



## **MAY IT PLEASE THE COURT? THE ORAL ARGUMENT COMPONENT OF YOUR LEGAL PRACTICE COURSE\***

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Your first exposure to oral argument at Georgetown will likely arise during the second semester of your Legal Practice: Writing and Analysis course (note that some courses, like Constitutional Law, may have an oral argument component depending on the professor). In the second semester of your first year, you will be introduced to persuasive legal writing and may be asked both to write an appellate brief 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 an oral argument checklist.

### **What to Expect**

You likely will be paired with another student in your Legal Practice 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. Even though the side you will represent in the case, both for writing the brief and for oral argument, will usually be assigned, oral argument partners may have the option to decide which student will argue each issue.

The oral argument will likely take place in an actual courtroom before a panel of judges, usually students, former Law Fellows or friends of present Law Fellows, although occasionally Law Fellows bring in attorneys. (Some students may argue in the SCI Moot Courtroom at GULC and may argue before a panel of all Law Fellows.) These judges will not have read your brief but will probably have read a bench memo prepared by the Law Fellows. They will not be familiar with the specific arguments you made in your own brief and may have case law that you *did not* include in your brief. Most importantly, they will be anxious to ask you questions. The biggest difference between oral argument and brief writing will be the spontaneity that is required of you when answering questions.

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\* Originally drafted by Carolyn Bannon & Todd Bissett. Polished by Martha R. Mora. Substantial edits made by Jasmine R. Sola. Certain ideas derive from INTRODUCTION TO ADVOCACY: RESEARCH, WRITING, AND ARGUMENT (6th ed. 1996).

## 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. Remember that the preparation process will actually help you write your brief and can be an extremely valuable part of that process. 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 tasks will aid your preparation. These tasks need not be completed in perfect order, and each one can be returned to at any time.

### Choose Your Theory

Meet with your partner to discuss your core theory. When the judge asks what the case is really about, how will you respond? Consider creating a one sentence theory that encapsulates the essence of your side's position. Discuss how the two issues fit within your theory and decide which student will argue which issue. Discuss and outline the main arguments you would like to cover in each issue. Compare research, cases, and secondary authorities with your partner.

### Get Familiar with the Facts

Spend some time gathering supportive authorities for each of the main points that you have outlined and collecting new research if necessary. 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 permitted to discuss any additional research that you have found. You should have case law to support every argument that you plan on making.

Make sure that you are thoroughly familiar with *all* the facts of your case. You should also be familiar with the relevant facts of the case law you are using. For those who really want to up their game, make a spreadsheet with the essential facts from your case. Next to those facts, list similar facts from cases that support your argument and dissimilar facts from cases that do not support you. Make sure to list the appropriate citations. For example, this could be a section of your spreadsheet if you are arguing that a Fourth Amendment search occurred:

Your Case Facts	Similar Facts	Dissimilar Facts
Defendant put couch on her lawn; officer stuck hand under cushion	Defendant put luggage in bus overhead bin; officer squeezed it (search)  <i>Bond v United States</i> , 529 U.S. 334 (2000).	Defendant put trash outside of house in opaque bags; garbage man gave bag to police (no search)  <i>California v. Greenwood</i> , 486 U.S. 35 (1988).

## Outline Your Argument

While some students write a full script of what they plan to say at oral argument, an outline is probably the most effective way to prepare. Oral argument will not be a “speech” in the ordinary sense of the word. During arguments the judges will often interrupt you and ask questions about issues you may not have discussed yet or did not plan to discuss at all. Rather than creating a grand, flowing presentation, prepare short discussions of the major issues, each one discrete and complete on its own. This will prepare you for questions that will jump from topic to topic, rather than lock you into a discussion or legal analyses that depends on you already having made previous points.

Create a strong introduction as well as the main points you want to address, keeping in mind that there are some things the first speaker may have 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 case.

Next, consider ranking your complete arguments in order of importance. When you are (inevitably) interrupted, knowing your most important points will guide your answers. This strategy also makes it easier to return to your key points after answering. There will be some cases or legal issues that are so important to your argument that you know you will have to deal with when you are presenting. You should take extra care to prepare concise and effective ways to get these points across quickly and memorably.

Think about integrating “sound bites”— phrases that may make your arguments particularly memorable—into your outline. For example, if your core theory 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.”

You should prepare to address counter points opposing counsel will likely make. By creating a spreadsheet like the one mentioned above, you will be ready to distinguish between the cases cited by opposing counsel and the facts of your case. The judges also will likely question you about cases they consider “bad” for your side. A colloquy between you and the judge should look something like this:

**Judge:** Counsel, what do I make of the fact that Ms. Jones left her couch in her front yard? Your facts sound a lot like *Greenwood* to me.

**You:** Your Honor, our case is different than *Greenwood*. Unlike in *Greenwood*, which involved police searching the defendant’s trash that had been left out for the garbage man to collect, there is no indication that Ms. Jones meant to dispose of this couch as trash nor provide it to any third party.

**Judge:** Does it matter that the officer put his hand under the couch cushion?

**You:** Yes, Your Honor, it does. In *United States v. Bond*, the Court held that a search occurred when an officer squeezed a piece of luggage found in a public area. Here, like in *Bond*, the officer manipulated Ms. Jones’s personal item, resulting in a search.

### **Practice, Practice, Practice**

Take time to “moot” your case. A moot refers to practice oral argument sessions. If possible, moot with your partner or a friend. Take turns presenting your arguments and challenging each other with questions. If you are unable to moot with your partner or a friend, just practice in front of the mirror. As you practice your argument, consider:

- What issues came up when you mooted that you 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?
- 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? Are you speaking too fast?
- When asked questions, do you listen carefully and consider your answer before responding?
- Do you provide an answer to the question asked? (no “maybes” allowed!)

It will probably take a few tries before you are comfortable mooted; however, try to stay “in character” the whole time. 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. It is important that you get used to dealing with surprises and blunders realistically. Practice referring to the practice judges as “Your Honor” so that you are comfortable with the phrase the day of your oral argument.

### **Find Your Voice**

Consider what your “voice” is. Your “voice” is the aesthetic manifestation of your core theory. Just like your core theory influenced your arguments, your core theory should also influence your tone of voice, word choice, and presence. Consider what value your theory represents. Are you representing a criminal defendant who suffered an invasive search? Think about how you can convey procedural fairness and dignity—maybe a note of outrage in your voice or disbelief. Are you representing a mother whose children have been removed from the home? Find a way to convey compassion. Although you are not speaking to a jury, judges have emotions too! How you make them feel matters.

## **Decide on Your Podium Materials**

Finalize the materials you will be bringing to the podium. Different people have different preferences—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 facts of the case and the reasoning and holding of the cases, especially any cases you reference in your argument. Having access to that kind of basic information if asked will improve your presentation.

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 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.

### **Oral Argument Checklist:**

#### **Before Argument**

- Choose a case theory
- Review your facts
- Review case law facts, holdings, and reasoning
- Create a case spreadsheet
- Prepare an introduction
- Outline and rank your most important arguments
- List the three points you *must* get to (in case you are short on time)
- Moot with your partner, a friend, or in the mirror
- Pick a voice
- Prepare your podium materials

#### **During Argument**

- Wear appropriate professional clothing (what you would wear to court)
- Address a single judge as “Your Honor”
- Address more than one judge as “Your Honors”
- Address the court as “the court” or “this court”

- Give a direct answer first: “Yes, Your Honor” or “No, Your Honor”
- Maintain eye contact with the judges