

NEW YORK LAW SCHOOL
MOOT COURT ASSOCIATION

**2011 CHARLES W. FROESSEL
INTRAMURAL COMPETITION**

TIPS FOR A SUCCESSFUL
ORAL ARGUMENT



MOOT CAMP DAY II

July, 9 2011

ORAL ARGUMENT: DO'S AND DON'TS

Delivering a persuasive oral argument is telling the audience what you are going to say, then saying it, and then reminding them of what you just said!

DOs:

- ✓ Begin with a roadmap and know it *cold*
- ✓ Have a strong “this case is about” to reestablish focus on your argument when judges throw you off
- ✓ Keep your hands and body still – no swaying, fidgeting or dancing at the podium
- ✓ Speak clearly and articulate your words
- ✓ Show great deference to the bench
- ✓ Address the justice as “your honor” when answering a question
- ✓ Scan the bench – don’t stare at the justice who asked the question
- ✓ Answer a question with a “yes” or “no” prior to explaining your reasoning
- ✓ Know the facts in the record
- ✓ Be confident: Act like you know what you are talking about even if you don’t have the slightest clue – if you say it convincingly they just might believe it!
- ✓ Take a moment to **think** about the answer to a question; this slows down those who naturally speak at a faster pace and allows you to better articulate a clear and smooth answer to a question

DON'Ts:

- ✓ Don’t read your oral argument from your notes; rather make eye contact and engage with the court, and speak naturally with occasional references as necessary.
- ✓ Don’t bring a stack of papers and shuffle through them when 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...” – that is another way to tell the judge he is an absolute moron
- ✓ Don’t stack laws before answering a question – first address the question, then cite authority to support the proposition
- ✓ Don’t say “um” “uh” or any derivative thereof
- ✓ Don’t use canned conclusions.

Purpose of a Road Map

For moot court oral arguments, a roadmap 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 roadmap must be **memorized and delivered without notes**.

(1) INTRODUCTION – View oral argument as 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.

The 'roadmap' is the first words from your mouth. As such, it *introduces* you to the Court. You should be friendly, yet serious and authoritative. You should scan the bench fully while delivering the roadmap, i.e., only your eyes and head should move. By your tone, posture and attitude, you tell the bench you are ready, willing and capable of discussing the law.

(2) FRAMEWORK - For the Court, the roadmap 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 key.

(3) **BACKBONE** - For you, the roadmap 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 roadmap 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.

Suggestions for Oral Argument Preparation/Presentation

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 in to a few distinct points.
- Utilize many opposing sides' 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
 - **List of relevant case law and citations is a MUST**
- **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 up 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?
- **Choose a theme that will unify the points of your argument.** What is this care really about? This can be policy or a legal theme. Consider the following example:
 - *“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:”

- Oral Argument rounds are EIGHT 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
 - 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.

Sample Road Map

“Good [Morning/Afternoon], Chief Justice, your honors, may it please the Court. My name is **__Barbie__** and I, along with my co-counsel, **__Ken__** represent **__Minnie Mouse__**, the **__[Petitioner/Respondent]__** on this appeal.

We ask this Court to [affirm / reverse] the decision of the **_____** [the applicable lower court] **_____** and hold that **_____** [state the holding that you seek to achieve] **_____**.

Mr. / Mrs. [co-counsel] will argue **_____**,
and I will argue **_____**
_____ for the
following three reasons:

FIRST, **_____**

SECOND, **_____**

and **THIRD,** **_____**.

Your honors, this case is about **_____**.”

ORAL ARGUMENT SKILLS CHECKLIST

<u>Skill</u>	<u>Notes</u>
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Content

Knowledge of case law

Knowledge of fact pattern

Application of law to facts

Record cites/Case with years

Policy Arguments

Structure/Organization

Introduction

Road Map

Smooth Transitions

Strong Conclusion

Style

Deference

Direct Answers

Posture

Hand Gestures

Verbal Communication
(Volume, Tone, Speed)

Eye Contact w/ Judges

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.