

Persuasive Rhetoric in the Legal Profession: A Case Study on Lawyers' Writing Habits

Emily C. R. Eggers

Faculty Advisor: Dr. Darci Thoune, English

ABSTRACT

This case study performed an analysis on survey and interview results based on the writing habits of five lawyers from a rural town in Wisconsin. From this analysis, I aimed to answer two primary research questions: (1) How do lawyers in this area utilize persuasive writing to achieve their client's goals and (2) what writing processes do lawyers in this area perform before being satisfied with their work? The findings of the first research question suggest that achieving their client's goals sometimes has to do with their persuasive writing, but always has to do with the facts of the case and the law applied to them. The findings of the second research question suggest that each lawyer has their own process, but every lawyer prefers multiple days to write and revise.

INTRODUCTION

Since I was a child, I've been told that I would make a great lawyer. As I grew up, I realized that probably wasn't a compliment, but, even so, it gave me an idea for a career that required skills I have always been very good at: reading and writing. I have found a much higher appreciation for law since then, through my studies here at UWL and through working at a law office, so, when prompted to write a Capstone Research Project, this topic made perfect sense for me. I also plan eventually to possibly practice law in rural Wisconsin, so that is why I chose that location.

After deciding on my project, I started thinking about what I would find from it. I was fascinated by how different lawyers approach persuasive writing and the different strategies they use. I was interested in learning about different lawyers' writing processes, and what they do to and with their work before being happy with it. In addition, I was interested in seeing how lawyers feel about their writing ability, and how they learned the "right way" to write effectively in this field. By studying these patterns, and looking at specific writing samples from these lawyers, I thought about how I could use this information myself in my future profession. Besides myself, I thought all of those in the field of law would find this research interesting, and even useful for their own work. I also thought that my findings would be useful to law schools and other pre-law programs in preparing their students more readily for their careers.

Through the research conducted in the following sections, I can confidently say that my findings answer and display all of these ideas.

RESEARCH QUESTIONS

Primary Guiding Research Questions

- How do lawyers in a rural Wisconsin town utilize persuasive writing to achieve their client's goals?
- What writing processes do lawyers in this area perform before being satisfied with their work?

Guiding Sub Questions

- How confident are lawyers in a rural Wisconsin town in their own writing?
- Do any experience writing apprehension or imposter syndrome, and, if so, what could be the cause of either?
- How and when did lawyers in this area learn to write for their profession?

REVIEW OF LITERATURE

Key Words

Persuasive Writing: a type of writing that is used to convince or persuade someone of something.

Writing Process: a series of actions taken by writers to move from an idea to a polished product.

Writing Apprehension: negative, anxious feelings (about oneself as a writer, one's writing situation, or one's writing task) that disrupt some part of the writing process.

Imposter Syndrome: a psychological occurrence in which people doubt their skills, talents, or accomplishments.

Workplace Writing: a complex mix of technical, informative, and persuasive deliverables that are bound by rhetorical and coordinating practices.

Writing Persuasively

I have found that the field of law does not know a lot about this area of research. When going out to look for literature, I found countless articles that advised how to write persuasively, but not how specific lawyers, or how lawyers in certain areas, write persuasively. But a Writing Center handout from the Georgetown University Law Center states, "Persuasive writing is essential to the practice of law. Persuasive writing enables you to make strategic decisions about how to present and package your arguments to ensure your document is as convincing as possible," (1). I think this explanation of how persuasive writing pertains to the legal field does a great job of showing how important it is not to just be able to write but to be able to write well persuasively to be a good lawyer. In addition, according to the Legal Information Institute, there are two types of legal writing: interoffice memoranda/letters to clients and persuasive writing ("Legal Writing"). So, in the case of my study, I know that it involves the persuasive writing half of legal writing. I did find one study done that discussed persuasive writing, but it was related to only legal briefs done by law students (Kahaney). As you can see, this topic has not been studied much, which allows for my study to bring something to the field that it has not seen before.

The Writing Process

When looking into the writing process of lawyers, I also did not find a lot. Again, mainly a bunch of advice articles on how to avoid procrastination. Overall, I think the field of law will be enhanced greatly by the portion of my study on persuasive writing and the writing process, as there is next to nothing in this area of research.

Confidence in Writing

When looking at the confidence of lawyers, I again did not find any specific statistics or studies, but I did find a statement made about how important the confidence of a lawyer is, "It's easy to make the connection between how confident you are and how persuasively you can make a point. When you feel confident, people see you as more effective and you become more productive," ("Dynamics between Lawyer Confidence and Reputation"). My study provides real examples of how this idea shows through a lawyer's writing; if they are more confident in their writing, usually they will be more likely to have the most effective writing.

Learning to Write Effectively

When looking at where lawyers primarily learned to write well, I found that it is law school, "Law schools focus significantly more on written advocacy skills than on oral advocacy," ("Does Law School Teach You How to Argue? - the Art of Law School"). Many agree that the focus of law school was legal writing over other skills that you need to be a lawyer. I think my study will either prove this notion further or show that maybe law schools need to change their teaching practices when it comes to writing, even for certain areas of law that are most common in rural areas.

To conclude, all of these sections, "Writing Persuasively," "The Writing Process," "Confidence in Writing," and "Learning to Write Effectively," show how much my study is needed in this field, and how these topics are all connected. For a lawyer to be able to write well persuasively, they need to learn how to, they need to have a good writing process, and they need to have confidence in their writing. My study shows how these topics are all connected between different lawyers and within each lawyer's experience. My study also contributes to the field of law information about lawyers that have never been studied before or even anything like it, so it would be starting a new conversation that would be useful to all lawyers, law schools, pre-law programs, and others.

METHODS

Upon IRB approval, this study performed analysis on survey and interview results from five different lawyers who practice in a rural Wisconsin town. I sent out emails to numerous lawyers from the town I chose to study to see if they would be interested, and after some great responses, and many no responses, I was able to get five to participate. Prior to their interview, each lawyer filled out a survey that had three parts. The first part asked them background questions, such as when they knew they wanted to become a lawyer, where they went to law school, and

how they would describe their writing process. The second part was a series of questions, most of them taken from The Daly-Miller Test and tweaked to fit professional writing, to gauge their writing apprehension by having them rate statements from strongly disagree to strongly agree. Some of these statements include, "I often worry that my best is not as good as expected in my profession," "I often worry that I'm not doing writing tasks properly," and, "I feel anxious when I need to work on a large piece of writing." The third part prompted them to submit two to three pieces of what they would consider persuasive writing that they have written during their career.

Before the interviews, I took notes on their background questions, analyzed their writing apprehension questions and noted outliers, and read their persuasive writing pieces. The interview had sections that addressed all of these. The first set of questions discussed their writing apprehension, when I asked their thoughts on their outlier answers, how confident they felt in their own writing, and if they've experienced imposter syndrome. For the next set of questions, I went through each persuasive writing piece they sent me and asked them how it achieved the goals of the client, how their persuasive could have influenced that, how confident they were with the piece when they wrote it, and what writing processes they went through before completing it. In the last set of questions, I asked a range of questions about their writing, such as how they developed their persuasive writing skills, what writing advice they have for future lawyers, and what challenges they've faced while writing in the legal profession.

After completing all of the interviews, I spent time analyzing my findings. First, I compared the lawyers writing apprehension survey results and noted where there were common outliers. Then, I relisted all of the interview questions and compiled each lawyer's response to look at similarities and differences among them, and, when there were differences, I noted why that may be. When choosing how to look at the lawyers' writing, it was difficult considering they all had very different formats, styles, and purposes, and I wanted to ensure total confidentiality. I decided I would discuss more generally the similarities and differences among the lawyers' responses to questions about their pieces, as that would be the best way to show patterns among different lawyers, without compromising confidentiality.

RESULTS AND DISCUSSION

From analyzing my findings, I have discovered results that answer all of my research questions, so I will be discussing each question in separate sections below about persuasive writing, the writing process, writing confidence, writing apprehension and imposter syndrome, and when the lawyers learned to write.

Legal Persuasive Writing

My research question for this section is: How do lawyers in a rural Wisconsin town utilize persuasive writing to achieve their client's goals? As I mentioned in the previous section, I will be discussing how the lawyers' responses to the questions on their writing pieces are similar and different. When asked if the piece helped achieve the goals of the client, most of the lawyers said that it did, but many said that it was most likely not because of their writing. Although some said their pieces were the only reason the client's goals could be achieved, others accredited it to the facts of the case and being favorable to their side. Others also were not sure if their pieces made a difference at all, considering they were one of many in a case that could have swayed the outcome.

In terms of feeling confident in the pieces, the lawyers' answers were quite similar. For the majority of the pieces, the lawyers felt confident in their writing, but not confident in the outcome of the piece. This was the primary reason given for not feeling as confident in a piece; they were very uncertain about how those receiving the piece would act.

For the writing processes for the pieces, almost every lawyer performed their standard writing process. When they deviated from that, it was to do additional revisions on pieces they felt needed it, or pieces that were abnormally long or complicated.

Overall, these lawyers all had very similar responses to the questions on their persuasive writing pieces. Based on these findings, it can be concluded that lawyers in general mostly feel confident about their writing, even if they are not confident about what the outcome of their cases will be. Additionally, another conclusion could be made that lawyers stick to their routine writing process, unless the specific writing piece demands more from them. They do differ in whether they think their writing solely achieved the goals of the client, which would be likely to change on a case-by-case basis.

Lawyers' Writing Process

My research question for this section is: What writing processes do lawyers in this area perform before being satisfied with their work? Every lawyer that I surveyed gave a different answer to this question, but one portion of their answers was consistent: they all wished they had more time to work on the writing pieces. That's one important

thing to know before you become a lawyer, that I learned very quickly when I first started working at a law office. Lawyers are always wishing there were more hours in the day to get their work done, and the hours they do have feel like they slip by fast.

As I stated, all the lawyers had different writing processes, with some more similar than others. The following table displays the three similarities I found among their writing processes, and how many lawyers were similar in these ways.

Table 1. Aspects of Writing Process

Aspects of Writing Process	Number of Lawyers out of 5
Makes an outline	2
Takes more than one writing session/day when schedule allows	5
Has someone else read and offer revisions to work	4

Although Table 1 shows how the lawyers' writing processes are similar, it only really shows how they are similar in certain aspects. This is because, in all, they do have many differences. One of the lawyers starts with researching and outlining, by first writing headlines and conclusions, and blocking off chunks of time to write. Another lawyer prefers to do the bulk of their writing in one sitting to get a first draft down on paper and then does multiple rounds of revisions afterward. Although these two examples, and the other processes, differ greatly, they all obviously work well for the lawyers who perform them.

Overall, the lawyers' writing processes have many similarities, but, as a whole, they all differed in some way or another. It can be concluded that lawyers in general all have similar aspects to their writing process, as anyone would, but that they differ based on the person's preferences.

Confidence in Writing

My research question for this section is: How confident are lawyers in a rural Wisconsin town in their own writing? When asked how confident they were in their writing, most of the lawyers said they were "pretty confident" or rated their confidence a 7/10 or 8/10. I think this level of modesty is admirable, especially considering I read their persuasive writing pieces myself, and I knew they should have had much higher confidence in their abilities. I hypothesize that this comes from a place of humility; knowing their writing is better than the average person but recognizing that there are others who write better.

While asking the lawyers questions about their writing pieces, I also asked how confident they were in the piece. For almost every lawyer, for almost every piece they sent, they described feeling confident in them. For some, the lawyers were extremely confident, and they shared that the reasons for that were because they knew they had written strong points well and because they felt the case favored their position. This was the number one reason given for why certain lawyers felt less confident about a specific piece; they either felt like the law or case was not favorable to them or they were not sure if it would be.

Overall, the lawyers' confidence in their own writing was pretty high, and the reason for it not being a 10/10 for most was because they recognized other writers are better than them. Even so, when looking at their confidence toward their writing pieces, the majority had confidence in their writing, while some didn't feel as confident because of uncertainty with the case. It can be concluded that lawyers in general have high confidence in their writing, which would make sense because of their extensive schooling and experience.

Writing Apprehension and Imposter Syndrome

My research question for this section is: Do any experience writing apprehension or imposter syndrome, and, if so, what could be the cause of either? Overall, most of the lawyers displayed either no or little writing apprehension from the survey. When determining their level of writing apprehension, I based it on how many outliers (answers that indicated writing apprehension) they chose on the survey. I would like to note an interesting finding that the lawyer with the least writing apprehension with an outlier of only one was the oldest and most experienced, while the lawyer with the most writing apprehension with seven outliers was the youngest and least experienced. This indicates that with time and experience, a lawyer's writing apprehension decreases, which also relates to my findings on imposter syndrome. Out of the five lawyers surveyed, three chose negative responses to questions relating to

enjoying writing. They claimed this is because (1) writing for their profession is hard work, and some even said it is one of the hardest parts of their job, so it is hard to enjoy it the majority of the time and (2) every piece of writing for their profession has a deadline, so they are usually not able to take as long as they would like with their pieces. In addition, out of the five lawyers surveyed, three mentioned while being asked about their outliers that they struggle with finding time to work on pieces of writing, especially large pieces of writing, and some said that limited time on deadlines makes them worry that they could potentially not be performing as well as they could, which indicates imposter syndrome.

For imposter syndrome, I have found that none of the lawyers currently feel like they experience it in their careers. So, from the finding just stated and the finding stated at the end of the last paragraph together, it can be concluded that some of the lawyers surveyed experience a level of imposter syndrome, even if they are not aware of it. Even so, every lawyer mentioned experiencing it specifically at the beginning of their careers, but every lawyer also explained that, for the most part, it goes away with time and experience. This answer makes sense, as every lawyer currently has many years of experience, so that would explain why they do not experience imposter syndrome anymore, and also why they do not experience much writing apprehension. It can be concluded that lawyers in general feel this same way; they experienced imposter syndrome and/or writing apprehension while fresh out of law school, but, as they gained experience, those feelings went away.

Learning to Write Effectively

My research question for this section is: How and when did lawyers in this area learn to write for their profession? Out of the five lawyers surveyed, four claimed that they primarily learned how to write for their profession while on the job. Although most said they learned a good amount in law school, they still said that they learned the writing skills they really needed while working. Many described law school as a good basis for what you should know when writing as a lawyer, but it did not go into detail how to write certain things, and the best way to write them convincingly, which would have been much more helpful. Some also brought up how they wish there were more practical applications during their undergraduate experience to get them more prepared for law school.

During this portion of the interview, I asked the lawyers what mistakes they made before they became “good” at writing in legal contexts. Across the board, the most common answer was making grammar mistakes. While for some this mistake does not happen anymore, for others, they still question if they have the right punctuation. This finding can make us non-lawyer people feel a bit better because even those who could be considered pros can make mistakes. Along this same line, one of the lawyers stuck out to me for their great attention to detail, especially when making sure grammar rules are followed. They also shared that they will never just send something off; they will read and write things over and over to make sure that the wording and punctuation is correct, even sometimes for emails. They explained that they think this level of cautiousness makes their writing better, and, overall, makes them sound more competent because they ensure there will be no errors.

I also asked the lawyers during this part of the interview what advice they would give to students who want to become lawyers. One of them said, “The practice of law can be very demanding. Choose it for the right reasons. It is hard to know at that age where life will take you.” Two lawyers actually had very similar pieces of advice but for different reasons. One primarily writes to clients, so their advice was to write in lay-person language so that clients understand what they are agreeing to and signing. The other lawyer primarily writes to judges, so their advice was to write from a place of humility, not arrogance, and to remember the audience is superior to you.

Overall, the majority of the lawyers claimed they learned to write for their profession while on the job, and not in law school, so it can be concluded that lawyers in general would agree with this as well. A takeaway from this would be that pre-law programs and law schools need to adjust their curriculums to include more practical writing applications for their students. The lawyers’ common mistakes and advice could also be consistent with all lawyers, and they are important to keep in mind for those who are considering a career in law.

CONCLUSION

This research study set out to discover and analyze the writing habits of five lawyers from a rural Wisconsin town, by looking at their persuasive writing, writing process, confidence in writing, and where they learned to write for their profession. Through my findings, I was able to answer all of my research questions on these topics, and, by doing that, I can make inferences about lawyers writing habits as a whole. By studying these patterns, and reading and discussing these lawyers’ writing samples, I can use this information in my future profession. Besides myself, I think all of those in the field of law would find this research interesting, and even useful for their own profession. Additionally, my findings further understanding of these topics and fill a major gap in the research of this field, as shown in my literature review. This research can be useful to pre-law programs and law schools to prepare their

students more readily for their profession. Also, my findings could be used as a snapshot in time of how lawyers feel now, compared to how they feel in the future. For future studies, there are two things I am absolutely certain will remain consistent between my study and those: lawyers will always have well-written, persuasive, and interesting writing, and they will always wish there was more time to get their work done.

REFERENCES

- Persuasive Writing 1*. www.law.georgetown.edu/wp-content/uploads/2019/09/Persuasive-Writing.pdf.
- “Legal Writing.” LII / Legal Information Institute, 2020, www.law.cornell.edu/wex/legal_writing.
- Kahaney, Phyllis S. Determining the qualities of a well-written brief: A descriptive study of persuasive writing in law school, New York University, United States -- New York, 1991. ProQuest, <https://libweb.uwlax.edu/login?url=https://www.proquest.com/dissertations-theses/determining-qualities-well-written-brief/docview/303953440/se-2>.
- “Dynamics between Lawyer Confidence and Reputation.” Legal.thomsonreuters.com, 9 May 2021, legal.thomsonreuters.com/en/insights/articles/confidence-and-attorney-reputation.
- “Does Law School Teach You How to Argue? - the Art of Law School.” Theartoflawschool.com, 10 May 2021, theartoflawschool.com/does-law-school-teach-you-how-to-argue/#:~:text=Law%20schools%20focus%20significantly%20more%20on%20written%20advocacy.