



Do's & Don'ts
ORAL ARGUMENTS

Oral Argument DOs

- Always address the judges as “your Honour/your lordship” or “Justice/Judge ____.”
- Speak slowly. Take your time. There is no prize for saying the most during an oral argument. Almost all competitors speak more quickly than they think they are, and it is better to be slow and clear. And if you speak quickly, it will be obvious to the judges when you are caught off guard.
- Brainstorm a list of potential questions. Where are the hard issues? What hard hypotheticals are there? Where are the key disagreements? What practicalities could impact the weight of the arguments (that is, what real or hypothetical facts, if slightly altered, could influence the outcome)? What are the most likely counterarguments to your points? Then consider answers to all of those questions. All well-prepared advocates will have considered the key questions in advance. Most will outline answers to these questions or rehearse their answers. One technique that some have found helpful is to create several brief sheets to prepare.
- Make one with key statutory/case references. Make another with the outline of your argument. Make a third with counterarguments or an outline of responses to points that might come up. (Petitioners might also create a list of points for rebuttal.) Be prepared to speak extemporaneously from your outline.
- Try to relax and to engage the judges—if you can, treat argument as a conversation, not a debate. Justice Scalia’s book recommends treating oral argument as a discussion between a young associate and a senior partner.
- Make sure you know and understand the case, the facts, and the law. You want the judges to trust you and your judgment about the case.
- Practicing in front of your friends may help you work on smooth transitions and become more comfortable with the subjects.
- Show respect for the judges at all times. Never attack the judges, even if you disagree with their arguments
- Create a short list of the few points you absolutely must get out, and refer to it as your argument nears its end. This list should be shorter than you think; getting to all of them may be substantially more difficult than you anticipate.
- Some judges (like some professors) may try to make you lose your confidence or throw you off by questioning or conveying scepticism about something when you’re

actually right. If your point is accurate or worth making, stick to your guns even if the questions are derisive or incredulous

- Make eye contact with the judges. If there are multiple judges, share your eye contact with them all (focus on the one looking at you at a given time). But don't stare
- Be professional and courteous to your opponent (who is "your colleague" or "opposing counsel" or "counsel for Petitioner/Respondent"). Disagree with his argument; use his words against him; but don't be petty, belittling, or unfair; don't mischaracterize or misquote him; and, above all, do not make personal attacks.
- Try to directly answer the question the judge puts to you before you expand on your answer. Almost all questions can be answered with a simple "yes" or "no," followed by explanation. Or a "yes, however..." followed by an explanation. If you can answer a question in this way, do so.

Oral Argument Don'ts

- Do not come to a round with a fully prepared speech to read. Yes, you should be able to speak for minutes on end if necessary—and sometimes a judge will let you go on that long without any questions—but, more importantly, come with an outline. Be prepared to mix, match, or reorder your arguments in order to get your points across.
- Do not read from the page and do not take more paper in than you can see while standing at the podium without shuffling through them. A practice or two will help you memorize key points; if you do not have them memorized then at least know where to find things immediately.
- Do not waste your already-short time by summarizing the issues, the law, the standards, or anything else that was in the briefs. Give detail if the judges seem unfamiliar with a point or want more detail, but in general you should assume that the judges are familiar with the underlying issues. They do their jobs and are usually well-prepared for argument, so they will quickly tire of overviews and summaries of the case.
- Don't fight hypotheticals or try to dodge them by saying "that's not this case." Of course it's not this case—that's why it's a hypothetical. But the judge still wants an answer, so give one and then distinguish the hypothetical or explain to the court why

it is flawed. Otherwise you may sound petulant and unwilling to answer the questions, and your judges will be annoyed.

- Do not display frustration with a judge by sighing, rolling your eyes, or shaking your head. Attempt to persuade, and if the judge is lost as far as your essential argument is concerned, you can respectfully acknowledge a disagreement or tactfully change the subject and try to persuade the remaining judges.
- Never interrupt a judge as he or she is asking a question. Wait for the entire question.
- Do not lean on the podium or brace yourself against it. Stand behind it (a minor step back or very slightly to the side can display your confidence), but do not use it for support.
- Do not pace. Moving around can be used to emphasize a point, but only if done so sparingly.
- Do not lean or shift your weight back and forth; keep your weight centered. Shuffling or swaying is distracting.

FOR LAW ESSENTIALS,



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