



Basics of Oral Argument

Prof. Jeffrey C. Brooks
*Preis PLC Director of
Advocacy and Professional
Practice, LSU Law Center*

What Is Oral Argument?

Courts of law in the United States operate under the “adversarial system”.

Opposing parties submit their positions on the case to a neutral magistrate for a decision.

What Is Oral Argument?

It's NOT:

~~Journal~~

~~DEBATE~~

~~Grant Show~~

~~Lecture~~

~~ARGUMENT~~

What Is Oral Argument?



What Is Oral Argument?

So, what **IS** it?

CONVERSATION

The **FUNDAMENTAL PURPOSE** of oral argument is to address the concerns of the judge(s).

What Is Oral Argument?

“The brief is counsel’s monologue, argument is the dialogue.”

Judge Frank Easterbrook,
U.S. Court of Appeals for
the 7th Circuit

A Dialogue? With Who?

An oral “argument” is really a conversation with the judge(s).

You are there to address their concerns.

You **aren't** there to score points or say every little thing that's important to you.

So How Do I Win?

1. Prepare.
2. Practice.
3. Be **YOURSELF.**

So How Do I Win?

“**Preparation** is everything, or nearly everything. If you are fully prepared, it is hard to be really bad, even if you consider yourself a miserable courtroom performer.

And if you are not prepared, it doesn't matter if you are the second coming of Cicero.”

Hon. William Bryson, U.S. Court of Appeals for the Federal Circuit and
former Acting Solicitor General

Oral Argument Preparation

Step 1: Know the facts and history of **your case** cold.

Who do you represent?

What does your client want?

Why do they want it?

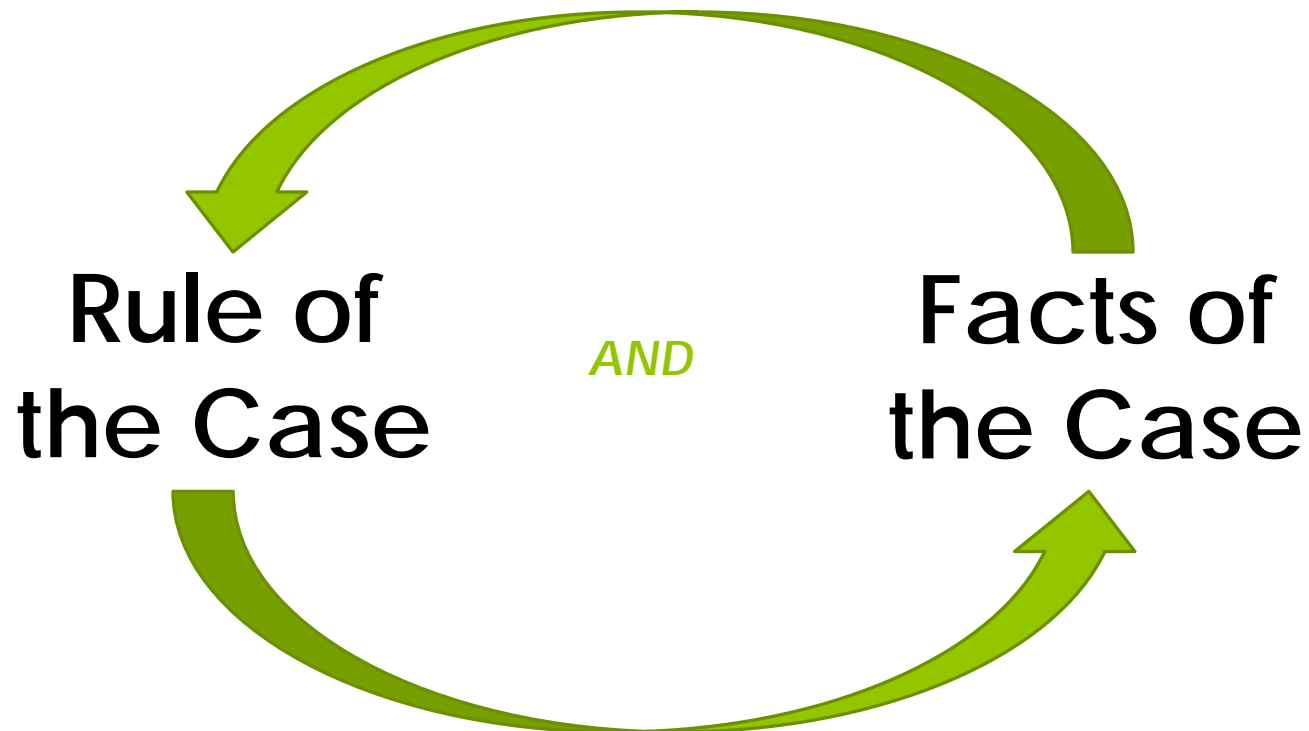
What does your opponent want?

What evidence do you have to prove your case?

What evidence is BAD for your case?

Oral Argument Preparation

Step 2: Know the relevant case precedents.



Oral Argument Preparation

Step 3: Come Up With Your Theme

Summarize your case in a couple of sentences, using simple, powerful language.

The “Grandmother Test”

Oral Argument Preparation

Six Commandments of The Theme

1. Short.
2. Simple.
3. Emotionally Appealing.
4. Tells Your Story.
5. Pulls Me In.
6. You Believe It.

Oral Argument Preparation

Your Theme Must Have:



THIS IS A CASE ABOUT...

Oral Argument Preparation

Step 4: Outline your presentation.

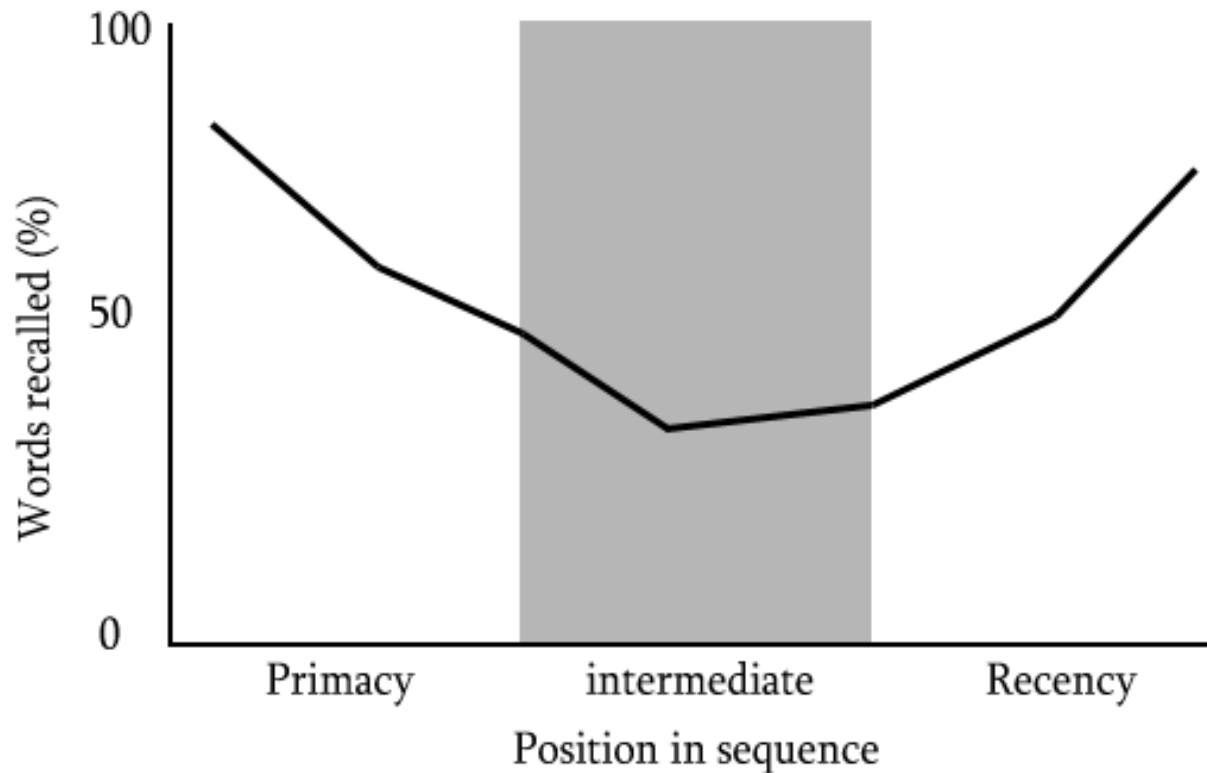
An effective oral argument depends on selecting a couple of points you can quickly and persuasively develop orally.

These issues should be (a) the most persuasive and (b) those for which you have the most support factually and legally.

DON'T TRY TO HIT EVERYTHING.

Oral Argument Preparation

Follow the rules of PRIMACY and RECENCY



Oral Argument Preparation

“May it please the court.”

Introduce yourself and who you represent, but keep introductions short.

Provide your theme and a brief “roadmap” of the issues counsel plan to address in oral argument.

Oral Argument Preparation

The roadmap is your “primacy”.

It **highlights** for the judges the point or points you think are most important in the case.

It also puts them on the path you want to be on.



Oral Argument - Questions

REMEMBER: The entire purpose of an oral argument is to have a **CONVERSATION** with the judges about what they feel is important.

This means that the judges are allowed (and WILL) ask you questions.

You must be flexible!

Oral Argument Preparation

What should I bring up to the podium with me?



Just bring your outline.

Oral Argument - Questions

If you are asked a question by the judge, **answer** it. Don't try to avoid it.

Questions are the judge telling you "I get what you're saying, here's my one concern." Questions are your friend.

Oral Argument - Questions

If a question is unclear, respectfully ask for clarification.

If you do not know the answer, do not bluff, but be apologetic. If you aren't familiar with a case, admit it!

Never concede a point simply because a judge is questioning you.

Oral Argument - Questions

Worst way to answer a judge's question:



Best ways to answer a judge's question:



Oral Argument - Questions

Your response to EVERY question should be:

- (1) Yes/No/Maybe,
- (2) Your Honor,
- (3) Because [Insert Short Answer Here],
- (4) Transition Back To Your Point.

Be DIRECT, RESPECTFUL, and CONCISE.

Questions?



Prof. Jeffrey C. Brooks
jeffbrosks@lsu.edu

Advocacy Fellow
Danny Bosch
dbosch2@lsu.edu

Your Task Today: TALK

- May it please the Court.
- My name is [*name*], and I am here today on behalf of [*your client's name*].
- Your Honor, this case is about [*suggestive sentence*].
- This court should [*affirm/reverse*] the court below because [*reasons*].