



The Write House

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Royal Court

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BRIEF-WRITING MASTERCLASS

Course Outline

1. The Architecture of Argument

- 1.1. The Structure of a Brief
- 1.2. Cover Page and Contents
- 1.3. Issues for Determination
- 1.4. Introduction
- 1.5. Facts and Procedural History
- 1.6. The Argument Section
- 1.7. Conclusion
- 1.8. List of Authorities

2. Issues for Determination

- 2.1. What's an issue for determination? Apply the lay-friend test.
- 2.2. Place your issues up front.
- 2.3. To formulate an issue, find governing law and isolate *legally significant* facts.
- 2.4. Winnow and prioritize your issues.
- 2.5. Devote time and effort to formulating your issues.
- 2.6. Learn the methods of drafting issues. Then unlearn most of them.
 - 2.6.1. The *whether* fragment
 - 2.6.2. The one-sentence statement
 - 2.6.3. The one-sentence question
 - 2.6.4. The Catholic catechism
 - 2.6.5. The *under-does-when* formula
 - 2.6.6. The deep-issue format
- 2.7. Use deductive logic to elicit doctrinal holding.
- 2.8. Forget *circumstances of this case*.
- 2.9. Prefer legal to procedural juxtapositions.
- 2.10. Craft issues to steer the court your way.
- 2.11. Leave the lower court and other parties out of it.
- 2.12. Phrase your issues like questions.

3. Facts and Procedural History

- 3.1. You can use topical headings.
- 3.2. Tell a story with your facts.
- 3.3. Your narrative should transcend mere storytelling.
- 3.4. Invest your story with a theme.
- 3.5. Stress your client's perspective.
- 3.6. Let the facts tell the story—don't interpret, don't interrupt.
- 3.7. Shun the dating maze and other data mess.
- 3.8. Call parties and witnesses their names.
- 3.9. Assign substantive descriptions to your data and documents.
- 3.10. Fit facts to law.
- 3.11. Deploy characterization for persuasive effect.
 - 3.11.1. Characterization could be constructive or destructive.
 - 3.11.2. Direct negation is not characterization.
- 3.12. Appeal to the court's conscience.
- 3.13. Appeal to the court's emotion.
- 3.14. Tell your facts differently than in other documents.
- 3.15. Remember that the facts control the law.
- 3.16. Think like a novelist—borrow fiction elements.
 - 3.16.1. Character—make your client likable.
 - 3.16.2. Conflict—characterize the conflict with thematic undertones.
 - 3.16.3. Resolution—prophesy a happy ending.
 - 3.16.4. Organization—provide context before detail.
 - 3.16.5. Point of view—choose a client-centered perspective.
- 3.17. Deal with bad facts—play safely with fire.
- 3.18. Include a procedural history when warranted.

4. The Argument Section

PART A— Organization, Structure, and Posture

- 4.1. Organize for persuasive flow. Accentuate point headings.
- 4.2. Use outlines and point headings for rhetorical advantage.
- 4.3. Erect signposts along the way.
- 4.4. Boost organization with roadmaps.
- 4.5. Push both justifying and motivating arguments.
- 4.6. Learn to structure your argument on each issue.
- 4.7. Should you get your Foot in their Door (FITD) or slam your Door in their Face (DITF)?
- 4.8. Winnow and prioritize your arguments.
- 4.9. Use thesis sentences to reinforce rhetorical narration.
- 4.10. Use transition, bridging, and paragraphing to boost linguistic coherence.
- 4.11. Use exquisite civility to boost ethos.
- 4.12. Present your case as representing good law or sound policy. Save judicial labour. Apply social science.

- 4.13. Drop the digest and record methods of “argument.” And quarantine the plague of false ratios.
- 4.14. Choose a structural formula for your argumentation.

PART B— Rebuttal and Refutation

- 4.15. Plot your offensive and defensive gambits.
- 4.16. Enclose refutation in a halo of affirmative arguments.
- 4.17. Push anticipatory refutation to make your case complete.
- 4.18. Plot recharacterization, negative imagery, and similar gambits.
- 4.19. Strategize with candid or zealous advocacy.

PART C— Citations and Quotations

- 4.20. Minimize citations and quotations. Scrutinize your authorities and isolate their *rationes decidendi*.
- 4.21. Know your best precedents.
- 4.22. Follow hierarchy in citing authorities. And prioritize primary over secondary authority.
- 4.23. Use explanatory synthesis.
- 4.24. Avoid ‘talking footnotes.’ Banish bibliographic algebra to footnotes.
- 4.25. Nurture the pinciting habit.
- 4.26. Pack your rhetorical punch with parentheticals.
- 4.27. Maximize citation clauses, citation sentences, and introductory signals. Minimize string citations. Starve bare cites.

5. **Think before you write.**

- 5.1. Believe in your client’s cause—formulate a thesis for every case.
- 5.2. Draft issues and point headings early.
- 5.3. Try the Flowers paradigm.

6. Case Theory, Themes, and Priming

- 6.1. Your theory of the case should convert the facts of the dispute into a legal problem soluble in your client's favor.
- 6.2. Your theme should supply moral justification for the victory you prophesy.
- 6.3. Your theme should possess narrative fidelity.
- 6.4. Your theme should leave an impression about the case.
- 6.5. Your theme should evoke emotions.
- 6.6. Your theme should prime the judge to view the case your way.
- 6.7. Your theory of an *appeal* should show the presence, or absence, of reversible error, as well as injustice, below.

7. Rhetoric and the Rhetorical Triangle

- 7.1. Why study rhetoric?
- 7.2. To exercise your rhetorical skills, you need a rhetorical situation.
- 7.3. To influence the rhetorical situation, deploy framing devices.
- 7.4. To wage all-out forensic battle, fight on all three fronts of the Rhetorical Triangle:
 - 7.4.1. Ethos
 - 7.4.2. Logos
 - 7.4.3. Pathos

8. Logic and Logical Fallacies

8.1. Introduction to Logic

8.2. Logical Fallacies

- 8.2.1. *Argumentum ad baculum*
- 8.2.2. *Argumentum ad misericordiam*
- 8.2.3. *Argumentum ad hominem*
- 8.2.4. *Dicto Simpliciter*
- 8.2.5. *Ignoratio Elenchi*
- 8.2.6. Red Herring
- 8.2.7. The Straw Man
- 8.2.8. *Argumentum ad ignorantiam*
- 8.2.9. *Argumentum ad verecundiam*
- 8.2.10. *Argumentum ad antiquitatem*
- 8.2.11. Hasty Generalization
- 8.2.12. Slippery Slope
- 8.2.13. False Cause
- 8.2.14. Amphiboly
- 8.2.15. Equivocation
- 8.2.16. Composition
- 8.2.17. Division
- 8.2.18. *Petitio Principii*
- 8.2.19. Complex Question
- 8.2.20. Suppressed Evidence

- 8.2.21. False Dichotomy
- 8.2.22. Inverse Error (or Denying the Antecedent)
- 8.2.23. Converse Error (or Affirming the Consequent)
- 8.2.24. Faulty Analogy
- 8.2.25. Half-Truth