

PERSUASIVE ADVOCACY IN ACTION

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A Workbook for Law Students

Robin Boyle-Laisure

PROFESSOR OF LEGAL WRITING
ST. JOHN'S UNIVERSITY SCHOOL OF LAW

Laura P. Graham

PROFESSOR OF LEGAL WRITING
WAKE FOREST UNIVERSITY SCHOOL OF LAW



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To my Dad, Wallace, and wife, Deborah; my late mother Verna; my brother Matthew and wife Julie; my husband, Skip Laisure; daughter, Andrea; son, Corey; and my Laisure nephews and Boyle nieces—I am grateful for my family's love and support.

ROBIN BOYLE-LAISURE

To all of the Wake Forest University School of Law students I've had the privilege to teach over the last twenty-five years: You are the inspiration for this workbook and for every professional pursuit I undertake. Thank you for everything you have taught me.

LAURA P. GRAHAM

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Introduction

Welcome to the dynamic realm of persuasive legal writing! As an aspiring legal professional, you are embarking on a journey that delves into the very heart of advocacy—the art and science of crafting compelling arguments to champion the causes of your clients. While lawyers wear many hats, from counselors to negotiators, the role of advocate remains paramount. Central to this role is the ability to articulate persuasive narratives, both in writing and orally, that influence outcomes and advance the interests of those you represent.

This workbook is designed with a singular focus: to help you hone your skills in persuasive legal writing and oral advocacy. As you navigate through its pages, you will encounter a rich tapestry of core principles, practical insights, and hands-on exercises tailored to elevate your prowess in crafting persuasive legal arguments, constructing well-reasoned briefs and other persuasive documents, and delivering compelling oral arguments.

Our approach is rooted in the recognition that effective advocacy is an amalgamation of strategic thinking, meticulous research, and eloquent communication. Through a blend of focused explanations and interactive exercises, this workbook empowers you to navigate the complexities of legal advocacy with confidence. Each chapter is crafted to guide you through the intricacies of constructing cogent legal arguments, arming you with the tools necessary to articulate your client's position with precision and persuasion.

As you embark on this learning journey, remember that the ability to advocate effectively is not merely a skill—it is an art form. By engaging with the content and exercises presented, you are not only honing your legal acumen but also cultivating the artistry required to sway opinions, influence decisions, and ultimately achieve the outcomes your clients seek.

I. How Persuasive Writing Differs from Objective Writing

In most legal skills courses, students spend the first semester learning the fundamentals of objective legal analysis and predictive legal writing. The culminating assignment is often an objective memorandum to a senior attorney that predicts the most likely outcome on one or more issues and explains the analysis that supports the writer's prediction.

In *predictive* legal writing, your task is to *construct an analysis* that *predicts the most likely outcome* of a legal issue, even if that outcome is contrary to your client's interests. The

ultimate value of the objective memo depends on the thoroughness with which you have examined and evaluated possible arguments for both your client and the opposing party. It is this thorough, neutral analysis that will allow your senior attorney to confidently decide what next steps to take in your client's case to achieve the best possible outcome.

In *persuasive* legal writing, your task is to *construct an argument that supports the outcome your client desires*. To be sure, the thorough, objective analysis that is the crux of predictive legal writing is the necessary starting point for good persuasive writing. A wise advocate will not begin drafting a brief before arriving at a deep understanding of the law and the facts that support *both parties'* arguments. But once the advocate has that deep understanding, she must take pains to develop an argument that will persuade the decision-maker in the case (usually a judge) to rule in favor of her client. And then she must craft a document (often a brief) that communicates that argument precisely, clearly, concisely, and powerfully.

The visual below captures the key similarities and differences between predictive legal writing and persuasive legal writing, using the mnemonic AEIOU: Approach, End Result, Investment, Objective, and User.

AEIOU

How Predictive and Persuasive Writing Differ

	PREDICTIVE	PERSUASIVE
APPROACH	<ul style="list-style-type: none"> Do a thorough job of pre-writing. Analyze how the law applies to the facts from both sides. Communicate which side's position seems stronger and why (and be sure to address any valid counter-analysis). 	<ul style="list-style-type: none"> Do a thorough job of pre-writing. Analyze how the law applies to the facts from both sides. Identify the strengths of your side's argument and the strengths of your opponent's argument. Communicate your analysis in a way that maximizes your strengths and minimizes or neutralizes your opponent's strengths.
END RESULT	<ul style="list-style-type: none"> The format is usually determined by you or your senior partner/supervisor—there is some flexibility. Precision, clarity, and conciseness matter. 	<ul style="list-style-type: none"> The format is often determined by court rules. Precision, clarity, and conciseness matter.

INVESTMENT	<ul style="list-style-type: none"> • Perhaps you haven't taken the case yet. • Or you're in the very early stages. • A mistake is usually not fatal to your client's (or potential client's) case. 	<ul style="list-style-type: none"> • You have taken the case. • You have taken the client's money. • You have perhaps invested months or years in the case. • A mistake can be fatal to your client's chances of success.
OBJECTIVE	<ul style="list-style-type: none"> • To predict. • You're an oddsmaker. • Your senior partner or supervisor wants the best answer, whether it favors your client or not. 	<ul style="list-style-type: none"> • To persuade. • You're a salesperson. • You must come up with the best argument possible on behalf of your client's position.
USER	<ul style="list-style-type: none"> • Usually a senior partner or supervisor. • Needs to know what the law is and how it applies to the case at hand. • May have some familiarity with the facts of the case. 	<ul style="list-style-type: none"> • Usually a judge or panel of judges (or other decision-maker). • Needs to be persuaded that the result your client wants is correct. • May have little or no prior knowledge of the case.

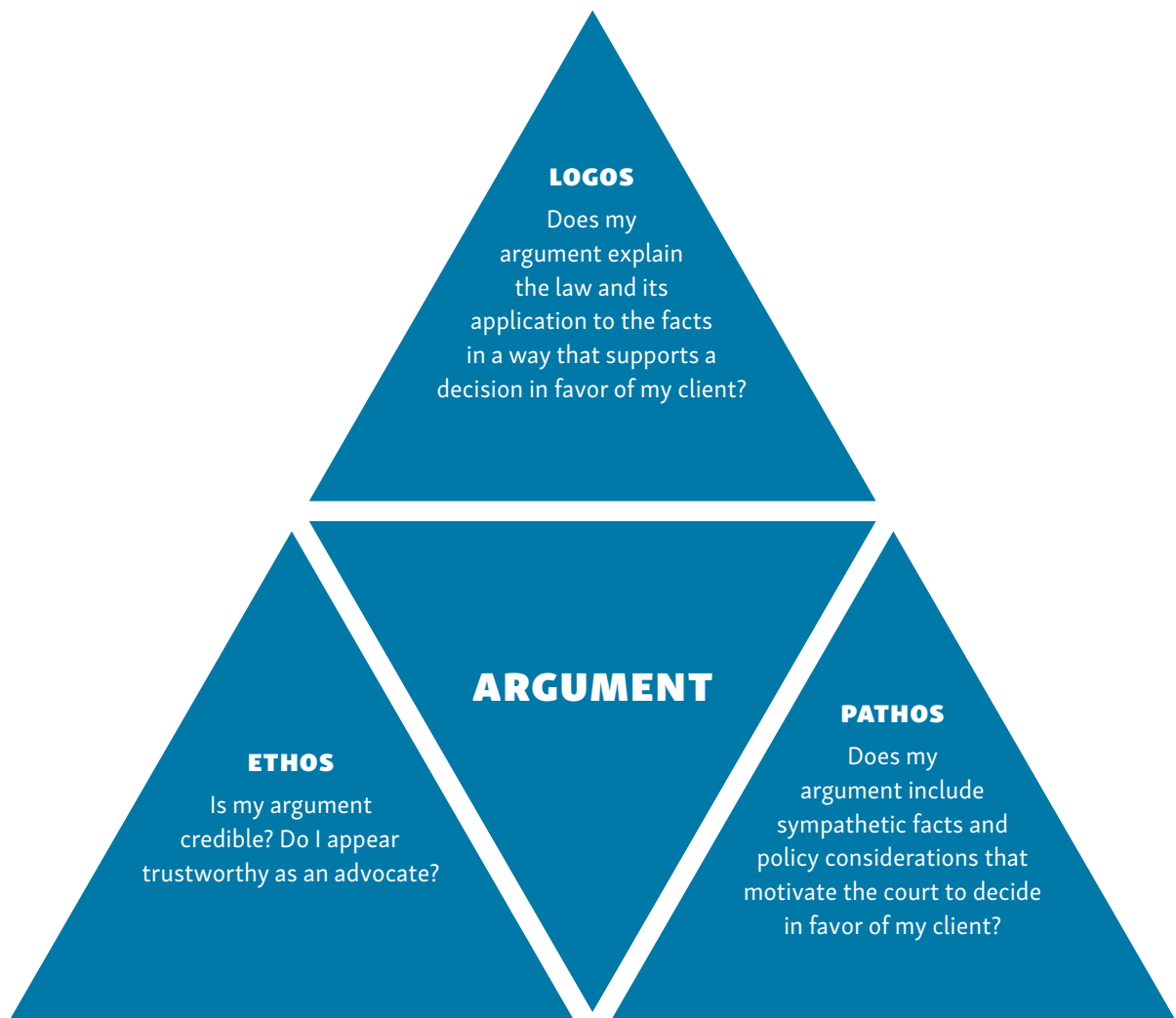
II. The Pillars of Persuasion

All effective advocacy, including effective legal advocacy, incorporates the three “pillars” of rhetoric (most often associated with Aristotle): *logos*, *pathos*, and *ethos*.

Logos is the pillar that might come most naturally to you at this point in your law school career. *Logos* refers to the “intellectual appeal” of the advocate’s argument; in legal advocacy, the intellectual appeal of the argument depends on how well the advocate marshals the law and the facts to support the client’s position. Good legal advocates research the law diligently and read and assess it carefully. Then they construct an argument that (1) sets out the legal rules that the decision-maker must understand and apply to reach the client’s result, (2) explains those rules to the extent necessary, and (3) “proves” how the application of those rules to the client’s situation leads logically to the result the client seeks, taking care to address and rebut the other party’s strong arguments. And they structure the argument in a logical, predictable way. These strategies give the decision-maker the *ability* to reach the result the advocate seeks.

Pathos refers to the “emotional appeal” of the advocate’s argument; in legal advocacy, the emotional appeal of the argument depends on how well the advocate weaves in sympathetic facts, and perhaps compelling policy reasons, that give the decision-maker the *desire* to reach the result the advocate seeks. *Pathos* usually isn’t emphasized in predictive legal writing instruction, but it’s a key consideration in persuasive writing.

Ethos refers to the “ethical appeal” of the advocate’s argument; in legal advocacy, the ethical appeal of the argument depends on how trustworthy the advocate appears in the eyes of the decision-maker. Legal writers establish their trustworthiness by (1) being candid and accurate about the governing law and the facts of the case; (2) ensuring that the document is well-written, error-free (or as close to error-free as possible), and compliant with all applicable content and format requirements; and (3) maintaining a tone of respect for the opposing party, the decision-maker, and the judicial process.



In this workbook, we have sought to infuse these three pillars of persuasion throughout the chapters and exercises.

III. How This Workbook Will Help You Develop Your Persuasive Skills

This workbook is not designed to cover every aspect of effective persuasive writing and oral advocacy. We proceed from the assumption that you are receiving in-depth instruction in both persuasive writing and oral advocacy as part of your legal skills coursework. Instead, this workbook is designed to reinforce some of the salient aspects of effective persuasive writing and oral advocacy and to provide you with opportunities to practice the key skills that will help you grow as an advocate.

In Chapter 1, we review the structure of the federal and state court systems, with the goal of helping you master the principles that affect an advocate's choice of authority when developing arguments.

In Chapter 2, we explore several types of shorter persuasive documents, including demand letters, affidavits, sentencing letters, and complaints.

In Chapters 3 through 8, we cover key principles for developing various segments of longer persuasive documents such as motion briefs and appellate briefs. These chapters discuss the Questions Presented section, the Statement of Facts section, and the components of the Argument section (effective point headings and roadmap sections, effective rule segments, effective factual application segments, and effective counterargument segments).

In Chapter 9, we review several aspects of good persuasive writing style, and we suggest some ways you can efficiently edit and polish your persuasive documents to maximize your *ethos* as an advocate.

Finally, in Chapter 10, we transition from written advocacy to oral advocacy, reviewing core principles of effective oral argument at the trial level and the appellate level.

In each chapter, we provide you with several short exercises designed to give you practice applying the concepts in the chapter. Sometimes the exercises are interwoven with the text of the chapter; other times, they appear at the end of the chapter. Your legal skills professor may assign these exercises as part of your class instruction; if not, you can complete some or all of them on your own.

In Appendices A–D, we include four complete Case Files. The exercises in some of the chapters of the workbook draw on the information in these Case Files. Your legal skills professor may even decide to use one of the Case Files as the basis for a persuasive writing assignment.

IV. Some Caveats

As you move through the workbook, please keep in mind that the purpose of the workbook is not to teach you the law; it is to help you develop your persuasive communication skills. In keeping with this purpose, we have made some editorial choices.

First, the examples included in the chapters and the accompanying exercises may not reflect the current state of the law. As you know, the law changes constantly, and it would be impossible to construct examples and exercises that are one hundred percent current and accurate as to the underlying law. Keep your focus on the principles of advocacy that the examples and exercises are meant to emphasize, not on the substantive law they contain.

Second, in some of the examples and exercises, we have edited the excerpts from the cases and other authorities for ease of reading. Our edits do not change the meaning of

the excerpts; they simply make the excerpts easier to read and use. We have chosen not to clutter the excerpts with ellipses, brackets, and other marks to reflect our edits.

Third, when we cite cases within the chapters and the accompanying exercises, we cite to the regional reporter whenever possible. We have made every effort to ensure that our citations are correct. But this workbook is not designed to teach you about correct legal citation form, so don't get sidetracked by our choices as to how to cite the authorities we use.

Welcome to the world of persuasive legal writing — where words become instruments of advocacy and the power to shape outcomes lies in the hands of those who can wield them with finesse. Let the exploration begin!