



ARTICLE

From the Courtroom to the Boardroom: Transactional Oral Advocacy¹

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A cappella. Zoom. Tax law.

Never before did these three things go together as well as they did during the spring 2021 semester in my legal writing and oral advocacy course at Suffolk University Law School.

Each academic year, many students report that oral advocacy is their favorite topic in my legal writing, research, and oral advocacy course at Suffolk University Law School. Maybe it is the thrill of being in the courtroom or the fun in crafting a persuasive argument while channeling their favorite television lawyer. Despite this interest by many, several students each semester are disinterested with the topic. Often, this disinterest is motivated by a student's interest in practicing law outside the courtroom, including as a patent attorney, real estate

¹ This article is inspired by previous work on this topic, including a blog post by the author. See Adam Eckart, *Oral Advocacy: Not Just for Litigators*, LEGAL WRITING MATTERS BLOG (Mar. 23, 2021), <https://sites.suffolk.edu/legalwritingmatters/2021/03/23/oral-advocacy-not-just-for-litigators-legal-writing-matters-blog>. I received significant positive feedback about the blog post from throughout the legal writing community. Accordingly, for purposes of this article, I have repurposed elements of that blog post to expand upon its theme and deliver information regarding the transactional oral advocacy exercise that many peers inquired about.

attorney, or corporate deal lawyer (to name a few). Despite my best efforts to tell students about the transferrable skills of oral advocacy, a disconnect persists for many.

Motivated by this challenge and the Zoom-based format of online teaching during the spring 2021 semester, this year I introduced a new oral advocacy assignment, rooted in transactional practice, designed to capitalize on the use of technology and demonstrate the transferrable skills of oral advocacy. This is where a cappella, Zoom, and tax law come together.

1. Oral Advocacy Skills as Transferrable Skills

Like my Legal Practice Skills course at Suffolk University Law School, many legal writing and oral advocacy courses dedicate a portion of their spring semester to oral advocacy. A majority of these courses assess students on one oral advocacy project: the oral argument.² These oral arguments are often set in moot courtrooms with judges and real-life courtroom pomp and circumstance. But despite the setting of these exercises, oral arguments are important exercises for all law students, whether they are in a courtroom every day or never practice at all. No matter what practice—or non-practicing role—lawyers have after law school, the skills learned in the oral advocacy segment of a first-year legal research, writing, and oral advocacy course are important for many reasons. Teaching oral advocacy skills in both litigation and transactional settings helps to reinforce such importance.

Oral advocacy skills are skills that, just like objective or persuasive legal writing, can apply in both the courtroom and the boardroom. In addition, several aspects of oral advocacy and oral arguments help students hone other skills too. Accordingly, the skills learned in the oral advocacy segment of a first-year legal research, writing, and oral advocacy course are important for the following reasons.

1. **Oral arguments help students become better writers.** Talking through arguments—whether to a colleague, a judge, or even oneself—can help solidify analogies, thesis statements, and other elements of writing. Preparing for a presentation pushes an attorney to develop the theme of a presentation, establish an “elevator pitch” that informs an overview or roadmap paragraph, and consider how different pieces of research fit together.
2. **Oral arguments help students become better public speakers.** Delivering oral remarks—whether in court or outside of court—helps students prepare for other aspects of their careers when they may be required to make

² Although legal writing programs take divergent views on grading oral arguments, even ungraded oral arguments typically assess student skills on oral advocacy.

presentations to clients, counterparties, or other audiences. Formal presentations, such as a presentation on a new law or regulation, and informal presentations, such as a phone call presenting research to a client or supervisor, are tasks that attorneys regularly complete that involve oral reporting and public speaking.

3. **Oral arguments help students become critical thinkers.** Responding to a judge's questions may be terrifying to some students, but preparing to answer a judge's question helps students in two ways. First, in the preparation phase, it helps students think about their case, their argument, and the relevant law. Second, answering unexpected questions in the "live" argument helps students practice the important skill of "thinking on your feet." Just like both sets of skills are central to preparing for and delivering oral arguments, both sets of skills are equally important for attorneys presenting to clients, to regulators, or to general audiences. Oral arguments help students practice these critical thinking skills.

2. Transactional Oral Advocacy

Introducing a transactional oral advocacy assignment into my course allowed my students to see that skills discussed in our oral advocacy class (and used in oral arguments) are important in transactional practices too. The following section explains a non-graded transactional oral advocacy exercise that I use in my class, its timing, the student deliverable, and the feedback I gave and received on the assignment. A full copy of the assignment is included in this article's appendix.

- **The Exercise:** The exercise asked students to review and apply Franklin³ IRS tax law and tax opinions in order to prepare a persuasive video to members of an a cappella union advising them of the availability of a tax deduction.⁴ Students persuaded union members why they should take advantage of an available tax deduction related to the expenses incurred for specific neon suits used in performances.
- **The Timing:** This exercise was placed in the class between my initial oral advocacy class and student oral arguments. This timing allowed students

³ This assignment is based in the fictional jurisdiction of Franklin, also used by the National Conference of Bar Examiners. The law included in this exercise is modeled after U.S. tax law, but is set in Franklin so as to avoid any confusion or student desire to complete additional research.

⁴ Because of various pressures on students at this point in the semester, I did not include a requirement for students to draft an accompanying PowerPoint deck or presentation, but this could be added.

to (1) see the applicability of oral advocacy to transactional practice, (2) practice oral advocacy skills before completing a graded oral argument, and (3) receive brief feedback (communicated after I viewed their video) before delivering their graded oral argument. As a class, we spent 25 to 30 minutes of class time discussing the assignment, the law, and a planned approach for the video, using break-out rooms to brainstorm talking points for the video.⁵

- **The Deliverable:** Students recorded a video (of no more than two minutes) explaining why union members were eligible for the tax deduction. Students used the same structure used in oral argument to convey their position, including an introduction, an explanation of the law, an application to our case, and a conclusion. Although students were not interrupted with questions, I advised students to try to anticipate and answer a question (or two) that an audience member would have, if given the opportunity to ask.⁶
- **The Feedback:** After I received and watched each student video, I provided brief written feedback to each student in order to help students in their upcoming oral arguments.⁷ The student videos were fantastic,⁸ but I think that my feedback was helpful for many students. At oral argument, I saw improved introductions, more confidence, and better analysis of case law (as compared to both the transactional videos and oral arguments from prior years). In addition to my feedback to students, students had some feedback for me too: they loved this assignment. Students reported that they enjoyed practicing their oral advocacy skills in a more informal setting, that it was helpful to record (and watch) a presentation before delivering their graded oral argument, and that my feedback helped assist in oral argument preparations. After the semester concluded, one student

⁵ Although the class time is somewhat significant, it is important for me that all students know the law and the approach for the video before we leave class since I want students to spend their preparation time focused on delivering a clear and concise message rather than deciphering tax law.

⁶ While I used this assignment to show students the similarities between oral arguments and transactional oral advocacy, we also discussed the differences. One main difference in this situation is the audience, and I discussed with students how they should modify their approach and tone to be appropriate for this more informal (and potentially less sophisticated) audience.

⁷ I asked students to email their video to me, but professors could likewise use file sharing systems or course learning management systems (like a discussion board on Blackboard or Canvas), utilizing “private” filters if you do not wish for students to see each other’s video posts.

⁸ I had the opportunity to share one student video at the ALWD Innovative Teaching Workshop in 2021 and fellow attendees shared my view that the videos were terrific.

reached out to tell me how helpful this exercise was in preparing her for her first week at a summer internship with a zoning attorney. She reported that this exercise helped her remember the transferability of skills learned in our course and helped her remember that not all written and oral communications were based on what a court might find—necessary perspective for working with a non-litigating attorney.

3. Conclusion

Giving students opportunities to practice oral advocacy skills in both litigation and non-litigation settings helps students develop oral advocacy skills, recognize the transferability of the skills (from the courtroom to the boardroom),⁹ and demonstrate value in oral argument exercises—for all types of lawyers. It can also help us connect with all types of students, regardless of their interests and predispositions. Because this transactional exercise was so successful, I plan on continuing it with or without Zoom. I think a cappella and tax law will pair just as well when we are back in person this year.

⁹ This exercise is just one way to show students transferability of skills between the courtroom and the boardroom. Persuasive writing assignments likewise lend themselves to writing for different types of audiences and could be adjusted to show transferability. See Adam Eckart, *Transferability: Applying Principles of Persuasive Writing to Transactional Matters*, LEGAL WRITING MATTERS BLOG (May 12, 2020), <https://sites.suffolk.edu/legalwriting-matters/2020/05/12/transferability-applying-principles-of-persuasive-writing-to-transactional-matters/>. Additionally, objective writing could illustrate transferability principles. The assignment included below could be adjusted from a persuasive oral assignment to an objective written assignment. Students could write a short objective memo or email to a client about whether the client is likely to be successful in claiming the tax deduction. This example would help show students that objective writing is important in all types of practices and that objective memos need not include a prediction of the likely outcome of the case in court.

APPENDIX

Transactional Oral Advocacy Exercise¹⁰

ASSIGNMENT

A local union of a cappella singers has called your office for tax advice. The president of the union has heard of a new regulation regarding a key tax deduction that is applicable to the union. The president has indicated that several union members are hesitant to take advantage of the deduction and has asked that your office prepare a short video recording that can be played to the union members at their annual meeting next week (via Zoom).

Please work with your co-counsel (in break-out rooms) to 1) discuss the law and advice you should give, and 2) create an outline of your oral argument to be presented via video. After class, each team member should record their own video (no more than 2 minutes) to persuasively convey to the union members that they have the ability to take advantage of the key tax deduction. Please send your recording to Professor Eckart via email before your oral argument.

Your video should mirror the content that you will deliver in your oral arguments (for the *Suffolk v. Jarrett* case next week) and will contain the following sections: 1) a short introduction (introducing yourself, the matter, and the desired result), 2) the law (a statement of a synthesized rule and an explanation of the law akin to a brief E paragraph), 3) a brief analysis, including a thesis, fact-to-fact comparison, and application of tax opinions, and 4) a conclusion. Be sure that the conclusion about the union's ability to take advantage of the key tax deduction is in-line with the president's position.

FACTS

You represent a union of a cappella singers. The union is comprised of several a cappella groups which consist of members aged 65 and over and style themselves as "old time" a cappella groups (as compared to "new age" a cappella groups that have become more popular in recent history). The members wear bright-colored neon suits as part of their singing uniform. The members do not wear these suits outside of performing – nor would it be normal to see someone walking down the street in such a neon-colored suit. These a cappella groups, and their neon suits, are popular in retirement communities in Florida and only those with such bright-colored suits are booked for performances.

The a cappella singers contend that they should be able to deduct the cost of their neon suits in their annual IRS tax filings, using the costs of their suits as a deduction against income earned (and thereby paying a lower amount in taxes). The IRS has not directly answered this question in the jurisdiction of Franklin. The

¹⁰ Developed by Professor Adam Eckart, Assistant Professor of Legal Writing, Suffolk University Law School.

union has come to your firm to seek guidance from the IRS on this matter. Your supervisor has tasked you with creating a persuasive video describing the availability of a tax deduction for the suits, which will allow union members to deduct the costs of the suits from their income on their annual tax filings.

LAW

Another associate at your law office has summarized the relevant regulation and two tax opinions that are on point for this matter. Use this information for the basis of your argument.

Regulation: Under Franklin IRS Regulations, work clothes are tax deductible if your employer requires you to wear them every day but they cannot be worn as everyday wear.

Tax Opinion 1 (March 1, 2021): Under one relevant tax opinion, Franklin IRS allowed the deduction of costs for uniforms incurred by actors. In this situation, the actors had purchased elaborate wigs, gowns, and special hats (including top hats) for use in time-period movies. The actors argued that such costumes were particular for a specific time period and while they may have been “everyday wear” during that time period, the costumes were no longer “everyday wear” and were only used in connection with filming the movie. The Franklin IRS agreed.

Tax Opinion 2 (January 10, 1999): Under one relevant tax opinion, Franklin IRS disallowed the deduction of costs for men’s business suits by a professional lawyer’s association. The lawyers asserted that the business suits were required by their employer and that the lawyers did not routinely wear the business suits outside of the office; instead, they often wore jeans or on occasions to look fancier wore khakis. The Franklin IRS disagreed, asserting that business suits are considered “everyday wear.”