

STYLE IS THE MEASURE OF THE ARGUMENT¹

Plato, in his work *Phaedrus*, eloquently described rhetoric “as the art of winning the soul by discourse.” In simpler terms, rhetoric is the art of selecting the most effective means of persuasion, which ultimately translates to the refinement of your own style of expressing yourself in the courtroom. Words are important, yes, but it’s *how* you use them that matters most.

The three most important ingredients of a well-crafted argument, as suggested by Aristotle, are *ethos* (the listener’s perception of the speaker’s character), *pathos* (emotion), and *logos* (logic). Allow these three principles to guide you as you polish *your* individual style—perhaps the most important rhetorical element of persuasion.

When asked to explain his success in court, Daniel Webster—one of the all-time greatest trial lawyers—spoke of his style in terms of clarity:

In addressing the understanding of the common person, I must use language perfectly intelligible to them. You will therefore find in my speeches ... no hard words, no Latin phrases....²

If you doubt its importance, just consider the peril when clarity is not achieved in the courtroom. Take, for example, an appellate court oral argument in a case involving a question of jurisdiction. The judge asked counsel: “Well, how did you get here?” Counsel responded: “I drove from Baltimore.” Observers promptly burst out laughing. Had the judge replaced “you” with “the case”—and asked “how did the case get here?”—the question would have been sufficiently clear.

This example calls to mind Mark Twain’s quip: The difference between one word is the difference between lightning and lightning bug.³

Words can be symphonic, and elevate our emotions. Words can also be clumsy tools that cut our very own fingers. Carefully selecting your choice of words—and arranging them to achieve eloquence—is the essence of style.

Consider Emerson’s appraisal of Montaigne’s use of words:

¹ This is the third article in a series designed to bring to the surface elements of classical rhetoric for modern advocates. Prior articles include: *Classical Rhetoric and the Modern Trial Lawyer* (ABA Litigation Magazine, Winter 2010, with JoAnne Epps and Ronald J. Waicukauski); and *Clarity of Expression – The Keystone of Successful Advocacy in Dispute Resolution* (ABA Litigation Magazine, Winter 2016). See, *The 12 Secrets of Persuasive Argument*, Waicukauski, Sandler, and Epps; ABA 2001).

² Lloyd Paul Stryker, *The Art of Advocacy* 56 (Corner Stone Library 1956); Robert Remini, Daniel Webster, *The Man and His Time*, p. 80 (1997 W.W. Norton).

³ *Clarity of Expression – The Keystone of Successful Advocacy in Dispute Resolution* by Paul Mark Sandler (ABA Litigation Magazine, Winter 2016).

The sincerity and marrow of the man reaches to his sentences. I know not anywhere the book that seems less written. It is the language of conversation transferred to a book. Cut these words, and they would bleed.⁴

Now take, for example, two personal injury cases. Both trial lawyers seek damages in their closing arguments. Imagine one lawyer exhorting, “Let’s turn to the measure of damages.” Now imagine the other quietly stating, “Let’s turn to the grim, grueling audit of pain.” Which style is most effective? It is impossible to evaluate without first knowing to whom these lawyers are speaking. Tailoring the argument to the listener is, therefore, a significant principle of rhetoric. So, in choosing your style, you might select the first version if arguing before a judge, but—if arguing before a jury—the second version may serve you well, if you believe members would be receptive. Remember: choosing the appropriate style is important. But it is perhaps even more important to know when to alter that style.

Select carefully and tailor your language to your listeners so that your style choices do not backfire. During closing argument for a jury trial in Los Angeles, defense counsel from Baltimore once used the term “waterman” in an effort to come across as down to earth. However, the jury had no idea what that word meant. While those from Baltimore know that a “waterman” is one who fishes the Chesapeake Bay, this West Coast jury was confused. Word choice clearly matters. The right choice can make you relatable; the wrong one can just as easily alienate the listener.

With diligence, you can improve your style. While some have natural born talent as advocates, many of the best have perfected their skills through hard work and practice. Consider Demosthenes, often regarded as the supreme example of the perfect advocate. When he was young, he spoke with an impeding stutter. In an attempt to completely alter his style, and to eradicate the stutter, Demosthenes practiced speaking with pebbles under his tongue—and it worked. His “Philippics” against King Philip of Macedon are legendary.

Woodrow Wilson practiced his speeches alone in the woods, carefully crafting his language over time. Winston Churchill spent hours working on and practicing his speeches. Often, listeners thought Churchill was speaking extemporaneously. He was not. His speeches were the result of a deliberate choice of style.

Ultimately, style is personal so you should develop one that is your own. Regardless of which words you choose, always strive for clarity with logic and emotion when appropriate. So how can you polish your style? One effective means is to study the classical rhetorical figures of speech known as *schemes* and *tropes*.

An example of a scheme is when you change the traditional—or expected—order of words in a sentence for effect or drama, such as: “A great lawyer was Hank.”

Tropes are figures of speech that occur when you change the significance of the words in a sentence. The most familiar examples of tropes are metaphors and similes. Metaphors are

⁴ See Jeffrey Collin’s book review of Phillippe Desan’s *Montaigne: A Life*, WSJ 1/28/17.

implied comparisons between two things that are unlike, but that have something in common: “The defendant’s case went down in flames.” A metaphor transforms a word or phrase from its literal meaning into something else. A simile, however, uses “like” or “as” to explicitly compare two things that are not alike: “These facts are clear as a fire bell in the night.”

The proper use of schemes and tropes will add zest to your courtroom arguments, and will enhance your arguments and the testimony of your witnesses, should counsel help them in expressing their answers with “style.”

Studying these figures of speech can be tedious—and even dry—but, oh, how you will reap the rewards of your efforts. If you consider them carefully, and mull over them, you will accomplish impressive improvement in persuasive abilities. But do not be hasty. Learn just one or two schemes and tropes at a time. Then attempt to use them. Even Shakespeare recommended a conservative approach. He suggested to “practice rhetoric in your common talk.”

Listed below are ten classical schemes and ten classical tropes that you—as the modern advocate—should study. Practice using them if the inclination strikes you.

SCHEMES:

1. Changing the normal order of words in a sentence. (Anastrophe)

Traditional Usage	Scheme	Benefit to Advocate
On direct examination: <ul style="list-style-type: none"> ▪ “Mrs. Smith, how would you describe your late husband?” ▪ “John was a wonderful man.” 	<ul style="list-style-type: none"> ▪ “A wonderful man was my husband, John.” 	Adds drama; emphasizes an important point under the doctrine of primacy—the judge/jury remember best what they hear first.

2. Repetition

a. Consecutive repetition of words in a sentence. (Epizeuxis)

Traditional Usage	Scheme	Benefit to Advocate
On direct examination: <ul style="list-style-type: none"> ▪ “How do you feel about what happened?” ▪ “I feel sad.” 	<ul style="list-style-type: none"> ▪ “I feel sad, sad, sad about what happened.” 	Emphasizes your point pursuant to the doctrine of frequency (repetition), which helps judge/jury remember and appreciate your witness’s reaction.

b. Consecutive repetition of phrases. (Epimone)

Traditional Usage	Scheme	Benefit to Advocate
<p>At opening statement:</p> <ul style="list-style-type: none"> “We shall prove that the landlord was negligent for not repairing the screen door that Mr. Jones fell through when he was pushed.” 	<ul style="list-style-type: none"> “This is the case of the careless landlord. He was careless because he did not care for the safety of little Tommy Jones, and he was careless because he did not repair the screen door.” 	<p>Uses repetition to emphasize a main point with rhythm to engage the judge/jury.</p>

c. Repetition of words at the beginning of a sentence. (Anaphora)

Traditional Usage	Scheme	Benefit to Advocate
<p>On direct examination:</p> <ul style="list-style-type: none"> “What was your reaction to what you observed?” “Despair.” 	<ul style="list-style-type: none"> “Despair, despair, despair.” 	<p>Injects emphasis and drama at the outset of the sentence for primacy and repetition (frequency).</p>

d. Repetition of words at the end of a sentence. (Epistrophe)

Traditional Usage	Scheme	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> “You should conclude that the evidence of liability for breach of contract and fraud is overwhelming.” 	<ul style="list-style-type: none"> “The evidence of breach of contract is overwhelming. The evidence of fraud is overwhelming.” 	<p>Adds drama and effect; takes advantage of recency—judge/jury remember what they hear last.</p>

e. Repetition of words at the beginning and end of a sentence. (Symplece)

Traditional Usage	Scheme	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> “This case is about Ms. Walters’ breach of her duty of care to Ms. Johnson. Based on the evidence, you should render a verdict in favor of Ms. Johnson.” 	<ul style="list-style-type: none"> “Negligence is what this case is about, and based on the evidence, you should find Ms. Walters liable for her negligence.” 	<p>For effect, employs both primacy (what is heard first) and recency (what is heard last).</p>

3. Interruption of normal flow of words by inserting a phrase. (Parenthesis)

Traditional Usage	Scheme	Benefit to Advocate
At opening statement: <ul style="list-style-type: none"> “The evidence will show that the plaintiff herself contributed to the accident.” 	<ul style="list-style-type: none"> “The evidence will show, and you will believe, that the plaintiff herself contributed to the accident.” 	Injects sincerity; emphasizes your point without pounding the table or using more words.

4. Deliberate omission of words implied from the context of the subject. (Ellipsis)

Traditional Usage	Scheme	Benefit to Advocate
At opening statement: <ul style="list-style-type: none"> “To prove our case, we shall call an expert from whom you will learn that the defendant was negligent, and hence liable to the plaintiff.” 	<ul style="list-style-type: none"> “From the testimony of our expert, you will find negligence, from negligence, liability.” 	Conveys your point concisely and with good effect.

5. A sudden halt in speech for effect. (Aposiopesis)

Traditional Usage	Scheme	Benefit to Advocate
At closing argument: <ul style="list-style-type: none"> “His suffering was too much to bear.” 	<ul style="list-style-type: none"> “His suffering (silence) was too much to bear.” 	Draws additional attention to your point, and the moment of silence evokes emotion.

6. Stating something by not saying it, or disregarding it. (Praeteritio)

Traditional Usage	Scheme	Benefit to Advocate
At closing argument: <ul style="list-style-type: none"> “Of great importance is the rate of speed the defendant drove his car.” 	<ul style="list-style-type: none"> “I shall not remind you about the speed the defendant drove his car.” 	Engages the judge/jury to think about the point you are making.

7. Correcting yourself. (Metanoia)

Traditional Usage	Scheme	Benefit to Advocate
At closing argument: <ul style="list-style-type: none"> “The defendant’s fraud will be clear 	<ul style="list-style-type: none"> “The defendant’s unfairness, I am sorry, 	Adds a bit of irony for effect.

from the evidence.”	the defendant’s fraud will be clear from the evidence.”	
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8. Anticipating the opponent’s objections and meeting them in advance. (Prolepsis)

Traditional Usage	Scheme	Benefit to Advocate
<p>On direct examination:</p> <ul style="list-style-type: none"> ▪ “Tell us, what happened to you that day?” ▪ “I walked into the food market and slipped on a very wet floor.” ▪ “Did you suffer any injuries?” 	<ul style="list-style-type: none"> ▪ “Tell us what happened to you that day.” ▪ “I walked into the food market and slipped on a very wet floor.” ▪ “Did you see a sign warning that the floor was slippery?” ▪ “No.” ▪ “Why not?” ▪ “There was no sign.” ▪ “Really?” 	<p>Immunizes the witness from cross-examination; continues your argument/theme of case from opening statement: “Mrs. Smith will prove that the owner of the store was negligent by not warning pedestrians of the wet floor. The defense will claim contributory negligence. But we shall prove otherwise.”</p>

9. Using the same letter or sound at the beginning of adjacent—or closely connected—words. (Alliteration or Assonance)

Traditional Usage	Scheme	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> ▪ “This action was no mistake. It was purposeful.” 	<ul style="list-style-type: none"> ▪ “This big, bad mistake was no accident.” 	<p>Engages the listener with rhythm.</p>

10. Repeating the ending of the sentence at the beginning of the next. (Anadiplosis)

Traditional Usage	Scheme	Benefit to Advocate
<p>On direct examination:</p> <ul style="list-style-type: none"> ▪ “What did you observe?” ▪ “I saw Mr. Smith speeding through the red light.” ▪ “Then what did you observe?” 	<ul style="list-style-type: none"> ▪ “What did you observe?” ▪ “I saw Mr. Smith speeding through the red light.” ▪ “After you saw Mr. Smith speeding through the red light, did you see anything else?” 	<p>Emphasizes your point through repetition.</p>

TROPES:

1. **An implied comparison between two things that are unlike, but have something in common. (Metaphor)**

Traditional Usage	Trope	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> ▪ “The conduct of the corporate defendant was horrendous. You know that. I know that.” 	<ul style="list-style-type: none"> ▪ “The conduct of the corporation was despicable. You know that. I know that. This is a case for punitive damages.... The only way to stop a beast in the woods is to stab it in the heart. The only way to stop this corporate monster is to stab it in the pocketbook.” 	<p>Adds drama and effect; paints a picture with words.</p>

2. An explicit comparison using words introduced by “as” or “like.” (Simile)

Traditional Usage	Trope	Benefit to Advocate
<p>On direct examination:</p> <ul style="list-style-type: none"> “How could you see what occurred when it was 11:00 p.m. at night?” “The moon was bright.” 	<ul style="list-style-type: none"> “The moon was bright as the sun that evening.” 	<p>Engages the judge/jury; paints a picture with words.</p>

3. Asking a question, and not answering it—also known as a rhetorical question. (Erotema)

Traditional Usage	Trope	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> “As you can observe, and have observed during the trial, Lucie Baines does not even look like the type of person who could have committed this heinous crime.” 	<ul style="list-style-type: none"> “Look at her, ladies and gentlemen. Does she look like the type of person who could have committed this heinous crime?” 	<p>Empowers the judge/jury to render the answer you desire without explicitly being told to do so; makes them feel engaged in forming their own opinions.</p>

4. Asking a question, and then answering it. (Hypohora)

Traditional Usage	Trope	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> “Mrs. Livingston brought this case to seek recompense.” 	<ul style="list-style-type: none"> “Why did Mrs. Livingston bring this lawsuit? Because she seeks recompense for the horrible treatment she received from her employer, the defendant Mr. Jones.” 	<p>Engages judge/jury by reinforcing the theme of your case in a sophisticated way.</p>

5. Understatement, by expressing the affirmative in the negative of its contrary meaning. (Litotes)

Traditional Usage	Trope	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> “You heard her testimony; her memory was excellent. You will be pleased to believe her and happy with your verdict of not guilty.” 	<ul style="list-style-type: none"> “You heard her testimony; her memory was not bad. She told us exactly what occurred. You, as members of the jury, would never be sorry that you believed her. You will never be ashamed rendering a verdict of not guilty.” 	<p>Implicitly rallies support for your witness.</p>

6. Understatement, by giving the impression that something is less important than it is. (Meiosis)

Traditional Usage	Trope	Benefit to Advocate
<p>On direct examination (plaintiff is testifying about noticeably serious injuries that she suffered when she fell many feet to the ground through a wooden deck):</p> <ul style="list-style-type: none"> “So now, Ms. Bursum, will you please describe for us the injuries you suffered as a result of the serious incident?” 	<ul style="list-style-type: none"> “So now, Ms. Bursum, will you please tell us about the injuries you suffered from this <i>little incident?</i>” 	<p>Compels the judge/jury to view the situation seriously with your ironic understatement of it; the opposite of hyperbole.</p>

7. Exaggeration. (Hyperbole)

Traditional Usage	Trope	Benefit to Advocate
<p>On direct examination:</p> <ul style="list-style-type: none"> “Mr. Smith, how would you describe the sound from the rifle shot?” “It was very loud.” 	<ul style="list-style-type: none"> “It was so loud it could be heard around the world.” 	<p>Infuses dramatic exaggeration for effect; stirs the judge/jury to see the case your way.</p>

8. Addressing someone or some personified abstraction that is not physically present. (Apostrophe)

Traditional Usage	Trope	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> “Ladies and gentlemen of the jury, in conclusion let your verdict be just.” 	<ul style="list-style-type: none"> “Justice. Justice cries out: Let your verdict be for Mrs. Jones.” 	<p>Adds dramatic effect.</p>

9. Using words to convey the opposite of their literal meaning. (Irony)

Traditional Usage	Trope	Benefit to Advocate
<p>At opening statement:</p> <ul style="list-style-type: none"> “Ladies and gentlemen, he blatantly breached his duty to those who elected him, and stole valuable artwork from the museum.” 	<ul style="list-style-type: none"> “His great love of art caused him to borrow indefinitely the museum’s most cherished possessions.” 	<p>Pairs drama with sarcasm to engage the judge/jury, and to keep them working with you for the “proper” result.</p>

10. Omitting the major premise of syllogistic reasoning in deductive arguments when the listener knows the premise. (Enthymeme)

Traditional Usage	Trope	Benefit to Advocate
<p>At closing argument:</p> <ul style="list-style-type: none"> “Ladies and gentlemen, we know that when a witness looks at you in the eyes, he is testifying honestly and is someone you can believe. John Jamaca looked you in the eyes when he testified. You can believe him.” 	<ul style="list-style-type: none"> “Ladies and gentlemen, John Jamaca looked you in the eyes when he testified. You can believe him.” 	<p>Eliminates the formality of the argument; creates a bond with the judge/jury based on shared values of the valid major premise.</p>

Schemes and tropes have come down to us through the ages, and you should continue to extoll their value. Consider Cicero’s view of style more than 2,000 years ago in his seminal work, *Oratoria*:⁵

[A]s soon as we have acquired the smoothness of structure and rhythm . . . we must proceed to lend brilliance to our style by frequent embellishments both of thought and words with a view to making our audience regard the . . . (case) which we amplify as being as important as speech can make it.⁶

By “embellishments,” Cicero was referring to schemes and tropes. Some might classify these figures of speech as ornaments, like musical flourishes within a symphonic masterpiece. However, the masterpiece excels because of its flourishes. So will you in court, if you master your style using schemes and tropes.

Of course, perfecting your style involves more than studying the schemes and tropes mentioned above. You must consider other important traits of style, such as clarity of expression, and selecting words that you believe will resonate with the listener—words that convey humor, emotion, or anger. Consider whether you desire an active or passive voice, or concrete or abstract words, and whether you wish to employ short or lengthy sentences.

Above all, ensure that the language you use is clear and particularly tailored to the listener. Simply put, do not insult or confuse the very listener you hope to persuade. Knowing your audience, judge, arbitrator, or jurors—before you present your case—is a critical step in choosing your words wisely.

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⁵ For an even more detailed study, consider *Farnsworth’s Classical Rhetoric* by Ward Farnsworth (David R. Godfine Publisher, 2010), and *The Elements of Eloquence* by Mark Forsyth (The Berkley Publishing Group, Penguin Group, 2013).

⁶ Quintilian, *Institution Oratoria* IX.1.26-28.