MAY IT PLEASE THE COURT? ORAL ARGUMENT IN LAW SCHOOL

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Oral argument – does the mere thought of it make you weak in the knees? Some students may want nothing more than to fulfill the oral argument requirement for Legal Research and Writing class and then never set foot in a courtroom again. For others, oral argument may be the reason you came to law school and a skill that you would like to hone through a coveted position on one of Georgetown’s Moot Court or Mock Trial teams. This handout is designed to be a guide for all students, whether you love or fear the idea of oral argument.

Your first exposure to oral argument at Georgetown will likely arise during the second semester of your Legal Research and Writing Course. In the second semester, you will be introduced to persuasive legal writing and will be asked both to write an appellate brief (as opposed to the exercise of writing a legal memorandum, which is a form of objective writing) and to orally argue your case before a panel of student judges. These two assignments should not be treated as discrete; perfecting your oral argument is an ideal way to perfect the legal arguments in your brief. The following provides insight on what to expect when giving an oral argument for your class, how to prepare for oral argument and some tips for presentation style. Because brief-writing and oral arguments for Legal Research and Writing class are similar to, but not the same as, their counterparts in Moot Court competitions, a section on preparing oral arguments for moot court competitions is also provided.

THE LEGAL RESEARCH AND WRITING REQUIREMENT

What to Expect:

You will be paired with another student in your Legal Research and Writing class. Both students will be on the same side of the case, and each student will be required to orally argue one issue. For example, in a stop and frisk case, one student will argue the “stop” issue, while the other will argue the “frisk” issue. The side you will take in the case, both for writing the brief and for oral argument, will usually be assigned (e.g., Appellant or Appellee). However, it is usually left up to each partnership to decide which student will argue each issue at the oral argument.

The oral argument will take place in an actual courtroom before a panel of judges [usually students, former Law Fellows or friends of present Law Fellows, though occasionally Law Fellows bring in attorneys]. These judges will not have read your brief,

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but will have read a bench memo that has been prepared by the Law Fellows. They will not be familiar with the specific arguments you made in your own brief but may have case law that you did not include in your brief. Most importantly, they will be anxious to ask you questions! But fear not, with adequate preparation, which will give you confidence, you will be able to present an effective oral argument.

**Preparation**

The more time you allot yourself to prepare for oral argument, the better. You may have several weeks between the time you have a draft of your brief and your oral argument, or you may only have a few days. If at all possible, you should try to begin preparations for oral argument at least two weeks before you will be presenting. Remember that the preparation process will actually help you in writing your brief, and can be an extremely valuable part of that process as well. There is no need to wait to have a written draft before you begin. Instead, use oral argument preparation to help you write your brief, and vice versa. The following is a plan of preparation based on a six-step process. You may choose to follow it, or use it as a model to adjust to your own schedule.

**Step 1**

Meet with your partner to discuss the issues. This will be the time when you mutually agree on which student will argue which issue. Discuss and outline the main arguments you would like to cover in your oral argument. Compare research, cases, and secondary authorities with your partner as an initial way of gathering information both for oral argument and also to help you in writing your brief.

**Step 2**

Spend some time gathering support authorities for each of the main points that you have outlined and collect new research if necessary. Remember that oral arguments can go beyond the brief! Do not worry if you find a good case that you did not include in the most recent brief that you submitted, as you are able to discuss any additional research that you have found and this extra research will also help you in writing the next draft of your brief. Make sure that you have case law to support every argument that you plan on making.

Use this time to make sure that you are thoroughly familiar with all the facts of the case. More than just knowing the facts, make sure you know where all the facts are in the physical record. The judges may ask you questions that will require you to reference the actual record, so make sure you are familiar with it. Consider making a list of essential facts with a reference to where they appear in the record. The record that you receive and from which you write your appellate brief normally has numbered lines, so this will allow you to easily identify and locate relevant facts.
Step 3

By the time you are about halfway through whatever length of time you have to prepare, you can start to really pull together your argument. You can do this on your own, but ideally you should work with your partner when you start to actually focus on the specific arguments and points you want to communicate to the judges in your oral argument. This way you avoid repetition, get two perspectives on the choices you make, and learn both arguments more thoroughly than you would otherwise. Some students find it useful to write the first draft or an outline of what they want to say in oral argument, and some prefer to do it all through oral practice. Consider all your options and go with what works best for you.

Make sure you prepare a strong introduction as well as the main points you want to address, keeping in mind that there are some things the first speaker has to do that the second does not (reserving time for rebuttal, introducing the second speaker) and vice versa (summarizing both speakers’ cases and concluding). Prepare to speak about the standard of review, a summary of the facts, and any other unique legal thresholds that your case presents. You may or may not have to discuss these in the oral argument, but you should have them prepared in any case.

Keep in mind that this will not be a “speech” in the ordinary sense of the word. During oral arguments the judges will often be interrupting you, asking you questions about issues you have not discussed yet or did not plan to discuss at all. The preparation that you do should reflect this. Rather than creating a grand, flowing presentation, prepare short discussions of the major issues, each one discrete and complete on its own. In this way you will be preparing yourself for questions that will jump from topic to topic, rather than locking yourself into a specific order of discussion or legal analyses that depends on your already having made previous points. Making each legal argument complete on its own will also force you to recognize deficiencies in your research that might have been hidden (even from yourself) when you were writing your brief – best to find these now, when you still have time to do more research.

This approach also allows you to consider integrating into your argument “sound bites” – turns of phrases that may make your arguments particularly memorable. For example, if your argument is that the Fourth Amendment is not a free pass for persons engaged in criminal activity to evade official scrutiny, your sound bite might be “no free passes.” There will be some cases or legal issues that are so central or important to your argument that you know you inevitably will have to deal with when you are presenting. Consequently, you should take extra care to prepare concise and effective ways to get these points across quickly and memorably. Remember to prepare legal arguments both in your client’s favor and to counter points opposing counsel will likely make.
Step 4

By this point, your argument preparation will be well under way and you will be ready to “moot.” A moot refers to practice oral argument sessions. You and your partner can moot with each other, as you are both familiar with the law and will be able to formulate questions. Take turns presenting your arguments and challenging each other with questions. Consider mooting your argument in front of a camera (because what you think you say is often not really what you actually say, and you probably had no idea that you actually said “uhh” that many times!). As you practice your argument, the focus should be on identifying problems. Consider:

- What issues came up when you mooted that you and your partner did not anticipate? Do you need to supplement your research?
- Are you careful and clear in how you frame the legal issues?
- Where are you prepared to draw the line on your issue? In other words, have you figured out beyond what point you will not let the judges push your position?
- Did you spend too much time on issues that are not very important?
- Are there any problems with presentation? For example, do you have any “verbal tics” such as “um” or “ah”? Do you have distracting mannerisms, or “physical tics,” such as clenching the podium, touching your hair, madly waving your hands, or swaying back and forth as you speak?
- How is your volume? Are you speaking too loudly?
- Do you speak clearly and enunciate carefully?
- When asked questions, do you listen carefully and consider your answer before responding?

It will probably take you a few tries before you are comfortable with mooting. However, try to stay “in character” at all times—do not mumble to yourself about how you messed up that argument or say things like “that was a mistake, I will not do that at the real argument.” If you make a mistake, either skip it and keep going or try to fix it as if you were in front of the real panel of judges; you will have plenty of time to discuss how to deal with it after you finish your moot, and it is important that you get used to dealing with surprises and blunders realistically. In addition, practice referring to the practice judges as “Your Honor” so that you are comfortable with the phrase the day of your oral argument.

Step 5

By now, about three-quarters of the way through your preparation period, it is time to take stock of what you have learned from your new moots. Any areas of law that came up that you were not prepared to deal with – research them. Any quirks of our own presentation technique that have been noted [talking too fast, mumbling, reading from your notes] – try to fix them. Many students moot a few times but never stop to take stock of what they have learned from those moots; taking some time off from mooting to
talk about what you have learned and how best to fix your problems and capitalize on your strengths can be a valuable technique.

By now you can also finalize the materials you will be bringing with you to the podium. Different people have different preferences for this – some want a binder full of tabbed materials, while others like to go up with nothing at all. Find whatever level you are most comfortable with. As a general rule, you should be able to reference, if asked, the major facts of the case, the procedural history of the case [findings of facts and law by the lower court(s)], and the reasoning and holding of the cases. Having access to that kind of basic information if asked will improve your presentation.

Remember that you do not have to be able to pinpoint each issue of law you are pulling from each case or to know what page of the lower court’s ruling discussed the standard of review. You should be able to reference the basics of the major facts, history, and legal sources that impact your case – if you cannot put all of that information on a page or two of paper, then you are trying to include too much.

**Step 6**

Continuing mooting your argument. By now you have done all the research you can do before your argument, and you will be familiar with both the format of oral argument and with the specific arguments you will be making. Try to become less reliant on your script, focus instead on maintaining eye contact with whoever is mooting you, and on making sure you are speaking clearly with enough volume and not too fast. Practice using your list of facts, references to the record, and cases so that you can quickly and effectively reference them in response to questions from the judges.

**Last Minute Tips**

- Speak in a conversational tone with the judges. A conversation is something you can create with the judges. Judges will appreciate if you talk with them, not at them.
- Show the court respect addressing a single judge as “Your Honor,” addressing more than one judge as “Your Honors,” and addressing the court as “the court” or “this court.”
- Wear appropriate professional clothing.
- Maintain eye contact with the judges.
- Listen carefully to the questions. Think before you answer and then give a direct answer first, then explain.
- Relax, nervousness is normal. Your nervousness is not a personal flaw but a normal response to an exciting challenge. Transform your stress and nervousness into productive energy.
PREPARING FOR COMPETITION: ORAL ARGUMENT AND MOOT COURT COMPETITIONS

The oral arguments required by your Legal Research and Writing class are not the same as those in Georgetown’s Beaudry and Leahy Competitions, which are in turn quite different from those Georgetown’s Barristers’ Council members participate in at moot court competitions around the country. The advice above however, is relevant to all of them. Should you decide to participate in Georgetown’s in-school competitions and possibly to compete nationally, below are several notes to keep in mind.

Arguing Both Sides
Unlike Legal Research and Writing oral arguments, and unlike real legal practice oral arguments, competitors in moot court competitions are generally required to argue both sides of their case before panels of judges. While this doesn’t change the preparation you should be doing, it should change the mindset you bring to the procedure. In most competitions, you will have written a brief for only one side of the argument, and thus you will need to do more additional research to effectively argue the opposite side. It is also extremely difficult to switch sides in oral arguments, and there is always the danger that you will accidentally begin arguing the wrong side during your argument, particularly when judges start asking difficult questions.

Note that preparing both sides of an argument, whether or not you actually are required to do so, is a very effective way to prepare for any oral argument. There is no better way to anticipate your opponent’s arguments than to prepare it yourself. To avoid the problem of becoming confused between the two sides, it is especially important that you moot both sides of the argument, preferably one right after the other. This will force you to develop the two sides and to become comfortable switching between them.

Tougher Judges
In your Legal Research and Writing oral arguments, your bench will generally be students, and they will question you in ways to improve your brief writing. These will most likely tend to be relatively friendly. In moot court competitions, however, judges are likely to be much more aggressive in challenging your understanding of the law and to trapping you into contradictory positions or into undermining your argument. In the final rounds of Georgetown’s in-school competitions around the country, judges will be attorneys or even judges from actual courts of appeals. They will know far more about this law than the student judges you deal with at Georgetown and have years of experience in challenging attorneys in oral argument.

Given this expanded challenge, it is imperative that you prepare through mooting your arguments. Ideally, if the rules of your competition allow, you should seek professionals in the area of law you are arguing to moot you – they can bring the kind of knowledge you will be facing when you argue in competition.
Opponents

In your Legal Research and Writing oral arguments, you will technically be arguing against other students in the same round. In reality each participant is challenged individually, and the judges will not expect direct response to your “opponent’s” arguments. In moot court competitions, however, effective response to your opponent’s positions is often an important part of your evaluation. Responses to your opposing counsel’s argument should not be limited to the use of rebuttal time, either; the respondent should generally challenge petitioner’s argument in their presentation, either by direct comparison or simply by ensuring that the same issues are discussed as were covered in petitioner’s argument. This is something you should practice extensively in your mooting sessions.

CONCLUSION

Whether you fear or adore the idea of arguing before a court, making the most of opportunities to prepare for oral argument while in a law school is an invaluable opportunity that should be optimized.