

# **LAW** & **RHETORIC**

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# RHETORIC

## A PRIMER

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CAROLINA ACADEMIC PRESS  
Durham, North Carolina

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**CATALOGING-IN-PUBLICATION DATA**

Names: Conti, Delia B., 1961- author.

Title: Law and rhetoric : a primer / Delia B. Conti, Linda L. Berger, Michael J. Cedrone,  
Mark A. Hannah, Melissa E. Love Koenig, and Julie A. Oseid.

Description: Durham, North Carolina : Carolina Academic Press, 2023. |  
Includes bibliographical references and index.

Identifiers: LCCN 2023031402 | ISBN 9781531019822 (paperback) |  
ISBN 9781531019839 (ebook)

Subjects: LCSH: Law--Language. | Law--Methodology. | Law--United States--Language. |  
English language--United States--Rhetoric.

Classification: LCC K213 .C667 2023 | DDC 340/.1--dc23/eng/20230822

LC record available at <https://lcn.loc.gov/2023031402>

**CAROLINA ACADEMIC PRESS**

700 Kent Street  
Durham, North Carolina 27701

(919) 489-7486

**WWW.CAP-PRESS.COM**

Printed in the United States of America

*To my family.*

**D.B.C.**

*To the legal imagination.*

**L.L.B.**

*Familiae meae.*

**M.J.C.**

*To C, E, and D.*

**M.A.H.**

*To Jonathan and Olivia, and my parents George and Edith,  
whose constant love and support lift me up.*

**M.E.L.K.**

*To Legal Storytellers.*

**J.A.O.**



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# Preface

**DELIA B. CONTI**

Law and rhetoric have an intimate connection in subject matter and in practice. Rhetorical theory is concerned with all matters of persuasion and law at its core focuses on persuasion. Many law students have a background in debate and individuals who like to argue are often encouraged to attend law school. I came to the field of law after many years of teaching rhetoric at the university level and studying political communication. This text originated when I attended law school and began to realize the contributions that rhetorical theory could make to the field of law for both practitioners and scholars. The fields of law and rhetoric are both fundamentally concerned with persuasion. For example, in law school we learned about the theory of the case and about the persuasiveness of stories. Yet there was no explicit connection to the rhetorical theory of narrative that illuminates how stories are fundamental to all persuasion. In law school we talked about the importance of credibility and legal reasoning. Aristotle's conception of ethos, pathos, and logos and Toulmin, Weaver, and Perelman all provide theoretical frameworks for understanding these persuasive elements typically considered a component of rational thinking.

The genesis of this book thus began many years ago. I wrote a draft in the years following my graduation from law school. Originally accepted for publication with revisions suggested, I was waylaid as I took a detour through administration for many years. Upon my return to faculty, I also returned to this text. Fortunately, I met a wonderful group of collaborators through participation in conferences focusing on legal writing. Each co-author was able to revise their chapter based on their experience, knowledge, teaching, research, and practice of law.

This text is truly a collaborative endeavor. Over the course of several conferences and several years, the co-authors have worked together discussing the interrelation between law and rhetoric. Each co-author has assumed primary authorship on the chapter to which their name is attached. We have benefitted immensely from our critiques, comments, and discussions, and the text has profited immensely from this extended dialogue.

Kenneth Burke wrote of the ongoing discussion that we join and then leave, and this truly reflects the development of this work:

Imagine that you enter a parlor. You come late. When you arrive, others have long preceded you, and they are engaged in a heated discussion, a discussion too heated for them to pause and tell you exactly what it is about. In fact, the discussion had already begun long before any of them got there, so that no one present is qualified to retrace for you all the steps that had gone before. You listen for a while, until you decide that you have caught the tenor of the argument; then you put in your oar. Someone answers; you answer him; another comes to your defense; another aligns himself against you, to either the embarrassment or gratification of your opponent, depending upon the quality of your ally's assistance. However, the discussion is interminable. The hour grows late, you must depart. And you do depart, with the discussion still vigorously in progress.<sup>1</sup>

We welcome you to this discussion. Our hope is that through reading this brief book you will become more effective lawyers through your understanding of rhetorical theory. Law students will benefit from learning about persuasion in the development and practice of law. Legal academics can explore the theoretical connections between the fields and discover new avenues for research. Legal practitioners can become more effective advocates. We have included bibliographies to provide you with the opportunity to delve into these rhetorical concepts in greater detail. The fields of law and rhetoric are fascinating, interconnected, and are fundamental to our society's success through collaborative efforts. The law grows and changes reflecting civilization's evolution. Rhetoric's fundamental underpinnings in the establishment of human interactions and productive communication provide a gateway to better understanding the study and the practice of the law.

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1. KENNETH BURKE, *THE PHILOSOPHY OF LITERARY FORM* 110–111 (Berkeley: University of California Press, 3d ed. 1974).