

# Persuasion

## An Updated Bibliography

Kristen E. Murray\*

### 1. Introduction

It has been more than ten years since this journal first published Kathy Stanchi's *Persuasion: An Annotated Bibliography*.<sup>1</sup> Persuasion, of course, remains "at the heart of the lawyer's craft."<sup>2</sup> However, persuasion scholarship has expanded and evolved a great deal since the original bibliography. Scholars have built upon foundational works and found new pathways for scholarly research, and the ranks of scholars—including legal writing scholars—writing in the field has grown significantly. Thus, it seemed like the right time for an update.

The methodology for updating this bibliography seemed obvious from the start. This bibliography should be read as a descendant of the original. No item from the first bibliography is repeated here. This update looks at how, of late, scholars have built upon the foundations established in the original bibliography and found new, smaller, broader, and/or different pockets of inquiry and discovery. If the first bibliography was focused on "greatest hits,"<sup>3</sup> then this bibliography should be read as a list of "current events."

These "current events" capture several threads in the field of the study of persuasion. First, certain areas of persuasion research that were nascent at the time of the original bibliography, such as Applied Legal Story-

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\* Professor of Law, Temple University, Beasley School of Law. Thanks to Jonathan Fedors, Jamie Klein, and Michelle Tabach for their research assistance. Sha-Shana Crichton and Brian Larson provided valuable insights and additions to the bibliography, as did the author of the original bibliography, Kathy Stanchi.

<sup>1</sup> Kathryn Stanchi, *Persuasion: An Annotated Bibliography*, 6 J. ALWD 75 (2009).

<sup>2</sup> *Id.* at 75.

<sup>3</sup> *Id.* at 76.

telling, are now robust, thriving areas of study—some even with their own bibliographies.<sup>4</sup> Second, the community of legal writing scholars has established firmer footing with respect to places to share their work.<sup>5</sup> More of us are writing, and more are writing about persuasion. (This is particularly evident in certain categories, such as the section on contemporary rhetoric and argumentation theory, *infra* at section C.) In this decade we have also seen the growth of community support and events such as reading groups, workshops, and symposia. Finally, persuasion scholars have pursued new areas of inquiry that we might not have even contemplated ten years ago.

Thus this collection of works explores the same fundamental question as the original—*why* and *how* do we persuade?—but presents different answers, answers that build upon and complement the entries in the original bibliography.

## 2. The bibliography

This bibliography shares the same mission as the original, and “focuses on books and articles that tell us something about how to persuade in legal writing.”<sup>6</sup> It is faithful to the eleven categories<sup>7</sup> of the original bibliography but also adds a new category: persuasion in transactional legal writing. Within categories, I sometimes collapsed subcategories, and sometimes created them. Like its predecessor, this bibliography does not presume to be comprehensive. Somewhere, I had to stop. One day, I hope, a subsequent update will pick up where I left off.

Not surprisingly, later works by several authors from the original bibliography are featured here. Where there have been pockets of scholarship resulting from specific events, I have tried to note them.

Generally speaking, the bibliography proceeds in the same order as the original did, with my new category appended as section L. After that, my organization diverges from the original, which organized each category from narrow to broad; I have simply listed the articles in each category

4 See generally Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ALWD 63 (2010); PHILIP N. MEYER, *STORYTELLING FOR LAWYERS* (2014); RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* (2d ed. 2019).

5 Linda L. Berger, Linda H. Edwards & Terrill Pollman, *The Past, Presence, and Future of Legal Writing Scholarship: Rhetoric, Voice, and Community*, 16 LEGAL WRITING 521, 537 (2010).

6 Stanchi, *supra* note 1, at 75.

7 They are: use of narrative theory, use of classical rhetoric, use of contemporary rhetoric and argumentation theory, use of visual and graphic arts to enhance persuasive writing, use of social science in persuasive writing, using authority to persuade, the structure of legal arguments and the use of framing techniques, the importance of emotion to persuasive legal writing, ethical considerations in persuasion, what judges think, and oral argument. See Stanchi, *supra* note 1.

alphabetically, by author. As in the original, the 125 works I included are exclusively placed in one category based on their dominant theme, even though several might have been placed in other categories as well.

### A. Use of narrative theory

Over the last decade, scholarship on the role of narrative in legal persuasion has largely been a product of or in conversation with the Applied Legal Storytelling (AppLS) movement, which is the subject of its own bibliography in this volume.<sup>8</sup> The AppLS bibliography catalogues the genre in all its forms. Here, I have focused on the use of narrative as a persuasive tool.

The origin of the AppLS movement dates to a July 2007 conference in London, *Once Upon a Time: Developing the Skills of Storytelling in Law*,<sup>9</sup> which occurred shortly before the creation of the original bibliography. AppLS has since held biennial conferences that have been co-hosted by the Legal Writing Institute and, since 2011, the Clinical Legal Education Association. Presentations from the conferences have been adapted for publication and grouped in issues of *Legal Writing: Journal of the Legal Writing Institute*, *The Law Teacher: The International Journal of Legal Education*, *The Clinical Law Review*, and this journal.<sup>10</sup>

The movement's roots are in law and literature scholarship published between the 1970s and early 2000s.<sup>11</sup> Today, AppLS scholars who focus on persuasion do so on one of two topics: the persuasiveness of storytelling in the context of legal advocacy and the effectiveness of storytelling in the context of legal pedagogy.<sup>12</sup>

Thus, unlike the original persuasion bibliography, this section is divided into two parts: practice and pedagogy. In the case of works about skills instruction in advocacy and clinical coursework, these two areas overlap (but appear under pedagogy in the bibliography below).

This section includes follow-up works from some of the authors whose work was included in the original volume along with exciting new scholarship, some of which is award-winning.<sup>13</sup>

8 J. Christopher Rideout, *Applied Legal Storytelling: An Updated Bibliography*, 18 LEGAL COMM. & RHETORIC 221 (2021). That bibliography, unlike this one, does recreate the entries from the first bibliography.

9 See Ruth Anne Robbins, *An Introduction to this Volume and to Applied Legal Storytelling*, 14 LEGAL WRITING 1 (2008); J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM. & RHETORIC 247 (2015).

10 See, e.g., 7 J. ALWD (2010); 9 LEGAL COMM. & RHETORIC (2012); 14 LEGAL WRITING (2008).

11 Robbins, *supra* note 9, at 6–10; Rideout, *supra* note 8, at 249.

12 Robbins, *supra* note 9, at 5.

13 Anne Ralph, *Narrative-Erasing Procedure*, 18 NEV. L.J. 573 (2018) (receiving the Penny Pether Award for Law and Language Scholarship); Helena Whalen-Bridge, *Negative Narrative: Reconsidering Client Portrayals*, 16 LEGAL COMM. & RHETORIC 151 (2019) (receiving the Teresa Godwin Phelps Award for Scholarship in Legal Communication).

### Part I. Narrative in persuasive legal advocacy

- Linda L. Berger, *How Embedded Knowledge Structures Affect Judicial Decision Making: A Rhetorical Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes*, 18 S. CAL. INTERDISC. L. J. 259 (2009).
- Linda L. Berger, *The Lady, or the Tiger? A Field Guide to Metaphor and Narrative*, 50 WASHBURN L.J. 275 (2011).
- Linda H. Edwards, *Hearing Voices: Non-Party Stories in Abortion and Gay Rights Advocacy*, 2015 MICH. ST. L. REV. 1327 (2015).
- Linda H. Edwards, *Speaking of Stories and Law*, 13 LEGAL COMM. & RHETORIC 157 (2016).
- Lisa Kern Griffin, *Narrative, Truth, and Trial*, 101 GEO. L.J. 281 (2013).
- Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237 (2010).
- Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207 (2012).
- PHILIP N. MEYER, *STORYTELLING FOR LAWYERS* (2014).
- Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 YALE J.L. & HUMAN. 1 (2014).
- Anne E. Ralph, *Narrative-Erasing Procedure*, 18 NEV. L.J. 573 (2018).
- RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* (2d ed. 2019).
- Jennifer Sheppard, *Once Upon a Time, Happily Ever After, and in a Galaxy Far, Far, Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 WILLAMETTE L. REV. 255 (2009).
- MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* (3rd ed. 2013).
- Nicole Smith Futrell, *Vulnerable, Not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing*, 93 N.C. L. REV. 1597 (2015).
- Helena Whalen-Bridge, *Negative Narrative: Reconsidering Client Portrayals*, 16 LEGAL COMM. & RHETORIC 151 (2019).

## Part II. Narrative in effective legal pedagogy

Mary Ann Becker, *What Is Your Favorite Book?: Using Narrative to Teach Theme Development in Persuasive Writing*, 46 GONZ. L. REV. 575 (2010–11).

Sha-Shana Crichton, *What Happens when the Media Gets Ahead of your Client's Story? An Attorney's Duty to use Conscious Word Choice*, 47 S.U. L. REV. 155 (2019).

SHA-SHANA CRICHTON, *Using Fiction to Teach Word Choice and To Teach How to Write an Effective Fact Statement*, in TEACHING LAW AND POPULAR CULTURE (Christine Corcos ed. 2019).

Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to the Classroom*, 7 J. ALWD 37 (2010).

Teri A. McMurtry-Chubb, *The Practical Implications of Unexamined Assumptions: Disrupting Flawed Legal Arguments to Advance the Cause of Justice*, 58 WASHBURN L.J. 531 (2019).

Laurie Shanks, *Whose Story Is It, Anyway?—Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509 (2008).

Jo A. Tyler & Faith Mullen, *Telling Tales in School: Storytelling for Self-Reflection and Pedagogical Improvement in Clinical Legal Education*, 18 CLINICAL L. REV. 283 (2011).

## B. Use of classical rhetoric

Here, I have diverged from the structure of the original bibliography, which divided this section into three parts (general classical rhetoric, metaphor and stylistic devices, and foundational works). These pieces are united in their pursuit of questions about why and how we use classical rhetoric to persuade, but vary by the contexts they consider, including historical topics such as advocacy and evidence and modern topics regarding digital commentary and curricular reform. Several of the works are from a symposium in the spring 2020 issue of the Nevada Law Journal, *Classical Rhetoric as a Lens for Contemporary Legal Praxis*.<sup>14</sup>

Elizabeth Berenguer, Lucy Jewel & Teri A. McMurtry-Chubb, *Gut Renovations: Using Critical and Comparative Rhetoric to Remodel How the Law Addresses Privilege and Power*, 23 HARV. LATINX L. REV. 205 (2020).

Linda L. Berger, *Studying and Teaching "Law as Rhetoric": A Place to Stand*, 16 LEGAL WRITING 3 (2010).

<sup>14</sup> Symposium: *Classical Rhetoric as a Lens for Contemporary Legal Praxis*, 20 NEV. L.J. 845 (2020).

- Linda L. Berger, *Creating Kairos at the Supreme Court: Shelby County, Citizens United, Hobby Lobby, and the Judicial Construction of Right Moments*, 16 J. APP. PRAC. & PROCESS 147 (2015).
- LINDA L. BERGER & KATHRYN M. STANCHI, *Gender Justice: The Role of Stories and Images*, in NARRATIVE AND METAPHOR IN THE LAW (Michael Hanne & Robert Weisberg eds., 2018).
- Kirsten A. Dauphinais, *Quintilian's Curriculum*, 20 NEV. L.J. 917 (2020).
- Kirsten K. Davis, *[Classical] Lawyers as [Digital] Public Speakers: Classical Rhetoric and Lawyer Digital Public Commentary*, 20 NEV. L.J. 1137 (2020).
- Jamal Greene, *Pathetic Argument in Constitutional Law*, 113 COLUM. L. REV. 1389 (2013).
- FRANCIS J. MOOTZ III, KIRSTEN K. DAVIS, BRIAN N. LARSON & KRISTEN K. TISCIONE, *CLASSICAL RHETORIC AND CONTEMPORARY LAW: A CRITICAL READER* (forthcoming 2022).
- Daphne O'Regan, *Eying the Body: The Impact of Classical Rules for Demeanor Credibility, Bias, and the Need to Blind Legal Decision Makers*, 37 PACE L. REV. 379 (2017).
- J. Christopher Rideout, *Penumbral Thinking Revisited: Metaphor in Legal Argumentation*, 7 J. ALWD 155 (2010).
- J. Christopher Rideout, *Ethos, Character, and Discoursal Self in Persuasive Legal Writing*, 21 LEGAL WRITING 19 (2016).
- KRISTEN KONRAD TISCIONE, *RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION* (2009).
- Kristen K. Tiscione, *How the Disappearance of Classical Rhetoric and the Decision to Teach Law as a "Science" Severed Theory from Practice in Legal Education*, 51 WAKE FOREST L. REV. 385 (2016).
- Melissa H. Weresh, *Ethos at the Intersection: Classical Insights for Contemporary Application*, 20 NEV. L.J. 877 (2020).

### C. Use of contemporary rhetoric and argumentation theory

This category has seen a fair amount of growth since the original bibliography, which styled it as an "emerging discipline." Themes addressed in these newer works include contemporary understandings and applications of rhetorical concepts, rhetoric and identity, other humanistic approaches to law and rhetoric, and recent argumentation theory.

Several of the works are part of a series established at the University of Alabama Press in 2015: *Rhetoric, Law, and the Humanities*.<sup>15</sup> Also

represented here are a number of works previously featured in 2015's Law and Rhetoric Bibliography<sup>16</sup> and works generated from participants in the West Coast Rhetoric Workshop.

Linda L. Berger, *Metaphor and Analogy: The Sun and Moon of Legal Persuasion*, 22 J. L. & POL'Y 147 (2013).

HANDBOOK OF LEGAL REASONING AND ARGUMENTATION (Giorgio Bongiovanni, Gerald Posterna, Antonio Rotolo, Giovanni Sartor, Chiara Valentini & Douglas Walson eds., 2018).

Martin Camper & Zach Fechter, *Enthymematic Free Space: The Efficacy of Anti-stop-and-frisk Arguments in the Face of Racial Prejudice*, 55 ARGUMENTATION & ADVOCACY 259 (2019).

KATIE L. GIBSON, RUTH BADER GINSBURG'S LEGACY OF DISSENT: FEMINIST RHETORIC AND THE LAW (2018).

Mark A. Hannah & Susie Salmon, *Against the Grain: The Secret Role of Dissents in Integrating Rhetoric Across the Curriculum*, 20 NEV. L.J. 935 (2020).

PRESUMPTIONS AND BURDENS OF PROOF: AN ANTHOLOGY OF ARGUMENTATION AND THE LAW (Hans V. Hansen, Fred J. Kauffeld, James B. Freeman, & Lilian Bermejo-Luque eds., 2019).

Brian N. Larson, *Law's Enterprise: Argumentation Schemes & Legal Analogy*, 87 U. CIN. L. REV. 663 (2019).

Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41 (2009).

Teri A. McMurtry-Chubb, *Still Writing at the Master's Table: Decolonizing Rhetoric in Legal Writing for a "Woke" Legal Academy*, 21 SCHOLAR 255 (2019).

Susan E. Provenzano & Brian N. Larson, *Civil Procedure as a Critical Discussion*, 20 NEV. L.J. 967 (2020).

Melissa H. Weresh, *Wait, What? Harnessing the Power of Distraction or Redirection in Persuasion*, 15 LEGAL COMM. & RHETORIC 81 (2018).

<sup>15</sup> The current catalog of series titles is available at the University of Alabama Press website. *Rhetoric, Law, and the Humanities*, UNIV. ALABAMA PRESS, <http://www.uapress.ua.edu/Catalog/ProductSearch.aspx?ExtendedSearch=false&SearchOnLoad=true&rhl=Rhetoric%2c+Law%2c+and+the+Humanities&sj=1446&rhdcid=1446> (last visited Jan. 6, 2020).

<sup>16</sup> Kirsten K. Davis, Julie A. Oseid & Kristen Konrad Tiscione, *Law and Rhetoric Bibliography: Selected Readings and Resources* (Stetson University College of Law Legal Studies Research Paper Series, Research Paper No. 2015-4, 2004), <https://ssrn.com/abstract=2555707>.

#### D. Use of visual and graphic arts to enhance persuasive writing

Given the pace of growth of technology and media, it is not surprising that this category has expanded since the original bibliography in 2009. This area of study has blossomed so much that the category is now worthy of its own comprehensive bibliography.<sup>17</sup> Key scholarly contributions catalogued here relate to the law of evidence: the competence, ethics, and rhetoric involved in using visual evidence in the context of advocacy and, as in other categories, how to teach law students about these topics. Other threads represented in this category are the impact on advocacy of developments in evidentiary and courtroom technology, the value of visual representations of legal reasoning, and the graphic design of legal writing documents.

VERONICA BLAS DAHIR, *Digital Visual Evidence*, in *THE FUTURE OF EVIDENCE: HOW SCIENCE & TECHNOLOGY WILL CHANGE THE PRACTICE OF LAW* (Carol Henderson & Jules Epstein eds., 2011).

NEAL FEIGENSON & CHRISTINA SPIESEL, *LAW ON DISPLAY: THE DIGITAL TRANSFORMATION OF LEGAL PERSUASION AND JUDGMENT* (2009).

Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis: Systematizing the Decision to Use Visuals as Legal Reasoning*, 20 *LEGAL WRITING* 57 (2015).

Ellie Margolis, *Is the Medium the Message?: Unleashing the Power of E-Communication in the Twenty-First Century*, 12 *LEGAL COMM. & RHETORIC* 1 (2015).

Gregory J. Morse, *Techno-jury: Techniques in Verbal and Visual Persuasion*, 54 *N.Y. L. SCH. L. REV.* 241 (2009–2010).

Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, 68 *J. LEGAL EDUC.* 64 (2018).

Michael D. Murray, *Mise en Scène and the Decisive Moment of Visual Legal Rhetoric*, 68 *U. KAN. L. REV.* 241 (2019).

Anshul Vikram Pandey, Anjali Manivannan, Oded Nov, Margaret Satterthwaite & Enrico Bertini, *The Persuasive Power of Data Visualization*, 20 *IEEE TRANSACTIONS ON VISUALIZATION & COMPUT. GRAPHICS* 2211 (2014).

Elizabeth G. Porter, *Taking Images Seriously*, 114 *COLUM. L. REV.* 1687 (2014).

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<sup>17</sup> Ellie Margolis, *Visual Legal Writing: A Bibliography*, 18 *LEGAL COMM. & RHETORIC* 195 (2021).



Elizabeth G. Porter, *Imagining Law: Visual Thinking Across the Law School Curriculum*, 68 J. LEGAL EDUC. 8 (2018).

Ticien Marie Sassoubre, *Visual Persuasion for Lawyers*, 68 J. LEGAL EDUC. 82 (2018).

### E. Use of social science in persuasive writing

This, too, was styled as a “burgeoning area in persuasive legal advocacy” in the original bibliography. Today, this category features the maturation/fuller development of interdisciplinary work represented in the original bibliography and new works that demonstrate the increasingly specialized application of that work to different facets of persuasive advocacy.

A number of the contributions listed here were generated at one of three symposia that have taken place since the last bibliography was published. Brooklyn Law School held a symposium in 2013, called *The Impact of Cognitive Bias on Persuasion and Writing Strategies*, resulting in an issue of the *Journal of Law and Policy*.<sup>18</sup> In 2014, the UNLV Boyd School of Law held a conference on Psychology and Lawyering.<sup>19</sup> Finally, in 2015, Wyoming Law held its conference on the Psychology of Persuasion.<sup>20</sup>

LINDA L. BERGER & KATHRYN M. STANCHI, *LEGAL PERSUASION: A RHETORICAL APPROACH TO THE Science* (2017).

Kenneth D. Chestek, *Of Reptiles and Velcro: The Brain’s Negativity Bias and Persuasion*, 15 NEV. L.J. 605 (2015).

Lucille A. Jewel, *Old-School Rhetoric and New-School Cognitive Science: The Enduring Power of Logocentric Categories*, 13 LEGAL COMM. & RHETORIC 39 (2016).

JENNIFER K. ROBBENOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING* (2012).

Michael R. Smith, *The Sociological and Cognitive Dimensions of Policy-Based Persuasion*, 22 J. L. & POL’Y 35 (2013).

Carrie Sperling, *Priming Legal Negotiations Through Written Demands*, 60 CATH. U. L. REV. 107 (2010).

<sup>18</sup> Symposium, *The Impact of Cognitive Bias on Persuasion and Writing Strategies*, 22 J. L. & POL’Y 1 (2013). Michael R. Smith’s work from the symposium appears in this category as well, below.

<sup>19</sup> See Jean R. Sternlight, *Psychology and Lawyering: Coalescing the Field*, 15 NEV. L.J. 431 (2015) (introducing the written version of the conference held at the UNLV Boyd School of Law, Las Vegas, Nevada in Feb. 2014). Kenneth D. Chestek’s work from the symposium appears in this category below; Larry Cunningham’s article from the symposium appears in the Oral Argument section.

<sup>20</sup> Kenneth D. Chestek, *Introduction to Psychology of Persuasion Symposium*, 16 WYO. L. REV. 281 (2016).

Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305 (2010).

## F. Using authority to persuade

Current developments in this category fit neatly into one of three categories: scholarship on the nature of legal authority (especially comparisons between settled authority and other forms, including persuasive authorities), scholarship on the use of nonlegal material in advocacy and judicial reasoning, and scholarship on the use of Internet material as authority.

Alexa Z. Chew, *Citation Literacy*, 70 ARK. L. REV. 869 (2018).

Linda H. Edwards, *Telling Stories in the Supreme Court: Voices Briefs and the Role of Democracy in Constitutional Deliberation*, 29 YALE J.L. & FEMINISM 29 (2017).

Amy J. Griffin, *Dethroning the Hierarchy of Authority*, 97 OR. L. REV. 51 (2018).

Sherri Lee Keene, *Stories That Swim Upstream: Uncovering the Influence of Stereotypes and Stock Stories in Fourth Amendment Reasonable Suspicion Analysis*, 76 MD. L. REV. 747 (2017).

David Klein & Neal Devins, *Dicta, Schmicta: Theory Versus Practice in Lower Court Decision Making*, 54 WM. & MARY L. REV. 2021 (2013).

Allison Orr Larsen, *Confronting Supreme Court Fact Finding*, 98 VA. L. REV. 1255 (2012).

Brian N. Larson, *Precedent as Rational Persuasion*, 25 LEGAL WRITING 135 (2021).

Ellie Margolis, *Authority Without Borders: The World Wide Web and the Delegalization of Law*, 41 SETON HALL L. REV. 909 (2011).

Lee F. Peoples, *The Citation of Blogs in Judicial Opinions*, 13 TUL. J. TECH. & INTELL. PROP. 39 (2010).

## G. The structure of legal arguments and the use of framing techniques

These works also fall roughly into one of three sub-categories: continuations of the work of Critical Legal Studies and Legal Semiotics scholars on argumentation and framing, arguments for the value of varied conceptions of framing for better understanding and development of particular areas of substantive law, and the value of legal framing in

social movements. (Some foundational works in the second category were published pre-2009 and for the sake of consistency I have not included them here, but rather focused on more modern iterations of the concept.) The third sub-category is an area of recent growth.

Jack M. Balkin, *Arguing About the Constitution: The Topics in Constitutional Interpretation*, 33 CONST. COMMENT. 145 (2018).

William W. Bratton, *Framing a Purpose for Corporate Law*, 39 J. CORP. L. 713 (2014).

Leslie Culver, *(Un)Wicked Analytical Frameworks and the Cry for Identity*, 21 NEV. L.J. 655 (2021).

Martha F. Davis, *Law, Issue Frames and Social Movements: Three Case Studies*, 14 U. PA. J.L. & SOC. CHANGE 363 (2011).

JUSTIN DESAUTELS-STEIN, *THE JURISPRUDENCE OF STYLE: A STRUCTURALIST HISTORY OF AMERICAN PRAGMATISM AND LIBERAL LEGAL THOUGHT* (2018).

Marie-Amélie George, *Framing Trans Rights*, 114 NW. U. L. REV. 555 (2019).

Gwendolyn Leachman, *Legal Framing*, 61 STUD. L. POL. & SOC'Y 25 (2013).

MICHAEL PARIS, *FRAMING EQUAL OPPORTUNITY: LAW AND THE POLITICS OF SCHOOL FINANCE REFORM* (2010).

Jaya Ramji-Nogales, *Symposium on Framing Global Migration: Moving Beyond the Refugee Law Paradigm*, 111 AJIL UNBOUND 8 (2017).

## H. Emotion in legal persuasion

Here, scholars have continued their work on the critical role that emotion plays in persuasion. The newer contributions build on the works in the original bibliography; another area of inquiry involves the invocation of emotion in lawyering and law school pedagogy. Of note generally is the Wake Forest Law Review's 2019 Symposium on "Cognitive Emotion and the Law."<sup>21</sup>

Kathryn Abrams & Hila Keren, *Who's Afraid of Law and the Emotions?*, 94 MINN. L. REV. 997 (2010).

Susan A. Bandes & Jeremy A Blumenthal, *Emotion and the Law*, 8 ANN. REV. L. & SOC. SCI. 161 (2012).

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<sup>21</sup> Symposium, *Cognitive Emotion and the Law*, 54 WAKE FOREST L. REV. 909 (2019).

Steven I. Friedland, *Fire and Ice: Reframing Emotion and Cognition in the Law*, 54 WAKE FOREST L. REV. 1001 (2019).

LAW, REASON, AND EMOTION (M.N.S. Sellers ed., 2017).

JULIA J.A. SHAW, *LAW AND THE PASSIONS: WHY EMOTION MATTERS FOR JUSTICE* (2019).

Kristen Konrad Tiscione, *Feelthinking Like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making*, 54 WAKE FOREST L. REV. 1159 (2019).

### I. Ethical considerations in persuasion

Entrants in this category continue the work of considering the boundaries of persuasion and where they might run up against ethical rules. Also represented here is work considering philosophical legal ethics as well as some ethical implications invoked by the AppLS movement.

Geoffrey C. Hazard, Jr. & Dana A. Remus, *Advocacy Revalued*, 159 U. PA. L. REV. 751 (2011).

Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ALWD 63 (2010).

Lori D. Johnson & Melissa Love Koenig, *Walk the Line: Aristotle and the Ethics of Narrative*, 20 NEV. L.J. 1037 (2020).

Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 Legal Comm. & Rhetoric 107 (2016).

Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079 (2020).

W. Bradley Wendel, *Whose Truth? Objective and Subjective Perspectives on Truthfulness in Advocacy*, 28 YALE J.L. & HUMAN. 105 (2016).

Helena Whalen-Bridge, *The Lost Narrative: The Connection Between Legal Narrative and Legal Ethics*, 7 J. ALWD 229 (2010).

Helena Whalen-Bridge, *Persuasive Legal Narrative: Articulating Ethical Standards*, 21 LEGAL ETHICS 136 (2018).

### J. What judges think

As in the first bibliography, works here fall into two subcategories. First are lessons learned from judges—directly or through surveys—regarding advocacy techniques. Second are works consisting of scholarly analysis of judicial opinions that purport to explain some aspect(s) of “judicial thinking” in a way that is useful for advocates. This is also an area where empirical work on the study of persuasion is prominent.

- Ted Becker, *What We Still Don't Know about What Persuades Judges—And Some Ways We Might Find Out*, 22 LEGAL WRITING 41 (2018).
- Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ALWD 1 (2010).
- LEE EPSTEIN, WILLIAM M. LANDES & RICHARD A. POSNER, *THE BEHAVIOR OF FEDERAL JUDGES: A THEORETICAL AND EMPIRICAL STUDY OF RATIONAL CHOICE* (2013).
- Sean Flammer, *Persuading Judges: An Empirical Analysis of Writing Style, Persuasion, and the Use of Plain English*, 16 LEGAL WRITING 183 (2010).
- THE PSYCHOLOGY OF JUDICIAL DECISION MAKING (David Klein & Gregory Mitchell eds., 2010).
- Lance N. Long & William F. Christensen, *When Justices (Subconsciously) Attack: The Theory of Argumentative Threat and the Supreme Court*, 91 OR. L. REV. 933 (2013).
- James A. Macleod, *Reporting Certainty*, 2019 BYU L. REV. 473 (2019).
- Anne E. Mullins, *Subtly Selling the System: Where Psychological Influence Tactics Lurk in Judicial Writing*, 48 U. RICH. L. REV. 1111 (2014).
- Richard A. Posner, *Judicial Opinions and Appellate Advocacy in Federal Courts—One Judge's Views*, 51 DUQ. L. REV. 3 (2013).
- RICHARD A. POSNER, *REFLECTIONS ON JUDGING* 236–86 (2013).
- Holger Spamann & Lars Klöhn, *Justice Is Less Blind, and Less Legalistic, than We Thought: Evidence from an Experiment with Real Judges*, 45 J. LEGAL STUD. 255 (2016).
- Elizabeth Thornburg, *(Un)Conscious Judging*, 76 WASH. & LEE L. REV. 1567 (2019).
- Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 PHOENIX L. REV. 1 (2009).

## K. Oral argument

Pedagogically speaking, oral argument remains an important corollary to persuasive writing and is often the culminating experience

22 Stanchi, *supra* note 1, at 86.

23 MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* ch. 13 (5th ed. 2018).

24 LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* ch. 21 (5th ed. 2019).

25 DAVID C. FREDERICK, *THE ART OF ORAL ADVOCACY* (3d ed. 2019).

of the persuasive writing course. The first persuasion bibliography introduced a “smattering of the leading voices on the topic.”<sup>22</sup> These leading voices continue to explore the topic, with several new editions of works that appeared in the original bibliography. These include updates from scholars Mary Beth Beazley,<sup>23</sup> Linda Edwards,<sup>24</sup> David Frederick,<sup>25</sup> and Richard Neumann,<sup>26</sup> and updates to the late Judge Ruggero Aldisert’s classic book *Winning on Appeal*.<sup>27</sup>

The perception of practical oral argument has perhaps changed since the original iteration of the bibliography. For example, a new thread of scholarship discusses the belief that oral argument is of decreasing importance to case outcomes. Also of note are explorations of how some recent social science research might be incorporated into how we prepare for, execute, and perceive oral arguments.

Rachel Clark Hughey, *Effective Appellate Advocacy Before the Federal Circuit: A Former Law Clerk’s Perspective*, 11 J. APP. PRAC. & PROCESS 401 (2010).

David R. Cleveland & Steven Wisotsky, *The Decline of Oral Argument in the Federal Courts of Appeals: A Modest Proposal for Reform*, 13 J. APP. PRAC. & PROCESS 119 (2012).

Larry Cunningham, *Using Principles from Cognitive Behavioral Therapy to Reduce Nervousness in Oral Argument or Moot Court*, 15 NEV. L.J. 586 (2015).

J. Marshall L. Davidson, III, *Oral Argument: Transformation, Troubles, and Trends*, 5 BELMONT L. REV. 203 (2018).

Michael J. Higdon, *Oral Advocacy and Vocal Fry: The Unseemly, Sexist Side of Nonverbal Persuasion*, 13 LEGAL COMM. & RHETORIC 209 (2016).

James C. Martin & Susan M. Freeman, *Wither Oral Argument? The American Academy of Appellate Lawyers Says Let’s Resurrect It!*, 19 J. APP. PRAC. & PROCESS 89 (2018).

Jay Tidmarsh, *The Future of Oral Argument*, 48 LOY. U. CHI. L.J. 475 (2016).

Michael Vitiello, *Teaching Oral Advocacy: Creating More Opportunities for an Essential Skill*, 45 SETON HALL L. REV. 1031 (2015).

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<sup>26</sup> RICHARD K. NEUMANN JR., ELLIE MARGOLIS & KATHRYN M. STANCHI, *LEGAL WRITING AND LEGAL REASONING* ch. 33 (8th ed. 2017).

<sup>27</sup> TESSA L. DYSART, HON. LESLIE H. SOUTHWICK & HON. RUGGERO J. ALDISERT, *WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENT* ch. 16 (3d ed. 2017).

## L. Persuasion in transactional documents

Finally, we reach the newest category in the bibliography: a new line of scholarship in persuasion that involves the role of persuasion in the process and products of transactional lawyering. This is an exciting development, as persuasion and advocacy are too often reflexively associated only with the litigation context. Some of these works might have been included in the narrative category that opened this bibliography, but it felt appropriate to give space to this new addition, currently occupied exclusively by legal writing scholars, which I hope will continue to flourish.

Susan M. Chesler & Karen J. Sneddon, *Once Upon a Transaction:*

*Narrative Techniques and Drafting*, 68 OKLA. L. REV. 263 (2016).

Susan M. Chesler & Karen J. Sneddon, *Tales from a Form Book: Stock*

*Stories and Transactional Documents*, 78 MONT. L. REV. 237 (2017).

Deborah S. Gordon, *Mor[t]ality and Identity: Wills, Narratives, and*

*Cherished Possessions*, 28 YALE J.L. & HUMAN. 265 (2016).

Lori D. Johnson, *Say the Magic Word: A Rhetorical Analysis of Contract*

*Drafting Choices*, 65 SYRACUSE L. REV. 451 (2015).

Lori D. Johnson, *Redefining Roles and Duties of the Transactional Lawyer:*

*A Narrative Approach*, 91 ST. JOHN'S L. REV. 845 (2017).

Karen J. Sneddon, *The Will as Personal Narrative*, 20 ELDER L.J. 355

(2013).