Introduction

Welcome to the Stetson Moot Court Board’s Spring Information session, where the goal is a two-pronged approach to both introduce you to the Board and help you out with your final R&W II arguments. Hopefully you have found the presentation helpful and hopefully you will find the next five pages just as helpful.

Inside are resources you can review, including links to online videos of oral arguments, to give you an idea of what to expect as you complete one of the capstones of your R&W classes.

Also included are tips from Moot Court Board members that they wish had been shared with them when they were in your shoes.

Additionally, we offer some tips on managing the jitters during your oral arguments and some great stress management techniques to use as you prepare for oral arguments. Even the most seasoned Board member feels some jitters or butterflies before speaking—the key is to manage the jitters and use them to your advantage rather than letting them take control.

Finally, we let the experts describe the perfect brief to you. This description, and tips, will help you as you finish up your appellate brief for R&W II.

Moot Court can be one of the most rewarding advocacy experiences on campus; members further develop skills that translate into almost any legal experience—from clerkships and public service, to trial work and transactional. We wish you the best of luck in R&W II and hope you decide to join us in the fall!

-Jason Lambert, Associate Justice, 2010-2012

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, concluding, and rebuttal.

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

- The Winning Brief by Brian 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 SW. 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.

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In This Issue of The Rebuttal

- The Brief and Brief Writing Tips
- Oral Argument and Oral Argument Tips
- Managing Oral Argument Anxiety
- A Complete Brief—From the Experts

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The Brief

The brief you are about to tackle is the largest writing project of your law school career thus far, and quite possibly the largest writing project you have ever undertaken. It can be daunting and unwieldy, but with planning and time management, you can be successful.

First, understand the issues. Think about exactly what the court has asked you to address. It is easy to get absorbed in piles of research and travel down the path of a well-thought-out, niche argument, without actually addressing the issues on appeal. Do not lose sight of the issues, and refer back to them regularly.

Second, stay organized from the beginning. You may end up with a four-inch thick stack of research, making it nearly impossible to find that case that said just what you need to include in the brief, unless you have kept things organized.

Third, start writing early. Map out your arguments, 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 proofread—your brief as many times as you can. Read it out loud. Read it in reverse order or out of order. When you get to the end of sentences, ask why and see if the next sentence answers the question. This will help ensure you have analyzed the issues thoroughly and that you have stayed on issue.

Finally, do not underestimate the importance of formatting. Your professor is reading the same thing 30 some-odd times. Make sure your brief is easy to read, formatted well, headings, and you will be well on your way to succeeding.

Board Member Tips on Brief Writing

You definitely need to know what your writing process is and utilize it. Just like in law school, where you need to know how you learn in order to figure out the best way to study, figure out the way you like to write and then implement that process. Personally, I am very visual, so I draw out my arguments on a very basic flow chart. Once I start understanding the basic organization, I need to talk out my arguments. Talking it out helps me hone in on the simplest organization that makes sense. If that works for you, that is wonderful! However, if it does not, figure out what does (writing everything out, recording your thoughts, reading as much as research as possible, etc.), and do it. However, whatever your process looks like, make sure you save enough time to polish your brief at the end of it.—C.J.

Start your research early and plug that research into a comprehensive outline. If you start a comprehensive outline prior to writing, it could prevent the need to research in the midst of writing (hopefully not days before the brief is due!).—W.C.

Do not procrastinate! I started working on the assignment almost as soon as we received it, and I had basically finished it a week before it was due. That extra time allowed me to proofread it a few more times and helped me to identify any gaps/weaknesses in my argument early enough to fill them. I know many people who waited until the very end to work on the assignment, and they were incredibly stressed out and sleep deprived by the end. Moral of the story: start early and work on it in small increments each day. —E.O.

It seems easier to focus on the brief and forget about the oral argument until after the brief is submitted, but having to defend your position really helps with developing the arguments and identifying its faults. Once you initially online your brief, take some time to talk it through and give the opposing arguments some consideration. Try to convince yourself that your position is right and anticipate rebuttals. If you can defend your points effectively, the brief will become a lot easier to write.—J.H.

I wish I knew how long it takes to work on the tables and formatting. You do not think those things will take very long—but they really do! You cannot rush through them either, because the mistakes will be the most glaring if your formatting or tables are sloppy. —M.F.
Oral Arguments

You should start thinking about your oral argument while you are writing the brief. This will help focus your written arguments, but also help you begin amassing the knowledge in your mind that you will need to successfully make your points during oral arguments.

Oral argument is supposed to be a conversation between you and the judges, so in practicing, have some informal sessions with your classmates just bantering ideas and arguments back and forth. Practice both with and without a clock so you can get a feeling for how best to make your arguments verbally and how long it takes you to make them.

Understand that your oral argument can be different from your brief. In many cases it must be, because even if you read your brief lightning quick, you would never make all your points in the time allotted. Focus on your strongest arguments and the bare essentials to make them quickly and understandably.

Do not spend as much time on the facts as you think you want to. The facts are a safe place to hang out in oral argument, but really only a sentence or two is probably necessary. The rest will come out as you make your arguments, and in this case, the judges will already be very familiar with the facts.

Answer questions, even unfavorable ones directly. Start with a yes, no or maybe, then begin your explanation. This helps the judges follow your argument more easily. Bear in mind, while this is a conversation, you want it to be a conversation you control, so answering questions directly gets you back to your argument sooner, which is always ideal.

Board Member Tips on Oral Arguments

Practices are the key to good oral arguments. Within the rules of your class, gather family and friends to serve as practice judges. If you can simply explain a complex area of law to those who are unfamiliar with the law in general, you are setting yourself up to do great! Also, set aside the time to practice by yourself. You may feel embarrassed when others walk by in the library and see you on your feet talking to a whiteboard in a study room, but you will, over time, become more confident in yourself and your argument. –W.C.

Preparation, preparation, preparation! I wish I had given myself more time. The more time, more familiarity, and more comfort you have with the material, the more likely your argument will come across as a conversation with the judges as opposed to a memorized speech. –J.C.

Always remember that you are basically having a conversation. Use questions to your advantage. A question helps you figure out what the judges want to discuss. Also, do your best to remain calm and answer the questions. Finally, make sure you know your record and the cases inside and out. Using record and case citations can really help you make a point stronger. To quote Dorie from "Finding Nemo": "Just keep swimming. Just keep swimming." Basically, relax, remember to breathe, and try to have fun. This is an excellent opportunity to learn what oral arguments are like in an educational setting without the added pressures of the real world. –E.O.

Go through your arguments every chance you get—while you are driving, in the shower, etc... Doing your argument while doing something else will prepare your brain to be thinking of where you will be heading next in your argument while you are talking or thinking about how you want to answer a judge’s question while listening. The repetition will also make your answers seem second nature, which is much more conversational than anything scripted or memorized. –J.L.

Write down the questions that you have been asked (or will likely be asked) on separate sheets of paper or notecards, put them in a zip lock baggy, and as you practice your argument pull out a random question and practice answering the question and transitioning back to your outline. –D.B.
Managing Presentation Anxiety

Understanding Anxiety

Most adult Americans 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 OK! Even Supreme Court Chief Justice 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 anxiety free to deliver a compelling or 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. Its root is in the prehistoric “fight or flight” response. The reason it is called “fight or flight” is because the brain is seeking to protect us from a perceived threat. Reducing the “fight or flight” response is simply a function of training our brain that public speaking, generally, and oral argument in particular is not a threatening situation.

One of the key ways to manage anxiety is through positive thinking and belief that you can perform at a high level. On Moot Court, we often remind ourselves that regardless of who we are arguing in front of, we probably know more about this particular case than the judges ever will. The same is true for you and your case, even with your professor sitting on the bench.

Believe in yourself; speak loudly, clearly, and energetically; and breathe. All of these will remind your brain that you are in control and that there is nothing to worry about, which will calm the anxiety response. This will help keep your head clear during oral argument and allow you to focus on your arguments and the judges’ questions.

Managing Anxiety

Once you understand your anxiety, you can develop a plan to manage it that works for you. While you may discuss with others what works for them, remember, each person is unique and something that works for someone else may not work for you. The important thing is to stay positive, not get discouraged, and forgive yourself when you make mistakes or struggle. Otherwise, the anxiety only becomes a bigger issue to deal with.

One of the best strategies can be thorough preparation, followed by preparation, and then a little extra preparation on top of that. If you have ever practiced something—an instrument, a sport, a speech—then you understand that practice is about learning something so thoroughly you cannot help but do it right when you are under pressure. Preparation for oral argument is no different. Your goal should not be simply to memorize your argument, but rather know it so well that when asked a question you do not really have to think about the answer, it just comes to you.

Once you have done that, prepare an outline to take to the podium with you. Something simple with just enough on it to trigger your memory if you do happen to lose your place or get tripped up by a judge’s question. Think of it as your security blanket. Organize things in a way that makes sense to you, try to limit it to two pages so both can be face up to you on the podium the entire time, and practice using the outline so you know how to reference it without reading from it.

Finally, we are all nervous at the podium, but some of us hide it better than others. Do not take a pen with you that you might fidget with and remember to stand steady at the podium, without rocking back and forth. Remember, you are the expert and you will do just great.
A Complete Brief—From The Experts

Statement of the Issues / Questions Presented

“Issues are the most important information attorneys give an appellate court.” Thomas B. Marvell, Appellate Courts and Lawyers (Greenwood Press 1978)

“The issues should be stated so simply and so clearly that the judges will grasp them at once. Nowhere in the brief is clarity more important . . . it is here that the brief writer makes an invaluable first impression.” Girvan Peck, Writing Persuasive Briefs (Little, Brown & Co. 1984)

Statement of Facts

 “[A] good [statement of facts] passes two essential tests: First it stands alone. Anyone reading your statement of facts should understand what the case is about without having to look at anything else. Second, the statement of facts should make the reader take your side. It should be persuasive without being argumentative.” James W. McElhaney, The Art of Persuasive Legal Writing, 82 ABA J. 76 (Jan. 1996)

Standard of Review

 “[I]t is important that counsel help us in their briefs by identifying the standard of review. A clear, succinct, and authority-supported statement of standard of review gets me off to a good start.” Frank M. Coffin, On Appeal: Courts, Lawyering, and Judging (W.W. Norton 1994)

Signposting / Headings

“When headings are interspersed within the argument itself they should be phrased in argumentative form, and not as mere topical references. If they are so worded, the judges will see immediately not only what the section concerns, but what the advocate argues.” Girvan Peck, Writing Persuasive Briefs (Little, Brown & Co. 1984)

Citations

“Nothing exposes the second-rate lawyer more quickly than an obvious error in citation form.” Irwin Alterman, Plain and Accurate Style in Court Papers (Am. L. Inst.-ABA Comm. on Continuing Prof. Educ. 1987)


Arguments

“Simple arguments are winning arguments; convoluted arguments are sleeping pills on paper.” Alex Kozinski, How You Too . . . Can Lose Your Appeal, 23 Mont. Law. 5 (Oct. 1997)

“Don’t tell your readers—show them. Many beginning writers make this cardinal error. They describe their thoughts, feelings, and attitudes about a subject rather than allowing the facts, action, and evidence to speak for themselves.” David L. Carroll, A Manual of Writer’s Tricks (2d ed., Marlowe 1995)

Conclusion

“The conclusion in a brief is not just the major thing; it’s the only thing. The purpose of a brief is to convince the court to accept your conclusion—to reverse, vacate, or affirm the lower court’s judgment. The only purpose of the brief’s contents that precede the conclusion . . . is to set the stage for logical premises to justify the suggested conclusion.” Ruggero J. Aldisert, Winning on Appeal: Better Briefs and Oral Argument (Natl. Inst. Tr. Advoc. 1992)