

Chapter Six: Topoi.

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You build strong arguments by answering questions before they are even asked. You've been introduced to the idea that a stronger argument is one that answers more questions. So: how are you to come up with these additional questions?

How can you find more questions? Where can you look for them? As it turns out, many questions are *commonplace*--they arise again and again in many different cases. If you learn what these commonplace questions are, then you'll be able to develop apply them again and again as you argue. At first, this will require some memorization, but with more practice, you'll forget the memorized list of commonplace arguments and just remember use them without thinking.

Rhetorical theory has a special name for these commonplace arguments: they are called *topoi*, from the Greek word meaning "places." The idea is that the topoi are places in which arguments can be found. Put another way they are *re-sources*: sources of argument that are reusable, again and again.

(Note: Topoi is plural: it means *places*. If you're talking about *one* place, then the form of the word is *topos*. One topos, many topoi.)

Topoi lists are *heuristics*, that is, tools or shortcuts that may be helpful when you're trying to find questions. Probably every subject in the world has its own topoi list. For example, if you take a history class, there will be a standard list of questions (topoi) you'll need to ask and answer if you're writing an essay exam: Who did what? When? Why? What were the results? If you're preparing a lab report, there will be a different standard list of questions (topoi): What method did you use? What were the results? What is the significance of the results? The same for legal argument. In fact, as we'll see, there are *several* lists of questions which can come in useful to help you build strong arguments.

In any one case, probably not all the topoi on the list will help. But it's likely that some will, and that using them you'll be able to ask more questions and build stronger arguments.

The following chapters of these materials will contain several topoi lists. At this point, I want to introduce just two lists, to give you an idea of what topoi are and how you can use them.

The first set are called the *denial topoi*. You'll learn what a "denial case" is next in these materials; for now, you can take it that this set of topoi or commonplace questions is useful when the case involves fundamental disputes about facts--about who did what. The OJ Simpson case, the case against President Clinton, and your own case are all denial cases, for example. In such cases, the following commonplace questions very frequently arise:

Motive
Means & Opportunity
Physical Evidence
Behavior Before & After
and Character.

Question. If you've ever taken a journalism course, this list of questions should look familiar. How does it compare with what you learned there?

Consider the topoi one by one.

Motive. Cui bono--"to whose advantage?"--that was the advice of one ancient forensic advocate, like the more modern "follow the money." Motive arguments are based on certain plausible assumptions: that people who feel anger, or want money, are likely to do wrong.

Cicero, who lived and died in the first century C.E., was both ancient Rome's greatest legal advocate and its greatest rhetorical theorist. Here is Cicero's advice on how to argue Motive:

Cicero, Inv. 2.19-21.

This topos [Motive] is what one might call the foundation or basis of the stasis Denial. For no one can be convinced that a deed has been done unless some reason is given why it was done. Therefore the accuser when he says that something was done on impulse, will be under the necessity of dilating upon that passion and, as it were, agitation and state of mind, with the full powers of his thought and expression, and of showing how great is the force of love, what powerful mental agitation arises from anger or from any of the causes by which he claims that the defender was urged to commit this crime. Here pains must be taken that it may not seem strange that a mind disquieted by such passion should undertake some crime. This can be done by citing examples of those who have done something under a similar impulse and by collecting parallels and by explaining the nature of mental disturbance.

When, on the other hand, the accuser says that the defendant did the deed not from impulse but deliberately, he will show what advantage was sought or what disadvantage avoided and will amplify this point to the best of his ability, so that, as far as in him lies, it may be shown that a perfectly sufficient motive prompted the crime. If it was for glory, how great the glory he expected to win; likewise if for

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power or wealth, because of friendship or enmity, and in short whatever he says the cause was, the accuser must enlarge upon it most emphatically. And he ought to consider very carefully not merely what the result might really have been, but more particularly what the result might have been in the opinion of the man on trial. For it is no matter if there was or is no real advantage or disadvantage connected with the act, if it can be shown that the defender thought there was.

Means and Opportunity. Obviously it's not enough just to want to commit a crime; the defender also had to be able to do so. He had to have the right instruments--the strength or the weapons to kill, for example--and he had to be in the right place at the right time.

Physical Evidence. Are there bloodstains, semen stains, fingerprints, shoeprints, hair, fibers, possessions etc. that show that the defender was at least at the scene of the crime, and possibly that he was a participant in it? All of these things can be used to construct arguments to show guilt.

Behavior before & after. Did the defender act in a suspicious manner before or after the crime? This can be the basis of arguments that the defender is guilty. For example: is there evidence that he planned the crime or collected the means? Did he talk to anyone about it? Did he try to flee?

Character. Is the defender a bad person? If he is, this fact can be used as the basis of a plausible argument, since bad people are more likely to commit crimes than good ones. (We'll see when return to the denial topoi later in these materials that there are questions about whether this line of argument is really a good one.)

Question. Use the denial topoi to invent as many arguments as possible as quickly as possible in the case you're working on. Once you get the hang of it, you should be able to get 20 or so in 2 minutes.

Question. Assume you're going in to an instructor to try to talk your way out of something you did wrong. Use the denial topoi to invent as many arguments as possible—again, aim for 20 or more in 2 minutes.

Question. Are there other good arguments in your own case that don't fall under any of the categories "Motive, Means, Opportunity" and so on? The answer is almost certainly *yes*. What are they?

Keep in mind again that the topoi are just heuristics. They will help you produce *more* questions and thus *more* arguments. They won't allow you to think up *all* the questions or *all* the arguments in any case.

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A second useful set of topoi are less general: they are the *witness topoi*. Much of the evidence at most trials is testimonial; it consists of what people say under oath, before the jury. But we know we don't believe everything they say. Why not? What sort of doubts do we have that lead us to think that what the witness says isn't true?

Try constructing a list of witness topoi for yourself.

Question. You are representing a client who was hurt in an auto accident. The accident occurred when two cars hit, bumper to bumper at right angles, precisely in the middle of an intersection. Your client has told you that the other driver ran the red light. Now you find out that Wanda Witness is going to testify that she was standing on one of the corners at the intersection and that she saw *your* client run the red light. Yikes!

How can you attack Wanda's testimony? Exactly what questions can you raise and then answer that *might* make her testimony look weak? Can you group these questions into perhaps a half dozen or so "big questions"--a list of the *topoi* you might use to knock down (or build up) the testimony of any witness?