


8 Ways to Slay Your 1st Oral Argument

MASTER YOUR CASE

Being the most prepared in the room is an instant equalizer.

 Your most important prep step is mastering the case: the facts, the law, the record, the dead bodies. Know them all, inside and out.

2 KEEP IT SIMPLE

“I don’t care how complicated your case is; it usually reduces to [a few] major points, in no particular order.”

–Chief Justice John Roberts

- ◆ Distill your argument into 2-4 points.

They are your anchors.

Keep coming back to their refrain.

3 Mind the judge's goal

- ◆ Judges see oral argument as an opportunity to help them write an opinion. They want to get that opinion right.
- ◆ You need to be able to say how the rule you advocate for would turn out in future cases and what is the outer extreme.

◆ Judges also see oral argument as a means of education. They want to understand and probe the reach of your position.

Judges often do so through hypothetical questions.

Prepare for these!

4 KNOW the judge's NAME

- ◆ Learn each judge's name and how they want to be addressed.
 - ◆ Know where they sit on the panel so that you can address them appropriately in response to their questioning.
- Practice addressing them by name (unless, of course, you have learned that they prefer to be addressed otherwise).

In the words of Chief Justice John G. Roberts Jr.,

“When I used to argue cases around the country, I would always go out a day early, sit in on a court session, and talk to the bailiff . . . How do the judges like to be addressed? . . . As ‘Your Honor’? . . . As ‘Judge’? . . .

When you don’t do it, he notices it, for whatever reason, and it’s a distraction To the extent those things—little tiny things—become distractions, that’s not good.”

5 Know Your Court

- ◆ Visit the argument site in advance. Learn where you will sit and where you will stand. Become comfortable at the podium. Spend time in the room. Absorb it. Own it. This will help you feel more comfortable on argument day.
- ◆ Also know how your court allocates its rebuttal time.

(Every court does it a little differently.)

Watch How it's Done

Seeing how other arguments have proceeded will help you feel more confident in your own one. Find videos of top students competing in moot court competitions to watch oral advocacy in a setting like yours.

- ◆ Read transcripts of past arguments in cases like yours—see what worked, what didn't, and get ideas and inspiration.

7 Prepare for a DIALOGUE—
not a speech!

The best oral arguments proceed like a conversation.

Expect a back-and-forth, and prepare accordingly.

Giving a memorized speech will not be persuasive.

8 Moot for your moot.

“I would do countless moot courts early on . . . I’d do them over and over again, and it paid off enormously.”

—Justice Roberts

As with all skills, the best way to master oral advocacy is practice.

◆ If you can arrange a parlay with friends, that works best. You will be sure to get asked questions you haven't yet considered. If practice with others is infeasible, a mirror works, too. Stand and deliver your opening points.

◆ Next, ask yourself: what questions do I dread most? Where are the weak points in my case? Then practice how you will answer those questions.

9 DON'T DODGE A QUESTION

- ◆ If a judge asks a yes or no question, the first words you say should be YES or NO.

- Only then should you elaborate, to try to advance the ball your way.

- ◆ If a judge asks a hypothetical question, never answer, “That’s not what happened in this case.”

—As the late Justice Antonin Scalia explained, if an attorney answers that way,

“Oh, boy. I mark them down . . . I would rule against them if I could, just on that alone [laughter].”

◆ If a judge asks something that seems out of logical order (in terms of how you think your points should proceed), be flexible.

—Never say, “I’ll get back to that,” or “I will answer that after telling you this.” Just answer the judge’s question directly.

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Amanda