

Index

AFFIRMATIVE POINTS

- Preparation for oral argument, **6:3**
- Substantive approaches, **9:5**

“AIR” TIME

- Substantive approaches, **9:6**

AMICUS CURIAE ARGUMENT

- Presentation, **7:5**

ANALOGIES

- Implications of rule being advocated, analogous legal contexts, **4:22**
- Moot courts, **5:10**

ANGER

- Decorum errors, **8:32**

ANSWERS

- Moot courts, **5:9**

ANTAGONISTIC QUESTIONS

- Members of court, dealing with, **9:23**

AUTHORITY

- Citing materials, errors in, **8:19**

BACKGROUND QUESTIONS

- Generally, **4:2 to 4:8**
- Context, **4:7**
- Opinion under review, **4:4**
- Parties involved, **4:3**
- Reason Supreme Court is hearing case, **4:8**
- Record, **4:6**
- Views of different courts to address same issue, **4:5**

BLACK LETTER LAW

- Substantive approaches, **9:12**

BRIEFS

- Preparation for oral argument, **3:2**

BRIEFS—Cont’d

- Reliance on citations of material not found in brief, **8:22**

CASE-DISPOSITIVE QUESTIONS

- Scope of rule being advocated, **4:11**

CASES

- Citation without explanation, **8:23**
- Scope of rule being advocated, distinctions, **4:15**

CHECKLISTS

- Generally, **App. A**

CHIEF JUSTICE

- Misaddressing, **8:27**

CITING MATERIALS, ERRORS IN

- Generally, **8:18 to 8:23**
- Authority, **8:19**
- Brief, reliance on citations of material not found in, **8:22**
- Cases, citation without explanation, **8:23**
- Record
 - generally, **8:20**
 - materials court cannot easily find, **8:21**

CLOSING ARGUMENTS

- Presentation, **7:9**

CONCESSIONS

- Scope of rule being advocated, **4:19**

CONSTITUTIONAL APPROACH

- Judicial idiosyncrasies, **4:25**

CONTEXT

- Background questions, **4:7**

CONVERSATIONAL TONE

- Speaking style, **9:16**

COURT USE OF ORAL

ARGUMENT

Generally, **1:3**

DECISIONAL POINTS

Preparation for oral argument, **6:1**

DECORUM ERRORS

Generally, **8:30 to 8:36**

Anger or frustration with court, **8:32**

Humor, inappropriate use of, **8:33**

Informality with court, **8:36**

Intemperate language, **8:35**

Opposing counsel, attacks on, **8:30**

Ridicule, making statements subject to, **8:34**

Sarcasm, **8:31**

DEFENSIVE PREPARATION

Moot courts, **5:11**

DEMEANOR

Speaking style, **9:20**

EARLY PRACTICE

Generally, **2:2**

EDUCATION OF COURT

Substantive approaches, **9:7**

EMOTIONS

Preparation for oral argument, emotional ups and downs, **3:13**

END OF ARGUMENT

Substantive Errors, this index

EYE CONTACT

Speaking style, **9:15**

FEMALE ADVOCATES

History, **2:5**

FLEXIBILITY

Members of court, dealing with, **9:21**

FORMALITY

Decorum errors, **8:36**

FRUSTRATION

Decorum errors, **8:32**

HISTORY

Generally, **2:1 to 2:9**

Dynamics of change in practice, **2:9**

Early practice, **2:2**

Evolution of nature and purpose of argument, **2:1**

Female Supreme Court advocates, **2:5**

Nature of argument, **2:1**

Office of Solicitor General, creation, **2:4**

Purpose of argument, **2:1**

Reforms occasioned by COVID-19 pandemic, **2:8**

Supreme Court Bar, reemergence, **2:7**

Transitional efforts to regulate oral argument, **2:3**

Twentieth century procedural developments, **2:6**

HUMOR

Decorum errors, **8:33**

Speaking style, **9:19**

**HYPOTHETICAL QUESTIONS
AND EXAMPLES**

Implications of rule being advocated, **4:21**

Substantive errors, **8:10**

IDIOSYNCRASIES

Judicial Idiosyncrasies, this index

**IMPLICATIONS OF RULE BEING
ADVOCATED**

Generally, **4:20 to 4:22**

Analogous legal contexts, **4:22**

Hypothetical questions, **4:21**

**IMPORTANCE OF ORAL
ARGUMENT**

Generally, **1:2**

INFORMALITY

Decorum errors, **8:36**

INTEMPERATE LANGUAGE

Decorum errors, **8:35**

INDEX

INTERRUPTION OF COURT

Members of court, dealing with, **8:25**

JUDICIAL IDIOSYNCRASIES

Generally, **4:23 to 4:26**

Judicial philosophy or constitutional approach, **4:25**

Personal knowledge of judge, **4:24**

Prior professional experience of judge, **4:23**

Styles of asking questions, **4:26**

JUDICIAL PHILOSOPHY

Judicial idiosyncrasies, **4:25**

LEGAL TEST

Scope of rule being advocated, articulation of correct legal test, **4:12**

LEGISLATIVE HISTORY

Scope of rule being advocated, **4:17**

LIMITING PRINCIPLES

Scope of rule being advocated, **4:13**

LOUDNESS OF SPEECH

Speaking style, **8:4**

MANTRA

Preparation for oral argument, **6:2**

Substantive approaches, **9:3**

MATERIALS

Preparation for oral argument, **6:5**

MEMBERS OF COURT, DEALING WITH

Generally, **8:24 to 8:29, 9:21 to 9:27**

Antagonistic questions, **9:23**

Best advocates, attributes of, generally, **9:21 to 9:27**

Chief Justice, misaddressing of, **8:27**

Deferral of consideration of questions, **8:29**

Errors, generally, **8:24 to 8:29**

Flexibility, demonstration of, **9:21**

Interruption of court, **8:25**

MEMBERS OF COURT, DEALING

WITH—Cont'd

Member of court, misaddressing of, **8:26**

Misstatements from bench, correction of, **9:24**

Personal credibility, maintenance of, **9:27**

Questions, asking of court other than to clarify meaning of question, **8:28**

Red light, permission to speak beyond, **9:26**

Time for argument, end before expiration of, **9:25, 9:26**

Train of argument, following of, **9:22**

METAPHORS

Substantive errors, **8:9**

MISSTATEMENTS FROM BENCH

Correction, **9:24**

MOOT COURTS

Generally, **5:1 to 5:12**

Analogies, use of, **5:10**

Answers, perfection of, **5:9**

Defensive preparation, **5:11**

Defined, **5:1**

Formal moot court, **5:6**

Informal moot court, **5:5**

Methods

generally, **5:3 to 5:7**

formal moot court, **5:6**

informal moot court, **5:5**

setting ground rules, **5:4**

Offensive argument, **5:11**

Reasons for moot courts, **5:2**

Resources, **5:12**

Setting ground rules, **5:4**

Theory of case, articulation of, **5:8**

MULTIPLE-PARTY ARGUMENTS

Presentation, **7:6**

NOTES

Speaking style, disorganized notes, **8:7**

OBJECTIVES

Preparation for oral argument, evaluation, **3:5**

OFFENSIVE ARGUMENT

Moot courts, **5:11**

OFFICE OF SOLICITOR

GENERAL

Creation, **2:4**

OPENINGS

Generally, **App. B**

Preparation for oral argument, **3:8**

OPPOSING COUNSEL

Decorum errors, attacks on counsel, **8:30**

PARTIES

Background questions, **4:3**

Perspective on oral argument, **1:4**

PASSION

Speaking style, **8:3**

PERSONAL CREDIBILITY

Maintenance, **9:27**

PERSONAL KNOWLEDGE

Judicial idiosyncrasies, **4:24**

PRECEDENT

Scope of rule being advocated, **4:14**

PREPARATION FOR ORAL

ARGUMENT

Generally, **3:1 to 3:13, 4:1 to 4:26, 5:1 to 5:12, 6:1 to 6:11**

Affirmative points, **6:3**

Brief, writing of, **3:2**

Courts of appeals, argument at, **6:11**

Decisional points, **6:1**

Determination of scope of what to prepare, **3:6**

Emotional ups and downs, **3:13**

Items to bring to court, **6:7**

Learning style of individual advocate, understanding of, **3:4**

Mantra, **6:2**

PREPARATION FOR ORAL

ARGUMENT—Cont'd

Materials, final preparation of, **6:5**

Moot Courts, this index

Morning of argument, **6:9**

Objectives, evaluation of, **3:5**

Opening, **3:8**

Questions, this index

Schedule for preparation, **3:7**

Segues, thinking through, **6:4**

Style of speaking, **3:12**

Supreme Court, argument at, **6:10**

Synthesis and practice, **3:10**

Third person's brief, preparation for argument based on, **3:3**

Visual aids, **6:8**

Visualization exercise, **6:6**

PRESENTATION OF ORAL

ARGUMENT

Generally, **7:1 to 7:9, 8:1 to 8:36, 9:1 to 9:27, App. C**

Amicus curiae argument, **7:5**

Attributes of best advocates, generally, **9:1 to 9:27**

Best advocates, attributes of, generally, **9:1 to 9:27**

Changing counsel for appellate arguments, **7:7**

Citing Materials, Errors in, this index

Closing argument, **7:9**

Common mistakes

generally, **8:1 to 8:36**

Citing Materials, Errors in, this index

Decorum Errors, this index

Members of Court, Dealing With, this index

Speaking Style, this index

Substantive Errors, this index

Decorum Errors, this index

Members of Court, Dealing With, this index

Mid-argument advocacy techniques, effective, **App. C**

Multiple-party arguments, **7:6**

INDEX

PRESENTATION OF ORAL

ARGUMENT—Cont'd

- Petitioner's argument, **7:2**
- Rebuttal argument, **7:4**
- Respondent's argument, **7:3**
- Speaking Style, this index
- Substantive Approaches, this index
- Substantive Errors, this index
- United States, arguing on same side as, **7:8**

PROFESSIONAL EXPERIENCE

- Judicial idiosyncrasies, **4:23**

PROFESSIONAL POSTURE

- Speaking style, **8:6**

QUESTIONS

- Generally, **4:1 to 4:26**
- Asking of court other than to clarify meaning of question, **8:28**
- Background Questions, this index
- Commonly asked questions, generally, **4:1 to 4:26**
- Four general categories, generally, **4:1**
- Implications of Rule Being Advocated, this index
- Judicial Idiosyncrasies, this index
- Plan for addressing questions, development of, **3:9**

RAPIDITY OF SPEECH

- Speaking style, **8:4**

READING TO COURT

- Speaking style, **8:5**

REBUTTALS

- Generally, **App. D**
- Presentation, **7:4**

RECORD

- Background questions, **4:6**
- Citing Materials, Errors in, this index

RED LIGHT

- Permission to speak beyond, **9:26**

RESOURCES

- Moot courts, **5:12**

RHETORIC

- Speaking style, **8:3**

RIDICULE

- Decorum errors, making statements subject to ridicule, **8:34**

SARCASM

- Decorum errors, **8:31**

SCHEDULE

- Preparation for oral argument, **3:7**

SCOPE OF RULE BEING

ADVOCATED

- Generally, **4:9 to 4:19**
- Articulation of correct legal test, **4:12**
- Case-dispositive questions, **4:11**
- Case law, distinctions in, **4:15**
- Concessions, **4:19**
- Legislative history, **4:17**
- Limiting principles, **4:13**
- Policies underlying rule, **4:18**
- Position of party, **4:10**
- Precedent, **4:14**
- Statutory text, **4:16**

SEGUES

- Preparation for oral argument, **6:4**

SHORT-HAND REFERENCES

- Substantive approaches, **9:9**

SHORT SENTENCES

- Speaking style, **9:17**

SPEAKING STYLE

- Generally, **8:2 to 8:7, 9:14 to 9:20**
- Best advocates, attributes of, generally, **9:14 to 9:20**
- Conversational tone of speech with professional sincerity, **9:16**
- Disorganized notes, **8:7**
- Errors, generally, **8:2 to 8:7**
- Eye contact, **9:15**
- Humor in appropriate manner, **9:19**
- Loudness of speech, **8:4**

SPEAKING STYLE—Cont'd

- Passion or rhetoric, excessive, **8:3**
- Professional demeanor, **9:20**
- Professional posture, failure to maintain while arguing, **8:6**
- Rapidity of speech, **8:4**
- Reading to court, **8:5**
- Respectful manner without being obsequious, **9:18**
- Short sentences, use of, **9:17**

STATUTORY TEXT

- Scope of rule being advocated, **4:16**

SUBSTANTIVE APPROACHES

- Generally, **9:3 to 9:13**
- Affirmative points, making of, **9:5**
- “Air” time, filling of, **9:6**
- Answer questions directly, **9:4**
- Black letter law, sticking to, **9:12**
- Context of problem or client’s business, understanding of, **9:10**
- Cull down distinctions to problematic cases, **9:8**
- Education of court, **9:7**
- End on powerful note, **9:13**
- Mantra, **9:3**
- Research answers to questions that may arise, **9:11**
- Short-hand references, use of understandable, **9:9**

SUBSTANTIVE ERRORS

- Generally, **8:8 to 8:17**
- Control of agenda, loss of, **8:13**
- Direct answers to questions, avoidance of, **8:8**
- End of argument
 - failure to make strongest arguments until end, **8:16**
 - poor ending, **8:17**

SUBSTANTIVE ERRORS—Cont'd

- Facts decided adversely below, re-argument of, **8:14**
- Failure to make strongest arguments until end, **8:16**
- Hypothetical examples, **8:10**
- Issues outside questions presented, argument regarding, **8:15**
- Leading with proposition that generates questions, **8:12**
- Metaphors, ill considered, **8:9**
- Ping-pong ball between judges, becoming, **8:13**
- Tendentious propositions, **8:11**

SUPREME COURT BAR

- Reemergence, **2:7**

SYNTHESIS

- Preparation for oral argument, **3:10**

TENDENTIOUS PROPOSITIONS

- Substantive errors, **8:11**

THEORY OF CASE

- Moot courts, articulation, **5:8**

TIME FOR ARGUMENT

- End before expiration, **9:25, 9:26**

TRAIN OF ARGUMENT

- Members of court, dealing with, **9:22**

UNITED STATES

- Presentation of oral argument, arguing on same side, **7:8**

USE OF ORAL ARGUMENT

- Generally, **1:3**

VISUAL AIDS

- Preparation for oral argument, **6:8**

VISUALIZATION EXERCISE

- Preparation for oral argument, **6:6**