

# **Don't Be Afraid to Be a Beginner: Reflections on a First Oral Argument**

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On June 5, 2023, I stood at the podium and faced a three-judge panel at the United States Court of Appeals for the Fifth Circuit for the first time. Full disclosure: it wasn't my first oral argument. I've had the privilege of conducting four other oral arguments in state appellate courts, but this was my first opportunity to converse with a federal appellate court. Arguing before a federal appellate court is a different experience, and because our client's issue involved a relatively new change in the law, it added another layer of stress and pressure. I leaned hard into this adage: "Don't be afraid to be a beginner," and it helped set the stage for a successful argument. Here's what I learned.

## **What I Got Right**

### **1. Starting Early**

I gave myself a solid month to prepare for oral argument. I worked around my other projects and deadlines, spending a little time each day on the argument. Some days I re-read a section or two of the briefing. Others I spent searching for new case law or new briefing on the issues. I read and re-read the relevant cases and committed phrases to memory. I listened to oral arguments on similar issues. I sketched outlines. I wrote multiple drafts of the first two minutes of my argument and my conclusion. I reviewed the relevant facts.

Giving myself this time allowed me to avoid feeling overwhelmed at the prospect of condensing complex issues and lengthy written arguments into a 20-minute argument. It also allowed me to absorb the issues and view the case from multiple angles. Building a high level of comfort with the material boosted my confidence.

**Tip: If this is your first argument, give yourself more time than you think you need.**

### **2. Conducting Moot Courts**

Practicing my argument in front of other attorneys was the single most helpful thing I did to prepare. I had three moot court arguments in the month leading up to oral argument, with different attorneys serving as the panel each time. After each run-through, we discussed what I did well and what I could do to improve, but I also tapped into their perspectives. I asked their advice on arguing points of law. I shared the areas where I was struggling to formulate concise, articulate answers, and I wrote down the suggestions I received.

I had the final moot court a couple of days after we learned which three-judge panel was hearing the case. Several of the attorneys on my moot court panel had experience with those judges, and I got excellent advice on what to expect and how to anticipate the panel's concerns. If I could

only do one moot court argument, I would schedule it for the week before the main event so that I could tailor the arguments to the specific judges on the panel.

**Tip: Other attorneys want to see you succeed. Let them help you, but take only the advice that will work for you.**

### **3. Embracing My Style**

I'm old enough and have been practicing law long enough to know who I am and what style works for me. I prefer a conversational tone and style. I am not aggressive, but I am earnest. I avoid reading from my notes, and I try to maintain eye contact with the Court as much as possible. If I were to put on a persona when I stood at the podium, it wouldn't ring true, and it would impact my credibility with the Court.

I also have an old-school approach to preparing my notes for oral argument. I use a simple file folder with hand-written index cards taped inside. Because I've taken adequate time to prepare, I can use shorthand to help me recall details that I want to incorporate into the argument. I prefer to stand at the podium with just the file folder. It gives the impression that I have full command of the material, and it removes the temptation to flip through the materials for a quote or a record citation that won't add much to the argument.

**Tip: Be yourself. There is no one right way to present your argument to the Court.**

### **4. Taking Time Off from Preparation**

When I was a law school graduate preparing for the bar exam, people wiser than I recommended taking off the weekend before the bar exam to relax and do something mindless. I didn't listen then, but I do now.

My argument was on a Monday morning. After my last moot court argument, I put my notes away for two days and worked on other cases. I spent Saturday with my family, and I picked the argument back up Sunday afternoon. Giving myself time away from the work of actively preparing to argue gave my subconscious the space to gain clarity and put all the pieces together. It's science!

**Tip: Take a break for a few days before the argument and find a way to relax. Use the day (or two) before the argument only for review and refinement.**

### **5. Immersing Myself in the Experience**

I know that the opportunity to present oral argument to a federal appellate court is an experience many attorneys never get. On the day of the argument, I focused on being present.

As I stood in the security line, I talked to other attorneys and observed that their nervous energy matched mine, and it calmed me to know that I was not alone. I took in all the beautiful, stately details of the building because I love a courthouse with traditional architecture. I felt all my

feelings – the nerves of anticipation, the adrenaline that comes with stepping to the podium, the intense focus during the argument, the relief of being done, and the satisfaction of knowing that I did the best I could for my client. I love oral argument -- but even if I didn't enjoy it, there is so much to appreciate about the experience.

**Tip: Give yourself the gift of being present and acknowledging your hard work. Remember what you did well, and forget the rest.**

### **What I Would Do Differently**

#### **1. Record Practice Sessions**

Like most people, I don't love hearing or seeing myself in recordings, but I wish that I had done both video and audio recordings of my practice sessions and/or moot court arguments. I don't have much of a poker face, and it would have been helpful to see where I let my face do too much of the talking. It also would have given me a way to revisit answers or phrases that were particularly concise or effective so that I could have committed those to memory. Additionally, listening to recordings would have helped me hone my introductory and closing statements in less time.

**Tip: Make audio and video recordings so that you can adjust presentation style and substantive arguments.**

#### **2. Enlist Someone to Take Notes During Moot Court Argument**

After my second moot court argument, one of the attorneys who attended emailed me a list of the questions asked and the substantive feedback given. It was such a great idea, and I don't know why it never occurred to me to ask someone to take notes. I get so hyperfocused that I often don't recall exactly what questions were asked or exactly how I responded. Recording yourself can accomplish the same goal, but having a designated secretary will save you time and allow you to focus on reviewing your performance.

**Tip: Ask someone attending your moot court argument to take notes.**

#### **3. Practice Rebuttal Argument**

I thought about rebuttal argument, and we discussed how I would respond to opposing counsel's points in the moot court arguments, but I did not make time to rehearse different scenarios. Rebuttal is a difficult skill to practice, but ceding the advantage of having the last word by failing to practice was a mistake. In hindsight, I overestimated my ability to prioritize my points and make off-the-cuff arguments. I know I did not use the three minutes I reserved as effectively as I could have.

Next time, I will ask my moot court panels to give me five to seven points from the opposing viewpoint so that I can practice prioritizing those issues and crafting short statements to

address them. It will also give me the opportunity to practice reading the room. I need to improve my ability to gauge the individual judges' concerns and persuasively address them.

**Tip: Having the last word is an advantage, but it requires you to be flexible and concise. Build that skillset ahead of time.**

There is an unmatched excitement in stepping to that podium for the first time. Enjoy it, and don't be afraid to be a beginner.