

Law School's Missed Lessons: Skillful Persuasion

By **Michael Friedland** (July 23, 2025)

While law school teaches everything from civil procedure to stare decisis, there are some aspects of practicing law that aren't covered during the three years that lead up to the bar exam. In this Expert Analysis series, attorneys offer advice on navigating real-world aspects of legal practice that are often overlooked in law school. If there is a professional skill you would like to write about, email expertanalysis@law360.com.

"You love to argue — you should become a lawyer!"

We've all heard that, and law school largely reinforces that conception of practicing law.

Law school teaches you to learn rules and apply them to facts. It teaches you how to show someone that you're right and they're wrong. In short, to argue. Some lawyers might believe they get extra points if they're smug, insulting and condescending.

With a few decades of litigation practice, I've learned something that I missed in law school, and that many other law students likely miss as well: My job is rarely to argue.



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Arguing often makes adversaries defensive. It often challenges them to dig in — or become more aggressive in their positions. As a lawyer, my job is to convince an adversary to give my client what they want. That is, to persuade.

The difference between arguing and persuading isn't merely semantic.

Persuading requires recognizing that a legal matter is not akin to a high school debate. I won't win if I score more points. I won't win by bullying or humiliating my adversary, or proving to them that I'm a better debater than they are.

Persuading requires accepting the fact that my adversary has power. They can decide whether to accept or reject whatever proposal is on the table, even if I'm 100% right and they're 100% wrong.

Persuading requires preparation and humility. It requires gaining an understanding of the adversary's perspective, acknowledging the perspective, and adapting and relating the presentation of the facts, the law, and the available options to that perspective.

First, listen.

Developing a strategy to persuade an adversary requires extremely careful listening. View every word an adversary will share as a gift. Encourage them to be open. Don't interrupt, and don't rush to react or reject. Ask sincere follow-up questions. Learn as much as you can.

If my adversary makes a factual representation, I'll ask questions like, "Are there any documents that I can share with my client that show that?" The information shared will be the materials needed to fashion a position that will be persuasive. The information shared will also be invaluable to developing a substantive counterattack that might be presented later.

I once had a colleague who thought his job was never to let our adversaries say a word. He thought it was his job to dominate every conversation. As a result, even in an hourlong phone call, we wouldn't learn a single useful thing. That approach will almost never lead to success.

See the world through your adversary's eyes.

Use the information shared to see the world through your adversary's eyes. Ask, "What do they see? How do they interpret the facts?" Even when you know your client feels they were wronged, question how your adversary feels and why.

Do the same with the law. I usually begin a case very confident that my view is right. But, what does my adversary think? Why? How would I argue it if I were them?

Then, be honest: Could my adversary actually be right?

It's sometimes a hard question to answer honestly. Cognitive dissonance is powerful, and it's difficult to challenge your own views. Ask a colleague who's not working on the case. Your colleague won't be invested in your case, so they can be more objective.

Years ago, I had a patent case I'd been working on for more than a year. All of us on the team were positive that there was no possible way the plaintiff could prove infringement. Then, we spoke to a colleague who wasn't on the team. She saw something in the infringement claim that we hadn't appreciated.

It was only then that we understood why the plaintiff was taking the position they were taking. Our colleague's insight allowed us to develop an effective counterargument to the position. We wouldn't have been ready with a response if we hadn't had that insight, and we wouldn't have been nearly as persuasive.

Adapt the presentation to your adversary's world view.

Having considered the adversary's perspective and desires, tailor the presentation to their point of view.

Begin by making it clear that you understand your adversary's position. Repeat their best arguments and acknowledge that they have some weight. Then, explain that your client has strong positions, too. Match your presentation to your adversary's, responding point by point.

If you were wrong about something, concede it: "You're right. I didn't initially realize that." But, if you put in the work, you'll be ready to explain why it doesn't matter, and why you believe your proposal is still best for both parties.

Don't threaten, bluster or say you're positive you'll win at trial. That kind of trash talking robs lawyers of credibility. Stay focused on getting agreement to what you're proposing right now.

For me, this means explaining why I'm positive that what I'm proposing makes sense for both parties, given the facts, the law, the parties' interests and the available options. I can do that with more credibility if I've demonstrated that I understand and respect my adversary's position.

Persuade the judge.

When I'm in court, I follow a similar approach. A lawyer's job is to persuade, not to argue — not with their adversary and definitely not with the judge.

Start by getting every bit of information you can from the judge.

If I get a written tentative, I'll obsess over every line. If the judge begins by expressing their views, I'll hang on every word. If I have a question or want clarification, I'll politely ask for it. For example, "May I ask to which portion of the record the court is referring?" Or, "Is there a particular case that is causing the court concern?"

In this sort of scenario, don't rush to figure out why what the judge said is wrong. Make sure that you first fully understand the judge before you substantively respond.

When I respond, I keep in mind that the job is to persuade the judge. The judge's job isn't to determine who's the best debater. Their only interest is to make the right decision. I'll do my best to adapt my presentation to the judge's perspective.

The best oral argument I've ever seen was a masterpiece of persuasion, not argument. The judge had issued an unfavorable tentative that was more than 50 pages long. The lawyer didn't begin by arguing that the tentative was wrong.

He began by pointing out that the case mentioned on the second page of the tentative may have been superseded by a more recent case. He then cited to the case and explained his understanding of its holding. After that, he noted that, on Page 7, the court stated that there was no evidence supporting a particular argument. He said he believed that the argument was supported, and cited to the paragraph and exhibit to a declaration.

We could tell the lawyer was doing it right when we saw the judge taking notes.

And the lawyer proceeded that way through the rest of the tentative order. When he finished, he told the judge that he believed that, once the additional cases and evidence were considered, the final order should be decided the other way. There wasn't a shred of argument in that oral argument. Instead, the lawyer worked within the judge's framework — as expressed in the tentative — to address the judge's concerns. The lawyer won.

Conclusion

Law school's emphasis on argument sometimes overlooks that the lawyer's ultimate goal isn't to be the best debater; it's to get the client what they want. Occasionally, a lawyer can accomplish the goal by arguing. More often, however, a lawyer needs to persuade — which requires more listening than talking.

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