

ENG U325 RHETORIC OF LAW*
NORTHEASTERN UNIVERSITY • FALL 2008 • MTH 11:45 – 1:25 P.M.

Prof. Beth Britt

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Course Description

In 1995, the televised double murder trial of O.J. Simpson brought courtroom rhetoric into the living rooms of millions of viewers. Skillful oral performances — such as defense attorney Johnnie Cochran’s memorable summation line, “If [the glove] doesn’t fit, you must acquit” — seemed to epitomize rhetoric’s ability to mesmerize the listener, to spin the facts to favor one outcome over another. This ability, decried since the birth of rhetoric over two millennia ago, has prompted many attempts to get “past” the rhetoric, to separate content from form, substance from delivery. Yet scholars in all fields — including law — have begun to believe that words and ideas cannot be neatly or easily separated, that all ideas come from a particular perspective and are conceivable (and expressible) only through language, which is always biased. For the law, this recognition means that rhetoric doesn’t just exist in courtroom oratory; it exists in every piece of legislation, every judicial opinion, and even the very procedures (such as the rules of evidence) through which law does its work. This recognition also means that the law is always “interested,” reinforcing particular social relations and ways of thinking at the expense of others. Because law “plays on a field of pain and death” (as legal scholar Robert Cover puts it), the relationship between rhetoric and law thus has profound implications for justice. This course explores this relationship.

By the end of this course, you should be able to:

- Describe how law can be viewed as rhetorical
- Discuss the practical, epistemological, and ethical implications of understanding law as rhetorical
- Analyze and critique legal texts using a variety of rhetorical tools

Required Texts and Materials

Lief, Michael S., H. Mitchell Caldwell, and Ben Bycel. *Ladies and Gentlemen of the Jury: Greatest Closing Arguments in Modern Law*. New York: Touchstone: 1998. Available for purchase at the NU bookstore and on reserve at Snell Library.

Stoner, Mark, and Sally Perkins. *Making Sense of Messages: A Critical Apprenticeship in Rhetorical Criticism*. Boston: Houghton, 2005. Available for purchase at the NU bookstore and on reserve at Snell Library.

Readings on Blackboard. (Important: Print out each reading and bring it to class on the day it is due. Note that we will discuss some texts more than once during the semester.)

Assignments and Grading

I will calculate your final grade as follows:

In-class exam	20 %
Pop quizzes on assigned reading	15 %
Proposal for final paper	10 %
Search model comparison paper	20 %
Final paper	35 %

* This syllabus is subject to change. You will be informed during class of any changes to the syllabus. If you miss a class, it is your responsibility to find out what you missed, including any changes to the syllabus.

The criteria I use to evaluate assignments include focus, thoroughness, insight, sophistication, creativity, use of supporting evidence, and professionalism. My grading corresponds with the grading standards of Northeastern's first-year writing program, which are described in detail at http://www.english.neu.edu/writingprogram/for_students/grades/.

Daily Schedule

Week	Date	Topic	Required Reading	Due
1	9/11	Introduction to the course		
Part I: Foundations				
2	9/15	Fundamental concepts in rhetoric	SP* ch. 1 & 2	
	9/18	Fundamental concepts in law	Romantz & Vinson (BB); Scaros (BB)	
3	9/22	Intersections of law and rhetoric	Sarat and Kearns (BB); White (BB)	
	9/25	Intersections of law and rhetoric (cont'd); review for exam	Cover (BB)	
4	9/29	EXAM		
Part II: Reading Law as Rhetoric				
	10/2	Reading critically	SP ch. 3; LCB ch. 1	
5	10/6	Describing discourse	SP ch. 4; LCB ch. 1 (re-read)	
	10/9	Reading trials	Sarat (BB)	
6	10/13	COLUMBUS DAY. No classes.		
	10/16	Reading judicial opinions	Gewirtz (BB); <i>Michael H. v. Gerald D.</i> p. 1-13 (BB); Amsterdam and Bruner (BB)	
7	10/20	Analyzing, interpreting, and evaluating discourse	SP ch. 5-7; <i>Broadnax v. Gonzalez</i> (handout)	
	10/23	Writing rhetorical analyses	SP ch. 8	Final paper proposal draft (post on Blackboard & bring a copy to class)
Part III: Advanced Analytical Tools for Legal Rhetoric				
8	10/27	Classical approaches	SP ch. 9; Carlson (BB)	Final paper proposal (final)
	10/30	Classical approaches (cont'd)	LCB ch. 5	
9	11/3	Burkean approaches	SP ch. 13; Merlo.pdf (BB)	
	11/6	Burkean approaches (cont'd)	LCB ch. 5 (re-read)	
10	11/10	Narrative approaches	SP ch. 11; Baker (BB)	
	11/13	Narrative approaches (cont'd)	LCB ch. 1 (re-read)	
11	11/17	Ideological approaches	SP ch. 14; McDorman (BB)	
	11/20	Ideological approaches (cont'd)	LCB ch. 1 (re-read)	
12	11/24	Feminist approaches	SP ch. 15; Bumiller (BB)	
	11/27	THANKSGIVING DAY. No classes.		
13	12/1	Feminist approaches (cont'd)	<i>Michael H. v. Gerald D.</i> (BB) (re-read)	
	12/4	Evaluating analytical approaches		Search model comparison paper
14	12/8	Workshop; wrap-up		Draft of final paper (post on Blackboard & bring a copy to class)
	12/11	READING DAY. No classes.		
15	12/12-12/19	FINAL EXAM WEEK. No classes.		
				Final paper due by 12 p.m. on Monday, December 15, in 406 Holmes. (Place in drop box.)

* SP=Stoner and Perkins; LCB=Lief, Caldwell, and Bycel; BB=on Blackboard

Required Readings
(Available on Blackboard)

- Amsterdam, Anthony G., and Jerome S. Bruner. "Categorizing at the Supreme Court: *Missouri v. Jenkins* and *Michael H. v. Gerald D.*" *Minding the Law*. Cambridge: Harvard UP, 2002. 54, 77-109.
- Baker, Tom. "Constructing the Insurance Relationship: Sales Stories, Claims Stories, and Insurance Contract Stories." *Texas Law Review* 72 (1994): 1395-1433.
- Broadnax v. Gonzalez*, 777 N.Y.S.2d 416 (Ct.App. 2004).
- Bumiller, Kristin. "Fallen Angels: The Representation of Violence Against Women in Legal Culture." *At the Boundaries of Law: Feminism and Legal Theory*. Ed. Martha Albertson Fineman and Nancy Sweet Thomadsen. New York: Routledge, 1991. 95-111.
- Carlson, A. Cheree. "John Quincy Adams' 'Amistad Address': Eloquence in a Generic Hybrid." *The Western Journal of Speech Communication* 49 (1985): 14-26.
- Cover, Robert M. "Violence and the Word." *Yale Law Journal* 95 (1986): 1601-1629.
- Gewirtz, Paul. "Narrative and Rhetoric in the Law." *Law's Stories: Narrative and Rhetoric in the Law*. Ed. Peter Brooks and Paul Gewirtz. New Haven: Yale UP, 1998. 10-13.
- McDorman, Todd F. "Challenging Constitutional Authority: African American Responses to *Scott v. Sandford*." *Quarterly Journal of Speech* 83 (1997): 192-209.
- Merlo, Elyse. "Identification and Categorization in *People v. Kobe Bryant*." Unpublished manuscript, 2007.
- Michael H. v. Gerald D.*, 491 U.S. 110 (1989).
- Romantz, David S., and Kathleen Elliott Vinson. *Legal Analysis: The Fundamental Skill*. Durham: Carolina Academic Press, 1998. 3-16.
- Sarat, Austin. "Speaking of Death: Narratives of Violence in Capital Trials." *The Rhetoric of Law*. Ed. Austin Sarat and Thomas R. Kearns. Ann Arbor: U of Michigan P, 1994. 135-183.
- Sarat, Austin, and Thomas R. Kearns. "Editorial Introduction." *The Rhetoric of Law*. Ed. Austin Sarat and Thomas R. Kearns. Ann Arbor: U of Michigan P, 1994. 1-27.
- Scaros, Constantinos. *Learning about the Law*. 2nd ed. New York: Aspen. 1-14, 91-105.
- White, James Boyd. "Imagining the Law." *The Rhetoric of Law*. Ed. Austin Sarat and Thomas R. Kearns. Ann Arbor: U of Michigan P, 1994. 29-55.

Policies

Attendance, Deadlines, and Classroom Etiquette

This course uses an interactive learning model. Its success—and your success in it—depends on attendance and active participation. Attendance is therefore required. You are allowed two absences (for any reason) without a grade penalty. For each absence after the second, your final grade will be lowered by a full letter (e.g., an A will become a B). If you experience extraordinary circumstances (e.g., religious holidays, illness, a death in the family, required participation in athletic events, or other equally serious and unavoidable life events) that cause you to miss additional classes, please see me.

I expect you to have read all assigned materials before coming to class. Please bring assigned readings to class, as we frequently refer to specific passages. If I call on you and it becomes clear that you have not read the assignment or brought the readings to class, you will be counted as absent.

A missed class does not exempt you from the assigned work for that day. Late assignments will be penalized by one letter grade for each weekday that they are late (for example, an A will become a B). If you miss the exam, you are entitled to a make-up exam only if you can provide written evidence for a religious holiday, illness, a death in the family, required participation in athletic events, or another equally serious and unavoidable life event. Vacations do not count as excusable absences, even if you notify me in advance. I do not give make-up pop quizzes.

A note on coming to class late: Please make every effort to arrive in class on time, as late arrivals disrupt class. I take attendance at the beginning of class by reading aloud from my roster. If you are not present when I take attendance, you are considered absent. If you arrive late, it is your responsibility to see me after class to change your "absent" to a "late." Sometimes being late is unavoidable; chronic lateness, however, indicates either a time management problem or a lack of respect for the class. Being late three times equals one absence. If you come to class after a pop quiz has been completed, you will not be allowed to make it up. If you come to class after a pop quiz has been distributed but before it has been collected, you will not be allowed extra time to complete it.

Format of Work

All work must be printed with a readable printer. Papers should have 1" margins on all sides and text between 10 and 12 point type. Papers should adhere to commonly accepted standards of grammatical and typographical correctness, should use MLA-style documentation, and should be stapled or paper-clipped. Include your name on all work.

Incompletes

I will assign the grade of incomplete only under extraordinary circumstances. In order to receive this grade, you must have completed most of the work for the course and have encountered an emergency (for example, serious illness or a death in the family) that prevents you from finishing one or two assignments. If you find yourself in this situation toward the end of the semester, talk to me as soon as possible before the last assignments are due. Please do not ask for an incomplete if you are having trouble completing work because of time commitments at work or in other classes.

Plagiarism

I encourage you to bounce ideas off each other, offer each other suggestions, and seek other opinions about your work. When you use the citable work of someone else, though, document your source. If you use someone else's words or ideas without acknowledging the source, if you do not place quotation marks around (or set off from the body of the text) the directly quoted words of someone else, if you submit work that you have completed in another context, or if you submit work purchased from a paper mill or written by someone else, then you have committed plagiarism, a serious breach of academic and professional conduct. Plagiarism is not only illegal; it is professional suicide.

I have a zero tolerance policy for plagiarism: if I find convincing evidence that you have used someone else's work without proper attribution, you will receive an F in the course and will be reported to the Office of Student Conduct and Conflict Resolution for possible further academic sanctions, which range from suspension to expulsion from the university.