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## Truth in Action: Revitalizing Classical Rhetoric as a Tool for Teaching Oral Advocacy in American Law Schools

Jennifer Kruse Hanrahan

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# TRUTH IN ACTION: REVITALIZING CLASSICAL RHETORIC AS A TOOL FOR TEACHING ORAL ADVOCACY IN AMERICAN LAW SCHOOLS

## I. INTRODUCTION

Effective oral argument is crucial for success in legal advocacy. Close cases are won or lost on the summation, or closing argument. In criminal law, denial of a closing argument has been treated as a violation of due process.<sup>1</sup> Harry Kalodner describes “oral argument [as] the seasoning to the brief. Effectively presented it makes more palatable to the judge [or jury] the dish of controversy served him by the opposing parties.”<sup>2</sup> Just as a chef carefully chooses a combination of ingredients and seasonings, a trial lawyer carefully chooses words and images to appeal to the senses of the judge or jury. Trial lawyers must develop oral argumentation skills because they are not usually born with a golden tongue. In *Alice in Wonderland* an intriguing method of developing a lawyer’s skills in arguing is disclosed: “‘In my youth,’ said his father, ‘I took to the law, And argued each case with my wife; And the muscular strength which it gave to my jaw Has lasted the rest of my life.’”<sup>3</sup> While this methodology may not be entirely sound, it reflects the generally held belief that trial lawyers need some sort of system to develop techniques of oral argument. Most trial lawyers, however, are thrown into practice without ever receiving this essential training. If law schools revived classical rhetoric methodologies, then students could effectively develop oral argument skills essential to realize the goal of the U.S. legal system—to find and express truth.

Even though Johnnie Cochran, Jr. and Cicero defended men accused of murder in different legal systems, and 2000 years apart from each other, they still used many of the same

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1. Myron L. Gordon, *Non Jury Summations*, 6 Am. Jur. Tr. 771, 779 (1967).

2. Harry E. Kalodner, “*The Matter of Oral Argument*,” 1 Practical L. 12, 15.

3. Lewis Carroll, *Alice in Wonderland* 48 (Grossett & Dunlap 1996).

rhetorical devices. However, Cicero purposely used rhetorical devices to enhance logical appeals to his jury, while Cochran used rhetorical devices unsystematically to make emotional and ethical appeals. Although both men had the same goal of winning their cases, Cicero was able to use truth as a means to victory while Cochran used emotional appeals as a means to victory. Although Cochran is a well-known and highly skilled lawyer, his skills, though less methodical than Cicero's, are not altogether common among lawyers and law students. Increasingly, judges have complained of the lack of talented and skilled orators that argue in their courtrooms.

It takes years of experience and consistent practice for an attorney to develop strong oral argumentation skills. Unfortunately, most law students have only one experience with oral argument (the first-year moot court competition), and even less receive actual training in oral argument during law school. In effect, each law student must "re-invent the wheel" of oral advocacy. Law schools, however, may improve law students' oratory skills by adopting methodologies similar to classical rhetoric.

This paper will first analyze the problems with the current oral advocacy pedagogy and present why a new system is needed. Part II explains how classical rhetoric can be used to solve the current deficiencies in oral advocacy education. Part III discusses how classical and modern oral arguments can be used as teaching tools. Part IV offers conclusions about the comparison and the significance of these two styles to contemporary American legal oratory.

## II. THE PROBLEM WITH AMERICAN ORAL ADVOCACY EDUCATION

### A. *Importance of Oral Advocacy*

Oral argument plays an essential role in the decision-making processes of the courts. Arguments before the Supreme Court of the United States are tape-recorded and transcribed for use by the justices and law clerks as they draft opinions. Oral argument is not only essential for trial lawyers as they attempt to persuade the jury, but oral argument is the attorney's last chance to prevail in appellate court, and it is the attorney's only opportunity to establish a human connection

with the judge.<sup>4</sup> Chief Justice Rehnquist counsels advocates that oral argument “is the only opportunity that you will have to confront face-to-face the nine members of the Court who will ponder and decide your case. The opportunity to convince them of the merits of your position is at its highpoint.”<sup>5</sup> Justice Re of the United States Court of International Trade also testifies to the power of oral argument: “speech may succeed where the printed word has failed.”<sup>6</sup> Justice Brennan even reveals that: “[o]ften my whole notion of what a case is about crystallizes at oral argument.”<sup>7</sup> “Appellate judges virtually without exception, say that a case should never be submitted without oral argument.”<sup>8</sup> Despite the need for good legal oratory, it is almost a thing of the past.

Frederick Weiner discusses whether law schools must adopt a method of teaching oral argumentation:

Should advocacy be taught? Anyone who has spent any length of time in an appellate court, whether for instructional purposes, on a busman’s holiday, or simply waiting for his own case to be reached, will answer that advocacy needs to be taught, and that it needs to be learned. Too many, far too many, lawyers burden courts of appeal with poorly prepared, poorly presented, and thoroughly unhelpful arguments—for which they receive, and clients pay, substantial and not infrequently handsome fees. Even after making due allowance for the frailties of mankind, it is amazing how few good arguments are presented and heard, even in the highest state and federal tribunals. Within the year I have been told by a justice of the Supreme Court of the United States that four out of every five arguments to which he must listen are “not good.” And comments from judges of other appellate courts give me no reason to suppose that the percentage of good arguments is perceptibly higher elsewhere.

Recently a representative cross-section of the graduates

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4. Whitney N. Seymour, Sr. *Foreword* in Edward D. Re & Joseph R. Re *Law Students’ Manual on Legal Writing and Oral Argument* xvii-xviii, 146 (Oceana Publications 1991).

5. J. Rehnquist, *Oral Advocacy*, 27 S. Tex. L. Rev. 289, 303 (1986).

6. Re, *supra* n. 6, at 145.

7. Harvard Law School, *Proceedings in Honor of Mr. Justice Brennan* Harv. L. Sch. Occasional Pamphlet Number Nine 22 (1967).

8. Frederick B. Weiner, *Oral Advocacy*, 62 Harv. L. Rev. 56, 56-58 (1948).

of the Harvard Law School was polled by the faculty, and asked to rank 'the skills of a lawyer' in the order of importance in the graduates' particular branches of practice. "The lowest rating, by a fairly wide margin, was given to skill in advocacy'.

Even if this response simply means that most Harvard Law alumni never get to court, but instead devote most of their energies to the office or to the conferences or consultations with clients, the rating is amazing—and, it is submitted, amazingly wrong. For whenever a lawyer negotiates, or puts a proposition to a client, or even when he discusses a difference of opinion with a partner, he is engaged in [oral] advocacy—the process of trying to convince people of something, the technique of persuasion. . . . Advocacy is not simply screaming at an appellate court or being 'positive' in the Ambrose Bierce sense, which to say, wrong in a loud tone of voice. . . . And since when has skill in persuading a particular group of hearers to decide in his favor become a minor factor in the skill of a lawyer?

Some lawyers feel that oral argument is unimportant, because 'the judges will study the briefs.' The brutal, hard fact is that some cases are won and lost on oral argument. (footnotes omitted)<sup>9</sup>

Despite Weiner's words of warning and testimony of the importance of oral advocacy, law schools have continued to reduce the amount of emphasis on oral advocacy.

### *B. Current Oral Advocacy and Law School Pedagogy*

Both legal practitioners and scholars acknowledge that even in the last decade oral advocacy has been neglected in many ways: "The need for good advocacy is clear and the shortage of good advocates is the subject of frequent comment. . . . Experienced judges know, and, indeed, many proclaim that the quality of their performance depends heavily on the skill and breadth of the advocacy which they can consider in reaching their judgments. . . there is a tragic shortage of *trained* advocates to take up the slack" (*Emphasis added*).<sup>10</sup> The literature on the importance of trial oral advocacy

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9. *Id.*

10. Seymour, *supra* n. 4.

is even more vast than that on appellate oral advocacy. Nevertheless, most manuals on trial oral advocacy only include suggestions and explanations concerning the Federal Rules of Evidence rather than outlining methods, techniques, and exercises. Most manuals on trial advocacy are also intended for practitioners rather than for law students.

Why is oral advocacy not being taught? Scholars and practitioners have offered many explanations. Some point to the sharp reduction in time allowed for oral argument in appellate court, or the crushing burdens of increased business in trial courts.<sup>11</sup> Some commentators find that because attorneys' skill in oral advocacy is declining, judges neglect oral argument. Ultimately, the lack of good oral advocacy springs from the lack of a real methodology.

While many law schools seem to assume that oral advocacy skills can be easily acquired after graduation, some schools are starting to recognize the need for teaching it.<sup>12</sup> Good oral argument pedagogy requires a set of tools that are clearly defined, readily applicable, and flexible so that an advocate can both increase her level of preparation as well as "think on her feet." Though many critics have excellent ideas that should be incorporated into law school pedagogy, none, or few, of these critics have offered a coherent and comprehensive system for the way oral advocacy should be learned or taught. Though Professor Landau recognizes that oral advocacy is important and that law schools have an important hand in the development of young lawyers' oral advocacy skills, he only devotes one chapter to these skills in his book *Legal Reasoning, Writing, and Oral Advocacy*.<sup>13</sup>

Though Judge Re recognizes the importance of oral argument in his *Law Students' Manual on Legal Writing and Oral Argument*, he does not present a formal system of methodology.<sup>14</sup> In fact, Judge Re only devotes one chapter to oral argument. He discusses knowledge of the record, use of written notes, content of notes (including arrangement of facts, issues, and law), time allowed, time shared with co-counsel, and rehearsal of argument. He dips into the rhetorical canons

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11. Weiner, *supra* n. 8, at 56-57.

12. *Id.*

13. Jack L. Landau. *Legal Reasoning, Writing, and Oral Advocacy* vol. 2. 675 (N.W. Sch. of L., Lewis and Clark College 1980).

14. Re, *supra* n. 4.

of Delivery and Style and testifies of the importance of understanding rhetorical situation and audience, but he appears to direct his comments specifically at practitioners. There is not enough detail for this instruction to be meaningful to a law student and there are no exercises for the classroom.

In *Trial Advocacy: A Systematic Approach*, Leonard Packel and Dolores Spina attempt to put forth a system that oral advocates can use in the trial process.<sup>15</sup> While the book appeals to practitioners, law students will find the section on keeping a Trial Book useful. In the Trial Book, the advocate keeps various pleadings, briefs, memos, research, and notes. This is similar to the commonplace book of ancient rhetoric in which the student would keep an organized compilation of his thoughts, readings, analysis, and imitations in preparation for oral argument. Planning and preparation should be included in the law school methods to train students in oral advocacy. Packel and Spina's system, however, does not offer methods to improve an advocate's skills in oral argument aside from general suggestions about style and delivery.

Most advocacy texts primarily focus on legal writing and research. A prominent and widely used Advocacy text, *Introduction to Legal Writing and Oral Advocacy* mirrors most advocacy texts or instruction books by focusing on general ideas about style and delivery with some commentary on arrangement.<sup>16</sup> The text advises the budding oral advocate to know the record, study the proper authorities, know the arguments, outline the arguments, prepare argument aids, and rehearse the argument. Although the book includes excellent appendices with examples of printed oral arguments, it contains few exercises or precise methods on how to prepare argument aids or what some examples of the best aids are.

The books mentioned previously are some of the most relevant sources of oral argument instruction; yet very few, if any, form part of the law school curriculum set by the American Bar Association (ABA). In its standards for accreditation, the ABA merely states that students must

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15. Leonard Packel & Dolores Spina, *Trial Advocacy: A Systematic Approach* (The Am. L. Inst. 1984)

16. Karen K. Porter, Nancy L. Schultz, Lauren Scott, Louis J. Sirico, Jr., & Annemiek N. Young, *Introduction to Legal Writing and Oral Advocacy*. (Matthew Bender & Co. 1989); See also Steven Lubet, *Modern Trial Advocacy: Law School Edition* (Nat'l. Inst. for Tr. Advoc.).

receive “instruction in the substantive law, values and skills (including legal analysis and reasoning, legal research, problem solving and oral and written communication) generally regarded as necessary to effective and responsible participation in the legal profession. . .”<sup>17</sup> This reference to “oral communication” could simply be represented by regular class participation—though a student may only participate once in a semester in a given class. While the ABA requires one substantial legal writing experience the first year and one additional writing subsequently, it has no specific requirement that students complete an oral argument, a specific amount of practice in oral advocacy, or structured training.<sup>18</sup> Many schools have followed the pattern set by the ABA.

Most law school advocacy programs focus on research and writing disproportionately to oral argumentation. In fact, most law students are only required to give one oral argument in the culmination of their first year. Rarely are law students ever required to take additional courses requiring oral advocacy. At Georgetown, students develop some oral skills in its advocacy program, but the program mostly focuses on legal writing and citation.<sup>19</sup> University of California Davis offers Introduction to Law, Legal Research, and Legal Writing courses, but it does not mention a specific oral advocacy course in its general description of first year courses.<sup>20</sup> Columbia University offers the first-year moot court experience where law students must write a brief and argue the case orally.<sup>21</sup> The University of Chicago follows the same trend, as law students are merely required to argue a case once before a panel of judges composed of faculty members and practicing attorneys.<sup>22</sup> Duke University also generally focuses on legal research and writing but requires a “mandatory oral advocacy component during the second semester administered by the moot court board,” for which students will receive instruction in basic principles of appellate oral advocacy and participate in an oral argument.<sup>23</sup>

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17. ABA Program of Leg. Educ., *Standard 302(a)(1)*. <<http://www.abanet.org/legaled/standards/chapter3.html>>.

18. *Id.* at 302(a)2.

19. Anita Montano, *Introduction to Advocacy: The Legal Research and Writing Course at J. Reuben Clark School of Law* Appendix 1 (BYU Press 2001).

20. *Id.* at 2.

21. *Id.* at 5.

22. *Id.* at 6.

23. *Id.* at 7.



Stanford University follows a similar pattern.<sup>24</sup>

Some law schools, however, are making oral advocacy a higher priority. Cornell University offers one semester of instruction in written and oral advocacy, focusing on techniques essential in a courtroom setting.<sup>25</sup> The University of Southern California (USC) declares: "To be effective, lawyers must incisively analyze legal principles and apply them to facts, and also communicate articulately—both in writing and orally."<sup>26</sup> Still, the only opportunity students have to develop their oral skills is through a first-year moot court program. The University of Virginia claims to have an innovative program in which law students must develop presentation skills. Virginia's program is unique because it is one of the few programs that require students to develop skills rather than simply require students to give an oral argument.<sup>27</sup>

While most law schools require students to give an oral argument, they rarely provide formal instruction on oral advocacy. Generally, students practice oral arguments with peers or once in front of a teacher. Even worse, oral advocacy is something that is thrown in at the end of the semester, rather than integrated into the entire course.<sup>28</sup>

Most lawyers and law school professors agree that current law school oral advocacy programs do not properly prepare all law students for legal practice; rather, those with oral advocacy skills will carry them on while others will be left to develop them on their own.<sup>29</sup> While many ideas to improve oral advocacy and pedagogy in law schools are floating around, a clear method has yet to be defined. The wise Judge Wilkin wrote speaking of the ancient legal orators, "These founders of the profession were masters of the word, both spoken and written."<sup>30</sup> Advocates and law school advocacy instructors should look to classical rhetoric in the hands of the ancient

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24. *Id.* at 8.

25. *Id.* at Appendix 2.

26. *Id.* at Appendix 4.

27. *Id.* at Appendix 6.

28. Personal interview (records on file with author).

29. Michael H. Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 S. D. L. Rev. 347, 353-4, 365 (2001).

30. Edward D. Re, Chief Judge United States Court of International Trade, Distinguished Professor of Law, St. John's University School of Law, quoting Robert N. Wilkin, *The Spirit of the Legal Profession* 22 (Yale U. Press 1938).

legal orators for a blueprint of oral advocacy pedagogy. As advocates and instructors become familiar with the rhetorical structure, they can easily add their own ideas to continue to improve current oral advocacy.

### III. THE SOLUTION: REVIVING CLASSICAL METHODOLOGY IN AMERICAN LAW SCHOOLS

#### A. *A Road Map of Classical Rhetoric*

Classical Rhetoric embodies a pedagogical system that can aid students as they develop skills of oral argument in the preparation stages (using Invention and Arrangement) as well as presentation stages (through Delivery, Style, and Memory). Classical rhetoric was the dominant discipline for developing legal arguments from the fifth century B.C. until the first quarter of the nineteenth century.<sup>31</sup> Classical rhetoric was the methodology that ancient Roman and Greek orators used to harness the power inherent in language. Rhetoric was epistemic as well as persuasive. Epistemic rhetoricians used language to find truth—as in the Socratic dialogues. Persuasive rhetoricians used the intricacies of language to persuade an audience of an already discovered truth or, in the case of the Sophists, a probability or possibility. Legal rhetoric—termed *apologia*, or defense—was a combination of epistemic and persuasive rhetoric.

Fundamentally, rhetoric was separated into five canons: Invention, Arrangement, Style, Memory, and Delivery. Legal orators utilized these canons to create and organize arguments, to improve eloquence, and to increase powers of recall and presentation. Within the canon of Invention, *topoi*, or topics, assisted orators in developing legal arguments.<sup>32</sup> The canon of Style contained exhaustive catalogues of figures of speech that were divided into two categories: (1) *schemes*, or artful deviations from the ordinary arrangements of words, and (2) *tropes*, or creative variations on the meanings of words.<sup>33</sup>

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31. See Edward P.J. Corbett, *Classical Rhetoric for the Modern Student* 540 (3d ed., Oxford U. Press 1990).

32. See Appendix A for a sample of the Common and Special Topics of Invention; see also Gideon O. Burton, *Silva Rhetoricae*, <<http://humanities.byu.edu/rhetoric/Figures/schemes%20and%20Tropes.htm>>.

33. *Id.*; see Appendix B for a sample of schemes and tropes.

Legal orators used the methods of these five canons to appeal to a jury's sense of *ethos*, *pathos*, and *logos*.<sup>34</sup> These three appeals, or modes of proof, often worked together and will be addressed at greater length in the analysis of the two cases at hand. *Ethos* deals with how the speaker represents himself and his client, *pathos* deals with how the speaker appeals to his audience, and *logos* deals with the logic of the words themselves and how the speaker interacts with the audience. This inquiry will largely focus on Cicero's and Cochran's use of Invention and Style to appeal to their audience's *ethos*, *pathos*, and *logos*. Also, examining the inner-workings of ancient rhetorical schools will introduce the reader to Arrangement, Memory, and Delivery.

### B. *Ancient Rhetorical Schools as Preparation for the Court: A Blueprint for Today*

Prominent Roman orators like Cicero honed their oratorical skills in rhetorical schools. These schools focused first on preparation. Students read orations and observed other orators so that they could eventually imitate these orators in declamation. Today, however, law schools generally prohibit first-year students from seeing other students' or practitioners' work before they complete their advocacy briefs and oral arguments to ensure that students do original work.

The typical Roman school day included detailed instruction on oratory. Master orators taught students different schemes, tropes, canons of rhetoric, and forms of arrangement.<sup>35</sup> Students attended public demonstrations of oratory.<sup>36</sup> They also gave practice speeches in their daily preparation.<sup>37</sup> Rhetorical classrooms were described as dramatic, colorful, and imaginative, though some scholars today argue that these accounts may have been exaggerated.<sup>38</sup> Like contemporary law schools, Roman schools taught students to examine both sides of a controversy.<sup>39</sup>

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34. See Aristotle's *Treatise on Rhetoric* 1356a 1-33 (Thomas Hobbes, trans., D.A. Talboys 1833) (claims these are the only 3 modes of proof).

35. E. Patrick Parks, *The Roman Rhetorical Schools as a Preparation for the Courts under the Early Empire* 62 (Johns Hopkins Press 1945).

36. *Id.* at 63.

37. *Id.* at 64. see also *The Institution Oratoria of Quintilian* (H.E. Butler, trans., Harv. U. Press 1966) (especially Books I and II).

38. *Id.* at 67.

39. *Id.* at 80.

One specific example of the many exercises that were used in the ancient rhetorical schools was the Declamatory exercises—*declamationes*.<sup>40</sup> *Declamationes* served as a medium through which a student could develop a judicial mind and the ability to speak eloquently.<sup>41</sup> The *suasoriae* preceded the *controversiae*, and the *suasoriae* was the part of the exercise that taught the student to think, while the *controversiae* was the exercise in which he learned to present.<sup>42</sup> Before students attempted the declamation, the teacher gave them advice, a *sermo*. Typically, the master orator would present students with a problem, or case, offer analysis, and then assign students to work through the problem themselves. After the students used different rhetorical devices to help solve the problem and express the solution eloquently in writing, the master orator would make corrections. Finally, the students had to commit their answer to memory for oral presentation.<sup>43</sup>

Imitation was another essential tool used in ancient rhetorical schools.<sup>44</sup> The pseudo-Ciceronian *Rhetorica ad Herennium* taught that skill in discourse is acquired by theory, imitation, and practice.<sup>45</sup> Isocrates, in his *Against the Sophists* first suggested the value of imitating accomplished orators.<sup>46</sup> Aristotle, in Chapter IV of his *Poetics*, mentioned that man is the most imitative of all creatures, that he learns first by

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40. Examples of such declamations are recorded in the work of the great Roman orator Seneca the Elder, *Oratorum et rhetorum sententiae divisiones colores*, in the *Declamationes* (19 *Majores* and 145 *Minores*) of Quintilian, and in the 51 *Excerptae decem rhetorum minorum* of Calpurnicus Flaccus. Some of these examples have been lost, and some are merely excerpts of notes taken by Roman instructors. Further, many of the applications of the *controversiae* of the declamation argument have been criticized as bizarre or fanciful. *Id.* at 78. Thus, I would not necessarily suggest that contemporary advocacy teachers use these examples directly in their instruction; yet, I would promote the processes and exercises that these ancient orators used to instruct students, rather than the applications of them.

41. *Id.* at 67.

42. *Id.* at 85.

43. *Id.* at 66.

44. Erasmus' masterpiece *De copia verborum ac rerum* (1528) was the popular text to which many Renaissance schools applying classical rhetoric eventually referred. It contained a meticulous delineation of the "flexible methodology" of imitation required to achieve "*copia*" or the "flexibility with language and ideas, based upon a proficiency in varying models, that prepared [students] to adapt to specific needs of discourse."

45. *The Rhetorical Tradition: Readings from Classical Times to the Present* 252-3 (Patricia Bizzell & Burce Herzberg, eds., Bedford Books of St. Martin's 1990).

46. *Id.* at 45.

imitation, and that he naturally delights in imitative works.<sup>47</sup> Major classical rhetoricians such as Longinus, Cicero, and Quintilian also recommended the practice of imitation.

Unfortunately, the technique of imitation has been misunderstood and curtailed. Many law professors view imitation with distaste because they think that it gives students a disincentive to come up with original arguments. In "The Theory and Practice of Imitation in Classical Rhetoric," Edward P.J. Corbett, quoting Donald Graves' in *Rhetoric and Composition: A Sourcebook for Teachers and Writers*, explains that the term "imitation" had a variety of meanings in antiquity. For example, Imitation was often understood in the same context as the Latin word *similis*, to make someone similar to someone else who was superior.<sup>48</sup> Quintilian explained this aspect of Imitation in positive terms:

In fact, we may note that the elementary study of every branch of learning is directed by reference to some definite standard that is placed before the learner. We must, in fact, be either like or unlike (*aut similes aut dissimiles*) those who have proved their excellence. It is rare for nature to produce such resemblance, which is more often the result of imitation.<sup>49</sup>

Though classical rhetoricians did not view similarity negatively, "similar" did not mean "identical." The Latin verb *aemulari*, from which emulate is derived, meant "to try to rival or equal or surpass" and had roughly the same roots as *imitari*, which meant "to produce an image of."<sup>50</sup>

All imitative exercises involved two steps: Analysis and Genesis. In Analysis, students did a close reading, or *prelection*,<sup>51</sup> of the model work, and students analyzed the merits and weaknesses of arrangement and style.<sup>52</sup> In Genesis, students attempted to produce something similar to the model. The students, however, were eventually severed from their models and asked to write on their own. In the process, the

47. Aristotle, *Poetics* 34 (Stephen Halliwell, trans., U. of N.C. Press 1987).

48. *Rhetoric and Composition: A Sourcebook for Teachers and Writers* (Richard L. Graves, ed., 3d ed., Boynton/Cook 1990).

49. *Id.* at 230.

50. *Id.*

51. For an intricate description of the classroom procedure of imitation, see Quintilian's *Institutio Oratoria* II, v, 6-16; see also Plato, *Phaedrus*, in Bizzell, *supra* n. 45 (where Socrates analyzes a speech by Lysias).

52. Graves, *supra* n. 48, at 231.

students developed rhetorical tools and a rich store of linguistic models.<sup>53</sup>

In addition to lexical analysis, phonetic analysis was an important part of imitation methodology. Teachers had students read their models aloud, alerting students' ears to the pronunciation, rhythms, vowel lengths, and meters of a work. Students even identified which meters were more appropriate for the beginning, middle, and end of their orations. Through this technique, students learned to recognize, remember, and imitate the metrical harmonies of language.

Students also analyzed figures of speech in imitative exercises. Renaissance pedagogues believed it was essential for students to search out eloquent *ways* that orators expressed themselves and implement these models in their own work. Erasmus summed up humanist thought with respect to imitation: "... thumb the great authors by night and day . . . We must keep our eyes open to observe every figure of speech that they use, store it in our memory once observed, imitate it once remembered, and by constant employment develop an expertise by which we may call upon it instantly."<sup>54</sup> Because this technique was so successful, countless books were published outlining the schemes and tropes of language so that students might readily draw on them in analyzing their models.<sup>55</sup>

Law students today should also be given the opportunity to benefit from imitative exercises. Such exercises will sharpen students' memories and creativity and will help them develop a catalogue of tools to solve problems and express their arguments well. With the advent of the Internet and other multi-media resources, advocacy instructors could direct their students to excellent examples of the best legal orators of our day. Law students could carefully examine the strengths and weaknesses of lawyers' oral arguments and imitate the techniques of their modern day "superiors." Students would still have a chance, as Quintilian suggested, to surpass what has already been done.

Another essential exercise of imitation was

53. See Appendix A.

54. Burton, *supra* n. 32.

55. Examples of such books include John Palsgrave's translation of *The Comedy of Acolastus* (Oxford U. Press 1937), which included marginal notes pointing out figures. See also Angel Day, *The English Secretorie* (1596).

*progymnasmata*<sup>56</sup> defined as “a set of rudimentary exercises intended to prepare students of rhetoric for the creation and performance of complete practice orations.”<sup>57</sup> These exercises consisted of fourteen types of imitation. Students would apply what they had learned in exercises of Analysis and develop ideas or quotations from their commonplace books to these preliminary forms of composition. These written exercises ranged from description, to narrative amplification, maxims and fables, encomium, vituperation, and defending and attacking the law.<sup>58</sup>

*Progymnasmata* exercises addressed skills that all law students need to develop. Composing *encomiums*, in which the speaker praises his subject by developing details from his background and personal characteristics, and *vituperations*, in which the author criticizes his subject by the same means, alert the law student to tone and audience. Amplifying a quotation, as one would when practicing a *chreia*, *proverb* or *maxim*, aid the law student in learning how to persuasively develop an idea. *Description* teaches the law student to give greater attention to facts and details and improves storytelling abilities.

Such exercises produced the most admired and effective legal orators of all time. Through rhetorical education, the Roman legal mind “acquired a keener sense of critical inquiry, leading it to view the law from all its possible angles and to arrive, thereby, at that universal and humane interpretation, so inherent a quality of the full flower of the Roman law.”<sup>59</sup> Because Roman legal orators were rigorously trained in rhetorical methods, they were able to think and speak on their own once they were released into the courtroom. Furthermore, rhetoric’s emphasis on truth and morality insured that no matter what conclusions legal orators reached, the orators would act ethically. Further, one of the characteristics of the declamation exercise was that the students were supposed to attempt to inject some original, creative interpretation into a case.<sup>60</sup> Thus, students’ minds were expanded from critical to creative thought. This is different from many law schools

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56. See Appendix B: *Progymnasmata*.

57. Burton, *supra* n. 32.

58. For a complete listing of the *progymnasmata*, see Appendix B.

59. Parks, *supra* n. 35, at 78-79.

60. *Id.*

today, where in their briefs students are heavily evaluated on their technical skill and how closely they follow the structure presented to them by the teacher.

These are only a few of many exercises available through rhetoric. Legal oral advocacy educators must delve deep into the rhetorical tradition for many more examples of useful exercises and techniques that will help law students achieve eloquence.

### C. *The Modern Critical View of Classical Rhetoric*

While the modern legal education system lacks concrete methodologies for teaching oral advocacy, many scholars are reluctant to accept classical rhetoric as the answer.<sup>61</sup> Though Roman legal rhetoric is rarely mentioned in law school classes or courtrooms today, interest in *pathos* and *ethos* and the power of rhetoric is slowly surfacing in the speeches and writings of our greatest oral advocates as well as in the work of respected academicians.<sup>62</sup> Recently, legal oratory scholars have begun to reclaim rhetoric as a valuable tool in oral argumentation. Gerald Frug of Stanford University suggested that we abandon the search for the basis of legal argument, seemingly always out of the reach of advocacy programs and young lawyers, and “replace such a search with a focus on legal argument’s effects, in particular, on its attempts to persuade. I suggest, in other words, that we look at legal argument as an example of rhetoric.”<sup>63</sup> Many other academicians and practitioners see the value of legal rhetoric as it was used by Cicero—expressing civic virtue and political stability as well as providing intellectual structure. Nevertheless, rhetoric is rarely, if ever, applied in law school training. Law students continue to lack a comprehensive system of methodology for

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61. They view the formal logic used in rhetoric as limited because “it can only be used in *easy* cases where the facts and the legal rule are clear cut.”

62. See Francis J. Mootz III, *Rhetorical Knowledge in Legal Practice and Theory*, 6 S. Cal. Interdisciplinary L.J. 491 (1998); see also Bernard E. Jacob, *Ancient Rhetoric, Modern Legal Thought, and Politics: A Review on the Translation of Viehweg’s “Topics of Law”* 89 N.W. U. L. Rev. 1622 (1995); Thomas M. McDonnell, *Playing Beyond the Rules: A Realist and Rhetoric-based Approach to Researching the Law and Solving Legal Problems*, 67 UMKC L. Rev. 285 (1998); James B. White, *Law as Rhetoric, Rhetoric as Law: the Arts of Cultural and Communal Life*, 52 U. Chi. L. Rev. 684 (1985); James B. White, *The Ethics of Argument: Plato’s Gorgias and the Modern Lawyer*, 50 U. Chi. L. Rev. 849 (1983).

63. Jerry Frug, *Argument as Character*, 40 Stan. L. Rev. 869, 872 (1988).



oral argumentation.

As we explore the rhetoric of Cicero and Cochran, separated by two millennia, the advantages of the classical rhetorical method should become clear. Perhaps this classical methodology, once a powerful part of the Roman civil law tradition, will once again find a home in our hearts, in our minds, and in our legal tongues as part of our own contemporary American legal education tradition.

#### IV. A COMPARISON OF CLASSICAL AND MODERN ORAL ADVOCACY TECHNIQUES

One of the most effective techniques of classical rhetorical education is imitation. By studying the skills of those who have mastered them, students can develop a foundation from which they can continuously draw while still discovering their own style. In the following sections, I present an analysis of the techniques of two skilled orators as an example of how classical rhetoric studies can make students more aware of oral advocacy skills.

##### A. *Cicero v. Cochran*

###### 1. *Cicero's Pro Cluentio and the Roman Legal and Political Atmosphere*

By the time Cicero took on *Pro Cluentio* in 66 B.C., his rhetorical abilities were highly developed, and he had secured the title of Praetor in the Roman government.<sup>64</sup> Though of humble birth, Cicero had studied Greek and Roman rhetoric abroad. He had used his mastery of language to rival the wealth and power of politicians and noble men of Rome. Cicero had successfully defended many clients against well-known advocates and improbable odds. Cicero and most Roman legal orators primarily spoke before large crowds in the Forum—the center for Roman civic activity.<sup>65</sup> The Forum was filled with jurists and civic leaders who evaluated the cases and rendered decisions. When arguing *Pro Cluentio*, Cicero had to be sensitive to a jury of Senators and Equestrian Orders of noble

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64. John T. Kirby, *The Rhetoric of Cicero's Pro Cluentio* (J.C. Gieben 1990).

65. Richard L. Enos, *The Literate Mode of Cicero's Legal Rhetoric* 47 (S. Ill. Univ. Press 1988).

birth, legal education, and wealth.<sup>66</sup> Senate members familiar with the law and legal rhetoric “frequently interrupted proceedings with boisterous cries of approval and disapproval.”<sup>67</sup> The public also attended since trials were flavored with scandal and heightened by the eloquence of legal orators.<sup>68</sup> At a time of moral decay and political crisis in Rome, the Forum also became a platform for advancing Roman values, and Cicero became one of the greatest spokesmen for virtue and truth, using legal rhetoric to find and expound the truth of a case.<sup>69</sup>

*Pro Cluentio* is one of Cicero’s most elaborate and complex legal orations. The argument is divided into 202 sections that will be referred to by section number in the subsequent analysis. Cicero was defending Aulus Cluentius Habitus on a charge of poisoning Oppianicus. The case was prejudiced by rumors that Cluentius had bribed the court to get Oppianicus convicted in a previous case and stories that depicted Oppianicus as a virtuous and honest statesman.<sup>70</sup> Cicero’s powerful rhetoric, however, aided him to unfold the truth and to eloquently convince the jury of Cluentius’s innocence.

## 2. *People v. Orenthal James Simpson and Contemporary American Criminal Law*

When O.J. Simpson was accused of murdering his ex-wife, Nicole Brown Simpson, and Ronald Goldman, Simpson summoned a “dream team” of attorneys led by Johnnie Cochran, Jr. Cochran appealed to masses of television viewers, as well as a Los Angeles jury composed of nine Blacks, two Whites, and one Hispanic.<sup>71</sup> Mr. Cochran simply had to persuade the jury that Simpson was innocent since once the accused is acquitted, the prosecution cannot appeal. This was not as easy a task as it seems, however. Defendants are convicted in 75 percent to 80 percent of contested criminal

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66. *Id.* at 16.

67. *Id.* at 47.

68. *Id.* at 48.

69. *Id.* at 47.

70. *Cicero: In Twenty-Eight Volumes* vol. IX (H. Grose Hodge, trans., Harv. U. Press 1979).

71. Alan M. Dershowitz, *Reasonable Doubts: The O.J. Simpson Case and the Criminal Justice System* 12 (Simon & Schuster 1996).

cases.<sup>72</sup> Even though it seemed that the odds and evidence were against him, O.J. Simpson was acquitted on October 3, 1995, due in large part to Cochran's abilities to persuade the jury that Simpson was innocent—or at least that there was a reasonable doubt of his guilt.

### B. *Ethos*

Of the three modes of proof, *ethos* deals with how the audience views the speaker. In the Roman legal system, a defendant was entitled to a *patronus*, or advocate. There were three ways an advocate could appeal to *ethos*: (1) through his reputation or "prevenient *ethos*," (2) through "argued *ethos*," or how the advocate portrays himself or his client during the argument, and (3) through "negative *ethos*," imputing bad character to the opponent or proving that bad character was incorrectly attributed to the defendant.

#### 1. *Cicero's Effective Appeal to Ethos in Pro Cluentio*

Cicero's reputation was already well-known and respected, so he merely mentions his *prevenient ethos* in §§144–145.<sup>73</sup> He also reminded the jury of his extensive knowledge of the law and of his office as Praetor. Cicero appeals to *argued ethos* to make his audience (1) *beniuolum*, or open-minded, (2) *attentum*, or attentive, and (3) *docilem*, or susceptible to instruction. These three goals are achieved in conjunction with each other. Cicero pursued *beniuolentia* throughout his speech. First, he says that public opinion has practically given an unspoken verdict against Cluentius. In §3,<sup>74</sup> Cicero asks the jury not to approach the case with prejudice, or *inuidia*, and to be open-minded enough to allow any of their preconceived opinions to be altered by the force of reason by being *docilem*.

*Beniuolentia* and *docilem*, however, are not enough. Cicero moves on to attain *attentos* in §7<sup>75</sup> through his *argued ethos*. He shows from the beginning that what he is about to say is important, new, and hard to believe, and he shows that it pertains to important people, to the Gods, and to the good of

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72. *Id.* at 13.

73. Hodge, *supra* n. 70, at 377-79.

74. *Id.* at 225.

75. *Id.* at 227-29.

the republic.<sup>76</sup> Cicero appeals through the Invention topic of *Testimony* through the *Supernatural* when he says, "Heaven grant me a favorable hearing from you."<sup>77</sup> In appealing to the *Supernatural*, Cicero implies that if the jury does not listen, they will defy the gods, who are on Cluentius's side, and incur the gods' wrath. Cicero's goal in this rhetorical plea is to give the jury a personal interest in the matter, so they are more likely to care how they decide.

Cicero also improves his *argued ethos* in § 8<sup>78</sup> when he promises the jury that his defense will be brief. At the same time, he outlines the *summa causae* of his oration so that it will be logical and easy for his audience to follow. Further, even though he could have his client acquitted on a technical matter, Cicero grants Cluentius's wish that he not be defended on *lege*, or legal details. This portrays Cicero as a man who wants to do what is right for his client. It also portrays his client as necessarily innocent on the merits.

Finally, Cicero removes prejudice through *negative ethos*, by logically proving that the prosecution's accusation that Cluentius bribed the court is false. Cicero then tears down Oppianicus's martyr-like status by outlining Oppianicus's crimes in §§9-42,<sup>79</sup> syllogism upon syllogism, leading the jury to conclude that Oppianicus in fact attempted to poison Cluentius and succeeded in murdering several others. Cicero's use of *negative ethos* eliminated the prejudice against Cluentius and placed blame on his opponent.

## 2. Cochran's Emphasis on Ethos in *People v. O.J. Simpson*

Like Cicero, Cochran deals with the problem of *invidia*, or prejudice, because millions of people watched O.J. Simpson flee from police cars and helicopters after his ex-wife's murder on national television. Cochran dispels his audience's suspicions by using *argued ethos* to make the audience *benivolus* as Cicero did. Cochran sculpts himself and his client as wholesome, normal people. He cordially pays deference to the families of the victims, as well as to the defendant's family in order to personalize O.J. Simpson while also showing that

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76. *Id.* at 225-29.

77. *Id.* at 229.

78. *Id.* at 229-31.

79. *Id.* at 231-65.

Cochran is professional and sympathetic.

Cochran uses the rhetorical device of *praeteritio*, or “passing by” an idea or weakness, in order to gain the jury’s trust and dispel prejudice by addressing the jury in the following way: “The Defendant, Mr. Orenthal James Simpson, is now afforded an opportunity to argue the case, if you will, but I’m not going to argue with you, Ladies and Gentlemen. What I’m going to do is try and discuss the reasonable inferences which I feel can be drawn from the evidence.”<sup>80</sup> Cochran “passes by” the idea that he will be arguing anything. He uses this technique to lull the jury into thinking it will be determining the facts on its own, while Cochran will simply characterize the facts for them. This tactic bolsters Cochran’s argued ethos because it puts him in a different category than the stereotype of the pushy and dishonest lawyer that many of the jurors may have brought to trial.

Cochran also admits his weaknesses and uses *litotes*, or deliberate understatement, to gain the trust of the jury. This is a technique with which many modern American lawyers are familiar. He tells the jury that if he does say something wrong, the jury should not hold that against his client. Cochran also admits that he talks too fast, and the court reporters should reprimand him. This is a very effective rhetorical device because the most difficult man to argue against is the man who admits he is wrong. This shows that even if a well-trained, educated lawyer can make mistakes, the prosecution, the policemen, and even the jury can make mistakes.

Cochran builds up his client’s ethos much more extensively than Cicero did. He repeats throughout the closing argument how proud the defense team was to have the privilege of defending such an incredible man in this “journey towards justice.”<sup>81</sup> Cochran also uses the topic of Invention of *Precedents* to paint pictures of O.J. Simpson having hamburgers at McDonalds with friends and attending his child’s recitals. Cochran then uses the topic of Invention of *Contraries* by juxtaposing these pictures with the prosecution’s pictures of O.J. as a murderous, insane, and uncivilized dog.<sup>82</sup>

Cochran puts himself on the level of his listeners by using a

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80. See Off. Tr. at 7, *People v. Simpson*, Case No. BA097211, 1995 WL 686429 (Cal. Super. L.A. County Dept. 103 1995).

81. *Id.* at xx.

82. *Id.* at 20-21.

very conversational tone and using mostly one-syllable words to improve his *argued ethos*. He uses the rhetorical figure of speech *polysyndeton*, a string of conjunctions designed for persuasive emphasis:

[*And*] if you stand the witnesses that we presented who stand unimpeached, unimpeached, *and* if you are left with dogs starting to bark at 10:35 or 10:40, 10:40 let's say—*and* we know from the most qualified individuals. . . this was a struggle that took from five to fifteen minutes. It's Already 10:55. *And* remember, the thumps were at 10:40 or 10:45—O.J. Simpson could not be guilty. He is then entitled to an acquittal.<sup>83</sup>

Cochran uses this rhetorical device to pile up evidence in favor of his client, which is similar to the way Cicero used negative ethos and piled up evidence against Oppianicus.

Cochran does not have a substantial reputation among the jury as Cicero did, so he spends no time on *prevenient ethos*. Cochran does use *negative ethos*, however, by focusing on the incompetence of the Los Angeles Police Department (LAPD) and the prosecution. Cochran says that the LAPD and the prosecutors are more concerned with their own images than with doing professional police work.<sup>84</sup> Cochran characterizes the prosecution as gloomy and distrustful, overly "speculative," and reliant on conjecture through the topic of Invention Definition.<sup>85</sup>

### C. *Pathos*

Pathos is the mode of proof concerned with appealing to the audience through emotions. The word is derived from the Greek *pathein*, "to experience."

#### 1. *Cicero's Use of Rhetoric to Appeal to the Jury's Pathos*

One of Cicero's most crucial appeals to pathos comes in §3,<sup>86</sup> when he argues against *invidia*, or prejudice. He also uses *causa communis*, putting the jury in the defendant's place. In §8,<sup>87</sup> Cicero inspires fear in the jury. He uses the topic of

83. *Id.* at 19.

84. *Id.* at 9.

85. *Id.*

86. Hodge, *supra* n. 70, at 225.

87. *Id.* at 229-31.

Invention of *Division* when he asks his jury to look at his client, one part, and relate him to themselves, or the whole, in order to see that prejudice will not only affect his client, Cluentius, but it will affect all of them.<sup>88</sup> By asking the jury to put themselves in Cluentius's place, they can feel the pain Cluentius has felt by being prejudged for eight years. Cicero uses *causa communis* to threaten the jury that if they give in to the prejudice they will lose their very identity as judges who are supposed to be fair and uphold the right, and that something bad could also happen to them if they convict an innocent man.

Cicero uses *personification* of prejudice and innocence to induce feelings of fear in the jury. "Everyone should fear prejudice," he says, "because it is the murderer of innocence."<sup>89</sup> Cicero says that though "prejudice may lord it at a public meeting, it must hide its head at a court of law."<sup>90</sup> Cicero uses this device to bring a graphic image to the jury and induce them to feel shame and impropriety if they allow prejudice into the court. Since the jury is composed of noble, educated statesmen, they would not want to do something improper. Cicero implies that the nonrational feelings of *invidia* against Cluentius are inappropriate and base. Ironically, he convinces the jury of his conclusion precisely by arousing base, negative feelings in them about being associated with people who make illogical decisions simply based on feelings.

In §195, Cicero appeals to the jury's *pathos* with the rhetorical device of the *Supernatural* through the topic of invention of *Testimony*. He says, "Gentlemen, chance has made you as gods, to sway for all time the destiny of my client, Aulus Cluentius."<sup>91</sup> Cicero thus praises the jury and persuades them to take its decision seriously. Contrary to what its members may have thought before Cicero's oration, Cicero's rhetoric persuades the jury that there is actually a question as to whether Cluentius is guilty. Cicero intends for the jury to relish in this question because it is through this question they retain their divine status. Further, the jury will conjure images of Roman mythology in their minds. Having heard stories of gods who were unmerciful when dealing with humans such as

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88. *Id.* at 225.

89. *Id.* at xx.

90. *Id.* at 227.

91. *Id.* at 433.

themselves, Cicero hopes the jury will not be so harsh with his client.

## 2. Cochran's Overwhelming Appeal to Pathos

After strengthening himself through his appeal to *ethos*, Cochran focuses on *pathos*. He engages in an *encomium*, or a speech of praise, where he glorifies the jury more extensively than Cicero through the stylistic device of *hyperbole*, or exaggeration, and exalts them as a "truly marvelous jury."<sup>92</sup> Cochran emphasizes this point with an appeal to the rhetorical Invention topic of *Authority* by citing Abraham Lincoln: "jury service is the highest act of citizenship."<sup>93</sup> This is especially effective because Cochran appeals to a predominantly black jury who would associate Lincoln with emancipation. Cochran later develops the theme of racial freedom.

The jury agrees with everything Cochran has said to this point since they cannot argue with his praise. Then, Cochran gives the final test of their service as jurors: "the quality of the verdict that you render and whether or not that verdict speaks justice as we move towards justice."<sup>94</sup> Here Cochran uses the topic of Invention of *Past Fact and Future Fact*. He implies that the jury's future verdict will determine the quality of their past service. This imposes a responsibility on the jury to listen to Cochran's words closely, so that they will not make a misstep in the "journey toward justice."

Cochran then appeals to the emotions of the jury by reminding them that Mr. Orenthal James Simpson is "on trial for his life."<sup>95</sup> Once the members of the jury are aware of the seriousness of their role—almost gods because they will control O.J. Simpson's life—Cochran reminds them that he was the one who placed them in this important role. He claims that the defense attorneys as well as the prosecution were very, very careful to select people who would be fair to both sides.<sup>96</sup> This tactic places Cochran in a position above the jury, as if they have a duty to him. In being fair to both sides, Cochran says, as he artfully requests *benivolentia* of the jury, they must "keep

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92. See Off. Tr. at 7, *Simpson*, 1995 WL 686429.

93. *Id.* at x.

94. *Id.* at 7.

95. *Id.*

96. *Id.*



an open mind. . . no one can tell you what the facts are.”<sup>97</sup> Cochran leads the jury to feel noble and then convinces them that if they do not listen to Cochran’s version of the facts, and if they have any prejudice against O.J. Simpson, the jury is throwing off that coat of nobility.

In another attempt to appeal to the emotions of the audience, Cochran relies on the Invention topic of *Testimony* through the devices of *Authority* and the *Supernatural*, similar to Cicero but on a grander scale. He says, “Sister Rose said a long time ago, ‘He who violates his oath profanes the divinity of Faith himself.’ And, of course, both sides of this lawsuit have faith that you’ll live up to your promises and I’m sure you’ll do that.”<sup>98</sup> Cochran uses the stylistic device of *antanaclasis* when he uses the word “faith” in two different senses. Even though he says both sides have faith, since Cochran is the one speaking, he entreats the jury to think about his faith in them to acquit. He links the faith that the defense has in the jury with that “Faith,” or God, to which Sister Rose refers. Cochran, like Cicero, appeals to the *Supernatural* to stir fear in the jury. He causes the jury to believe that if they convict O.J. Simpson, then they will be defying the truth that O.J. is innocent, that truth that only resides in God.

Additionally, in appealing to the jury through *pathos*, Cochran speaks on the idea of freedom and brotherhood. He uses the pronoun “we”, bringing everyone together as one. He forces the jury to put themselves in O.J. Simpson’s shoes, using the rhetorical device *causa communis*. Cochran uses the stylistic scheme of *rhetorical questions* to stir the jury’s imagination: Would the jury like to be locked away forever? Would they like to lose their freedom? He again uses *Authority* by quoting Frederick Douglas, who said shortly after the slaves were freed, “In a composite nation like ours as before the law, there should be no rich, no poor, no high, no low, no white, no black, but common country, common citizenship, equal rights and a common destiny.”<sup>99</sup> This *Authority* appeals to the jury, mostly Blacks, by stirring within them a collage of memories and experiences, calling them to the duty to free another Black man, O.J. Simpson, and enabling them to realize Douglas’s dream.

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97. *Id.*

98. *Id.* at 8.

99. *Id.*

As a final appeal to freedom, Cochran characterizes the detective in charge of the investigation as a racist. He emphasizes "there is a Caucasian hair on that glove," that the detective was a liar, and that the jury would not convict "black" man O.J. Simpson because they are the guardians of justice.<sup>100</sup> Cochran uses this approach to warn the jury that they might face a racist prosecution. Cochran's words leave the jury passionate and worried about racism—something far from the possibility or probability that O.J. Simpson murdered his ex-wife.

#### D. *Logos*

*Logos* is the mode of proof appealing to reason, found in the words of the speech itself—the interface between speaker and audience. *Logos* is the most complex of the three appeals, and can easily cause confusion. Also, if the audience cannot follow a rational argument, they might lose focus. Ancient Roman legal orators used formal logic, or syllogistic theory. Aristotle defined a syllogism as "a *logos* in which, when certain things have been posited, something else proves as a result to be necessarily so."<sup>101</sup> Generally, orators used two rhetorical bases for the syllogisms in their arguments from *logos*: (1) *enthymemes* for deduction and (2) *examples* for induction.<sup>102</sup> Rhetorical syllogisms follow several enthymematic patterns and often depend on probabilities. They are very useful in legal rhetoric because there is no universal agreement on what may be termed probable.

##### 1. *Cicero's Prominent Appeal to Logos*

Although Cicero uses all three modes of proof, he theorizes that pathos and ethos are simply support for the foundation of the case—*logos*. Cicero posited that the case should speak for itself. The orator was merely the vehicle to bring forth the truth. Since *logos* is characterized by the words themselves rather than by the orator's personality or the audience's feelings, this is the perfect appeal to accomplish Cicero's goal of finding and expressing truth. Cicero uses several enthymematic patterns in *Pro Cluentio*—this study will only

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100. *Id.* at 76.

101. Kirby, *supra* n. 64.

102. *Id.* at 78.

examine *semeion*, *diuisio*, *non sequitur*, and *Stasis Theory*.

A *semeion* is a pattern of *enthymeme* that relies on probability (as in “where there’s smoke, there’s fire” because the smoke is caused by the fire and signifies it).<sup>103</sup> In §25, Cicero gives us a *semeion*:

All who flee are (probably) guilty, and aware of it;

Oppianicus fled;

Therefore Oppianicus was guilty and aware.<sup>104</sup>

Cicero is a master of human psychology and constructs this syllogism so that the first premise is in the very beginning, but then he leaves out facts that will complete the syllogism until the end, when the jury can draw its own inferences and conclusions. Using this rhetorical device was effective because the jury was prejudiced against Cluentius, and Cicero wanted the jury to discover the ultimate truth by drawing inferences themselves.

Cicero also masterfully uses the enthymematic pattern of *diuisio*, or partition, which falls under *Division*. Cicero uses *diuisio* to play the opposing arguments against each other, showing the jury by process of elimination which arguments are true. For example, in §64<sup>105</sup>, Cicero assumes the premise that the court in Oppianicus’s trial had been bribed. He uses *diuisio* to show the possible explanations: (1) If the jury was bribed either by Oppianicus or Cluentius, And if not by Cluentius, Then by Oppianicus, and (2) If the jury was bribed by either Oppianicus or Cluentius (but not both), And if by Oppianicus, Then not by Cluentius.<sup>106</sup> Even though Cicero leaves out the premise that both Cluentius and Oppianicus could be guilty, he openly states several possibilities for the jury to weigh and by which to make a judgment.<sup>107</sup> This has immense cognitive appeal. By partitioning the problem into all of its possible conclusions, Cicero gives the audience a sense of completeness, so that the jury is not left with any doubt that Cluentius is innocent.

Cicero also uses *Non sequitur*, or complete *Refutation* of his

103. *Id.* at 87.

104. *Id.* at 88.

105. Hodge, *supra* n. 70, at 289.

106. Kirby, *supra* n. 64, at 95.

107. W. Peterson, *M. Tulli Ciceronus Pro A. Cluentio Oratio*, (Macmillan 1899).

opponent's argument, as an appeal to *logos*. In §92<sup>108</sup>, Cicero explains that even if others who Cluentius was accused of conspiring with to bribe the jury were guilty, this does not mean that Cluentius is guilty. This device helps Cicero show that the argument posited by the prosecution has no logical merit.<sup>109</sup> Cicero's tactic is simple and easy for the jury to follow; yet it refutes the prosecution's argument.

Stasis Theory is Cicero's final appeal to *logos*. This theory is a system of Invention to determine the point at issue. The system consists of four basic categories: *stokhasmos*, *horos*, *poiotes*, and *metalepsis*, or Fact, Definition, Quality, and Transference.<sup>110</sup> Classical judicial orators asked themselves three questions: (1) *an sit* "Whether a thing is"; (2) *quid sit* "What it is"; and (3) *quale sit* "What kind of thing it is?" Pleading a case under stasis of fact is to answer the first question negatively. If the answer is affirmative, the stasis moves to the second question of whether it was a crime. If the orator answers affirmatively, he must move to stasis of Quality, the question of whether the crime really was criminal, or whether it could be justified under the circumstances. Transference is the last chance doctrine, where an advocate must attempt to free the defendant by a legal technicality.<sup>111</sup>

In *Pro Cluentio*, Cicero attacks the issue under a double stasis. He begins the case under the strongest stasis of *Fact*, claiming that Cluentius is innocent of either bribing the jury at Oppianicus's trial or poisoning Oppianicus later. But, as alluded to, Cicero can also attack the prosecution under *Transference* because Cluentius is a member of the Equestrian order and thus is technically not liable under the *Lex Cornelia*, a statute worded to apply only to Senators. Cicero chooses to abandon *Transference*, however, because he is certain that his client is innocent and that the jury will acquit on the merits.

## 2. Cochran's Limited Appeal to Logos

Cochran uses *logos* less than any of the three appeals. His *Stasis Theory* is one of *Fact*, and he sets out to show the jury that O.J. Simpson is completely innocent. He uses the stylistic

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108. Hodge, *supra* n. 70, at 319-21.

109. Kirby, *supra* n. 64, at 98.

110. See Burton, *supra* n. 32.

111. Kirby, *supra* n. 64, at 109.

rhetoical device of *metaphor* to help the jury visualize this: O.J. Simpson is cloaked in a presumption of innocence—just as everyone on the jury is.<sup>112</sup> Cochran claims Simpson, an innocent man, is on trial because there was an incompetent investigation of the facts. Cochran argues that had the prosecution been more careful or checked out other suspects, his client would have quickly been set free.

Unlike Cicero, Cochran eventually relies on *Transference*. He details the semantics of the term “reasonable doubt” to persuade the jury that even if they believe O.J. Simpson was guilty of murder, they had to acquit on a technicality. Cochran explains the instruction “Sufficiency of the Circumstantial Evidence,” which states

A finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with a theory that the defendant is guilty of a crime, but (2) cannot be reconciled with any other rational conclusion. Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt.<sup>113</sup>

Mr. Cochran leads the jury along an interpretation of this instruction through an enthymeme. He tells the jury that if both the prosecution's interpretation of evidence and the defendant's interpretation of evidence seem reasonable, then they must find for the one that points toward innocence. He continues by saying that if the prosecution is unreasonable and the defense is reasonable, they must find for the defendant. Finally, Cochran explains that only if the prosecution is totally reasonable, and the defense is totally unreasonable, can the jury convict.<sup>114</sup> Through the topic of *Possible/Impossible*, Cochran assures the jury that all evidence in favor of O.J. Simpson is reasonable and that the prosecution's circumstantial evidence is unreasonable. He argues that O.J. Simpson is arthritic, old, and even clumsy. He then juxtaposes this with the prosecution's characterization of the evidence that the murder was stealthy.<sup>115</sup> This device leads the jury to believe it was impossible for Simpson to have committed the murder.

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112. Off. Tr. at 109, *Simpson*, 1995 WL 686429.

113. *Id.* at 19.

114. *Id.* at 20.

115. *Id.* at 42.

Cochran also appeals to *logos* as he continually repeats the term “common sense.” He argues that the prosecution’s theory does not make sense. Therefore, it “just makes sense” to set O.J. Simpson free. He implies that the members of the jury would only convict Simpson if they had no common sense. Cochran refers to the topic of Invention of *Testimony* through the device of *maxim*: “If it doesn’t fit, you must acquit.”<sup>116</sup> Cochran uses this phrase as an allusion to the gloves used in the murder. Cochran says the glove does not fit.

### *E. Comparing Cicero and Cochran on a Larger Scale: The Significance of the Rhetorical Analysis*

After comparing Cicero and Cochran on a smaller scale, we may turn to a larger scale comparison of the two orators and the significance of their respective rhetorical techniques to contemporary legal education.

#### *1. Review of Similarities*

From the rhetorical analysis of Cicero’s *Pro Cluentio* and Cochran’s closing argument in *People v. O.J. Simpson*, we can see, that despite the two-thousand years that have passed between their careers, Cicero and Cochran used similar rhetorical devices. Both orators used *negative ethos* to (1) dissuade the jury from believing prejudice that has preceded their clients and (2) tear down the prosecution. Both orators also used some degree of *argued ethos* to gain the jury’s trust, to get their attention, and to make them more open-minded and receptive to instruction. In their appeals to *pathos*, both Cicero and Cochran praised their juries with the rhetorical device of *encomium*, likening the jury unto gods, and then, when Cicero and Cochran secured the jury’s attention, they used the rhetorical Invention device of *causa communis* in order to put the juries in the place of their defendants and to inspire passionate emotions and fears. Both orators also appealed to the topic of Invention of *Testimony* through the *Supernatural*. Whereas Cicero appealed to Roman, pagan gods, Cochran focused on the Christian God. Finally, both orators appealed to *logos*, though to varying degrees and with different motives.

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116. *Id.* at 19.

## 2. Overview of Differences: Cicero's and Cochran's Diverse Means and Ends

Cicero and Cochran used different techniques. Cicero largely used rhetorical topics of Invention and devices of Style to appeal to *logos*; yet, he used *ethos* and *pathos* to bolster *logos*. This emphasis on *logos* was effective because it helped Cicero (1) develop a sound logical structure and (2) increase the predictability and certainty of the court's decisions because it allowed Cicero to "discover" the truth through syllogisms and topics of Invention. Cochran, on the other hand, focused most of his oratorical energies on appeals to *pathos* and *ethos*. While Cochran's appeal may have been appropriate to persuade a jury of laypersons, it lacked the depth and complexity of Cicero's argument. This resulted in (1) a disorganized structure and (2) lack of certainty up until the verdict was announced. Both Cicero and Cochran chose to use different means because they were seeking different ends. Cicero sought to use epistemic rhetoric to find truth and lead his jury to truth and public virtue in the long run. Cochran sought to use any device he could to simply win the case at hand.

Cicero used rhetorical topics of Invention and Style to create a strong, unified structure for an argument that flows syllogism upon syllogism to the truth of whether Cluentius murdered Oppianicus. Cicero created an intricate network of syllogisms that unify the beginning, middle, and end of his argument. Cicero used syllogistic theory and other rhetorical devices from *logos* not only to generate a sound logical structure to persuade his jury, but also to lead Cicero himself and the jury to the truth prior to his closing argument. After using epistemic rhetoric to find truth, Cicero was so certain that the court would find his client innocent on the merits of the case that he decided to forego pursuing his *Transference* argument that the statute the prosecutor was using did not apply to his client. Cicero's extensive use of *logos* assured that he, the jury, and the public looking on would generally come to the same conclusion. Cicero was also appealing to a jury of Roman men educated in the law, rhetoric, and politics. He could not supine the jury simply with emotional stories or distract them with unrelated issues simply to appeal to *pathos*. He would not have been taken seriously unless his logic was sound.

Of the two parts to syllogistic theory, Cochran used more

*examples* in his appeal to *logos* than Cicero. Aristotle found that use of *example* as rhetorical argument was more suited to deliberative oratory—which is similar to religious sermons—and *enthymeme* was more suited to judicial.<sup>117</sup> Although Cochran may not have been conscious of it, he organized only one enthymeme in his entire closing argument. He made haphazard references to authorities like Abraham Lincoln, Sister Rose, and Frederick Douglas.<sup>118</sup> This technique may have been an effective way of securing the audience's attention periodically, especially since his jury is mostly composed of people who might respect such authorities. Still, Cochran lacked organization in his use of *example* and other language devices and lost the overall unification and cognitive effect that Cicero attained by using systematic rhetoric to secure a sound structure. Cochran pleased his audience in spurts to regain their attention, but he steered away from the spine of the case onto the ribs too often in digressions. Even Cochran's contemporaries agree that this is not a good tactic.<sup>119</sup>

Cochran's oft-repeated reference to "common sense" was an appeal to *logos* that bolstered his *ethos* and *pathos* by relating to the average citizens on the jury and removing the barrier between legal theory and a layperson's understanding. This tactic did not, however, help Cochran improve the predictability of the jury's decision. Cochran merely hoped that his client could win the case on the merits, but he had no way of knowing whether O.J. Simpson was innocent or guilty. So, Cochran relied on a technicality of semantics in the jury instructions' definition of reasonable doubt. Therefore, Cochran did not achieve the overwhelming consensus through *ethos* and *pathos* that Cicero achieved through solid *logos*. Millions of people, many of whom had been watching the trial hour after hour for the past year, were in suspense until the minute those fated words were uttered: not guilty.<sup>120</sup> Even Simpson's appellate lawyer Alan Dershowitz began preparing for an appeal when he heard that the jury had a verdict. Many Americans believed that O.J. Simpson was factually guilty.<sup>121</sup>

Whereas Cochran used *logos* to bolster his *pathos* and *ethos*,

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117. Kirby, *supra* n. 64, at 99.

118. See Off. Tr. at x, 8, *Simpson*, 1995 WL 686429.

119. Gordon, *supra* n. 1, at 781.

120. Dershowitz, *supra* n. 71, at 12.

121. *Id.* at 14.



Cicero used rhetorical devices from *pathos* and *ethos* to decorate and bolster his underlying *logos*. For example, *Humor* was an important stylistic device for both Cicero and Cochran to appeal to *pathos*. Cochran used simple, conversational humor that would increase his *argued ethos* by creating emotions of happiness in the jury. Cicero, on the other hand, used a complex form of *Irony* that demanded his jury to have knowledge of politics, history, rhetoric, and law. Cicero's humor, through an appeal to *pathos*, actually bolstered his *logos* because his *Irony* incited contemplation and cognition in his jury. Such complex humor, contrarily, may not have been appropriate for the modern jury that Cochran was addressing.

Additionally, Cicero only touched on his own reputation and did not spend much time building up Cluentius's character but Cochran heavily emphasized his own qualities and spent much of his closing argument convincing the jury that he and his client were good people. Cochran may have emphasized himself, however, because he did not have a well-established reputation with the jury as Cicero did. Alternatively, Cicero declared:

It is a great mistake to consider the speeches we deliver before the courts as a faithful depository of our personal opinions. All these speeches emanate from the cause and the circumstances rather than the man and the orator, for if the cause could speak for itself, there would be no need of counsel. We are therefore called upon not to utter our own maxims, but to bring out everything of significance that the cause can furnish.<sup>122</sup>

Cicero relied on rhetorical methodology and specifically *logos* because he viewed it as the best way to let the words and the facts speak for themselves. Cloaked in *pathos* and *ethos*, *logos* would create the clearest path to truth.

Conversely, Cochran appealed heavily to *pathos* in developing the theme of racism in the case and inspiring the jury to acquit Simpson with the spirit of freeing a Black man from bondage. Cochran obviously saw *pathos* as his most effective appeal for his audience. But according to this methodology, the jury could have decided one way that day because of the feelings that were stirred within them, and they could have decided another way another day if different

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122. Gordon, *supra* n. 1, at 788.

feelings were stirred within them. However, this may be effective because in a criminal trial the prosecution cannot appeal. In most cases, the jury finds the defendant guilty, but many cases have been reversed on appeal because of improper appeals to passion before a jury.<sup>123</sup>

Perhaps the reasons why each of these orators used different means in their legal argumentation can be found in their legal education; and perhaps the reasons for such differences will also become clearer as we examine how different Cicero's and Cochran's ends were. Both Cicero and Cochran professed that their purposes were to find truth. However, they each defined truth differently. For Cicero, justice, as in coming to a proper conclusion based on the details of the law, was not an end in itself; impliedly, neither was winning.<sup>124</sup> Neither of these ends necessarily manifested truth. For Cicero truth was the answer to the question: "Did Cluentius kill Oppianicus?" The purpose of Cicero's argument also extended to the ethics of classical rhetoric. Cicero hoped that he, the jury, and the public would all find truth, and this would serve as a method for preserving public virtue and a stable society.<sup>125</sup>

Cochran's definition of truth was much narrower. The theme of his closing argument is "a journey towards justice."<sup>126</sup> Cochran implied that justice is defined according to the technicalities of the law. Alan Dershowitz, appellate lawyer on Simpson's defense team who worked closely with Cochran, shed some light on the definition of truth: "The truth is that most criminal defendants are guilty. Prosecutors, therefore, generally have the *ultimate* truth on their side. But since prosecution witnesses often lie about some facts, defense attorneys have *intermediate* truth on their side. Not surprisingly, both sides emphasize the kind of truth that they have more of."<sup>127</sup> Cochran used means that would help him win small victories, or intermediate truths so that he could achieve his ultimate end: acquittal. Cochran may have desired a more methodological approach to help him find the absolute truth, but he relied on those oratorical skills familiar to his profession

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123. *Id.* at 779.

124. Enos, *supra* n. 67, at 16.

125. *Id.*

126. Off. Tr., *Simpson*, 1995 WL 686429.

127. Dershowitz, *supra* n. 73, at 35.

in contemporary American law. He did the best with what he had, and many of his techniques will still be useful as law schools improve methods for teaching oral advocacy, but these methods are certainly not comprehensive.

## V. CONCLUSION

Contemporary American law schools should adopt classical legal rhetoric as Cicero used it into legal argumentation methodology for two reasons: first, epistemic rhetoric leads to ultimate truth and public virtue; second, rhetorical methods appealing to *logos* lead to juridical predictability and sound intellectual structure for legal argumentation. Though current methods of oral argumentation may help trial lawyers achieve momentary effects on a jury, these victories are fleeting. Using the ethics and methodology of rhetoric as exemplified by Cicero in *Pro Cluentio* will help law students develop solid skills that will help them and the judicial system in the long run.

Although much is written today about the importance of oral advocacy, there is no concrete methodology, despite the fact that good oral advocacy skills do not magically descend upon law students once a dean places a diploma in their hands. Good oral advocacy requires training and structured practice in addition to intellect and talent. Law schools must stop skimming over oral advocacy as an afterthought in the first-year curriculum. As the system now stands, many students could leave law school at the top of their classes without having developed skills in trial oral advocacy. Oral advocacy is crucial, whether a student eventually argues before the Supreme Court, negotiates in small claims court, discusses a legal theory with a senior partner, speaks with a client, or professes to future law students.

Rhetoric is a quarry of golden bricks for law schools as they attempt to build systems of methodology for oral advocacy pedagogy. The Classical System can serve as a blueprint for modern law schools. Advocacy instructors may not use exact replicas of rhetorical exercises in the classroom, but they may do well to use the processes and exercises tried for declamations, *suastoriae*, *controversiae*, imitation, *progymnasmata*, and the rhetorical devices flowing from the canons of rhetoric: Invention, Arrangement, Style, Memory, and Delivery in appealing to *ethos*, *pathos*, and *logos*. The

examples in this study are only a sampling of the catalogues of exercises, techniques, and examples that rhetoric can offer to law students as they develop their arguments. Furthermore, many orators use techniques similar to classical rhetorical methods, but these techniques could be improved. Law schools might take the pieces of current oral advocacy and add them to the foundation of rhetoric for an extremely effective pedagogy.

Rhetoric will also combat moral decay. Through rhetoric, legal orators may be able to gain the public trust that has been lost by lawyers who are so concerned with winning a case they will twist language in every way to achieve their end. Prominent lawyer, F. Lee Bailey's, ideal could be achieved: "In the law we have substituted rhetoric for the sword, and if we were more successful and enjoyed more public confidence, more people would be content to use our courts to resolve their disputes instead of trying to settle them themselves, often with disastrous consequences."<sup>128</sup>

The well-known philosopher and statesman Benjamin Disraeli defined justice as "truth in action." As rhetoric continues to grow in the American tradition of legal oratory, and as law students carry with them rhetorical, hopefully the practice of justice will evolve toward that ideal of "truth in action," rather than simply fulfilling the technicalities of the law.

*Jennifer Kruse Hanrahan*

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128. F. Lee Bailey, *To Be A Trial Lawyer* (Telshare Pub. Co. 1982).

## APPENDIX A

## RHETORICAL TOPICS OF INVENTION

**Common Topics****Definition**

- A. Genus
- B. Division

**Comparison**

- A. Similarity
- B. Difference
- C. Degree

**Relationship**

- A. Cause and Effect
- B. Antecedent and Consequence
- C. Contraries
- D. Contradictions

**Circumstance**

- A. Possible and Impossible
- B. Past Fact and Future Fact

**Testimony**

- A. Authority
- B. Testimonial
- C. Statistics
- D. Maxims
- E. Law
- F. Precedents (Examples)
- G. Supernatural

**Special Topics**

- A. Epideictic
- B. Judicial
- C. Deliberative

Source: Edward P.J. Corbett. *Classical Rhetoric for the Modern Student* 97 (3d ed., Oxford U. Press 1990).

## APPENDIX B

**STYLE: MOST COMMONLY USED FIGURES OF SPEECH  
DEFINED**

**Tropes:** Artful deviations from the ordinary or principal signification of a word.

1. Reference to One Thing as Another
2. Wordplay and Puns
3. Substitutions
4. Overstatement/ Understatement
5. Semantic Inversions

**Schemes:** Artful deviations from the ordinary arrangement of words.

1. Structures of Balance
2. Changes in Word Order
3. Omission
4. Repetition

## APPENDIX C

## EXTENDED LIST OF CLASSICAL RHETORICAL FIGURES

A listing of some of the classical rhetorical figures will help us understand the sheer magnitude of options and exercises rhetoric has to offer to legal orators.

<b>-A-</b>	anacephalaeosis	apagoresis	<b>-C-</b>
abissio	anacoenosis	aphaeresis	cacemphaton
abominatio	anacoloutha	aphorismus	cacosyntheton
abuse	anacoluthon	apocarteresis	cacozelia
acaloutha	anadiplosis	apocope	catachresis
accismus	anamnesis	apodioxis	catacosmesis
accumulatio	anageon	apodixis	cataphasis
acervatio	anaphora	apologue	cataplexis
acrostic	anapodoton	apophasis	categoria
acyrologia	anastrophe	apoplanesis	characterismus
acyron	anemographia	aporia	charientismus
adage	anesis	aposiopesis	chiasmus
adhortatio	antanaclasis	apostrophe	chorographia
adianoeta	antanagoge	apothegm	chreia
adjudicatio	antenantiosis	appositio	chronographia
adjunct	anthimeria	ara	circumlocutio
adjunctio	anthropopatheia	articulus	climax
admonitio	anthypophora	aschematiston	coenotes
adnexio	anticategoria	asphalia	commoratio
adnominatio	anticipation	assonance	communicatio
adynaton	antilogy	assumptio	comparatio
aequipollentia	antimetabole	asteismus	complexio
aeschrologia	antimetathesis	astrothesia	comprobatio
aetiologia	antiphraasis	asyndeton	conceit
affirmation	antiprosopopoeia	auxesis	concessio
aganactesis	antiptosis		conclusio
aischrologia	antirrhesis	<b>-B-</b>	conduplicatio
allegory	antisagoge	barbarism	congeries
alleotheta	antistasis	battologia	conjunctio
alliteration	antisthecon	bdelygmia	consonance
amara irrisio	antistrophe	benedictio	contrarium
ambiguous	antithesis	bomphiologia	contrary
amphibologia	antitheton	brachylogia	conversio
ampliatio	antonomasia		correctio

<b>-D-</b>	epanodos	<b>-H-</b>	mempsis
deesis	epanorthosis	hendiadys	merismus
dehortatio	epenthesis	heterogenium	mesarchia
deinosis	epergesis	homilogia	mesodiplosis
dendrographia	epexegetis	homoeosis	mesozeugma
deprecatio	epicrisis	homoiototon	metabasis
descriptio	epilogus	homoioteleuton	metalepsis
diacope	epimone	horismus	metallage
diaeresis	epiphonema	hydrographia	metaphor
dialogismus	epiplexis	hypallage	metaplastm
dialysis	epistrophe	hyperbaton	metastasis
dianoea	epitasis	hyperbole	metathesis
diaphora	epitheton	hypotyposis	metonymy
diaskeue	epitrochasmus	hypozeugma	mimesis
diastole	epitrope	hypozeugis	mycterismus
diasyrmus	epizeugma	hysterologia	
diazeugma	epizeuxis	hysteron proteron	<b>-N-</b>
dicaeologia	erotema		noema
digressio	ethopoeia	<b>-I-</b>	
dilemma	eucharistia	icon	<b>-O-</b>
dirimens copulatio	euche	indignatio	oeonismus
distinctio	eulogia	insinuatio	ominatio
distributio	euphemismus	interrogatio	onedismus
	eustathia	inter se pugnancia	onomatopoeia
<b>-E-</b>	eutrepismus	intimation	optatio
ecphonesis	example	irony	orcos
ecphrasis	excitatio	isocolon	oxymoron
ecthipsis	exclamatio		
effictio	excursus	<b>-J-</b>	<b>-P-</b>
elenchus	exergasia		paenismus
ellipsis	exouthenismos	<b>-K-</b>	palilogia
emphasis	expeditio		parabola
enallage	expolitio	<b>-L-</b>	paradiastole
enantiosis	exuscitatio	litotes	paradiegesis
enargia			paradigma
encomium	<b>-F-</b>	<b>-M-</b>	paradox
energia		macrologia	paraenesis
enigma	<b>-G-</b>	martyria	paragoge
ennoia	geographia	maxim	paralipsis
enthymeme	gnome	medela	parallelism
enumeratio	graecismus	meiosis	paramythia
epanalepsis		membrum	parathesis



parecbasis	prodiorthosis	schematismus	systole
paregmenon	proecthesis	scheme	systrophe
parelcon	prolepsis	skotison	
parembole	prosapodosis	sententia	<b>-T-</b>
parenthesis	prosepsis	sermocinatio	tapinosis
pareuresis	prosonomasia	simile	tasis
paroemia	prosopographia	solecismus	tautologia
paroemion	prosopopoeia	soraismus	taxis
paromoiosis	prospohnesis	sorites	thausasmus
paromologia	protherapeia	subjectio	tmesis
paronomasia	prothesis	sustentatio	topographia
parrhesia	protrope	syllipsis	topothesia
pathopoeia	proverb	sylogismus	traductio
perclusio	prozeugma	symperasma	transitio
periergia	pysma	symploce	transplacement
period		synaeresis	tricolon
periphrasis	<b>-Q-</b>	synaloepha	
perissologia		synathroesmus	<b>-U-</b>
peristasis	<b>-R-</b>	synchorexis	
permutatio	ratiocinatio	synchysis	<b>-V-</b>
personification	repetitio	syncope	
philophronesis	repotia	syncrisis	<b>-W-</b>
pleonasm	restrictio	synecdoche	
ploce	rhetorical question	syngnome	<b>-X-</b>
polyptoton		synoeciosis	
polysyndeton		synonymia	<b>-Y-</b>
pragmatographia	<b>-S-</b>	synthesis	
procatalepsis	sarcasmus	syntheton	<b>-Z-</b>
proclees	scesis onomaton	synzeugma	zeugma

Source: Gideon O. Burton, *Silva Rhetoricae* <<http://humanities.byu.edu/rhetoric/silva.htm>> (BYU 1996-2000).