

# BASICS OF ORAL ARGUMENT

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# What Is Oral Argument?

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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.

These submissions are made in writing and orally.



# What Is Oral Argument?

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

Judge Frank Easterbrook,  
U.S. Court of Appeals for  
the 7<sup>th</sup> Circuit



# So Why Do We Call It “Oral Argument”?

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# What Is Oral Argument NOT?

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~~Jazz~~

~~DEBATE~~

~~Lecture~~

~~Gaming Show~~

~~ARGUMENT~~

# Oral Argument Is....

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# CONVERSATION

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



# So How Do I Win?

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

# So How Do I Win?

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“**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





# Preparation – Step 1 (Facts)

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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?

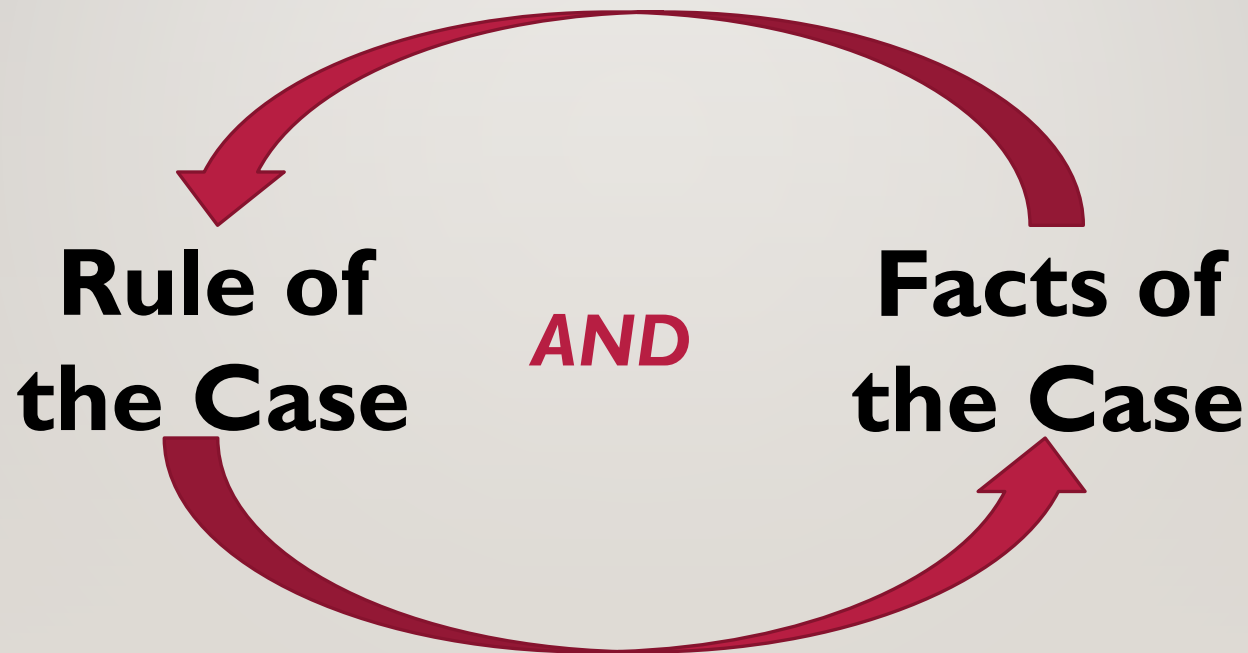
What evidence is BAD  
for your case?



# Preparation – Step 2 (Law)

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Know the relevant case precedents.



# Preparation – Step 3 (Theme)

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

It should pass the “Grandmother Test.”



# Six Commandments of the Theme

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1. Short.

2. Simple.

3. Emotionally Appealing.

4. Tells Your Story.

5. Pulls The Listener In.

6. You Must Believe It.

# **Your Theme Must Have...**

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## **THIS IS A CASE ABOUT...**



# Preparation – Step 4 (Outline)

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Create an outline of your oral argument.

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

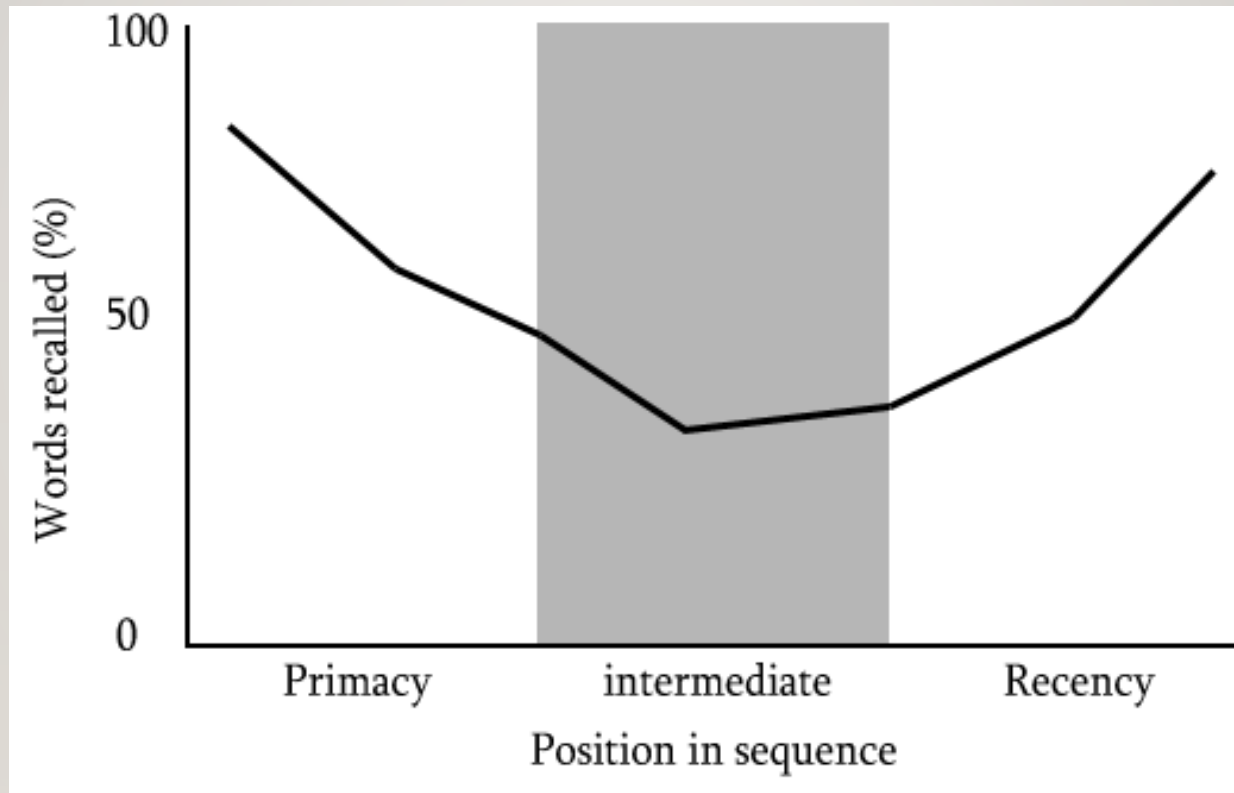
These issues should be (a) the most persuasive and (b) those for which you have the most support factually and legally.

**DON'T TRY TO HIT EVERYTHING.**



# Primacy and Recency

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# Beginning The Argument

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1. “May it please the court.”
2. Introduce yourself and who you represent, but keep introductions short.
3. Provide your theme and a brief “roadmap” of the issues counsel plan to address in oral argument.

# After Introductions, Give a “Roadmap”

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The roadmap is your “primacy”.

It **highlights** for the judges the point or points you think are most important in the case, and gives them a structure to follow as you make your submissions.



# Can The Judges Ask Questions?

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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 to (and WILL) ask you questions.

You must be flexible!





# Oral Argument - Questions

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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

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- 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.

# Answering Questions

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**Worst** way to answer a judge's question:



**Best** ways to answer a judge's question:



# Your Response to Every Question:

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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 Roadmap Points.

Be DIRECT, RESPECTFUL, and CONCISE.

# LET'S TRY IT!

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1. “May It Please The Court.”
2. Introduce Yourself and Your Client.
3. “This is a case about...”

## **Remember:**

- Your theme should be short, simple, and pass the “Grandmother Test.”
  - Your theme should be interesting and pull the listener in.
  - Your theme should take a side and make your case.



# Questions?



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# ADVOCACY IN LAW SCHOOL



# ADVOCACY IN LAW SCHOOL

**Competition**

**Compete  
Against  
Other Law  
Students**

**Client  
Representation**

**Advocate  
for Real  
Clients**



# **“TRIAL ADVOCACY” COMPETITIONS**



# “MOOT COURT” COMPETITIONS





# **“DISPUTE RESOLUTION” COMPETITIONS**





**COMPETE AGAINST OTHER LAW STUDENTS**







**COMPETE AGAINST OTHER LAW SCHOOLS**













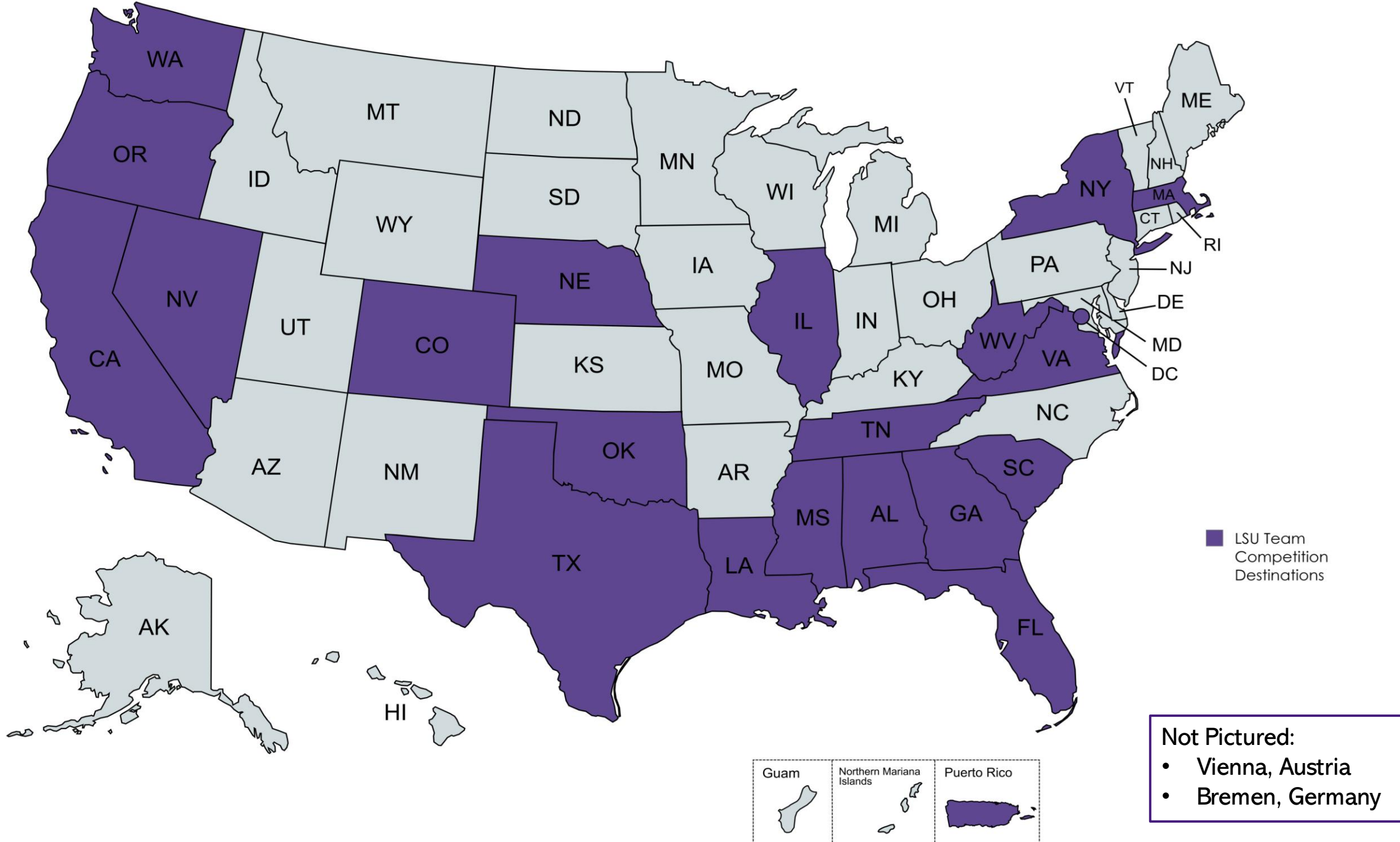






**TRAVEL TO AMAZING DESTINATIONS**









# REPRESENT REAL CLIENTS









**WHAT CAN I DO IN  
COLLEGE TO GET  
READY?**

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# **SPEECH, DEBATE, AND COMMUNICATION**





# WRITING





# LSU

College of Music  
& Dramatic Arts



# THEATER





# UNDERGRAD MOCK TRIAL AND MOOT COURT





**PUT YOURSELF OUT  
THERE AND TRY  
SOMETHING NEW!**

# Stay In Touch

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