

# Persuasion: An Annotated Bibliography

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## I. Introduction

Persuasion is at the heart of the lawyer's craft. Whether you are a litigator, transactional lawyer, or trial lawyer, part of your job is to persuade people to make decisions, or do things, that they may not have chosen to do but for your intervention. Lawyers persuade judges, juries, opposing counsel, colleagues, and clients. Nevertheless, for something that is so central to the art of lawyering, persuasion continues to be a somewhat mysterious phenomenon for lawyers. What is it that compels us to make one decision and not another? How do we convince someone to do one thing and not another? The idea that it is possible, through behavior, writing or speaking, to deliberately and consciously influence another person is both fascinating and perplexing. Because it is so important to our craft, and because it is a little mysterious, persuasion marks a critical intersection where the realities of law practice meet the intellectual pursuit of legal scholarship. It has, as a result, become a principal focus for scholars whose expertise lies in the areas of legal writing and legal method. Legal writing scholars occupy a similarly intersectional space in the legal academy: our expertise lies equally in the hard realities of the practical and in the ivory tower of the academy.

That the subject of persuasion in law has both practical and theoretical aspects makes it an eminently apt subject for the ALWD journal, which focuses on scholarship that addresses the substance of what lawyers do—particularly the way that lawyers write and communicate. In other words, persuasion is a fitting topic for J. ALWD, a journal devoted to the exploration of the theories that underlie legal practice and communication.

In keeping with the mission of J. ALWD, this bibliography focuses on books and articles that tell us something about how to persuade in legal writing. The backbone of the bibliography is scholarship that dedicates itself explicitly to the task of illuminating something about the mysterious phenomenon of persuasion in legal communication. Included here are articles such as those addressing the use of policy arguments, classical rhetoric, and metaphors in legal writing. But also included are articles and books that can

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tell us something important about persuasion in legal writing but that have, for whatever reason, not discussed writing or law practice explicitly. These include ruminations on argumentation theory, “framing” of legal arguments, and semiotics. Together, they tell a riveting story of how lawyers go about the business of convincing people.

A list like this, however, is bound to be incomplete. My goal here was to set out a kind of “greatest hits” of persuasion; a starter list for someone who wants to learn more about the topic. In doing so, my focus was on works that analyze persuasion deeply and theoretically, and less so on “how to” lists. This is not a judgment on the utility of the shorter “how to” lists of persuasion, which are valuable tools and eminently useful to both practitioners and academics. But I thought this bibliography should be a celebration of the renaissance of the discipline of persuasion and rhetoric in law and legal writing, and the treatment of persuasion as a theoretical, academic pursuit. So the works that follow are (mostly) those that go beyond a statement of what *is* persuasive toward a more analytical examination of *why* or *how* something persuades. What I learned from my research is that this focus blurred the boundaries of multiple disciplines within and without law. For example, once I decided that any bibliography on persuasive legal writing had to take into account the writings on the formulation of legal arguments, an area of the discipline that legal writing professionals have (oddly and unfortunately) not occupied, the list expanded significantly.

To make the bibliography useful and not unwieldy, at some point I had to stop listing. I made judgment calls and I culled. I eliminated both the works that were too basic and those that were too abstruse. If there was a great deal of scholarly activity in an area, I took a representative sampling (a sort of “see e.g.” citation) based on what I believed would be the best starting point for the interested reader. The resulting list has something for everyone with more than a passing interest in persuasion, but it was bound to be a little idiosyncratic. I see it as the start of a dialogue, and I welcome comments on what readers thought of what I have included, and criticism for what I have overlooked.

## II. The Bibliography

Organizationally, the works included in the bibliography are roughly grouped into eleven categories. Of course, there is often considerable overlap among the categories, and many of the works could comfortably fit in more than one. When this was the case, I generally placed the work in only one category: the one I thought represented the dominant theme of the work. A couple of times I categorized a work—this was usually a foundational, major work such as a book—in two places. In terms of organization, there is no hierarchy in the order of the works. I started with categories of works that are primarily interdisciplinary, such as those incorporating narrative theory, rhetoric, visual arts, and social science. I then moved to works that had, as

their dominant theme, a particular and practical aspect of persuasion, such as use of authority, structure, emotion, and ethics. There is some correlation in these categories to the Aristotelian processes of logos, pathos and ethos, but the correlation was not exact, and the works often addressed different concepts in addition to the traditional Aristotelian methods. Therefore, I did not use the Aristotelian names in these categories, despite the strong Aristotelian underpinning in many of the works. Finally, I turn to some of the key writings either authored by judges, or works reflecting judicial perspectives on legal persuasion, which I believe deserves its own category because it represents the unique opportunity for lawyers to hear directly from our primary audience. Finally, rounding out the bibliography is a set of works on oral argument and persuasive speaking.

Within each category, again there is no hierarchy in the organization. The only real scheme within each category was to start narrow, with the articles most explicitly addressing legal communication, and end with the more foundational works, mostly books, from which the articles draw. The organization is not alphabetical; it is meant to be random. I doubt true randomness was achieved, however. Here, even more so than with the order of the categories, I suspect that students of the subconscious will detect in the order of the works something of my views about the “leading” works in the category.

### A. Use of Narrative Theory

At the forefront of the scholarship on persuasion is the use of narrative theory to inform persuasive legal writing and legal argument. The heart of persuasive legal advocacy is the facts of the client’s story. Facts are so critical to persuasion that it is an axiom of law practice that lawyers would rather have bad law than bad facts. In the works that follow, scholars address the importance of facts in persuasion and borrow various techniques from narrative theory to show how to tell a more persuasive story in briefs and other legal documents. Among other things, these writers encourage lawyers to use techniques from creative fiction to tell stories that are compelling and affecting to the audience. Also included here are the core works on narrative theory as applied to law and legal argumentation. There is some significant overlap between some of the works here and some in the Contemporary Rhetoric category, but I have tried to apply my “dominant” theme rule as best I could.

1. Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 Rutgers L.J. 459 (2001).
2. Ruth Anne Robbins, *Harry Potter, Ruby Slippers, and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey*, 29 Seattle U. L. Rev. 767 (2006).

3. Shaun B. Spencer, *Dr. King, Bull Connor, and Persuasive Narratives*, 2 J. ALWD 209 (2004).
4. Linda H. Edwards, *The Convergence of Analogical and Dialectic Imaginations in Legal Discourse*, 20 Leg. Stud. Forum 7 (1996).
5. Philip N. Meyer, *Vignettes from a Narrative Primer*, 12 Leg. Writing 229 (2006).
6. Kenneth D. Chestek, *The Plot Thickens: Appellate Brief as Story*, 14 Leg. Writing 127 (2008).
7. Stacy Caplow, *Putting the "I" in Wr\*it\*ng: Drafting an A/Effective Personal Statement to Tell a Winning Refugee Story*, 14 Leg. Writing 249 (2008).
8. J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 Leg. Writing 53 (2008).
9. Gerald P. Lopez, *Lay Lawyering*, 32 UCLA. L. Rev. 1 (1984).
10. Delia B. Conti, *Narrative Theory And The Law: A Rhetorician's Invitation To The Legal Academy*, 39 Duq. L. Rev. 457 (2001).
11. John Leubsdorf, *The Structure of Judicial Opinions*, 86 Minn. L. Rev. 447 (2001).
12. Jerome Bruner & Anthony Amsterdam, *Minding the Law* (Harv. U. Press 2002) (particularly chs. 4-5).
13. Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* ch. 3 (2d ed., Aspen 2008).
14. Stefan H. Krieger & Richard K. Neumann, Jr., *Essential Lawyering Skills, Interviewing, Counseling, Negotiation and Persuasive Fact Analysis* § 13.4 (3d ed., Aspen Law & Bus. 2007).

Having included mostly articles that encourage lawyers to use narrative techniques to tell the most persuasive, most engaging story for their client, it is also important to mention that there are times when “stories” can work against a client, and a lawyer. Sometimes, people can be too quick to rely on stock stories instead of reality. In these essays, the authors remind us that life is not always a story, with a graceful arc, explainable consequences, and a seamless denouement. Life can be unfair; coincidences, even bizarre ones, occur. So sometimes, lawyers have to work against the typical story line to show the audience the truth.

15. Kim Lane Scheppele, *Just The Facts, Ma'am: Sexualized Violence, Evidentiary Habits, And The Revision Of Truth*, 37 N.Y. Law Sch. L. Rev. 123 (1992).

16. Alan M. Dershowitz, *Life is Not a Dramatic Narrative*, in *Law's Stories: Narrative and Rhetoric in the Law* 99 (Peter Brooks & Paul Gewirtz eds., Yale U. Press 1996).

### ***B. Use of Classical Rhetoric***

In addition to drawing from recent developments in the fields of psychology and neuroscience, students of persuasive legal writing have also explored classical rhetorical principles to enhance persuasion in legal writing. I have broken this substantial and broad category into three parts. The first part includes articles that discuss classical rhetoric generally, or focus on the Aristotelian triad of logos, pathos and ethos and its use to enhance persuasive argumentation. The second part includes articles that focus a bit more narrowly on particular stylistic devices such as metaphor, literary allusions and other figures of speech. The last part lists some of the classic texts on rhetoric from which the legal scholarship has drawn.

#### ***Part 1: General Classical Rhetoric***

17. Michael H. Frost, *Ethos, Pathos and Legal Audience*, 99 Dick. L. Rev. 85 (Fall 1994).<sup>1</sup>

18. Michael H. Frost, *With Amici Like These: Cicero, Quintilian and the Importance of Stylistic Demeanor*, 3 J. ALWD 5 (2006).

19. Michael H. Frost, *Greco-Roman Legal Analysis: The Topics of Invention*, 66 St. John's L. Rev. 107 (1992-93).

20. Michael H. Frost, *Brief Rhetoric: A Note on Classical and Modern Theories of Forensic Disclosure*, 38 U. Kan. L. Rev. 411 (1989-1990).

21. Kristen K. Robbins, *Paradigm Lost: Recapturing Classical Rhetoric To Validate Legal Reasoning*, 27 Vt. L. Rev. 483 (2003).

22. Steven D. Jamar, *Aristotle Teaches Persuasion: The Psychic Connection*, 8 Scribes J. Leg. Writing 61 (2001-02).

#### ***Part 2: Metaphor and Stylistic Devices***

23. Michael R. Smith, *Levels of Metaphor in Persuasive Legal Writing*, 58 Mercer L. Rev. 919 (2007).

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<sup>1</sup> Many of Michael Frost's articles are collected in Michael H. Frost, *Introduction to Classical Legal Rhetoric: A Lost Heritage* (Ashgate Publg. 2005).

24. Michael H. Frost, *Greco-Roman Analysis Of Metaphoric Reasoning*, 2 Leg. Writing 113 (1996).

### ***Part 3: Foundational Works***

25. Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* (2d ed., Aspen 2008).
26. Aristotle, *On Rhetoric* (George A. Kennedy trans., Oxford U. Press 1991).
27. Marcus Fabius Quintilianus, *Institutio Oratoria* (H.E. Butler trans., Harv. U. Press 1921).
28. Edward P.J. Corbett & Robert J. Connors, *Classical Rhetoric for the Modern Student* 401 (4th ed., Oxford U. Press 1999) (see also prior editions of this book, authored by Edward P.J. Corbett).

### ***C. Use of Contemporary Rhetoric and Argumentation Theory***

Students of persuasive legal writing have also looked to the discipline of argumentation, a relatively new branch of philosophy that seeks to study and identify the process and substance of argumentation, particularly logic and rhetoric. Included here are some of the foundational works of argumentation theory from which scholars of legal advocacy have drawn, as well as some of the works in law inspired by this emerging discipline.

29. Paul T. Wangerin, *A Multidisciplinary Analysis of the Structure of Persuasive Arguments*, 16 Harv. J. L. & Pub. Policy 195 (1993).
30. Kurt M. Saunders, *Law as Rhetoric, Rhetoric as Argument*, 3 J. ALWD 166 (2006).
31. Jack Balkin, *A Night in the Tropics: The Reason of Legal Rhetoric and the Rhetoric of Legal Reason*, in *Law's Stories: Narrative and Rhetoric in the Law* 211 (Peter Brooks & Paul Gewirtz eds., Yale U. Press 1996).
32. Laura E. Little, *Hiding with Words: Obfuscation, Avoidance, and Federal Jurisdiction Opinions*, 46 UCLA L. Rev. 75 (1998).
33. Linda Levine & Kurt M. Saunders, *Thinking Like a Rhetor*, 43 J. Leg. Educ. 108 (1993) (there is some classical rhetoric in here, too).
34. Linda L. Berger, *Of Metaphor, Metonymy, and Corporate Money: Rhetorical Choices in Supreme Court Decisions on Campaign Finance Regulation*, 58 Mercer L. Rev. 949 (2007).

35. Linda L. Berger, *What is the Sound of a Corporation Speaking? How the Cognitive Theory of Metaphor Can Help Lawyers Shape the Law*, 2 J. ALWD 169 (2004).
36. Austin Sarat & Thomas R. Kearns, eds., *The Rhetoric of Law* (U. of Michigan Press 1994).
37. Erwin P. Bettinghaus & Michael J. Cody, *Persuasive Communication* (4th ed., Wadsworth Publ. 1987).
38. Stephen Toulmin et al., *An Introduction to Reasoning* (2d ed., Prentice Hall 1984).
39. Frans H. Van Eemeren et al., *Fundamentals of Argumentation Theory: A Handbook of Historical Backgrounds and Contemporary Developments* (Lawrence Erlbaum Assocs. 1996).
40. Chaim Perelman & Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (U. of Notre Dame Press 1969).
41. Jerome Bruner & Anthony Amsterdam, *Minding the Law* (Harv. U. Press 2002) (particularly chs. 2-3, 6-7).

#### ***D. Use of Visual and Graphic Arts to Enhance Persuasive Writing***

Branching off from creative writing and narrative techniques, lawyers and legal writers have begun to explore the persuasive potential of other media arts, such as filmmaking and other visual arts. Thinking about why movies or paintings affect us, and how they teach us, can only broaden the lawyer's array of persuasive tools.

42. Ruth Anne Robbins, *Painting with Print: Incorporating Concepts Of Typographic And Layout Design Into The Text Of Legal Writing Documents*, 2 J. ALWD 108 (2004).
43. Elyse Pepper, *The Case for "Thinking Like a Filmmaker": Using Lars von Trier's Dogville as a Model for Writing a Statement of Facts*, 14 Leg. Writing 171 (2008).
44. James Parry Eyster, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 Leg. Writing 87 (2008).
45. Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* ch. 11 (2d ed., Aspen 2006).



### ***E. Use of Social Science in Persuasive Writing***

Yet another burgeoning area of the discipline of persuasive legal advocacy is the use of social science data. Persuasion and human decision-making have become a primary focus of fields within communication, psychology and advertising. Increasingly, legal scholars are taking advantage of this research, and using it to enhance our knowledge of legal advocacy. Included here also are some of the more influential and helpful sources for those looking to expand their knowledge about the psychology and science of persuasion.

46. James Stratman, *Investigating Persuasive Processes in Legal Discourse*, 17 Discourse Processes 1 (1994).

47. Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 Mich. St. L. Rev. 411.

48. Kathryn M. Stanchi, *Playing with Fire: The Science of Confronting Adverse Material in Legal Advocacy*, 60 Rutgers L. Rev 381 (2008).

49. Robert Cialdini, *Influence: The Psychology of Persuasion* (rev. ed., Collins Business 2007).

50. Noah J. Goldstein, Steven Martin & Robert Cialdini, *Yes! 50 Scientifically Proven Ways to be Persuasive* (Free Press 2008).

51. Richard M. Perloff, *The Dynamics of Persuasion: Communication and Attitudes in the 21st Century* (3d ed., Lawrence Erlbaum Assocs. 2007).

52. James B. Stiff & Paul A. Mongeau, *Persuasive Communication* (2d ed., Guilford Press 2003).

53. Daniel O'Keefe, *Persuasion: Theories and Research* (Sage Publications 1990).

### ***F. Using Authority to Persuade***

Another critical component of persuasion in law is the use of precedent. Various commentators have explored the meaning of authority in persuasion—how does law define authority, what are the limits of legal authority and how should authority be used? The works in this category expand both our notions of how to use the authority, like statutes and case law, with which lawyers are familiar, but also expand the notion of what constitutes authority.

54. Ellie Margolis, *Beyond Brandeis: Exploring the Use of Non-Legal Materials in Appellate Briefs*, 34 U.S.F. L. Rev. 197 (2000).



55. Dan Hunter, *Teaching and Using Analogy in Law*, 2 J. ALWD 151 (2004) (see also Dan Hunter's related, and longer, article, Dan Hunter, *Reason Is Too Large: Analogy and Precedent in Law*, 50 Emory L.J. 1197, 1215-20 (2001)).
56. Ellie Margolis, *Surfin' Safari-Why Competent Lawyers Should Research On The Web*, 10 Yale J. Law & Tech. 82 (2007).
57. Coleen M. Barger, *On The Internet, Nobody Knows You're A Judge: Appellate Courts' Use Of Internet Materials*, 4 J. App. Prac. & Proc. 417 (2002).
58. Ellie Margolis, *Closing the Floodgates: Making Persuasive Policy Arguments In Appellate Briefs*, 62 Mont. L. Rev. 59 (2001).
59. Robert C. Berring, *Legal Information and the Search for Cognitive Authority*, 88 Cal. L. Rev. 1673 (2000).
60. Andrew Solomon, *Making Unpublished Opinions Precedential: A Recipe For Ethical Problems & Legal Malpractice?* 26 Miss. C. L. Rev. 185 (2006-2007).
61. Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* chs. 5-6 (2d ed., Aspen 2008).

### ***G. The Structure of Legal Arguments and the Use of Framing Techniques***

At the heart of persuasion is the construction of substantive legal arguments. The works included in this section of the bibliography dissect legal doctrine into component arguments, showing how most of the law can be reduced to a predictable set of competing principles. For example, Jack Balkin's piece explores, among other things, how many legal arguments can be understood as a set of competing dyads, such as "No Liability without Fault" versus "As Between Two Innocents, Let the Person Who Caused the Damage Pay." Similarly, Pierre Schlag and David Skover show the common "attacks" that lawyers make on legal arguments, such as attacks on analogy or attacks on authority. Learning and understanding the core principles upon which most legal arguments are based is essential to the creation and construction of persuasive legal arguments and thus these texts are critical to the effective advocate's arsenal.

The pieces on legal argumentation also inspired a related set of articles on the strategic framing of legal questions. The "framing" articles recognize that the outcome of a legal dispute is often determined by the way the question is framed, and explore the different ways that legal questions can be framed.

62. Duncan Kennedy, *A Semiotics of Legal Argument*, 42 Syracuse L. Rev. 75 (1991) (originally printed in 3 Law & Semiotics 167).
63. Jack M. Balkin, *The Crystalline Structure of Legal Thought*, 39 Rutgers L. Rev. 1 (1986).
64. Jennifer Jaff, *Frame-shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning*, 36 J. Leg. Educ. 249 (1986).
65. Laura E. Little, *Characterization and Legal Discourse*, 46 J. Leg. Educ. 372 (1996).
66. Joseph William Singer, *Legal Storytelling: Persuasion*, 87 Mich. L. Rev. 2442 (1989).
67. Walter Probert, *Law And Persuasion: The Language-Behavior of Lawyers*, 108 U. Pa. L. Rev. 35 (1959).
68. Bryan Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 Scribes J. Leg. Writ. 1 (1994–95).
69. Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 Mich. St. L. Rev. 411.
70. Wilson Ray Huhn, *The Five Types of Legal Argument* (2d ed., Carolina Academic Press 2008).
71. Karl Llewellyn, *Bramble Bush: On Our Law and Its Study* (Oceana Publications, Inc. 1981).
72. Edward H. Levi, *An Introduction to Legal Reasoning* (U. Chi. Press 1962).
73. Pierre Schlag & David M. Skover, *Tactics of Legal Reasoning* (Carolina Academic Press 1986).

### ***H. The Importance of Emotion to Persuasive Legal Writing***

Often overlooked by lawyers, emotion can play a critical role in persuasion. Although emotion, as well as its Aristotelian counterpart, pathos, appear in works throughout this entire list, in the works that follow, legal commentators have argued for the centrality of emotion to law and legal argumentation. Though many of these commentators argue that the law should recognize the importance of emotion in law and legal argument, some,

including Martha Nussbaum, argue that certain emotions can be a destructive influence in law.

74. Peter Brandon Bayer, *Not Interaction but Melding—The “Russian Dressing” Theory of Emotions: An Explanation of the Phenomenology of Emotions and Rationality with Suggested Related Maxims for Judges and Other Legal Decision Makers*, 52 Mercer L. Rev. 1033 (2001).

75. Laura E. Little, *Negotiating The Tangle Of Law And Emotion*, 86 Cornell L. Rev. 974 (2001).

76. Lynne N. Henderson, *Legality And Empathy*, 85 Mich. L. Rev. 1574 (1987).

77. Peter H. Huang & Christopher J. Anderson, *A Psychology of Emotional Legal Decision Making: Revulsion and Saving Face in Legal Theory and Practice*, 90 Minn. L. Rev. 1045 (2006).

78. Symposium, *Law, Psychology, and the Emotions*, 74 Chi.-Kent L. Rev. 1423 (2000).

79. Eric A. Posner, *Law and the Emotions*, 89 Geo. L.J. 1977 (2001).

80. Kathryn M. Stanchi, *Feminist Legal Writing*, 39 S.D. L. Rev. 387 (2002).

81. Martha C. Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* (Princeton U. Press 2004)

82. Susan A. Bandes, ed., *The Passions of Law* (NYU Press 1999).

83. Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* chs. 5-6 (2d ed., Aspen 2008).

### ***I. Ethical Considerations in Persuasion***

Any time lawyers consider how to influence their audience, a critical constraint is ethics. While it is our task to persuade and convince, lawyers must be vigilant that persuasion does not bleed into manipulation or deceit. The works in this category define the boundaries of ethical behavior in persuasion, either by a deep exploration of the rules of ethics, or by criticism of certain kinds of rhetoric. Also included here are works that focus on the legal arguments that can spring from *ethos*, the persuasion that results from the establishment of the speaker’s credibility, reputation and credentials.

84. Elizabeth Fajans & Mary R. Falk, *Shooting from the Lip: United States v. Dickerson, Role [Im]morality and the Ethics of Legal Rhetoric*, 23 U. Haw. L. Rev. 1 (2000).

85. Beverly J. Blair, *Ethical Considerations In Advocacy: What First-Year Legal Writing Students Need to Know*, 4 Leg. Writing 109 (1998).
86. Eugene Garver, *For the Sake of Argument: Practical Reasoning, Character, and the Ethics of Belief* (U. Chi. Press 2004) (see also the review of Garver's book, David McGowan, *So What If It's All Just Rhetoric*, University of Minnesota Law School Legal Studies Research Paper Series, Research Paper No. 04-15 (available at <http://ssrn.com/abstract=578542>).
87. Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* ch. 16 (2d ed., Aspen 2008).
88. Melissa H. Weresh, *Legal Writing: Ethical and Professional Considerations* (LexisNexis 2006).

### ***J. What Judges Think***

Most of the works on this list are studies and ruminations of advocates about how to persuade the legal audience. But also important is what the audience itself thinks about the persuasive tactics used by lawyers. Included here are some of the leading studies of what judges think about legal writing and advocacy, as well as some notable works written by judges for lawyers about how to best sway judicial decision-making.

89. Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 Leg. Writing 257 (2002).
90. Bryan A. Garner, *Judges on Briefing: A National Survey*, 8 Scribes J. Leg. Writing 1 (2001–02).
91. Ruggero J. Aldisert, *Winning on Appeal: Better Briefs and Oral Argument* (2d ed., NITA 2003).
92. Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (Thomson West 2008).

### ***K. Oral Argument***

Finally, an essential component of persuasive legal advocacy—particularly persuasive writing—oral advocacy. Linked inextricably with brief-writing, oral advocacy is the culmination of the brief writer's task, and highlights the brief writer's expertise, credibility and verbal skill. Although it is the close companion of written advocacy, oral advocacy has its own conventions and constraints, and many commentators have weighed in on what makes an excellent oral argument. What follows is a smattering of the leading voices on the topic.

93. Michael J. Higdon, *Oral Argument and Impression Management: Harnessing the Power of Nonverbal Persuasion for a Judicial Audience*, 57 U. Kan. L. Rev. 631 (2009).
94. Stephen A. Newman, *Using Shakespeare to Teach Persuasive Advocacy*, 57 J. Leg. Educ. 36 (2007).
95. Stephen M. Shapiro, *Oral Argument in the Supreme Court of the United States*, 33 Cath. U. L. Rev. 529 (1984).
96. Richard H. Seamon, *Preparing For Oral Argument In The United States Supreme Court*, 50 S.C. L. Rev. 603 (1999).
97. David C. Frederick, *The Art of Oral Advocacy* (West 2003).
98. Frank M. Coffin, *A Lexicon of Oral Advocacy* (NITA 1984).
99. Ronald J. Waicukauski et al., *The Winning Argument* (ABA 2001).
100. Ruggero J. Aldisert, *Winning on Appeal: Better Briefs and Oral Argument* ch. 15-16 (2d ed., NITA 2003).
101. Mary Beth Beazley, *A Practical Guide to Appellate Advocacy* ch. 13 (2d ed., Aspen 2006).
102. Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy and Style* ch. 34 (5th ed., Aspen 2005).
103. Linda H. Edwards, *Legal Writing and Analysis* ch. 22 (2d ed., Aspen 2007).