
**The Little Book
on
Oral Argument**

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This book is for law students and lawyers who want to do well at oral argument. It focuses on how to argue a case before an appellate court. But almost all the advice here applies equally to arguing a motion before a trial court, which most lawyers do more often.

If you're a law student, your first oral argument will come in the spring of your first year, as part of your legal writing course. You will argue orally the arguments you made in an appellate brief. For many of you, this will be your first experience in public speaking. That's why this book starts from scratch. The chapters on nervousness, preparation, and delivery make up a quick course in public speaking.

But you'll need more than public speaking skills to do well at oral argument. An oral argument isn't a speech. In a speech, you talk and the audience listens. In an oral argument, you and your audience interact. The judges decide what you will talk about as much as you do. They can interrupt you with questions at any time. They can cut you off, tell you to move on, or take up your time telling you what they think. And they hold the power to decide your case. The chapters on style, substance, structure, questions, and rebuttal explain the approach you'll need to be effective in this peculiar form of conversation.

Because oral argument is conversational, you can't simply stand before the judges and recite a condensed version of your brief. A brief is like classical music; the notes remain the same no matter what the situation or who's listening. Oral argument is like jazz. It's imperfect, unpredictable, and risky, yet immediate, personal, and powerful. Each oral argument will be different, requiring you to make moment-to-moment adjustments

to fit the situation and the judges. To make those adjustments intelligently, you need more than mechanical rules. You need to understand the psychology of persuasion. In this book, I've tried to explain that psychology by giving you the reasons for each suggestion I make. If you understand those reasons, when you're up there all alone—just you and the judges—you'll be able to improvise the music on your own.

2 Nervousness

Oral argument is scary. Law students and lawyers are competitive. We want to win. We hate to lose. We fear failure. We fear failure in public even more. That's why oral argument is so scary. That's why you're nervous.

You're also nervous because oral argument is a one-shot deal. It's live. You can't go back and revise an oral argument as you can a brief.

If you're a law student facing your first oral argument, you have another source of nervousness: fear of the unknown. This book should help eliminate that. After you've read it you'll know what to expect and what to do.

The mortality rate for oral argument is relatively low. I've seen a thousand students go through their first oral argument and guess what? They survived. So will you. And once you get over the hump of that first one, it's all downhill. Every time you argue, the unknown will decrease and your ability and confidence will increase.

In the meantime, this chapter gives you tips on how to live with your nervousness and suggests several concrete things you can do to reduce it.

Nervousness is normal. Law students aren't the only ones who feel nervous about oral argument. Experienced lawyers feel that way too. In fact, polls show that most people are more afraid of public speaking than of dying. To me this only proves that most people who are polled don't think carefully about the questions.

My point is: you're human. Don't interpret your nervousness as a personal flaw. Be gentle with yourself.

The Little Book on Oral Argument

"Recommended for all attorneys facing oral argument for the first time and an excellent resource for first-year moot court programs."—Bimonthly Review of Law Books

*Other books by Alan L. Dworsky
available from William S. Hein & Co., Inc.:*

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