

Persuasion in a Familiar Activity: The Parallels Between Résumé Writing and Brief Writing

By **Patricia Grande Montana**

Patricia Grande Montana is an Associate Professor of Legal Writing at St. John's University School of Law in Queens, N.Y.

To succeed in drafting a “winning” brief, you must approach it like you approach any other persuasive piece of writing in everyday life. A résumé is one such type of writing. Although many writers might not realize that composing a résumé is an exercise in persuasion, it is. The résumé’s purpose is simple: to persuade the employer to hire the applicant. Thus, a good résumé will be tailored to the needs of the employer. To achieve this goal, writers of successful résumés will carefully consider the employer throughout the planning, drafting, and revising processes. They will step into the shoes of the employer and evaluate what type of person the employer seeks. Then, they will identify the skills and experiences they have that match the needs of the employer. These are the ones that they will emphasize in their résumé. Not only will they explain them in a clear and concise way, but they will also arrange the information in a way that prioritizes the ones that exactly fit the employer’s needs. This means that every decision—from the placement of information to the selection of words—is a deliberate one, designed to convince the employer to hire them.

In contrast, poor résumés are not tailored to the needs of the employer. They typically include a detailed summary of what the applicants have accomplished over their lifetime with little consideration of its relationship to the job they seek. Students are often guilty of drafting résumés in this way.¹ They devote their time largely to

updating the latest version of their résumé. They add any recent educational and work experiences as well as change home and e-mail addresses, with the main purpose of fitting the “new” information onto a single page. As a result, they never fully consider how to arrange and describe their experiences to show their relevance to the employer’s needs. This approach inevitably fails to persuade the employer to hire them.²

If brief writers similarly ignore their audience—the court—when they develop their arguments and organize their text, they will likely fail to obtain a favorable ruling. Just like successful résumé writers take into account the employer’s perspective, brief writers must carefully consider what facts and arguments are most likely to persuade the court of their position. They must arrange that information in a way that showcases their position’s strengths and minimizes its weaknesses. If the brief’s statement of facts are monotonous, for example, or the argument summarizes the law on the subject without showing its application to the case, the brief will lose the reader in the same way an unfocused résumé does. To keep the court’s attention, the brief needs to narrate a compelling story and describe, using vivid examples, how the relevant law warrants the outcome the writer seeks. Just like a résumé is customized to the employer’s needs, so too must the brief’s facts and law be customized to the case’s strengths in order to persuade. Thus, brief writers can learn important lessons about persuasion by examining the qualities that make an effective résumé stand out from the pile.

There are six important steps that successful résumé writers follow. They (1) understand the reader’s

¹ Christen Civiletto Carey, *Full Disclosure: The New Lawyer’s Must-Read Career Guide*, 25–26 (2001) (“Students often stray from [the] objective [of landing the interview] and start pursuing others, like drafting a detailed life history or producing a creative piece of self-congratulatory propaganda.”)

² Jane A. SteckBeck, *Marketing Yourself Through a Winning Resume*, 5 Nev. Law. 12, 13 (Nov. 1997) (asserting that the reader will “quickly lose [sic] interest in a ‘kitchen sink’ resume” that lists everything the applicant has ever done).

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needs; (2) develop specific headings; (3) use vivid examples; (4) lead with the strongest selling point; (5) explain potentially harmful facts; and (6) keep it short and simple. If brief writers abide by these guidelines, they too will produce writing that outshines their competition.

1. Understand the Reader's Needs

Writers of effective résumés create a very rich and detailed image of the type of person the employer is looking to hire. This helps them see what experiences of theirs match the qualifications of the ideal candidate. To the extent there is not a perfect match, they will creatively show how a different experience produced the same type of qualification the employer desires. Assume, for example, that an employer seeks a law clerk to research Title VII issues. The ideal candidate would have actual experience researching that statute. Without that experience, however, a candidate could still effectively show that she has the requisite skills. Although she did not research Title VII issues, if she researched other statutory problems, she can use that experience to illustrate that she is competent in statutory research generally. The employer will then have confidence that she can easily tackle a Title VII problem given her background in statutory research. Further, if the applicant had no legal research experience whatsoever, a good résumé would draw on any nonlegal research to show that the research skills there are easily transferable to the legal context.

Similarly, good brief writers develop a very deep understanding of what the law requires to succeed on their case before crystallizing and prioritizing their arguments, and deciding on how to tell their version of the facts. Like résumé writers, they do this first because they need to see how their case fits or does not fit the law. For example, suppose a female reality television personality brought a New York defamation action against your client, a Web blogger, for posting statements about the plaintiff on her blog. After researching the law, you learn that a limited purpose public figure must establish that the defendant acted with actual malice—the highest degree of fault—in publishing the

statements. Because this high standard of fault benefits your client, you will want to identify similarities between your case and the cases in which courts have found that the plaintiffs were limited purpose public figures.³ If the analysis requires evidence that the plaintiff had continuous media contact, you would highlight any facts that satisfy that standard just like résumé writers would emphasize experiences that meet the employer's requirements. In the event you do not have such facts, you would argue that the facts you do have are equivalent to media contact, in the very same way the applicant for the law clerk position would show that her nonlegal research experience has adequately prepared her to conduct Title VII legal research. Although the comparison might not be a perfect one, by making it, you establish that your argument has merit. A good brief writer thus assesses what the court needs to hear in order to rule in its favor so that the brief can be structured to say it.

2. Develop Specific Headings

A good résumé captures the employer's attention by also using headings that specifically describe the information they cover. Catch-all categories, such as "Experience," "Nonlegal Employment," and "Other Experience" are generic headings that miss the chance to guide the employer in a more helpful manner. Such headings put the burden on the employer to figure out whether the information listed is relevant to the job in any way. Because most employers are busy and receive many applications for a single position, they typically will not do this work for the applicant.

Therefore, a persuasive résumé will create headings that correspond to the qualifications the employer seeks. For example, if a marketing position requires a background in public speaking, an effective heading might read: "Public Speaking Engagements." This will have a greater impact on the employer than a list of job experiences

³ In addition, you will want to distinguish your case from cases in which the courts have found the plaintiffs were not limited purpose public figures.

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organized chronologically under a general heading “Work Experience,” where the references to public speaking are hidden in the job summaries. By separating out those experiences that meet the employer’s needs, the résumé more clearly illustrates why the applicant is right for the position.

In brief writing, persuasive argument headings are ones that provide succinct and specific summaries of the arguments that follow. Together, the main headings and subheadings tell the court the legal conclusions it should reach on each issue and the reasons for those conclusions. Just like effective résumé headings establish why the applicant should get the job, effective point headings demonstrate why the writing party should prevail. If the argument headings include general statements of law instead, they will have the same negative effect on the audience as the general headings in résumés do. Because they neglect to tell the court upfront why the writing party should win, the court is forced to identify on its own the arguments hidden in the text below. Courts, like employers, are busy and sometimes overburdened. If they rely on point headings to understand the case, the writer will lose this important opportunity to persuade.⁴ To ensure that the full argument is heard, the brief must plainly state the party’s assertions and the bases for them in the headings.

Returning to the earlier defamation example, let’s assume that the main heading reads: “A Limited Purpose Public Figure Must Prove Actual Malice.” Although this is an accurate statement of the law, it is a bland heading. It does not state an argument or provide any critical facts of the case. A more assertive heading would argue, using specific facts, why the defendant should win that point in the same way an effective résumé heading would highlight the qualifications that establish why the applicant should be hired. Therefore, a revised

heading might read: “Because Plaintiff Thrust Herself into the Public’s Eye by Participating in a Nationally Publicized Reality Television Show, She Is a Limited Purpose Public Figure Who Must Prove Actual Malice on Her Defamation Claim.” This revised heading previews for the court the foundation of the defendant’s main point, which will make the entire argument easier for the court to follow.

3. Use Vivid Examples

A persuasive résumé does more than simply point out that the applicant has the experience the employer seeks. It provides vivid examples of the applicant’s experiences by focusing on accomplishments. “An accomplishment is a specific and quantified contribution, not a general statement about [the applicant’s] basic scope of responsibility, as in a job description.”⁵ Let’s say that an applicant worked as a law clerk in a small law firm. If part of that job’s description stated that the applicant simply “drafted briefs,” the employer would not be very impressed. Even though the experience might fit what the employer is looking for, the explanation says nothing about the extent and quality of the applicant’s work. To convince the employer that the applicant is the most qualified, the writer must revise it to showcase an accomplishment. The description, therefore, could be revised as follows: Drafted posttrial brief on asbestos violations that won a favorable decision in the United States Court of Appeals for the Second Circuit. This specific example is more informative because it tells the reader the type of brief the applicant wrote and its subject matter. And, the accomplishment—that it was such a good brief that it resulted in a favorable outcome—demonstrates that the applicant not only has the desired experience, but also is very talented.

Just like résumé writers need to provide clear examples of how they are right for the job, brief writers need to provide vivid descriptions of how

⁴ This is especially true when the headings are also reproduced in a table of contents. Because the table of contents precedes the argument section in the brief, the court gets its first overview of the case by reading the headings. Therefore, headings that outline a clear picture of the case will make a good first impression on the court.

⁵ Rachelle Canter, *How to Write a Resume That Stands Out from the Pile*, 16 No. 6 ALA News 10, 11 (Dec. 1997/Jan. 1998).

the relevant authority supports their arguments. Thus, if the writer is relying on a case to make a point, it is essential that the brief describes completely the relevant facts, holding, and rationale of that precedent. A general description of the case (like the general description “drafted briefs”) will not impact the court in the same way that a detailed narrative will. The narrative must include all of the facts that the writer plans on using to reason by analogy later in the brief. Oftentimes inexperienced writers unintentionally omit some of these facts. Because they are so intimately familiar with the precedent, they do not even notice that what they put down on paper is incomplete.⁶ Therefore, writers must be careful to revise their briefs to tell the completed message because only that message (like the revised résumé description of “drafted briefs”) will truly convince the court of their position. Further, when reasoning by analogy, the analogies must be clear. Good briefs reconcile the similarities and differences between their case and the supporting cases. They convincingly show that the facts present in the analogous cases are unequivocally present in their case, while the facts on which the courts rely in the distinguishable cases are absent. By providing these analogies and vivid descriptions of the authority, the court will see more clearly why the law should be applied in the way the brief writer argues.

4. Lead with the Strongest Selling Point

An effective résumé is also organized to give immediate visibility to the applicant’s strongest selling points. This is done, in part, because the realities are such that an employer might not read the entire résumé. Thus, in arranging the information on the page, the writer will begin with those qualifications that best fit the job’s criteria. The experiences that do not exactly match the employer’s needs but nonetheless reflect the

applicant’s overall competence will follow. Suppose, for example, an intellectual property lawyer, who has not previously taught law, applies for a law school faculty position to teach intellectual property. A persuasive résumé for that position would emphasize two elements of the applicant’s background. First, the applicant has extensive legal experience in the relevant subject matter and, second, the applicant has some form of teaching experience, even if not in law. If the legal experience is more impressive than the teaching experience, the résumé would lead with a heading devoted to the applicant’s legal experience in intellectual property. The next heading would be “Teaching Experience” and would summarize any teaching experience the applicant had. By leading with the applicant’s strongest selling point, the employer will immediately see how qualified the applicant is for the job without having to read the entire résumé to be persuaded.

The same principles apply to brief writing. An effective brief is organized around legal points and leads with the point that is best supported by favorable controlling law, favorable facts, or a mixture of both. Just like a prospective employer, the court’s enthusiasm is at its highest when it first begins to read. Therefore, a brief that opens with its strongest argument will immediately capture the court’s attention and confidence in the writer’s case. This will set a positive tone for the brief which, in turn, will persuade the court to accept the remaining weaker arguments.

Determining the descending scale of points, however, is harder for the brief writer than for the résumé writer. The brief writer must also consider whether there are dispositive issues, dependent arguments, or alternative arguments. Obviously, if there is a threshold issue in the case, an effective brief will lead with its assertion on that issue, even if it is not the strongest of all of the brief’s arguments. For instance, if the plaintiff is asserting that the defendant breached a contract, the plaintiff must first establish that there was a contract. Then, the brief would set out its remaining arguments—from strongest to weakest—that there was a breach. Subordinate and alternative arguments would also

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⁶ See Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 *Legal Writing* 175 (1997). When writers revise they see the words they wrote and they often remind their short-term memories of the complete message. *Id.* at 181. The short-term memory “tells” the brain the complete message, thereby preventing writers from seeing that the words that they actually wrote fail to communicate the entire message. *Id.*

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follow this order. Therefore, similar to a résumé, a brief will engage its reader by leading with the most compelling reason why its position should prevail.

5. Explain Potentially Harmful Facts

It is not uncommon for applicants to have something in their background that they consider potentially harmful to their chances of landing a job. For many, it is the fact that they were unemployed for a period of time. An effective résumé, however, will not lie about or obscure such negative facts. If the reader noticed that an applicant, for example, vaguely described dates of employment to cover up an unemployment gap, the reader would likely conclude that the reason for the gap was very bad. Otherwise, why wouldn't the writer simply explain it? Further, the fact that the applicant was not candid in one part of the résumé will cause the reader to mistrust the veracity of the résumé's other representations, guaranteeing that the applicant will not get the job. Thus, a good résumé will be truthful about potentially harmful facts.

To be persuasive, the writer will neutralize the impact of any harmful facts by placing them among favorable ones and describing them in the most positive way. For instance, let's assume that the applicant was unemployed because he changed careers. He would explain this reason in his résumé or, more likely, his cover letter, next to the employment descriptions that indicate his career change. Because the reason is innocuous and at the same time the employer is directed to favorable material that establishes his qualifications, the employer would likely forgive the gap.

Similarly, the writer of a good brief will not ignore seemingly negative facts or authority but rather will diffuse them by carefully positioning them in the brief. In brief writing, it is even more crucial that the writer addresses weaknesses because if the writer does not, the opponent undoubtedly will. In that situation, the writer is pushed to react to the opponent's spin on the material. Because the writer did not explain the material in his or her own way earlier, the response usually takes a defensive tone, which is less impressive to the court. Moreover, in

the case of an omission, the court, like an employer, will question the writer's credibility and lose confidence in all of the writer's assertions. To avoid these pitfalls, an effective brief will be honest about harmful information.

However, just like a good résumé, a persuasive brief will exploit its paragraph and sentence level structure to disarm such harmful information. Good brief writers usually set positive information at the beginning of sentences and paragraphs and potentially damaging information in the middle of both. When the reader sees the information in that context, its negative effect is often reduced. Because the brief writer discloses the information in a positive way, the court is not alarmed by it. Rather, the court views the writer as a credible advocate and, as a result, seriously considers the writer's assertions.

6. Keep It Short and Simple

A good résumé is concise and contains only information that is relevant to the sought-after position. The “kitchen sink” approach to résumé writing does not work; that is, not every detail of the applicant's life story should be collapsed into the résumé. For example, an applicant who tutored elementary school children on an occasional basis will not discuss this experience in his résumé if it has no bearing on the computer technician job for which he is applying. Such immaterial facts will not influence the employer's decision and, in some instances, might even divert the employer's attention away from experiences that are actually relevant. Because most résumés should be limited to one or two pages, every word matters. An effective résumé thus will not waste space on irrelevant material.

Furthermore, an effective résumé is an easy-to-read document that is free of pompous terminology, jargon, surplus words, and code words that carry special meaning for the writer, but make no sense to the reader. That type of language does not impress the employer; rather, it distracts the employer from concentrating on the candidate's actual qualifications. The use of passive voice is distracting because it de-emphasizes the applicant's role as the person responsible for the achievements listed on the résumé. Thus, to emphasize the applicant's

involvement, an effective résumé uses the active voice as well as simple text and clear language.

Likewise, a persuasive brief will use the active voice as well as plain language to communicate ideas. An effective brief also will omit pompous language, jargon, surplus words, and code words for the same reasons an effective résumé does. Brief writers similarly face page limitations and should not misuse the space by trying to impress the court with unnecessary language. Rather, the time should be devoted to fully developing the supporting authority and reasoning by analogy to buttress the brief's assertions.

Moreover, the kitchen sink approach to brief writing will fail to persuade a court in the same way this approach to résumé writing will fail to persuade a prospective employer. Just because there are countless cases that address a party's argument does not mean that the brief should discuss every one (or even string cite all of them) to make a point. If it does, it will be harder for the court to focus on the cases that matter. An effective brief

selects and exploits only the ones that most convincingly address the arguments. Similarly, the brief should not include ineffectual arguments simply because the party wants to cover all of its bases. The weaker arguments will diminish the effect of the stronger ones and thus should be cut loose. Therefore, a persuasive brief presents only its legitimate arguments and does so in a clear and concise way.

The techniques a writer uses to plan and write a persuasive résumé are applicable to planning and writing a persuasive brief. If writers can see the parallels between successful brief writing and persuasive writing in a familiar activity like résumé drafting, it will be easier for them to navigate the process successfully.

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Another Perspective

“What is persuasive? This question is at the heart of lawyering and legal writing.

The art of persuasion requires empathy as well as a deep understanding of human psychology and the complex emotional and intellectual processes that result in perception and attitude change. Measuring persuasiveness is exceedingly difficult, yet this endeavor continues to preoccupy a number of disciplines, including philosophy, communications, psychology, and rhetoric. On some level, what tactics persuade is more than a little mysterious and cannot be precisely quantified or definitively articulated. What is persuasive to one may be neutral to another and even repellent to a third. Nevertheless, there are clues about how human beings respond to persuasive tactics, and lawyers should be taking greater advantage of the information.”

—Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 Mich. St. L. Rev. 411, 412 (2006).