed by Stoics, ancient and modern, is what one modern author calls “the Stoic Morning Routine.”¹⁷⁰ The practice is best articulated by Marcus Aurelius in *Meditations*, when he writes, “[w]hen you arise in the morning, think of what a precious privilege it is to be alive—to breathe, to think, to enjoy, to love.”¹⁷¹ Gratitude and a realization of the temporal nature of our existence is—to say the least—humbling. And it dials your mind to that setting.

And when you go to bed at night, take five minutes, reflect on the day and be your own most harsh critic. In what modern Stoics call “retrospective mediation,”¹⁷² the Roman Stoic Seneca advised of the moments before sleep,

I make use of this opportunity, daily pleading my case at my own court. When the light has been taken away and my wife has fallen silent, aware as she is of my habit, I examine my entire day, going through what I have done and said. I conceal nothing from myself, I pass nothing by. I have nothing to fear from my errors when I can say: “See that you do not do this anymore. For the moment, I excuse you.”¹⁷³

Creating this mindset in one’s daily life is central to applying the mindset to one’s profession. Humility is not a switch turned on when the lawyer starts writing. A mindset are the beliefs that shape how a person makes sense of the world, themselves, and their place in the world. Humility is a mindset.

Beyond the few suggestions above, there are many more practices set out in the literature to help cultivate humility.¹⁷⁴ Suffice it to say, that cultivating humility requires a desire to achieve that mindset, an understanding of what it is, and a commitment to keep it present in your mind.

168 Sophie Grace Chappell, *Humility Among the Ancient Greeks*, in *PHILOSOPHY OF HUMILITY*, *supra* note 50, at 198. See generally JONAS SALZGEBER, *THE LITTLE BOOK OF STOICISM: TIMELESS WISDOM TO GAIN RESILIENCE, CONFIDENCE, AND CALMNESS* (2019).

169 SALZGEBER, *supra* note 168, at 26–35.

170 *Id.* at 137.

171 Quoted in *id.* at 135.

172 MATTHEW J. VAN NATTA, *THE GOOD FORTUNE HANDBOOK: DEVELOPING A STOIC OUTLOOK DAY BY DAY*, Episode Five (2017) (e-book), <https://pressbooks.pub/goodfortune/chapter/a-stoic-end-to-the-day/>.

173 Quoted in SALZGEBER, *supra* note 168, at 137; see also Bernard Marr, *The Power of Mindset: How Curiosity and Humility Can Drive Career Success*, *FORBES* (Apr. 21, 2023), <https://www.forbes.com/sites/bernardmarr/2023/04/21/the-power-of-mindset-how-curiosity-and-humility-can-drive-career-success/?sh=3f55e15c5e0c> (“Be honest with yourself. Think honestly about your weaknesses as well as your strengths. Be willing to admit your mistakes and take responsibility without relying on excuses. These mistakes or weaknesses show where you have room to grow.”).

174 See generally SALZGEBER, *supra* note 168; VAN NATTA, *supra* note 172.

Cultivating the mindset need not precede practicing humility, however. Each feed off the other, and now we turn to how to demonstrate humility in legal writing.

D. How to *demonstrate* humility in persuasive legal writing

“Boastful or arrogant writing is as repellent as a boastful or arrogant person.”¹⁷⁵ The suggestions below will yield writing that is inviting, not “repellent.”

1. Audience first, last, and only

“I write for me,” said famed American playwright Edward Albee. “The audience of me.”¹⁷⁶ While all the world may be a stage, lawyers are not playwrights and courtrooms are not Broadway.

Lawyers write for a specific client for a specific reason for a specific audience.¹⁷⁷ Lawyers write for a judge, or some decision maker, with the aim of getting that reader to “yes.” The process of writing for the audience requires the writer to “‘de-centre’ from his or her own understanding of what is being written and project an interpretation from the reader’s perspective.”¹⁷⁸ As an audience driven endeavor, the writer must never write for the audience of me. This kind of writing requires putting their ego aside, in other words, humility.

Recently, a Chicago attorney offered a stellar example of how to not write “for the audience.” Following dismissal of the case, the lawyer filed a motion to amend, and in doing so caused District Court Judge Steven C. Seeger to pen a Memorandum Opinion and Order that started with this: “Most of us say things in our heads that we wouldn’t say out loud. And most of us say things out loud that we wouldn’t say in a court filing. But not everyone is blessed with the same filter, or with the same willingness to use the brake pedal.”¹⁷⁹

Judge Seeger then went on to quote from the motion passage after passage that demonstrated disrespect for the Court. Disrespecting an audience is not writing with humility. Examples of this disrespect in the

¹⁷⁵ RICHARD PALMER, *WRITE IN STYLE: GUIDE TO GOOD ENGLISH* 72 (1993).

¹⁷⁶ Quoted in Donald M. Murray, *Teaching the Other Self: The Writer’s First Reader*, 33 *COLL. COMPOSITION & COMM’N* 140, 140 (1982).

¹⁷⁷ See generally Teresa Godwin Phelps, *The New Legal Rhetoric*, 40 *SW. L.J.* 1089, 1093 (1986) (seminal article arguing legal writing should reject the “current-traditional paradigm,” which failed to emphasize the role of the audience and the writer).

¹⁷⁸ Debra Myhill, Helen Lines & Susan Jones, *Writing Like a Reader: Developing Metalinguistic Understanding to Support Reading-Writing Connections*, in *READING-WRITING CONNECTIONS: TOWARDS INTEGRATIVE LITERACY SCI.* 107 (Rui A. Alves, Teresa Limpo & R. Malatesha Joshi eds., 2020), <https://ore.exeter.ac.uk/repository/bitstream/handle/10871/29969/2018MyhillLinesJonesWritinglikeaReaderReading%26Writing.pdf?sequence=3>.

¹⁷⁹ *Porch v. Univ. of Ill. at Chi., Sch. of Med.*, No. 21-CV-3848, 2023 WL 2429348, at *1 (N.D. Ill. Mar. 9, 2023).

motion included statements that questioned whether the Court’s clerk wrote the order dismissing the complaint, and other statements that intimated that the Judge did not even “take the time to carefully read” a prior order.¹⁸⁰ After offering a few pages of examples, Judge Seeger wrote “The Court could go on. Counsel did. After 28 pages, counsel finally ran out of gas.”¹⁸¹ The attorneys motion offered an example of writing *for the audience of me*. Judge Seeger offered counsel leave to file an amended motion.¹⁸²

Generally, the way to write for “the audience” is to focus on the decision maker reading the brief—the judge.¹⁸³ The dos and don’ts of writing for the audience include use of short sentences, being precise, concise, simple, and clear, employing signals like headings and transitions, and all other matter of writing methods and elements that help guide the reader. But the purpose of this article is not to rattle off the ways to put “audience first.” Rather, the purpose here is to remind the legal writer to keep the *perspective* of the reader front and center. To recast a quote from *Caddyshack* “be the reader.”¹⁸⁴ The best way to do this is to start with that mindset, and when the writing is complete, come back to it and pretend that you did not write it. Again “be the reader.”

“Be the reader” means focusing on the composition of the text from the judge’s perspective. In other words, ask what the judge is looking for in the brief. Patrick Stanton, Circuit Court of Cook County Associate Judge, offers insight in that regard.¹⁸⁵ “A good judge wants to be right. And the pathway to winning is to show the judge the way to the right decision.”¹⁸⁶ Central to that task, Judge Stanton explained, is for the lawyer to “be credible, and to be credible the lawyer should remember to show humility, and acknowledging the other side’s argument while explaining that your argument is the one that leads to the right result.”¹⁸⁷ In this way, the brief should be structured to “educate” the judge with clear logical steps to that “right decision” the judge wants to deliver.¹⁸⁸ The brief writer is an

180 *Id.* at *2.

181 *Id.*

182 Minute entry granting leave to file amended motion, *Porch v. Univ. of Ill. at Chi., Sch. of Med.*, No. 21-CV-3848 (N.D. Ill. June 27, 2023).

183 ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 5 (2008).

184 The movie shows the Chevy Chase character advising teenage Danny that the way to best play golf is to “be the ball.” See Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) Are as Important as IRAC*, 25 T.M. COOLEY L. REV. 267, 272 (2008) (citing *CADDYSHACK* (Warner Bros. 1980)).

185 Interview with Patrick Stanton, Chi., Ill. (Mar. 2, 2023).

186 *Id.*

187 *Id.*

188 See Laura A. Webb, *Why Legal Writers Should Think Like Teachers*, 67 J. LEGAL EDUC. 315, 320 (2017).

educator for the judge, not a combatant with opposing counsel. “Arrogant writing,” Stanton concluded, “is not helpful.”¹⁸⁹ Says the audience.

2. Simplify

Simplify, simplify, simplify.¹⁹⁰ A chorus repeated over and over and over when it comes to suggestions on improving legal writing.¹⁹¹ Why? One reason is cognitive: long words long sentences long paragraphs are harder to remember than short ones.¹⁹² Simpler is also easier to read, an aspect of a brief readers appreciate.

Another reason to simplify is the process of simplifying writing works to help the writer better understand his or her points. The better the writer understands the argument, the better teacher that lawyer will be for the judge. Wisconsin Supreme Court Justice William Bablitch advised that “[a] lawyer should write the brief at a level a 12th grader could understand. That’s a good rule of thumb. It also aids the writer. Working hard to make a brief simple is extremely rewarding because it helps a lawyer to understand, clarify and distill the issue. At the same time, it scores points with the court.”¹⁹³

Streamlined writing respects readers. As Joseph Kimble observed thirty years ago, “[w]riting is a public act that presumes someone else’s time. We have no right to waste it with dense, inflated, obscure prose.”¹⁹⁴ Moreover, using simple and plain language increases fluency. A reader experiencing fluency—something called “cognitive ease”¹⁹⁵—is a happier reader.

This is how simple writing respects readers. Respect for another is the essence of humility. As David Mellinkoff, late Professor at UCLA School of Law, wrote decades ago, “Pompousness and verbosity go hand in hand, indifference to readers. A touch of humility kills off verbosity.”¹⁹⁶ Examples of how to simplify writing include using shorter words, shorter sentences,

¹⁸⁹ Interview with Patrick Stanton, *supra* note 185.

¹⁹⁰ Douglas E. Abrams, *What Great Writers Can Teach Lawyers and Judges: Wisdom from Plato to Mark Twain to Stephen King (Part 2)*, 5 PRECEDENT 21 (2011), <https://scholarship.law.missouri.edu/facpubs/889>.

¹⁹¹ See, e.g., ROBERT E. BACHARACH, *LEGAL WRITING: A JUDGE’S PERSPECTIVE ON THE SCIENCE AND RHETORIC OF THE WRITTEN WORD* 109 (2020).

¹⁹² *Id.*

¹⁹³ Mark Rust, *Mistakes to Avoid on Appeal*, ABA J., Sept. 1, 1988, at 78, 80 (cited in Bryan Garner, *Judges on Effective Writing: The Importance of Plain Language*, 73 MICH. BAR J. 326, 326 (1994)).

¹⁹⁴ Joseph Kimble, *Plain English: A Charter for Clear Writing: (Part Three)*, 71 MICH. BAR J. 1302, 1305 (1992).

¹⁹⁵ Raymond P. Ward, *The Science Behind Plain Language*, 19 SCRIBES J. LEGAL WRITING 181, 184 (2020) (citing DANIEL KAHNEMAN, *THINKING FAST AND SLOW* 60 (2011)).

¹⁹⁶ DAVID MELLINKOFF, *LEGAL WRITING: SENSE AND NONSENSE* 122 (1982); see also Charles A. Beardsley, *Beware of, Eschew and Avoid Pompous Prolixity and Platitudinous Epistles!*, 16 CAL. BAR J. 65 (1941).

shorter paragraphs, few if any modifiers, and use of the active voice—think Hemingway!¹⁹⁷

3. Be plain spoken

Reading the word “pusillanimity” triggers reader resentment for the author not admiration. Wasn’t that you’re feeling when you came upon that word early on in this article? That was the point.

Unnecessarily complicated and long words offend readers. They demonstrate arrogance. Arrogant writing uses complicated words, what us lawyers call *legalese*. Humble writing is plain spoken. When asked his opinion of legalese, Associate Supreme Court Justice Stephen G. Breyer said “Terrible! Terrible! I would try to avoid it as much as possible. No point. Adds nothing. I’m sure there are some instances where there is a necessity for it, but I have not found one, or I can’t find many.”¹⁹⁸

Here is an example. *Union Carbide Corp. v. American Can Co.*¹⁹⁹ involved a dispute over plastic bags used in meat-packing plants. In an affidavit, an expert witness and lawyer, wrote the dispute involved “beef fabrication plants.”²⁰⁰ Rather than persuade or impress the judge, this failure to be plain spoken met with derision. District Judge Prentice Marshall wrote,

A “beef fabrication plant” must be an interesting place. We had always thought that beef was “fabricated” by Mother Nature. We assume, however, that Mr. Fischer meant to refer to what is commonly known as a meat packing plant. Perhaps this confusion illustrates the wisdom behind Beardsley’s Warning to Lawyers: “Beware of and eschew pompous prolixity.”²⁰¹

Judges find pompous language ineffective. For example, Texas Supreme Court Justice Wallace Jefferson said his biggest “pet peeve” was “when the brief is pompous.”²⁰² He continued to explain why, saying such briefs “are condescending or disrespectful” and concluded simply, “That doesn’t get you anywhere.”²⁰³ Late Second Circuit Court of Appeals Judge

¹⁹⁷ Gerald Lebovits, *Thoughts on Legal Writing from the Greatest of Them All: Ernest Hemingway*, NYSBA ONLINE (Mar. 23, 2021), <https://nysba.org/thoughts-on-legal-writing-from-the-greatest-of-them-all-ernest-hemingway/>.

¹⁹⁸ Bryan Garner, *Interviews with United States Supreme Court Justices: Justice Stephen G. Breyer*, 13 SCRIBES J. LEGAL WRITING 145, 156 (2010).

¹⁹⁹ 558 F. Supp. 1154 (N.D. Ill. 1983).

²⁰⁰ *Id.* at 1159.

²⁰¹ *Id.* at 1159 n.6.

²⁰² David M. Hugin, *Judicial Spotlight: An Interview with Chief Justice Wallace Jefferson*, 17 APP. ADVOC., Spring 2004, at 13, 18.

²⁰³ *Id.*

Roger J. Miner echoed this point, writing that “we prefer briefs that are not pompous.”²⁰⁴

Lawyers want to appear intelligent. We need to. It is an element of ethos.²⁰⁵ In what may seem a paradox, research reveals that use of clear, simple words in place of complex words makes authors appear more intelligent.²⁰⁶ Writers, lawyers included, tend to believe that “million-dollar words lead readers to believe the author is smart.”²⁰⁷ Five separate experiments on groups of Stanford University students showed the opposite: “needless complexity leads to negative evaluations.”²⁰⁸

Readers find it difficult to read difficult words. Hardly surprising. Reading fluency is positively correlated with readers’ intelligence judgments about the writer. A belief the writer knows what they are writing about is the key to being persuasive. This is shown by the clear and concise writing, and sound logic. Given that reality, why be arrogant in your writing by employing needless complexity?

4. Respect opponents

Demonstrating respect for opponents shows humility.²⁰⁹ Attacking opponents shows arrogance. Respect works with judges. Arrogance does not. As Judge Miner advises, “Ad hominem attacks are particularly distasteful to appellate judges. Attacks in the brief on brothers and sisters at the bar rarely bring you anything but condemnation by an appellate court.”²¹⁰ To that point, Texas Supreme Court Justice Wallace Jefferson explains how this tactic fails to persuade a judge:

If you are rude to your opponent in the brief it negatively impacts your case. If you have to go to those lengths, then there is often something fundamentally wrong with your argument. I prefer to see the logic of an argument carry the day. The same is true of an opinion. If it is unsound, a dissent’s logical critique will expose the flaws. Why clutter that critique with personal attacks?²¹¹

204 Roger J. Miner, *Twenty-Five “Dos” for Appellate Brief Writers*, 3 SCRIBES J. LEGAL WRITING 19, 20 (1992).

205 SMITH, *supra* note 139, at 148 (listing eleven qualities an intelligent legal writer is perceived to have).

206 David M. Oppenheimer, *Consequences of Erudite Vernacular Utilized Irrespective of Necessity: Problems with Using Long Words Needlessly*, 20 APPLIED COGNITIVE PSYCH. 139 (2006).

207 *Id.* at 140.

208 *Id.* at 151.

209 See Matthew L. Stanley, Alyssa H. Sinclair & Paul Seli, *Intellectual Humility and Perceptions of Political Opponents*, 88 PERSONALITY 1196 (2020).

210 Miner, *supra* note 204, at 25.

211 Hugin, *supra* note 202, at 19; see also *Bank of Am., N.A. v. Atkin*, 305 So. 3d 305, 307 (Fla. App. 2018) (“Insults or disparaging comments by lawyers to courts in court filings cannot be justified as zealous advocacy because they risk alienating the very judges the lawyer was hired to persuade. Insults normally reflect—not attempts at persuasion—but the abandonment of any attempt to persuade.”).

The American College of Trial Lawyers puts it this way in its *Code of Pretrial and Trial Conduct*: “A lawyer should not make disparaging personal remarks or display acrimony toward opposing counsel, and must avoid demeaning or humiliating words in written and oral communication with adversaries.”²¹² Social science research confirms that being disrespectful, insulting, or demeaning to others is repellent, not persuasive.²¹³ As the late Associate Justice Scalia noted, attacking opposing counsel “undercuts the persuasive force of any legal argument. The practice is uncalled for, unpleasant, and ineffective.”²¹⁴

Rarely is insulting and demeaning language directly aimed at an opponent. Rather, disrespectful language often more often finds a home in adjectives describing arguments presented by an opponent. A distinction without a difference. Adjectives should be avoided as a rule, but if compelled to describe a noun (an opposing point, case, or argument), don’t use adjectives like *utterly* before meritless, *totally* before irrelevant, *disingenuously* before claims.²¹⁵ Point made.

5. Don’t overstate your claims

“[O]ver the top’ language will diminish your credibility and risk alienating the court.”²¹⁶ Hyperbole “is deliberate overstatement or exaggeration used to express strong feeling or make a vivid impression.”²¹⁷ While a deft use of what Michael Smith calls “literary hyperbole” can be sparingly used,²¹⁸ exaggeration should be avoided in persuasive legal writing.

Avoid superlatives like *always*, *never*, *best*, *worst*, *most*, *biggest*, *smallest*, *greatest*. Similarly, intensifier adverbs that end in “ly” should be avoided. Words like *obviously*, *plainly*, *outrageously*, or *unbelievably* are coercive, not persuasive.²¹⁹ They signal weak arguments,²²⁰ and disrespect

212 Am. Coll. of Trial Lawyers, *CODE OF PRETRIAL AND TRIAL CONDUCT* 4 (2009), https://www.vawd.uscourts.gov/sites/Public/assets/File/pretrial_and_trial_conduct.pdf.

213 Robert P. Abelson & James C. Miller, *Negative Persuasion Via Personal Insult*, 3 J. EXPERIMENTAL SOC. PSYCH. 321, 321 (1976) (finding that an individual directly insulted by a communicator attempting to persuade him will show a “boomerang effect” by increasing the extremity of his initial attitude position).

214 SCALIA & GARNER, *supra* note 183, at 34–35.

215 See Megan Boyd & Adam Lamparello, *Legal Writing for the Real World: A Practical Guide to Success*, 46 J. MARSHALL L. REV. 487, 515 (2013); see also Savannah Blackwell, *Legal Writing Tip: Never Insult Your Opponents or Their Arguments*, THE BAR ASS’N OF S.F. BLOG (June 23, 2017), <https://www.sfbar.org/blog/legal-writing-tip-never-insult-your-opponents-or-their-arguments/> (“If you wish to be taken seriously by the court, whether in oral or written argument, never malign or belittle your opponents or their position.”).

216 Boyd & Lamparello, *supra* note 215, at 515.

217 Karin Ciano, *Legal Writing Notebook: Why Hyperbole Is a Complete Disaster*, MINN. LAW. (Nov. 3, 2016), <https://minn-lawyer.com/2016/11/03/legal-writing-notebook-why-hyperbole-is-a-complete-disaster/>.

218 SMITH, *supra* note 139, at 265–67 (providing an example of *Lanier v. State*, 709 So. 2d 112, 117 (Fla. App. 1998) (Levy, J., concurring), comparing loot left behind by defendants to the trail of pebbles and bread crumbs left by Hansel and Gretel).

219 Ciano, *supra* note 217.

opposing counsel as noted above. One study found that appellate briefs that use more intensifiers are less effective and less likely to succeed than briefs with fewer intensifiers.²²¹ Finally, adjectives of absolute like *everyone*, *forever*, and *always* are also unpersuasive.²²² They convey arrogance.

To this point, Illinois Appellate Court Justice Michael Hyman offered his views in a recent decision. In *APS Holmes Group v. Sorkin*,²²³ Judge Hyman took the occasion to point out just how ineffective “intensifiers” are in appellate briefs. Words like *clearly* and *merely* and *very* “hamper rather than enhance prose, making it clunky, disconcerting, and, typically, hyperbolic.”²²⁴

Justice Hyman then rattled off just how many times the lawyers in the case before his panel chose to use such words. For example, *clearly* was used fifteen times in appellant’s brief and ten times in appellee’s brief, and other words like *actually*, *certainly*, *brazenly*, *utterly*, and others “ornamented” the briefs.²²⁵ Concluding, Judge Hyman wrote that these “weasel words”²²⁶ are a cop-out that “only push the reader away.”²²⁷ Offering advice to every lawyer who pens a brief, Justice Hyman concluded that “briefs benefit from not merely limiting, but clearly avoiding, the very occurrence of intensifiers.”²²⁸ Including intensifiers is arrogant. Excluding them is humble.

6. Avoid personal opinions—show don’t tell

A lawyer’s argument is about the argument, not about the lawyer. Judges, decisionmakers, and others whom a lawyer seeks to persuade become so because of the soundness of the argument. The opinion of the writer is just that—his or her opinion. Show the reader why the case is not applicable; show the reader why the statute must be read broadly; show the reader why the “floodgates will open” if they accept the other side’s argument. Don’t tell the reader.

220 Wayne Schiess, *Using Intensifiers Is Literally a Crime*, 96 MICH. BAR J. 48–49 (Aug. 2017), <https://www.michbar.org/file/barjournal/article/documents/pdf4article3187.pdf>. See generally Jacob Gershman, *Why Adverbs, Maligned by Many, Flourish in the American Legal System*, WALL ST. J. (Oct. 8, 2014), <https://www.wsj.com/articles/why-adverbs-maligned-by-many-flourish-in-the-american-legal-system-1412735402>.

221 Lance N. Long & William F. Christensen, *Clearly, Using Intensifiers is Very Bad—or Is It?*, 45 IDAHO L. REV. 171, 180–84 (2008).

222 Ellen B. Zweibel & Virginia McRae, *Adverbs and Adjectives Alarm Bells*, POINT FIRST LEGAL WRITING ACAD. BLOG (last visited Mar. 25, 2024) (“Excessive adverbs and adjectives create redundancies, strain credibility, weaken your message by overkill, and get in the way of the reader’s own thinking.”), <http://pointfirstwriting.com/edit-your-own-work/alarm-bell.html>.

223 2023 IL App (1st) 211668-U, ¶ 40 (Hyman, J., concurring).

224 *Id.* ¶ 42.

225 *Id.* ¶ 43.

226 *Id.* ¶ 46.

227 *Id.* ¶ 45 (citing *Bennett v. State Farm Mut. Auto Ins. Co.*, 731 F.3d 584, 584–85 (6th Cir. 2013)).

228 *Id.* ¶ 47.

Opinionated equals arrogant.²²⁹ Telling someone a fact or proposition imposes your opinion on the reader—it’s a lecture. Showing the reader takes them on a journey where they discover the same opinion but with a helping hand not a cudgel. The maxim to *show don’t tell* has long been a staple of fiction writing.²³⁰ The reason relates to how we read.

As Canadian poet Jan Zwicky explains,

Telling the reader “What happened” makes the mind’s eye glaze over in just the way that it glazes over when it is forced to memorize formulae that it does not understand. Showing is like offering an elegant proof; the mind reaches to understand what is going on. When it succeeds, it feels the satisfaction of having grasped meaning.²³¹

For the same reason, the maxim *show them don’t tell* them also finds currency in non-fiction writing,²³² including legal writing.²³³

Ways to *show not tell* in persuasive legal writing include, most obviously, avoiding phrases such as “in my opinion” or “I think.” Less obvious but also important in showing not telling a reader is 1) to avoid forms of “to be,” including “is” and “was”; 2) use concrete sensory descriptors; and 3) use juxtaposition of place and causation.²³⁴ Lawyers should avoid “telling verbs” which summarize how the actor in the story is feeling, because they block reader participation in the narrative.²³⁵ The point here is not to provide a primer on descriptive prose, but to raise awareness that telling someone is arrogant; showing them is humble.

III. Conclusion: confident humility in persuasive legal writing

In persuasive writing, lawyers need to strike a balance and be neither arrogant nor servile. Being open to being wrong is a good thing, not a bad thing. Lawyers can look to other professions for proof.

229 Cowan et al., *supra* note 26, at 431.

230 See, e.g., WILLIAM NOBLE, *SHOW DON’T TELL: A WRITER’S GUIDE* (1991).

231 Jan Zwicky, *Show, Don’t Tell*, 87 *THEORIA* 897, 897 (2021); see also Cynthia Dollins, *Crafting Creative Nonfiction: From Close Reading to Close Writing*, 70 *READING TEACHER* 49 (2016).

232 PHILLIP LOPATE, *TO SHOW AND TO TELL: THE CRAFT OF LITERARY NONFICTION* (2013).

233 Rebecca Talbott, *Show, Don’t Tell: How to (Invisibly) Persuade through Facts*, 74 *WASH. ST. BAR NEWS*, June 2020, at 30; see also Handel Destinvil, *Four Tips from Creative Nonfiction for Better Legal Writing*, *ABA MINORITY TRIAL LAW. COMM. PRAC. POINTS* (May 26, 2016), <https://web.archive.org/web/20200923203743/https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2016/4-tips-from-creative-nonfiction-better-legal-writing/> (“The extra factual details show that you have a better grasp of your facts, make your argument more memorable, and also allows [sic] the reader to feel as if they came to a conclusion on the facts on their own.”); see also Patrick Barry, *Show and Tell*, 26 *PERSPS.* 76, 76 (2018) (urging legal writers to “be particular in writing” and to “show and not just tell”), <https://repository.law.umich.edu/articles/2534>.

234 Talbott, *supra* note 233, at 31.

235 K.M. Wieland, *Most Common Writing Mistakes: Are Your Verbs Showing or Telling?*, *HELPING WRITERS BECOME AUTHORS BLOG* (Dec. 19, 2010), <https://www.helpingwritersbecomeauthors.com/most-common-mistakes-series-are-your/>.

For example, while scientists may not like being wrong, intellectual humility is a core ethic of their profession.²³⁶ To that point, Carl Sagan said “in science it often happens that scientists say, ‘You know that’s a really good argument; mine is mistaken,’ and then actually change their minds and you never hear the old view again.”²³⁷ Far to the other end of the culturally important spectrum from science, social media also values intellectual humility. In a recent study, researchers found that admitting wrongfulness on a Facebook post leads to better interpersonal impressions.²³⁸

Lawyers are advocates. Their goal is, most often, to win or at least secure the best possible outcome for their client considering the law and the facts. Central to this endeavor is having and projecting confidence that your client should win or walk away with the best possible outcome.²³⁹ Confidence and humility are not inconsistent. Arrogance and humility are inconsistent.

While studies of this phenomenon with respect to lawyers do not exist, athletes have been studied. The combination of confidence and humility is a potent potion.²⁴⁰ Many professional athletes possess and display confident humility. Soccer’s Lionel Messi,²⁴¹ baseball’s Mike Trout,²⁴² and gymnastics’ Simone Biles²⁴³ come to mind. While these athletes are known for being talented, what makes them so great is not just talent. Rather what makes them great is talent *combined* with confident humility.

These athletes are confident because they practice, and they work hard—harder than others. And they practice and work hard not because

236 See generally Rink Hoekstra & Simine Vazire, *Aspiring to Greater Intellectual Humility in Science*, 5 NATURE HUM. BEHAV. 1602 (2021).

237 Carl Sagan, *The Burden of Skepticism*, keynote address at CSICOP Committee for the Scientific Investigation of Claims of the Paranormal conference (Apr. 1987), in 12 SKEPTICAL INQUIRER 38 (Fall 1987), <https://skepticalinquirer.org/1987/10/the-burden-of-skepticism/>.

238 Adam K. Fetterman et al., *When You Are Wrong on Facebook, Just Admit It: Wrongness Leads to Better Interpersonal Impressions on Social Media*, 53 SOC. PSYCH. 24 (2022).

239 Jonathan J. O’Konek, *Agreeing to Be Agreeable: A Proposal for the Introduction of “The Reasonable Legal Advocate Standard” in a Lawyer’s Professional Ethos*, 97 N.D. L. REV. 49, 56 (2022) (“[A] lawyer demonstrates ‘reasonableness’ by promoting fairness to opposing counsel in discussions, plea negotiations, and courtroom demeanor. By incorporating these traits, a ‘reasonable lawyer’ projects confidence, knowledge, and—most importantly—trust. When a court, or jury, must decide who to believe in a given matter, they look to the confidence, knowledge, and trust of the advocate presenting the argument.”); see also Christopher M. Varano, *Projecting Confidence Is Fundamental to Career Success*, THE LEGAL INTELLIGENCER (ONLINE) (Apr. 10, 2014, 12:00 AM), <https://www.law.com/thelegalintelligencer/almID/1202650460609/>.

240 Michael W. Austin, *Is Humility a Virtue in the Context of Sport?*, 31 J. APPLIED PHIL. 203 (2014).

241 Josh O’Brien, *Lionel Messi Discusses Importance of Staying Humble and Disliking Being a Role Model*, MIRROR (Dec. 4, 2021, 10:52 PM), <https://www.mirror.co.uk/sport/football/news/lionel-messi-psg-role-model-25618918>.

242 Jim Alexander, *Mike Trout’s Angels Deal Rewards Baseball’s Best, and Most Humble, Star*, ORANGE CTY. REG. (Mar. 19, 2019, 6:37 PM) <https://www.ocregister.com/2019/03/19/alexander-mike-trouts-angels-deal-rewards-baseballs-best-and-most-humble-star/>.

243 David Barron, *Biles Staying Humble Despite Dominating Efforts*, CHRON (Aug. 24, 2014, 6:41 PM), <https://www.chron.com/olympics/article/Biles-staying-humble-despite-dominating-efforts-5709510.php>.

they are extraordinary but because they are humble. An athlete, talented and competitive as each of these athletes is, cannot get better *without the recognition* that they can get better. This recognition requires humility. For example, in a Nike ad, the sometimes-humble Michael Jordan said, “I’ve missed more than 9,000 shots in my career. I’ve lost almost 300 games. Twenty-six times I’ve been trusted to take the game-winning shot and missed. I’ve failed over and over and over again in my life. And that is why I succeed.”²⁴⁴

Humility in sports, like humility in legal writing, has two aspects. First, there is *behind the scenes*—for the athlete this takes the form of practice; for the brief writing lawyer this takes the form of reviewing, revising, rewriting. For both the legal writer and the athlete, humility behind the scenes is recognizing that there is always room for improvement.

Second, there is the *public face* of the athlete and the lawyer. For the athlete, this is “game time” when behind-the-scenes humility plays out with confidence. So too with legal writers—their briefs written for the audience and, having other elements set out in this article, demonstrate confident humility. This works. As philosopher Ian James Kidd points out, disciplined argumentation (what lawyers do) can foster humility, and that humility fosters better argumentation.²⁴⁵

Judge Parker Dunston’s short essay, discussed earlier in this article, should be required reading in law school and for the practicing bar.²⁴⁶ She highlighted confidence in the practice of advocacy is healthy until it ceases to be appropriately momentary and becomes, instead, a character trait. At that point, confidence becomes arrogance. Confidence is situational; arrogance a way of being.

Judge Dunston counsels that “[h]umility means recognizing that we shouldn’t be too proud to be transparent about our faults and shortcomings. . . .”²⁴⁷ She continued, “We practice humility by making a conscious effort to thank our staff, celebrate the successes of others, ask for and accept feedback, and always be willing to learn new and better ways to do things.”²⁴⁸ Humility is not about surrendering confidence helpful in prevailing in the lawsuit. Arrogance is the villain. Arrogance is confidence gone awry. Arrogance is the Achilles Heel of athletes and lawyers alike.

244 Nike, *Failure* (May 1997), <https://www.youtube.com/watch?v=GuXZFQKKF7As>.

245 Ian James Kidd, *Intellectual Humility, Confidence, and Argumentation*, 35(2) *Topoi* 395 (2016).

246 Dunston, *supra* note 158.

247 *Id.*

248 *Id.*

Judge Dunston’s words mirror Lionel Messi’s credo. The world’s greatest soccer player recognizes his imperfection: “I’m never satisfied. I always push my limits and I always try to get better every day.”²⁴⁹ And Messi credits others: “I’m lucky to be part of a team who help to make me look good, and they deserve as much of the credit for my success as I do for the hard work we have all put in on the training ground.”²⁵⁰ We lawyers should find and then celebrate our inner Messi, or Biles, or Trout.

We lawyers are better lawyers when we recognize our imperfections as writers, and the shortcomings of our arguments. We lawyers must credit others, including opposing counsel. To be sure, as writers trying to convince our audience of the correctness of our position, our writing needs to be approachable (the humble part) and convincing (the confident part).²⁵¹ But too many lawyers too often exclusively embrace too much convincing/confidence, and then confidence morphs into arrogance, and you are less convincing.

Lawyers should not get too cozy with confidence to where it morphs into arrogance. Rather, lawyers who write persuasive documents should heed the advice of author Flannery O’Connor and learn the lessons of Icarus. O’Connor wrote, “[T]o know oneself is, above all, to know what one lacks. It is to measure oneself against Truth and not the other way around. The first product of self-knowledge is humility. . . .”²⁵² Legal writers, all lawyers, need to always know what they lack because in that realization lies being a better writer and a more effective lawyer.

Greek mythology offers perhaps the best example of the consequence of confidence morphing into arrogance. Icarus was ready to escape from the Labyrinth on the Island of Crete with wings fashioned of feathers and wax as his father, Daedalus, cautioned, “Let me warn you, Icarus, to take the middle way, in case the moisture weighs down your wings, if you fly too low, or if you go too high, the sun scorches them. Travel between the extremes.”²⁵³

Upon hearing his father’s advice, Icarus assented, then ascended. Soon confidence morphed into arrogance. Icarus flew higher and higher, and “His nearness to the devouring sun softened the fragrant wax that

249 40 Lionel Messi Quotes That Will Inspire You to Pursue Your Dreams, HIGHLIGHTS BLOG (Nov. 23, 2023, 10:19 AM), <https://www.thehighlightsapp.com/blog/lionel-messi-quotes>.

250 *Id.*

251 Like legal writers, physicians must strike a similar balance and physicians who possess and exhibit the right level of humility “promote approachability while maintain perceived expertise.” Kim & Parcell, *supra* note 11, at 1.

252 Flannery O’Connor, *The Fiction Writer & His Country*, in MYSTERY AND MANNERS: OCCASIONAL PROSE 35 (Sally & Robert Fitzgerald eds., 1969) (quoted in Ward, *supra* note 34, at 7).

253 Ovid, *The Myth of Daedalus and Icarus*, METAMORPHOSES, BOOK VIII, <https://www.commonlit.org/en/texts/the-myth-of-daedalus-and-icarus> (last visited May 8, 2024).

held the wings: and the wax melted: he flailed with bare arms, but losing his oar-like wings, could not ride the air. Even as his mouth was crying his father's name, it vanished into the dark blue sea."²⁵⁴

We legal writers should not believe we can fly close to the sun. We can't. We shouldn't. Confidence must be held in check by sincere humility lest confidence morphs into arrogance. Instead, have and project confident humility to be a more effective persuasive writer.

²⁵⁴ *Id.*