

Workshop 5D

Not Your Mother's Rhetoric: Rhetorical Teaching Across the Curriculum

Linda Berger

Mercer University Walter F. George School of Law

Suzianne Painter-Thorne

Mercer University Walter F. George School of Law

Karen J. Sneddon

Mercer University Walter F. George School of Law

**Not Your Mother's Rhetoric:
Rhetorical Teaching
Across the Curriculum**



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**Linda L. Berger
Suzianne D. Painter-Thorne
Karen J. Sneddon**

1. When I hear the word “rhetoric,” I think of _____

2. When I hear the phrase “rhetorical teaching,” I think of _____

Introduction

What do we mean by “rhetorical teaching”? At its core, this concept means teaching with an understanding that there is more to the use of language in legal contexts than appears on the surface. If the surface covered everything, if there was nothing to learn but how to read the words and understand their literal meaning, then law professors would have little to do. But if learning the law requires students to uncover what lies beneath the surface, then almost everything we do involves rhetorical teaching.

For example, take the title of this presentation: when we say this is “not your mother’s rhetoric,” we do not (of course) mean that we know your mother and that this is not her rhetoric. Instead, we mean (though we might not have been successful) to call up images and frames as cultural reference points to subtly persuade you of several things: we want you to think that this workshop contains something new (Not Your Mother’s Cookbook, Not Your Father’s Oldsmobile), but we also want you to think that this something new is not so trendy that it will not fit (Not Your Daughter’s Jeans).

Starting with the premise that almost everything we do involves rhetorical teaching, we will use this workshop to illustrate how rhetorical theories and approaches can enrich our engagement with students in the law school classroom. Although three specific law school classrooms will be the focus—Advanced Persuasion, American Indian Law, and Trusts & Estates—the workshop is designed to show how “rhetoric” might apply across the law school curriculum.

Rhetoric as study, process, and perspective¹

First, we begin with a broad view of rhetoric: rhetoric is the study of the use of language (and other symbols) to communicate. Growing out of such study, rhetoric guides our practices in the use of language and other communicative symbols, especially when our goal is to persuade, to motivate, or to reach understanding. At the heart of rhetorical study and practice is an understanding that meaning is not “found,” but instead is constructed out of an interaction of language, context, constraints, audience, and author.

From this broad view of rhetoric, we derive three approaches that can be used to improve law school learning:

1. Rhetoric can provide tools for analysis, interpretation, and evaluation of the legal arguments and legal reasoning advanced by lawyers and judges.
2. Rhetoric can provide methods and techniques for composing more effective legal documents in a variety of settings.
3. Rhetoric can provide lenses and perspectives that help students and lawyers invent and imagine more effective and more persuasive ways

¹ Material in this section is adapted with permission from Linda L. Berger, Linda H. Edwards, and Terrill Pollman, *The Past, Presence, and Future of Legal Writing Scholarship: Rhetoric, Voice, and Community*, 16 *Leg. Writing* __ (2010).

to frame legal arguments and communicate about legal issues.

1. *Rhetoric as the study of legal arguments and legal reasoning.*

Rhetoric provides many alternative methods for analysis, interpretation, and criticism; we can apply these to help students better understand all forms of legal argument and legal reasoning.

Both classical and contemporary rhetoric offer methods for teaching students to engage in close or critical reading (and for engaging in such reading ourselves). These methods range from reading to identify appeals based on classical rhetoric's modes of persuasion (logos, ethos, and pathos) to applying James Boyd White's questions for rhetorical analysis (context, art of the text, rhetorical community). Understanding narrative structure and argument framing (categories and metaphors) aids students in their interpretations and assessments of the opinions they read as well as the briefs they write and respond to. Professors are using these approaches to evaluate oral arguments, briefs, opinions, and other legal documents and to study particular audience responses; their findings apply directly to their teaching.

2. *Rhetoric as the process of composing legal documents.*

The most obvious application of rhetorical theory and analysis in law school teaching is its usefulness in teaching the process of composition. Classical rhetoric's "topics" (typical categories of argument) are used for invention, helping law students and lawyers imagine a range of proofs. Classical rhetoric also provides guides that help law students check their logical arguments for validity and effectiveness, and it is the foundation for all later advice about arrangement (organization) and style.

Contemporary rhetoric, specifically the New Rhetoric, is the source of much of our understanding about how to teach writing as a process for making meaning through the interaction of reader and writer, text and context. New Rhetoric theory is the source for law school applications using reading journals; writers' memos; peer review; writing conferences; drafting, feedback, and revision as a recursive process; and portfolios and other forms of guided self-reflection.

More recently, law teachers have turned to contemporary rhetoric, narrative and metaphor theory, and persuasion research to advise students and lawyers about how to construct arguments. This advice derives from approaches such as Stephen Toulmin's layout of argument ("an argument is *movement* from accepted *data*, through a *warrant*, to a *claim*"); Chaim Perelman's starting points for argument (an argument is designed to move the audience from agreement about the starting points or premises to agreement about some conclusion); Kenneth Burke's pentad as a system for analyzing language use as a mode of action (examining the inter-relationships or tensions among the elements that constitute the dramatic

action: the act, the scene, the agent, the agency, and the purpose); and George Lakoff and Mark Johnson's cognitive metaphor theory (metaphor shapes our perception and understanding).

3. *Rhetoric as perspective or lens on legal communication.*

Perhaps most important, law teachers may use rhetoric to provide different perspectives or lenses to guide the process of imagination and invention. Rhetoric's ability to un-earth embedded pathways and to unsettle preconceptions can be tapped in a number of ways. Thus, rhetoric can help writers see through new eyes by suggesting techniques to make the familiar strange, look from the outside in and the inside out, and link abstractions to concrete images and stories.

As already noted, classical rhetoric's general and special topics can generate lines of argument. Similar kinds of "topics" that lend themselves to re-seeing legal arguments include those identified with literary criticism: contrasting appearances with reality; finding a previously overlooked, but "ubiquitous" argument; or discovering a paradigmatic structure in a literary text that provides form and framework.

Other rhetorical tools for invention include such concepts as Kenneth Burke's pentad for examining narrative action and his suggestions for metaphor modeling ("try to consider [the concept] in as many different ways as its nature might permit"). As always, rhetoric is both topic and tool. That is, we can teach the use of invention methods themselves, and we can teach what we discover when we use these methods.

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² Compiled by Linda Berger 2010 from suggestions made by colleagues including Karen Sneddon, Sue Painter-Thorne, Amy Sloan, Tom Cobb, Michael Smith, Kirsten Davis, and others.

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