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Using a Civil Procedure Exam Question to Teach Persuasion

Sophie M. Sparrow
University of New Hampshire School of Law

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spend the next few weeks working on arguments about personal jurisdiction. Using the facts from students’ Civil Procedure exam and the cases from their text, students argue that their client does not have the necessary minimum contacts for jurisdiction over an out-of-state defendant.

Working in small groups during class, students compare their matrices of the cases, outline and draft components of the arguments, and read and critique their classmates’ drafts. At several times during this module, students also e-mail professors current versions of their arguments. From these we make composites that illustrate particular techniques, such as organizing for persuasiveness, using authorities, making policy arguments and refuting counter-arguments. We also use these composites to illustrate common problems students encounter. Students read the composites on overheads, diagnosing the troublesome areas and identifying strategies to make the writing more persuasive.

This exercise has several benefits in addition to allowing students to concentrate on the skill of persuasion. One is that revisiting material builds upon what they already know, allowing students to make connections between new and old. Another benefit to this approach is that it increases student confidence. As they rework the same material a month after the exam, students recognize where they had been invisible before. By calling their attention to this, we help them see their progress and continued capacity to grow and develop as future lawyers. This helps students at all levels; students who have done well see how they can improve, and students who have struggled see that they can master writing and analysis. Do students groan about having to revisit the minimum contacts cases? Yes, but at the end of the semester those students also note that these exercises helped them really start to “get” what it means to persuade.

Social Justice and Persuasion

Clifford S. Zimmerman (Northeastern University School of Law)

I integrate issues of social justice into my teaching of persuasion to heighten the context in which students learn the technique. The topic triggers added emotional energy on the part of the students, who then immerse themselves into the research, organization, argument construction, and persuasion with great enthusiasm and vigor. With their work self-motivating, I can focus on rhetorical technique. In the end (after two briefs and most recently, the students are amazed at how much they learned and accomplished and how much fun they had in the process. Years ago, I merely integrated an issue of social justice (e.g. police brutality, the Gulf War, spousal abuse and police protection, medicinal use of marijuana, or abortion) into the briefing. This passive gives students a forum to pursue their interests and concerns of the “client.”

Non-legal readings on issues of social justice add new depth and understanding to the students’ legal analysis and arguments in the briefs, while writing reflective essays jump-starts the creative process. From the implementation perspective, time is a major concern here. It takes time to find an issue like this; time to collect readings; time for any additional research. But as with many things in our profession, time sowed leads to a great yield. From the implementation perspective, time is a major concern here. It takes time to find an issue like this; time to collect readings; time for any additional research. But as with many things in our profession, time sowed leads to a great yield.

Using a Civil Procedure Exam Question to Teach Persuasion

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Because studies show that learners master new material more effectively when it builds upon what they already know, we use material from the fall semester to teach persuasiveness. This passive combines these two of learning into one and having the students focus on persuading, rather than learning new doctrine or facts. Turning a predictive discussion into a persuasive argument also demonstrates that making an argument requires the same rigorous thinking as predicting a result.

Turning a predictive discussion into a persuasive argument also demonstrates that making an argument requires the same rigorous thinking as predicting a result. One way we do this is by assigning students to write an argument based on their fall Civil Procedure exam.

At the beginning of the spring semester we introduce some general principles of persuasive writing, and then assign students to write an argument based on their fall Civil Procedure exam. As an introductory exercise, ask the students to pair up and elicit the following information from each other: name, undergraduate school or major or recent job experience, and what separate these students from the rest of the class, including an explanation of what each person will add to that class—what experience or insight he or she will bring. This simple exercise introduces the students to interviewing and to advocacy as they persuade the rest of the class of each person’s worth and potential for contribution. It teaches them about eliciting facts and then shaping those facts into a message that will appeal to the audience—both the rest of the class and the “client”—while considering the interests and concerns of the “client.”

1. First class of the semester

As an introductory exercise, ask the students to pair up and elicit the following information from each other: name, undergraduate school or major or recent job experience, and what separate these students from the rest of the class, including an explanation of what each person will add to that class—what experience or insight he or she will bring. This simple exercise introduces the students to interviewing and to advocacy as they persuade the rest of the class of each person’s worth and potential for contribution. It teaches them about eliciting facts and then shaping those facts into a message that will appeal to the audience—both the rest of the class and the “client”—while considering the interests and concerns of the “client.”

Five Simple Exercises for Teaching Persuasion

Nancy Sowpan (Texas Tech University School of Law)

These simple exercises for teaching persuasion take less than a class period each, yet convey powerful and concrete lessons about persuasion.

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2. Examining oral advocacy via famous speeches

Many of the rhetorical devices used in well-known speeches throughout the ages can be used in written persuasion as well. Reading those speeches—out loud, as well as silently—and discussing the devices gives students insight into what word patterns make them respond, both intellectually and emotionally, to a persuasive message. One excellent example is Martin Luther King, Jr.’s “I Have A Dream” speech; its powerful, persistent patterns and insistant imagery are easy for students to identify and discuss. For other examples, see Thomas Sten’s Minneapolis Star Tribune, which has published a series of great speeches. The speeches are available in advance of my assigning the problem. These exercises divide on the issue and are rich in citations to other sources, both legal and non-legal, that can be used in writing the brief.

I ask the students, then, to write a reflective essay on the subject. I expressly tell them that I do not want a recounting or synthesis of the sources, but rather an essay on their thoughts on the subject matter. (They do not know; typically, what a reflective essay is, so some direction here really starts to get “what it means to persuade.”)

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Gulf War, spousal abuse and police protection, medicinal use of marijuana, or abortion) into the briefing. To me, “social justice” includes a range of issues, such as issues of race, gender, ethnicity, class, power, or sexual preference. While this had positive results, I realized that I was not utilizing the full potential by adequately preparing the students to address the issue. Thus, I started collecting and assigning non-legal readings (anywhere from six to twelve articles or book chapters) for them to read...
In determining which facts to omit, and in writing the facts in general, I caution students to remember their ethical duty of candor and to be concerned with their credibility as advocates. Students readily understand that they cannot lie to the court, but must be taught that they cannot portray something as a fact unless it can be cited from the record. Students must learn that both the arguments and the advocate are judged as a whole, and a judge’s perception of an attorney is being less than candid in one area will affect the credibility of the attorney’s arguments. When determining which facts to omit, I have my students imagine this question from a judge: “Your opponent has argued that fact X is important. Who have you not included it? If the student can reasonably answer the question with “Fact X is not relevant because . . . .” then the fact is properly omitted. The credibility line is difficult to draw and depends upon each case and advocate. I do not penalize students for crossing the line unless I feel they have done so by a significant margin.

A final aspect of persuasion is word choice. I ask my students to select the action verbs in the facts section carefully, choosing unusual verbs for emphasis. For example, an attorney wanting to emphasize the significance of an automobile accident may write that one vehicle “smashed” or “plowed into” the other, while opposing counsel may write that the vehicles simply “collided.”

An exercise I utilize to emphasize verb choice is to give the students several sentences describing various legal situations, with a verb underlined in each sentence. I ask the students, working in groups, to think up as many alternative action verbs as possible and rewrite the sentences. I usually combine this exercise with exercises dealing with other aspects of writing the facts, such as using greater detail to emphasize favorable facts and placing key facts at the ends of sentences.1

The bottom line is that, unless the facts are not in dispute and the issue is purely legal, how the court perceives the facts will be critical. Students need to learn that part of their job is to tell a story, and that story must be their client’s story. 

The Second Draft
The facts

Utilize the Facts
(continued from page 11)

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Turning a predictive discussion into a persuasive argument also demonstrates that making an argument requires the same rigorous thinking as predicting a result. One way we do this is by assigning students to write an argument based on their fall Civil Procedure exam. At the beginning of the spring semester we introduce some general principles of persuasive writing, and then spend the next few weeks working on arguments about personal jurisdiction. Using the facts from students’ Civil Procedure exams and the cases from their text, students argue that their client does not have the necessary minimum contacts for jurisdiction over an out-of-state defendant.

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This exercise has several benefits in addition to allowing students to concentrate on the skill of persuasion. One is that revisiting material builds students’ analytical skills and understanding of Civil Procedure. From talking to our Civil Procedure colleague, we know that she emphasized in class, how students analyzed the material on their exams, and where students need additional coaching. By working through the material collaboratively over several classes, students develop more sophisticated approaches to arguing the minimum contacts rules that they showed in their exams and communicate those arguments more effectively. In the process, students also learn that the art of persuasion is not about “telling” but “showing” why the requested result should be followed.

Another benefit to this approach is that it increases student confidence. As they rework the same material a month after the exam, students recognize where they need to sharpen their writing and organizational skills. Students also begin to realize that they are now identifying arguments, analogies and issues in a way that had been invisible before. By calling their attention to this, we help them see their progress and continued capacity to grow and develop as future lawyers. This helps students at all levels; students who have done well see how they can improve, and those who were struggling recognize that they can master writing and analysis. Do students groan about having to revisit the minimum contacts cases? Yes, but at the end of the semester those students also note that these exercises helped them really start to “get” what it means to persuade.

1. For a longer example of the “Goldilocks” hypothetical, seeSteven V. Armstrong & Timothy P. Terrell, Organizing Facts to Tell Stories, 9 Perspective 90, 90-91 (Winter 2003).
2. This example is drawn from a LEI conference presentation by Julie Spanbauer (John Marshall), later published as Teaching First-Semester Students that Objective Analysis Persuades, 5 Legal Writing 167, 178-185 (1999).
3. Several of these techniques are highlighted in Louis J. Sirico, Persuasive Writing for Lawyers and the Legal Profession (Matthew Bender & Co. 1995).