

## The Five Types of Legal Arguments

### Presentation Four: Identifying and Attacking Legal Arguments

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#### Identifying the Types of Legal Arguments

*People v. Gibbons*, 215 Cal.App.3d 1204, 263 Cal.Rptr. 905 (4th Dist. 1989)

#### A. Famous Legal Arguments

1. John Marshall demonstrates how to attack an argument based upon plain meaning by proving that the word is ambiguous.
2. Marshall makes an intratextual argument by comparing the word "necessary" in the Necessary and Proper Clause with the words "absolutely necessary" from Article I, Section 10.
3. Marshall makes an intertextual argument comparing the language of the Constitution to the language of the Articles of Confederation to prove that the framers of the Constitution intended to confer broader implied powers upon the Congress.
4. Brandeis makes an intent argument regarding the Framers' views on Freedom of Expression.
5. Holmes rejects text and intent in favor of tradition in arguing that the nation's experience over a century should prevail on the
6. Warren rejected the intent of the framers of the 14th Amendment as a guide to decision because their intent was unclear and because conditions had changed so much that their specific views regarding separate schools were no longer relevant.
7. Warren cites both precedent and policy arguments in favor of overruling the precedent of *Plessy v. Ferguson*.
8. Berger makes a straightforward tradition argument in favor of a law criminalizing homosexual behavior.
9. Kennedy finds a number of ways to rebut the tradition arguments regarding sodomy laws. He says that these laws were never enforced, that our traditions are changing, that foreign countries have declared these laws to be inconsistent with human rights and that because of globalization our traditions must come under closer scrutiny. At the end he

makes a policy argument for striking down this law.

10. In the *Youngstown* case, Black decided against the President on textual grounds.

11. In the same case Frankfurter found no tradition of allowing a President to exercise this type of power.

12. Robert Jackson rejected text, intent, tradition and precedent in this passage.

13. Instead, Jackson composed an intricate policy argument, built upon what he regarded as the purposes of the doctrine of Separation of Powers.

14. Abraham Lincoln rebuts the intent arguments of Roger Taney and Stephen Douglas regarding the phrase "all men are created equal."

15. Kennedy, O'Connor, and Souter identify the four factors to consider in deciding whether to follow or overrule a case, when they considered whether to reaffirm *Roe*.

16. John Harlan explains that "tradition is a living thing," and that there have always been conflicting traditions.

17. John Paul Stevens rebutted President Clinton's policy argument, in effect saying that it was no big deal to require a sitting President to give a deposition in a civil case. How wrong he was!

18. Blackmun's casual reference to constitutional text and his passionate policy argument from *Roe v. Wade*.

19. Thurgood Marshall's rebuttal policy argument from *Kros*, finding a \$50 filing fee to be a very big deal indeed.

#### B. How to Attack Each Type of Argument

Intra-type attacks – Attacking an argument on its own terms – contends that the argument does not have strong basis in text, intent, precedent, tradition, or policy.

Cross-type attacks – Attack an argument by contending that there is a different type of argument that is stronger.

#### Intra-type and Cross-Type Attacks

-There are 28 different intra-type attacks on legal arguments, and two basic forms of cross-type attacks.

#### Intra-type Attacks on Textual Arguments

##### A. Attacks on Arguments Based upon Plain Meaning

1. The text is ambiguous

# Five Types Of Legal Arguments

**Anthony S. Fauci**



## **Five Types Of Legal Arguments:**

## Whispering the Strategies of Language: An Psychological Journey through **Five Types Of Legal Arguments**

In a digitally-driven world wherever displays reign supreme and instant interaction drowns out the subtleties of language, the profound techniques and emotional subtleties hidden within words often get unheard. However, situated within the pages of **Five Types Of Legal Arguments** a captivating fictional value pulsing with organic emotions, lies an exceptional journey waiting to be undertaken. Written by an experienced wordsmith, this wonderful opus invites readers on an introspective trip, gently unraveling the veiled truths and profound influence resonating within the very cloth of each and every word. Within the mental depths with this emotional review, we shall embark upon a sincere exploration of the book is key subjects, dissect its charming writing fashion, and yield to the effective resonance it evokes strong within the recesses of readers hearts.

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