

Preparing for Oral Argument

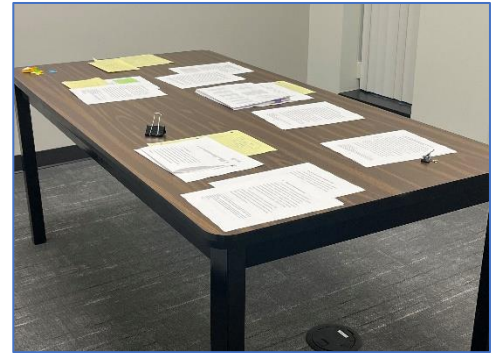
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When preparing for an oral argument, I have two “end goals”: (1) clear and concise substance—both for key points that I want to make, and for key answers I anticipate making to likely questions from the bench—and (2) flexibility: the ability to pivot based on judges’ questions, and reorganize the rest of my argument time towards what seems to be of most interest to the panel.

To move myself towards those goals, about a month before argument, I start preparing by printing out my client’s brief (or briefs, if appellant) and then lay the pages in stacks on a worktable in the conference room by my office, by major topic.

Why, in our electronic era, would I make piles of paper? Because that’s I’m going to have at the courthouse—a stack of hard copy notes and other materials. I like the idea of starting with something that physically resembles the end product.



Preparation underway for an argument about three weeks away

Stacks also help with developing flexibility because I can move them around to test out different orders of argument. As the appellee, I want to be able to adjust the order of my arguments to match what the judges are interested in. And as appellant, I have the ability to (at least at the start) set the agenda by stating the first topic. By moving the stacks around, I can try different orders and how they flow and sound.

I try to stop by that table daily to make notes on the stacks. I might add a printout of a key case, or a piece of paper with a possible question or way of phrasing a key point.

After that process has been going for awhile, then I'll add the corresponding parts of the other side’s briefs to my stacks. A couple of weeks later, I can take a stack back into my office and type out a more organized set of notes about that topic.

And lest you think I am a total pack rat, if I see that I have unnecessary material in a stack, then I throw it away. “Decluttering” keeps my material organized and gives me a sign that my argument is developing in a more concise direction.

As my notes come together I can start practicing the actual presentation. I try to do that both by talking to myself (in private, to not disturb my law partners or family members), and to an audience (usually, colleagues with varying degrees of knowledge about the case). By talking to yourself, you can hone the precise wording of your points. But only practicing with others gives you critical outside perspective. I find that I can get so caught up in my own view of an issue that I forget how it may look to others—and at the end of the day, the argument is for the benefit of “others” (the judges), not me!