

The Spring Problem and Persuasive Writing

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At UNT Dallas College of Law, your 1L first semester is about teaching you the basics of legal writing and using the CRAC/IRAC format. The second semester builds on that foundation by introducing persuasive writing, where you will learn how to turn an objective rule into a persuasive rule.

A persuasive paper, like the Motion for Summary Judgment Opposition that you will be assigned, is going to be very similar to writing an internal objective memorandum. The structure of the paper mostly stays the same, and the differences will largely depend on your writing style. This article aims to lay out the basics of how to get started and useful tips and tricks for writing a good paper, which then builds up to the ultimate goal of preparing you for oral arguments in the second half of the semester.

Before getting into the meat of this article, here are some general words of advice that I found useful while I was writing my paper during my 1L year:

- Give yourself enough time to finish the assignment with plenty of room to edit and revise. Students who run up against the due date will often sacrifice quality just to get the assignment done quickly, and therefore lose easy points. As a procrastinator myself, I know how easy it is to put things off until the last minute. This is **NOT** one of those assignments.
- Much like the objective memo, be as concise and straight to the point as possible.
- Ask the professor or the teaching fellow for help when you need it (this is not a shameless plug). The earlier that you understand the assignment, the better it will be for you when writing.
- Polishing and revising your paper should take about as long as writing it, and do not be afraid to make significant changes if necessary.

NOTE: Writing for law school and writing in real-world practice may differ based on a wide array of factors. While some writing skills transfer, always refer to your firm's specific practices and local court rules.

I. How to get started.

Getting started might be a challenge for some people, as it was for me. For instance, I like having a sense of direction before I get started writing. You will probably notice that you have a lot more freedom, and there are going to be multiple ways to tackle the issue. However, I also recognize that this might come easier to other people, or to those who may already have some experience. There are two points that I would like to touch on in this section: (1) knowing what the professor expects from you, and (2) how to get started on researching the prompt.

A. The teacher's expectations.

The best way to get started is to, first and foremost, read the assigned memo carefully and thoroughly. Then, it would be best to look at the professor's rubric. The assigning memo will clearly state what you have to write about and will ask you to address specific elements of a claim. Look for any special instructions, if any, in the assigning memo.

The professor's rubric will have everything you need to get at least a passing grade on this assignment. The more subjective issues, such as how to draft a persuasive sentence or how to make the paper "flow well," will be addressed during lecture and writing lab hours. Otherwise, much like with the objective memo, the bulk of the writing will be done outside of class.

NOTE: Every professor will have different criteria and personal tastes. Although the rubric will not change between professors, pay attention to the writing style and how they want you to draft a particular sentence.

B. How to research the prompt.

One of the first things the professors will tell you, and one of the most important things in my opinion, is that you will need to look at the opponent's Motion for Summary Judgment (MSJ) for direction. Oftentimes the rules you will use for your paper will come straight from the opponent's MSJ, and what you will have to do is tweak them in your favor. For those of you who might feel a bit lost getting started, this is the easiest and probably the best way to get some sense of direction for your paper.

When reading the opponent's MSJ, read the opponent's case law and see if there is anything that they left out of the rule statement because it disfavors their argument, and then check to see if the case itself has received any negative treatment. The best cases for your argument will be those found in the negative treatment category. Do not think that you absolutely must stay in your jurisdiction. Remember that this is a persuasive paper, and you are allowed to look outside of your jurisdiction to make your argument (so long as it stays within the boundaries of the assignment).

An optional step is to print out or bookmark your cases into a dedicated folder. You probably learned this in your Legal Research course. These websites will save your annotations, so you do not have to waste time looking up your cases over and over again.

II. How to make a persuasive argument.

When writing this paper, you want to be able to make a strong and persuasive argument for your case but also to be as concise and straight to the point as possible. Remember the things that you were told not to do in the first semester? Those same things still apply.

In this section of the article, there are two things that I wish to cover: (1) How to use rule-bridging language, and (2) how to address and counter your opponent's arguments in your counter-analysis.

A. How to use rule-bridging language.

The best papers will make use of rule-bridging language as much as possible, and will mostly be seen in the analysis and counter-analysis section of your paper. Rule-bridging language is somewhat difficult to explain, so I will be making use of an example. This is taken from the Fall 2024 assignment:

Rule: "Ownership of the premises" without "evidence of caretaking" for an animal is insufficient to find an individual liable as the animal's keeper. Cite.

Analysis: Although [the defendant] was not the true owner of the wolf-dog, he kept the wolf-dog on his property with "evidence of caretaking" because of XYZ. Cite to case; cite to record.

Rule-bridging, explained as simply as possible, is weaving the rule taken from the case law into your specific fact pattern. If the court stated that something was "reasonably foreseeable" because of XYZ reason, you are going to want to try and argue that your case was "reasonably foreseeable" because of XYZ reason (XYZ being the evidence in the record). Only make sure to include the words that are required to make your argument and to eliminate any unnecessary fluff. Never forget to add the "because," because that would make your argument conclusory, and you do not want that. If it sounds repetitive, then you are doing it right. You want to compare the case law to the issue, so you want to be as analogous as possible by using the direct language taken from the case law, and argue that it applies to your case.

B. The counter-analysis.

One unique thing about the MSJ Opposition, when compared to the actual MSJ, is the inclusion of a counter-analysis section. Your professors will likely refer to this as the second "C" in your CRACC, which is a new concept for persuasive writing. This is your opportunity to downplay the opponent's argument. Your main goal of the counter-analysis is to address or distinguish the opponent's arguments and argue that their use of the case law is wrong or has been misapplied in some way. You will learn how to do this in class, but essentially it is similar to the "unlike" analysis section in the objective memo.

In my opinion, the counter-analysis was one of the harder sections to write because you had to avoid being too aggressive, but also avoid being too wordy, among a whole slew of other different factors that you have to take into consideration. So, my advice when outlining your argument is to list out the facts of the opponent's case illustration and to be very literal in distinguishing the facts from their case and the facts in yours. If you feel like something can be distinguished, it is better to include it than not and to edit it out later if you need to cut it down to save space.

Using another example from the Fall 2024 assignment, you may argue that your case was different from the opponent's XYZ case because in that case, the plaintiff presented evidence of ownership of the animal. In this case, the plaintiff did not present evidence of ownership of the animal. Therefore, the rule for strict liability of an animal bite does not apply here because of XYZ.

III. How to prepare for oral arguments.

You will encounter oral arguments in the spring semester, which is also something new. I am not a very good public speaker, so I hope this will be beneficial to everyone and especially to those who easily get stage fright.

Preparing for oral arguments is easier than it seems. You have essentially been preparing for oral arguments throughout the entire semester. You will have (hopefully) already written your paper by the time oral arguments come around, or have at least finished a significant portion of it, so that you will have all the necessary substantive knowledge required for this assignment. Think of this assignment as conveying your argument that you have been writing this entire semester through a conversation, as the name implies.

Everyone will prepare differently for this assignment, so it is a matter of choosing what method you think is best to prepare. The hardest thing is trying to anticipate what your professor, or the "judge" in this instance, will try to ask you. From my experience, most questions will lean on your counter-analysis and how well you will be able to articulate how your case law should be applied over your opponent's case law. You will likely be asked things such as distinguishing your case from the opponent's case, how or why you think your case law applies to the issue, or maybe even more general questions about why you think the judge should rule in your favor. Stick to the facts in the record to make your arguments, and have a good understanding of the case law. One thing to remember is that this is a closed environment, so most of the questions will be fixed to a certain topic surrounding your arguments. You will likely be told ahead of time what issues you will likely have to address during oral arguments.

When you are in front of the podium presenting your argument, you will only have a small window of time. It might feel like a century while you are up there, but so long as you cover all of your points and answer the professor's questions carefully you will do a good job. Remember that you do not have to use the entire allotted time. Just as with any presentation, make sure to pace yourself as you talk and to take pauses in between just in case you get interrupted with a question. I might also suggest taking a stress ball or fidget toy up to the podium with you, and to keep it in your pocket. Personally, I was death-gripping the side of the podium when I was up there.

Overall, some may enjoy the spring problem more than the fall problem because students will be allowed more freedom to express their own thoughts. I thought it was nice, and it gave me some good experience. This is more like the papers that you will be seeing and writing out in real practice. You may also choose to use this paper as your writing sample when submitting applications. It will be more helpful for you over the objective memo.