

# The Rebuttal



## Introduction

Welcome to the Stetson Moot Court Board’s Spring Information Session! We hope that you will get two things from this session: (1) an introduction to the Moot Court Board, and (2) some helpful tips for your R&W II experiences.

The process of researching and writing an entire brief and then preparing for an oral argument is an extremely arduous task—something that is quite nerve-racking for most. Our hope is that the information provided on these issue of *The Rebuttal* will provide you with some tips to

not only substantively help you get through the brief-writing and oral-argument process, but will also help you manage your nerves and stress throughout this time.

There is not a Moot Court Board member who will tell you that he or she does not get nervous when about to give an oral argument. or that the brief-writing process for a competition was “a breeze.” Because of these, we hope that we will be able to provide some tips to make this process as non-stressful and smooth as possible.

The reason why Moot Court Board members continue to put themselves through the stress of brief writing and oral arguments is because of the rewards one receives when becoming a member of the Board— not least of which is becoming a member of the Moot Court Board family!

We hope that this issue and general information session will help you in R&W II and will spark an interest in the Moot Court Board! Good luck in R&W II, and we hope to see you at tryouts in the fall!

### Oral Argument Anxiety?

Here are some tips from the Moot Court Board Members

Nervous about doing oral arguments? Here are some handy tips from our members.

#### General Strategies

- \* Start early! This includes writing the brief, as well as preparing the oral argument. The earlier you

begin, the more time you will have to perfect.

—Deidra Brown

- \* Know the problem inside and out. Every fact, bit of relevant law, and think about the effect the court’s decision will have.

—Meagan Foley

- \* Make a schedule and practice a lot. Try to have fun and learn.

—Jonathan Hart

- \* Judges love deference!

—Michelle Reilly

Half a Breathsaver 3-hour mint while your co-counsel is up at the podium does WONDERS!

—Victoria San Pedro

#### Handling Nerves

- \* I remember I would not be physically attacked or injured by the judges (hopefully) during the competition.

—Kevin Crews

*Tips on Handling Oral Argument Anxiety Continued on page 2*

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### Tips on Handling Oral Argument Anxiety, from page 1

*Handling Nerves continued~*

- \* Be confident with yourself and that will show through to the judges.—Tyler Egbert
- \* Remember that every competitor/opposing counsel is not Atticus Finch.—Andrew Harris
- \* Remembering to breathe is always important.—Erin Okuno

*And What to Say When You Are Up There:*

- \* Standard of Review is key. Understanding how to use this to your advantage is especially helpful in oral arguments.—Amar Agha
- \* Make sure to articulate why you win and why it actually matters that you win.—Chad Burgess
- \* Just like Romney and Obama did in the Presidential debates, stay on message and do not let the moderator/judges get you too far off track.—Kevin Crews
- \* Know the law and find your happy place to go back to when you get off track or get tough questions.—Andrew Harris
- \* K.I.S.S. (Keep It Simple, Stupid!)—Jonathan Hart
- \* While it is important to stand your ground, it is also important to concede occasionally. If you can concede a very specific minor point without weakening your argument, it shows that you are being reasonable.—Erin Okuno

### Written and Oral Advocacy Resources

◇ Visit the link at the bottom of every page of this newsletter and click on the “Instructional Videos” link to view sample introduction/roadmaps, transitions and signposting, answering single and double questions, conclusions, and rebuttal.

◇ Read the *Stetson Guide to Oral Advocacy*. If you do not have this already, your R&W II professor can send it directly to you. It has great tips, outlines, and ideas from a group of professors at the nation’s number one school in advocacy.

◇ *Making Your Case: The Art of Persuading Judges* by Justice Antonin Scalia and Bryan A. Garner. This book contains a lot of help tips for writing briefs and presenting oral arguments.

◇ *The Winning Brief* by Bryan Garner. This book is organized into 100 short, easy-to-follow topics, ranging from formatting properly to crafting persuasive arguments. One caveat: where there is a discrepancy or disagreement between Garner and your professor—follow your professor’s instructions!

◇ *Twenty Pages and Twenty Minutes: Effective Advocacy on Appeal*, 30 S.W. L.J. 801 (1976), by John C. Godbold. A short law review article on both oral and written advocacy in federal courts with good pointers for anyone interested in persuasive advocacy.

◇ *A Dictionary of Modern Legal Usage* or *The Redbook*, both by Bryan Garner. These are useful for determining matters of legal usage and style. Where ALWD or Bluebook end, these begin.

## The Brief

The brief that you are about to tackle is the largest writing project of your law school career thus far, and quite possibly the largest writing project that you have ever done. It can be daunting and nerve-wracking, but with planning and time management, you can *and* will be successful!

First, you have to understand the issues. Think about exactly what you are supposed to address. It is very easy to get absorbed into the tons of research you will be doing and travel down “rabbit holes” into issues that are not relevant. Do not lose sight of the issues, and refer back to them regularly to ensure that you are on the right track.

Second, stay organized from the beginning. You could end up with a four-inch stack of research, making it very difficult to find that exact line that you know you read in one of the cases, but you cannot for the life of you remember which case. If you’ve kept things organized—using a three-ring binder, file folders, tabs, or taking notes—it will make your life easier throughout this already stressful process!

Third, start writing early! Map out your arguments in a way that makes sense to you—flow charts, outlines, pictures, etc.—whether it is on a white board, your computer, or a napkin. Organize and plan out your arguments, so they flow into each other. Include the important facts and apply the relevant case law.

Fourth, finish early and polish (edit and proof-read) your brief as many times as possible. Read the brief out loud. Read it backwards. Read a sentence, ask, “Why?” and see if the next sentence answers the question.” This will help that you not only have a “clean” brief but you also have analyzed the issues thoroughly and that you have stayed on track.

Finally, do not underestimate the importance of formatting (following the “local rules” or instructions). Your professor is reading the same thing thirty some-odd times. Make sure your brief is simple, easy to read, and formatted well, and you will be well on your way to succeeding!

## The Research and Writing Reporter

After hearing the students in the fall 2012 R&W II appellate brief oral arguments, “Judge” William Collum wrote an opinion for the United States Court of Appeals for the Twelfth Circuit. He found for the government/appellee on both issues.

I.  
On the search and seizure issue, the co-tenant exception makes logical sense. Absent pre-text (of which there was none in this case), a co-tenant should be allowed to give consent to search those areas over which the co-tenant has some form of dominion and control (common areas). Where the other co-tenant uses the common areas for illegal acts or storage of illegal items, it makes logical sense that a co-tenant, who

already has access to it because located in a common area, has the right to allow police access to search the common areas (and also the right to demand the police obtain a warrant).

II.  
On the jury instruction issue, the government wins because of the standard of review. The statement is bad, but I don’t think it is bad enough for an appellate court to find it an abuse of discretion. The appellate court may use the opinion to publicly admonish the trial judge as to the error of the statement (the colloquial term for such an opinion is “bench slap”), but, given the statement in light of all the evidence presented, I just don’t think an appellate court would

find the trial court judge abused her discretion and order a new trial.

Stay tuned for more from the Research and Writing Reporter. There is a possibility of seven more opinions this spring as students take R&W II from the following professors:

- \* Professor Anderson
- \* Professor Bohl
- \* Professor Bowman
- \* Professor Feeley
- \* Professor Gardner and Professor Long
- \* Professor Lenz
- \* Professor Palmer

## Understanding and Managing Anxiety

Most American adults fear public speaking more than death, bankruptcy, or divorce. With that kind of statistic floating about, it is little wonder you may be more than a little nervous about presenting your oral argument. But that is more than okay! Even the Chief Justice of the Supreme Court of the United State, John Roberts, an excellent appellate attorney prior to becoming Chief Justice, has remarked at how nervous he was prior to almost every argument. You do not have to be free of anxiety to deliver a brilliant argument. You simply have to understand what makes you nervous and then seek to manage that anxiety and use it to your advantage!

Anxiety is the brain’s reaction to a stressful situation—rooted in

the prehistoric “fight or flight” response. Reduction of this response is simple a function of training our brain to understand that public speaking is not a threatening situation.

One of the key ways to manage anxiety and to train our brains is through positive thinking. On Moot Court, we often remind ourselves that regardless of who our panel is, we probably know more about this case and the case law than the judges do. The same is true for you and your case, even with your professor sitting on the bench.

Once you understand your anxiety, you can develop a plan to manage it in a way that works for you. Everyone will likely manage anxiety in different

ways, but the important thing is to stay positive, not get discouraged, and forgive yourself when you make mistakes or struggle.

One of the best strategies can be thorough preparation, followed by preparation, then a little additional preparation on top of that. If you have every practiced anything, then you understand that practice is about learning something so thoroughly you cannot help but to do it right when you are under pressure. Once you do that prepare some sort of outline or chart to remind yourself of the important points.

Believe in your self; speak loudly and confidently; and breathe! All of these will remind your brain that you are in control and there is nothing to worry about.

### Upcoming Events

- \* Tuesday, March 19, R&W II and Moot Court panel—12:00–1:00 p.m., in the Great Hall (lunch provided).
- \* Tuesday, April 9, Advocacy Board Tryouts Informational Meeting—5:00–6:00 p.m., in the Great Hall (meeting will be videotaped).
- \* Friday, April 19, First-Year Appellate Advocacy Competition—5:00 p.m. (more details to come).
- \* Monday, May 20, Moot Court Board Tryouts begin with the release of the record and the writing exercise.

### Questions?

If you have any questions, please contact anyone of the following individuals:

Professor Bowman, Faculty Advisor for the Moot Court Board,  
bowman@law.stetson.edu

#### 2012–2013 Moot Court Justices

- \* Chad Burgess, Chief Justice of the Moot Court Board,  
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