NEW YORK LAW SCHOOL
MOOT COURT ASSOCIATION

CHARLES W. FROESSEL
INTRAMURAL COMPETITION
2013

TIPS FOR A SUCCESSFUL
ORAL ARGUMENT

Moot Camp Day II
Sunday, July, 14 2013
ROOM W401
12:00 P.M. - 1:00 P.M.
Delivering a persuasive oral argument is telling the audience what you are going to say, saying it, and then reminding them of what you said!

**DO’s:**

- Begin with a **road map** and memorize it cold.
  - **Tip:** As a starting point, consult the point headings of your brief. Point headings should lead you to the strongest arguments for your position.

- Develop a strong theory of the case to help focus your argument and support your position throughout.
  - **Tip:** When developing your theory of the case, consider all relevant facts and laws, as well as any common sense and emotional factors that may help to sharpen your argument.

- Keep your hands and body still—no swaying, fidgeting or dancing at the podium.
  - **Tip:** It is hard to find a gesturing “comfort zone.” However, standing stiffly may give off the impression that you are nervous and/or unsure of your position. While remaining formal, try to appear as comfortable as possible without making motions that might be distracting to the judges.

- Speak clearly and articulate your words.

- Show great deference to the bench.
  - **Tip:** Address the justice as “your honor” when answering a question.

- Scan the bench—don’t just stare at the justice who asked the question.

- Answer a question with a “yes” or “no” prior to explaining your reasoning.
  - **Tip:** If you are unsure of whether you would like to commit to responding “yes, your honor” or “no, your honor,” it may be best to pause for a moment. Pauses usually lead the judges to believe that they have asked a thoughtful and insightful question, while giving you time to think of the best way to respond.
✓ Know the facts in the record.

✓ Be confident! Act like you know what you are talking about, even if you don’t—if you say it convincingly they just might believe it!

DON'Ts:

✗ Don’t bring a stack of papers and shuffle through them while you argue.

✗ Don’t argue with the justices—if the justice doesn’t understand your point, *politely* say “respectfully, your honor...” **DO NOT** say “with all due respect...” as this might come across as condescending.

✗ Don’t stack laws before answering a question.

  ○ **Tip:** Directly address questions first, and then cite authority to support your answer.

✗ Don’t use “um” or “uh” or any derivative thereof.

✗ Don’t use canned conclusions—“For the aforementioned reasons the Court should hold...”

  **Tip:** End your argument on a strong point or with your theory of the case, if it’s supported by strong public policy.
PURPOSE OF A ROAD MAP

For moot court oral arguments, a road map serves three very important functions: (1) it introduces you to the Court; (2) it frames your argument for the Court; and (3) it is the backbone of your argument. Without question, a road map must be memorized and delivered without notes.

(1) **INTRODUCTION** - An oral argument is an opportunity to engage in a dialogue with the Court. Ideally, the oral argument should resemble a dialogue between the Court and counsel—the judges asking questions and counsel providing well-reasoned and coherent answers. Questions can and do interrupt the flow of counsel's presentation, but effective advocates welcome such questions, as they offer an insight into the mind of the questioning judge. But remember, the courtroom is not a stage, and you are not a playwright. You have no control over the questions that the other participants in this argument—the judges—will ask.

Your road map will serve as your introduction to the Court. It is an opportunity to make a great first impression—don’t waste it. You should scan the bench while delivering the road map, i.e., only your eyes and head should move. Your tone, posture, and attitude should demonstrate to the bench that you are competent and prepared to discuss the law. Practice your road map until you sound natural and unrehearsed. Consistency in your tone will build your credibility with the judges.

(2) **FRAMEWORK** – For the Court, the road map forms the framework of your argument. It outlines what you want to say to the Court, and what you want the Court to remember of your argument. In a few short, crisp sentences, the Court hears what you are asking it to do and what the main points of your argument are. Brevity and clarity are essential.

(3) **BACKBONE** – For you, the road map is the backbone of your argument. It is the axis upon which your argument turns. It is the path you follow when arguing your points to the Court. Most importantly, the road map is your safety net after answering questions. You return to it faithfully, to keep your presentation smooth and flowing, and to ensure that all of your points have been made. You must use your oral argument skills to direct the flow of the oral argument; try as hard as possible to ensure that all of your initial points get discussed.

Do not get thrown off kilter if a judge interrupts your road map with a question. In fact, it is likely that this will happen. Stand firm to your position. REMEMBER: IT IS YOUR SHOW! Respectfully respond the judge’s question, and do your best to tie that response into your road map. Using qualifiers such as “Your honor, that leads me to...” will let the judges know where you are headed.
Presenting an Oral Argument can be a stressful experience, but a thorough knowledge of the material and **exhaustive practice** will not only sharpen your presentation skills, but will make the experience challenging and fun.

**GET COMFORTABLE WITH BOTH SIDES OF EACH ISSUE!**

- **Utilize YOUR brief;** examine the point headings and decide the most effective way to distill the argument down to a few distinct points.

- **Utilize the OPPOSING SIDE’S briefs** to ensure that you have a good grasp of all the case law.

- **Create a ONE-PAGE document with a concise outline of your argument.**
  
  - **Manila folders with each side labeled can be effective.** While everyone has a different preference regarding his or her oral argument notes, one suggestion is to place your “introduction” on the cover of the folder, your “road map” on the inside cover, and your relevant facts/case law on the adjacent inside cover.

  - **List relevant case law and citations.** Pick out three or four of the most favorable facts for your position, and include these along with their citations to the fact pattern in your oral argument aid. Citing to the fact pattern will draw the judges to the strongest points in your argument, and will show that you really know your stuff!

- **Anticipate the questions you will be asked, particularly the hard ones.** Now that you have re-read the briefs and refreshed yourself on the facts and authorities, you should have a good idea of the “make or break” points of your case. Do some brainstorming with your partner. Try to put yourselves in the position of the judges. What do you think they will want to learn more about? Does your argument ask the Court to extend the law to a new factual setting? What will be the ramifications of that extension of the law in future cases? Put your Socratic training to good use and think of some hypothetical fact patterns, analogous to your facts, in which the holding you are requesting would be applied. Does it still work the way you intended?
• **Develop a theory of the case.** What is this case really about? This can be policy or a legal theme. Consider the following example:

  o **“In any case involving child custody, the overriding concern must be the children’s best interests. In this case, there can be no question that permitting children to live with the parent who has the financial means to care for them, the emotional stability to raise them with patience and tenderness, and the support of other relatives for providing a stable and nurturing environment, will be in their best interests.”**

**PRACTICE, PRACTICE, PRACTICE!!**

When you know what to argue, begin with a “COLD ROUND”:

- A “cold round” is when the judges will ask very few or no questions at all.

- Oral Argument rounds are FIFTEEN minutes long; begin by timing and watching yourself in a mirror to ensure you look professional and are able to fill the full amount of time if you are faced with a cold bench.

When you are feeling HOT about your COLD round:

- Begin working with your partner; have your partner time you as they ask you questions throughout the argument.

  o **NOTE:** Working with people who do NOT know the law is just as important as working with those who do. Sometimes we all get lost in the details and forget about the overall argument.

- You can NEVER go through your argument too many times—sometimes you must be ready in a few minutes to argue a completely different side. Allow enough **time and preparation** for BOTH sides of BOTH issues.

- Always remember to stay relaxed and have fun!
“Good [morning / afternoon / evening], Chief Justice, your honors, may it please the Court. My name is ______________, and I, along with my co-counsel, ______________, represent ______________, the [petitioner / respondent] on this appeal.

We ask this Court to [affirm / reverse] the decision of [name of the applicable lower court] and hold that [state the holding you would like the Court to reach] for the following [number of reasons]: [list reasons].

[Name of Co-counsel] will argue ______________, and I will argue ______________.

Your honors, this case is about: [Theory of the case].
**ORAL ARGUMENT SKILLS CHECKLIST**

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<tr>
<th>Skill</th>
<th>Notes</th>
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<td><strong>Content</strong></td>
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<tr>
<td>Make persuasive arguments—think of how to make the court CARE about your client/argument</td>
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<td>Listen to the questions the judges ask—thoughtfully answer their questions</td>
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<td>Think about why justice requires the outcome you want</td>
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<td>Be flexible and ready to move on when an argument isn’t working</td>
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<td>Knowledge of case law –</td>
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<td>Knowledge of fact pattern –</td>
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<td>Application of law to facts –</td>
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<td>Record cites –</td>
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<td><strong>Structure/Organization</strong></td>
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<td>Introduction –</td>
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<td>Road map –</td>
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<td>Smooth transitions –</td>
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<td>Strong conclusion –</td>
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<td><strong>Style</strong></td>
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<td>Deference –</td>
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1 Note: This checklist is an example of typical skills that participants are judged on at moot court competitions and is not a grading rubric for the Froessel Competition.
Direct answers –
Posture –
Hand gestures –
Verbal communication (volume, tone, speed) –
Eye contact with judges –