

**ORAL ARGUMENT  
IN THE SUPREME COURT OF TEXAS**

**HON. NATHAN L. HECHT**  
**Justice**  
**The Supreme Court of Texas**

State Bar of Texas  
**PRACTICE BEFORE THE TEXAS SUPREME COURT**  
April 1, 2005  
Austin

**CHAPTER 8**



## NATHAN L. HECHT

Justice Nathan L. Hecht was elected to the Supreme Court of Texas in 1988 and re-elected in 1994 and 2000. Throughout his service on the Court he has been the Court's liaison to all committees involved in studying and revising rules of practice and procedure in Texas courts. In 2000 he was appointed by the Chief Justice of the United States to the Advisory Committee on Civil Rules for the Judicial Conference of the United States.

Justice Hecht began his judicial service in 1981 when he was appointed to the 95th District Court in Dallas County. He was elected to that bench in 1982 and re-elected in 1984. In 1986 he was elected to the Court of Appeals for the Fifth District of Texas at Dallas, where he served until taking office on the Supreme Court.

Before taking the bench, Nathan Hecht was a partner in the Dallas law firm of Locke Purnell Boren Laney & Neely (now Locke Liddell & Sapp). He joined that firm in 1976 and practiced mainly in the area of general business and commercial litigation.

Justice Hecht received a B.A. degree with honors in philosophy from Yale University in 1971. He attended Southern Methodist University School of Law as a Hatton W. Sumners Scholar, and received his J.D. degree *cum laude* in 1974. He was elected to Order of the Coif and served as an editor for the *Southwestern Law Journal*. Following law school, he served as a law clerk to the Hon. Roger Robb, Circuit Judge, U.S. Court of Appeals for the District of Columbia Circuit. He also served in the U.S. Naval Reserve Judge Advocate General Corps, achieving the rank of Lieutenant. He was honorably discharged from military service in 1979.

Justice Hecht is licensed to practice in Texas and the District of Columbia, as well as the United States Supreme Court and many other federal courts. He is a member of the American Bar Association, the District of Columbia Bar Association, the State Bar of Texas, the Dallas Bar Association, and the Travis County Bar Association. He is also a member of the American Law Institute, a fellow in the American Bar Foundation, a life fellow in the Texas Bar Foundation, and a founding fellow of the Dallas Bar Foundation. In 1984 he received the Outstanding Young Lawyer Award from the Dallas Association of Young Lawyers. In 2000 he received the Southern Methodist University School of Law Distinguished Alumni Award for Judicial Service. In 2004 he received the Hatton W. Sumners Foundation Distinguished Public Service Award. He has taught as an Adjunct Professor at the University of Texas School of Law.

Justice Hecht is a member of the Texas Philosophical Society. Since 1971 he has attended the Valley View Christian Church of Dallas, where he is an elder, an adult Sunday School class teacher, and an organist and pianist.



TABLE OF CONTENTS

- I. INTRODUCTION ..... 1
- II. PREPARATION ..... 1
  - A. By the court ..... 1
  - B. What’s left? ..... 1
  - C. By the advocate ..... 1
- III. THE ARGUMENT — A FEW POINTERS ..... 2
  - A. The opening ..... 2
  - B. The first sentence ..... 2
    - 1. X points ..... 2
    - 2. About ..... 2
    - 3. The most important thing ..... 2
  - C. Leading with your chin ..... 2
  - D. Prioritize, list, memorize ..... 3
  - E. Welcome questions ..... 3
    - 1. Never postpone ..... 3
    - 2. Never bob and weave ..... 3
    - 3. Avoid the obvious ..... 3
    - 4. Handle ignorance deftly ..... 3
    - 5. Never disparage ..... 3
    - 6. Disagree when you must ..... 3
    - 7. Concede when you must ..... 3
    - 8. Anticipate hypotheticals ..... 3
  - F. Never interrupt ..... 3
  - G. Avoid splitting argument ..... 4
  - H. Take care using visual aids ..... 4
  - I. Quit when done ..... 4
  - J. Quite at the red light ..... 4



## I. INTRODUCTION

There are many good articles on oral argument in appellate courts generally, and several on oral argument in the Supreme Court of Texas. It would be hard to improve on Randy Roach's thoughtful and practical chapter included in the materials for this course last year, and I will not try. I attach it with his permission and commend it for your study. I venture only to add a few comments from my own perspective as a Member of the Court for the past 16 years.

## II. PREPARATION

**A. By the Court.** The Justices of the Supreme Court of Texas expect one another to be thoroughly prepared for oral argument. That has been part of the Court's culture the entire time I have served and, I suspect, long before I arrived.

Each Justice should have read and voted on the petition for review shortly after it was filed. Each has participated in the discussion of the petition and response at Conference, and at least three Justices have voted to request full briefing. From the briefs and record, a law clerk has prepared a comprehensive memo setting out the factual and procedural background of the case, identifying the issues, summarizing the arguments, analyzing the case, suggesting a disposition, and attaching the court of appeals' opinion (if one was written). Each Justice has read and discussed this memo at a second Conference, and at least four have voted to hear oral argument. Each Justice has then read the briefs and, shortly before argument, re-read the law clerk's memo. Not all of this is true, of course, for Justices who join the Court at some later point in the process, but generally speaking, before oral argument, the Court has already discussed the case twice, and the Justices have read what the lawyers have filed and begun to form their views on the matters involved.

Also, the Court (by random draw) assigns responsibility for the opinion in a case prior to oral argument. The assigned Justice may begin work on the opinion immediately. This may include an initial review of the record, a summary of the relevant facts and background, and preparation of an outline from which the opinion will be written. In some chambers, law clerks suggest questions for oral argument, especially on matters that the briefs have left unclear, but also on issue that must be resolved.

**B. What's left?** If the Court has already gone this far toward resolving the case based on the papers, why

bother with oral argument? For one thing, few briefs in cases to be argued answer all questions. Usually, the court of appeals (or the trial court or agency) was right, or at least close enough. If the Court concludes that the decision being reviewed was clearly wrong, it will ordinarily reverse in a per curiam opinion, at least six Justices' having decided that oral argument will not aid consideration of the case. Most cases set for oral argument are close enough or difficult enough that dialogue beyond the briefs is useful.

Further, oral argument often helps a Justice make up, and sometimes even change, his or her mind. The old saw is that a case cannot be won at oral argument but can be lost. Neither is entirely accurate. An oral discussion of the case may help the Court appreciate arguments and issues that have not been well explained or well understood in print. Oral argument is not an alchemy that turns a bad case into gold or a good one into lead. It is but a part of the dialogue among the advocates and the Court that helps ensure a right decision. The record is part of that process, as are the briefs. Oral argument serves its own unique function.

**C. By the advocate.** The advocate's preparation for oral argument is guided by its function: to assist an already well-informed Court better appreciate the parties' positions. If the briefs have done their job, there should not be much occasion to tell the Court something it should already know. Occasionally, it happens that a new case is found just before argument, or in preparing for argument counsel realizes for the first time the importance of some matter previously overlooked. But for the most part, the purpose of oral argument is to explain and to answer questions.

An advocate cannot do this well without an exhaustive knowledge of the record and briefs. When a segment of trial testimony is critical, counsel must know the words verbatim. When preservation of a complaint is at issue, counsel should be able to cite the record page. The advocate must know by heart the cases that help and hurt — the facts, the analyses in the opinions, how they fit into the stream of jurisprudence, even the names of the judges who decided them. To be adequately prepared for oral argument, the advocate must have mastered every aspect of the case.

Moreover, preparation should include actual practice of the argument, preferably before a skeptical audience. Advocacy often causes blindness to the flaws in one's position and the failings in presentation. Rare is the lawyer immune to this infirmity. The only treatment is exposure to others who have no sympathy

for the success of the venture. The well-prepared argument will have been tested and cross-examined before it is presented in court.

Finally, preparation includes familiarization with the mechanics of the argument. A few lawyers argue in the Supreme Court more than once a year, but for most, practice in the courtroom is an unfamiliar experience. Where do I park? (Always a problem around the Capitol.) When is the courtroom open? Is there a place to wait? (I have no idea. Ask the Clerk.) When will my case be argued? (Usually three cases are scheduled each day of argument. But not always. And the order sometimes changes.) Where do I sit? (Petitioners sit on their left facing the bench (the Court's right). Lead counsel sits closest to the podium.) How large is the podium? Will it hold the papers I want to carry with me? (Take as few as possible.) Where can I put a cup of water so I won't spill it? (On counsel table, not on the podium.) When do I begin? (*After* the marshal introduces you to the Court. *Wait* for the marshal.) What do the time lights mean? (Green means five minutes remaining. Red means stop.) Who are all these guys? (A seating chart with the Justices' names is on the podium. It is a safety net. It is not to be read for the first time during argument. *Do not* call a Justice by the wrong name; it usually irritates *both* Justices.)

A well-prepared advocate will have sat through Supreme Court arguments days or weeks before his or her case, or at least tried to become familiar with the courtroom. I recall that the first time one particular nationally prominent law professor from outside Texas argued in the Supreme Court, he arrived a day early and had one of his former students, then a law clerk for the Court, show him the courtroom and take him through the drill step by step. The next day he argued as if he were a regular. He called each Justice by name. He cited each case and rule by name or number. Having become comfortable with the format, he could concentrate on the substance of his argument without distraction.

### III. THE ARGUMENT — A FEW POINTERS.

**A. The opening.** Begin: "May it please the Court" or, as in the U.S. Supreme Court, "Mr. Chief Justice and may it please the Court". Not: "Good morning." This is a formal proceeding.

**B. The first sentence.** Ordinarily, each side is allowed 20 minutes to argue, and most of that time will be consumed answering the Court's questions. Usually — not always — the first minute or so of argument will be your one chance to speak without interruption.

Whatever you want to be sure to say, this is the time — and probably the only time — to say it.

There is no one best opening gambit. There are a number of good ones, depending on the nature of the case and the issues raised.

**1. X points.** "In the brief time I have this morning, I would like to make three [or two or four] points that I think are critical in deciding this case. First, . . . . Second, . . . . And third, . . . ." Even if your brief statement of these points is interrupted by a question, you will probably be asked at some point to finish them. Even if that question never comes, the initial listing gives you a convenient way to segue back into your argument after questioning: "If I may return to my first point, . . . ."

**2. About.** "In the end, I have come to see this case fundamentally as being about . . . ." Most of the time, the importance of the case to the jurisprudence has been an important — maybe *the* important — factor in the Court's decision to hear argument. By starting with that acknowledgment (assuming you have correctly discerned it), you can try to tie answers to questions to one overarching theme.

**3. The most important thing.** "I respectfully submit that the most important aspect of this case — one I hope the Court will keep in mind throughout — is . . . ." Just as the "about" beginning gives you something to tie up to throughout the argument, this beginning provides a foundation to return to. Maybe the substantive issues seem very important and troublesome, for example, but there is some ever-present procedural hurdle to reaching or deciding them. Whatever you may be asked, you can always return to this impediment.

As I say, there is no single beginning sentence that will work well in every argument. The point is to try to open effectively. "It was the best of times, it was the worst of times" does make one want to keep listening.

**C. Leading with your chin.** *Never* begin with a weak point. The danger is that you will evoke a long series of you-can't-be-serious questions that will take precious time away from other issues while convincing the Court that, indeed, you can't be serious. There are probably exceptions to this rule, as there are to every rule. Perhaps the weak point is the elephant in the room that cannot be ignored. But such cases are rare exceptions. This admonition assumes you can tell a weak point from a strong one — hence the importance of trying your argument out on someone beforehand.

**D. Prioritize, list, memorize.** You will almost never have to yourself all of the allotted 20 minutes to speak. Much of the time you will be responding to questions. I do not recall an argument in 16 years in which no question was asked. But you may sometimes have more of the time than you anticipate, and so you should be prepared to lay out your position concisely and convincingly. You should list the points you believe you must make, then prioritize them so that you can be sure that the most important things are covered.

**E. Welcome questions.** Responding to questions is the most important purpose of oral argument and the hardest part. Part of your preparation simply must involve anticipating questions and formulating answers. One difficulty lies in the fact that a great gulf mysteriously separates the bench and the bar, and questions that often seem obvious to judges do not occur to counsel. Occasionally I hear an off-the-wall question (I never ask one myself, of course), but most of the time my colleagues' questions seem eminently reasonable, and if counsel seems taken aback, I wonder whether counsel has prepared as well as he or she should have.

In any hard case — and most of the cases argued are hard in some respect, or they would not be argued — there will be questions with no perfectly satisfactory answers. But you should attempt to craft the best answer possible to every question, and you must do this before argument. As in any hearing, listening is at least as important as talking, and you must be able to think on your feet, but this is not batting practice, it's the world series. Inapt responses to questions can affect the outcome of a case, and the importance of previously thought-through answers cannot be overemphasized.

Here are a few simple do's and don't's:

**1. Never postpone.** “I will answer that in a few minutes, if I may.” You may not. It is a cardinal rule of oral argument: respond when asked.

**2. Never bob and weave.** The Court expects a straight answer, not a convoluted one, and if the question calls for a simple “yes” or “no”, you should start there and then explain.

**3. Avoid the obvious.** “That’s a good question” is faint praise. Each Justice usually thinks his or her questions are good ones. If you want to flatter a judge, say: “I believe Your Honor has driven to the heart of the matter”, adding perhaps, “as well as Justice Holmes would have.” Better yet, skip the commentary.

You should also avoid common conversational tics like: “Frankly, . . .” (I should hope so), or “To be honest, . . .” (indeed).

**4. Handle ignorance deftly.** Hit with a question to which you do not know the answer, you must admit you do not know and offer to find out and supplement the briefing. For example, it is common for the Supreme Court to ask whether other American jurisdictions have encountered an issue and how they have resolved it. Counsel should anticipate the question but often do not. Having no ready answer may be understandable, given the difficulties in researching other states' law. But asked about the application of an argument to another relatively obvious fact pattern, counsel should try to avoid confessing this truth: “You know, I never thought of that.” Perhaps not, but you certainly should have. 'Twere better far to offer: “Your Honor raises a difficult question that I struggle with.” The response is equally true, but less damaging.

**5. Never disparage.** “Respectfully, Your Honor, I believe the question is beside the point.” Since the Court will determine the point, its question, by definition, cannot be oblique, and there is no respectful way to say otherwise.

**6. Disagree when you must.** “Respectfully, Your Honor, I believe that the *Jones* case should be read differently.” This *is* a respectful response, and an honest one, and one with which others on the Court may agree.

**7. Concede when you must.** “While we have argued that position, Your Honor, it is not our strongest point.” “We agree that *Jones* can be read contrary to the position we have taken, but we believe *Jones* is distinguishable [was wrongly decided].” Nothing helps an advocate's cause so much as an appropriate concession. But as I have said, this assumes that you know the strong and weak points of the case.

**8. Anticipate hypotheticals.** Because the Court is concerned not simply with the outcome in a particular case but with its place in the jurisprudence, many of the questions will ask how the argued rule of decision would work in other situations. “What if . . .” and “Would it make any difference that . . .” questions are a staple of argument in the Supreme Court. You should have tried beforehand to think through every realistic scenario to demonstrate why the outcome for which you argue will be good for the law.

**F. Never interrupt.** Justices often interrupt counsel, and usually — in my view — rudely. But

however uncivil the judicial interruption may be, counsel must simply stop speaking when a Justice starts. If you are cut off unfairly, you must try to return to the point or hope that another Justice will help.

**G. Avoid splitting argument.** There are two principal problems with splitting argument between counsel. One is that the time reserved for the second speaker will almost always be reduced because the first speaker will not or cannot (because of questions) relinquish the podium. The other is that the first speaker will likely be asked questions which the second speaker is prepared to address, and vice versa. Many times parties and counsel may believe it necessary to split oral argument, but there is *always* a significant risk that the overall presentation will be less effective than otherwise.

**H. Take care using visual aids.** The courtroom is not equipped for using charts or other visual aids by computer, computer projection (*e.g.*, PowerPoint), overhead projector, or the like. Charts may be placed on an easel at one end of the bench, but because the bench is long, Justices at the other end may have difficulty seeing. Sometimes charts can be useful in demonstrating the operation of equipment, or the disputed area in a title case, or a time line when the sequence of events is crucial, to give but a few examples. But you must consider carefully the logistics of presenting the chart, its efficacy, given the constraints of the environment, and whether its use is more distracting than helpful. An alternative is a bench exhibit for each Justice to which counsel can refer during argument.

**I. Quit when done.** It happens, though not often, that the Court falls silent, the important points have all been made, and time remains. For the love of heaven, sit down. Though uttered rarely, no words are more beautiful to an appellate judge than: “And if there are no further questions, I will yield my remaining time to the Court.” In 16 years, I have *never* seen a case hurt because counsel used less than the allotted time for oral argument. I have seen many hurt by counsel’s dogged determination to soldier on to the red light.

**J. Quit at the red light.** Twenty minutes is undeniably short, but over the past 16 years Justices with a wide range of personalities and philosophies have reached consensus that 20 minutes is about the right amount of time for oral argument in all but extraordinary cases, given the extent of the Justices’ preparation beforehand. The Court extends argument — sometimes a minute or so, occasionally longer — when important questions remain unanswered, and counsel are permitted to continue to answer questions after the red light is lit.

But most post-red-light answers should be directly to the point. It is commonplace for counsel to submit post-submission briefs — usually short letters — on areas counsel believes were inadequately covered in oral argument, and while the Rules of Appellate Procedure do not provide for such briefs, I do not recall one ever being struck.

**TEXAS SUPREME COURT ORAL ARGUMENT:  
A COURT - CENTERED APPROACH**

**ROBERT M. “RANDY” ROACH, JR.**  
Cook & Roach, L.L.P.

Houston  
1111 Bagby, Suite 2650  
Houston, Texas 77002  
(713) 652-2800  
(713) 652-2029 - Fax

Austin  
1004 West Avenue  
Austin, Texas 78701  
(512) 479-5966  
(512) 479-0409 - Fax

State Bar of Texas  
**PRACTICE BEFORE THE TEXAS SUPREME COURT**  
April 16, 2004  
Austin

**CHAPTER 9**



---

---

**EDUCATION:**

Georgetown Univ., BA in Philosophy (1977) (magna cum laude)  
University of Texas School of Law, JD (1981) (Texas Law Review; Hildebrand Moot Court Champion)

**PROFESSIONAL ACTIVITIES :**

Board Certified in Civil Appellate Law and Board Certified in Personal Injury Trial Law  
Former Chair of Appellate Practice Section, Houston Bar Association  
Treasurer of Appellate Practice and Advocacy Section, State Bar of Texas (2002- )  
Director of Appellate Advocacy, University of Houston Law Center (1994- )  
Adjunct Professor of Law, Appellate Advocacy, University of Houston Law Center (1990- )  
Adjunct Professor of Law, Appellate Advocacy, University of Texas School of Law (2000- )

**LAW RELATED PUBLICATIONS AND PRESENTATIONS:**

Author/Speaker for State Bar of Texas CLE Programs on the following Appellate topics: Supreme Court Advocacy - 2004, 2003, 2002, 2001; Appellate Procedure - 2001; Mandamus - 2003, 1999; Appellate Briefs - 2003, 1998; Appellate Lawyers at Trial - 1997; Error Preservation - 1997; Daubert Challenges - 1997; Oral Argument -2003, 2002, 1995, 1994, 1992, 1991; Attorneys Fees - 1996; Motions for Rehearing - 1995, 1993; ADR - 1994 1993

Author/speaker for University of Texas CLE programs on the following Appellate topics: Oral Argument before the Supreme Court of Texas - 2002; Oral Argument Preparation - 2001; Briefwriting- 2003; Appellate Ethics - 2000; Hot Tips - 1997; Appellate Lawyers at Trial - 1996; Oral Argument Questions - 1995; Oral Argument Survey of Texas Appellate Judges -

Author/Speaker for Houston Bar Association CLE programs on the following Appellate topics: Oral Argument - 2000, 1998, 1996, 1997, 1995; Appellate Lawyers at Trial - 2002, 1998; Construction Law- 2003; Appellate Rules - 1997; Error Preservation - 2001; Motions for Rehearing - 2001; Texas State Survey of Appellate Judges -1997; Evaluating Potential Appeals - 1993; Statewide Appellate Court Funding and Redistricting - 2003

Author/Speaker for American Bar Association CLE programs on the following Appellate topics: Appellate Lawyer at Trial - 2001; Appellate ADR; Appellate Oral Argument - 1997; Insurance Appeals - 2001

Author/Speaker at over 30 CLE programs Trial Procedure topics including discovery strategy, ethics, coverage litigation, budgets, investigating catastrophic accidents, evidence, ADR, Mary Carter agreements, bifurcating punitives, and products liability - 1990-2004

Author/Speaker for South Texas College of Law CLE programs on the following topics: Appellate ADR - 2002; Appellate Oral Argument - 1999; Discovery - 1993, 1989

Author/Speaker on Insurance Coverage topics at CLE programs sponsored by: State Bar - 2004, 2003, 2002; University of Texas - 2003, 2002, 2000, 1999, 1998; American Bar Association - 1997, 1996; Univ. of Houston - 2004, 2003, 2002; South Texas College of Law - 1999; Anderson Kill - 1995; Houston Intellectual Property Law Association - 2002

Co-author of "Technology Risks and Liabilities: Are You Covered?" SMU Law Review; Volume 54, No. 4, Fall, 2001

**PROFESSIONAL MEMBERSHIPS :**

Product Liability Advisory Council; International Association of Defense Council; Federation of Defense and Corporate Counsel; Fifth Circuit Bar Association; District 4I Grievance Committee, 1993-1998.

**PROGRAM CHAIR:**

Annual Meeting Committee, Appellate Advocacy Section, ABA Tort and Insurance Practice Section 2000-200; Judicial Liaison Committee, Insurance Section of State Bar of Texas, 2000-2001; University of Texas Insurance Law Seminar, 1998

**PROFESSIONAL LISTINGS :**

Who's Who in American Law; Who's Who in the World; AV rated by Martindale-Hubble

## TABLE OF CONTENTS

I.	INTRODUCTION	1
A.	Court-centered focus of appellate advocates	1
B.	Structure of this paper.	1
II.	THE GOALS OF ORAL ARGUMENT BEFORE THE TEXAS SUPREME COURT.	1
A.	Helping the court to the greatest possible extent.	1
B.	Proper framing of the issue.	2
C.	Propose and defend the proper decisional rule of law.	2
D.	Make the best use of the first ninety seconds.	2
E.	Focus on the jurisprudential issues.	2
F.	Manage the precious time effectively.	3
G.	Identify the 6 to 12 key points in support of the proposed holding.	3
H.	Extend the argument beyond the briefs.	3
I.	Provoke questions and issues with answers to questions.	3
J.	To be persuasive, be comprehensible.	3
K.	Protect and enhance your credibility.	3
L.	Be the master of the record and the law.	3
III.	PREPARATION FOR ORAL ARGUMENT	3
A.	Basics.	4
B.	The importance of preparation.	4
C.	Developing a flexible approach to answering the Court's questions.	4
D.	Question and answer modules.	4
E.	Sowing questions in the mind of the Court.	5
F.	Focusing on the jurisprudential consequences that flow from a proposed rule of law.	5
G.	Framing the issue for the Court.	5
H.	Identify the weak points that can be conceded.	5
I.	Formal and informal moot courts or practice arguments.	5
J.	Practice and rehearsal.	5
K.	Scripting and editing your argument.	6
L.	Deciding on visual aids.	6
M.	Focusing on the principal cases.	6
N.	Identifying key portions of the record.	6
O.	Identify cases written or authored by particular justices on aspects of your case	6
P.	Preparation during the hours immediately preceding the oral argument.	6
IV.	PRESENTATION OF ORAL ARGUMENT	6
A.	Approach the podium with confidence and a minimum of materials.	6
B.	Use the first ninety seconds to engage the Court and to make your most important point before the Court begins asking questions	7
C.	Embrace the Court's questions and make your case out of answers to those questions.	7
D.	Concede what you must.	7
E.	Don't talk over the Court's questions.	7
F.	Don't miss the softball questions.	7
G.	Use an answer to one question to transition to another key point.	8
H.	Focus on the justness of your position.	8
I.	Don't run the stop sign.	8
V.	CONCLUSION	8



# TEXAS SUPREME COURT ORAL ARGUMENT: A COURT-CENTERED APPROACH

## I. INTRODUCTION

For many lawyers, the pinnacle of their practice is presenting an oral argument before the Texas Supreme Court. There are many reasons why an oral argument in the Supreme Court is viewed by lawyers so highly. It is the highest court of the state and the court of last resort concerning Texas law. This is the court that can and frequently does change Texas jurisprudence and is often the most prepared and most challenging court in which to appear.

This author has been a student of Supreme Court oral argument for over 20 years. This paper is based in part on the author's personal experiences attending oral arguments, listening to audio tapes of oral arguments, and making oral arguments before the Texas Supreme Court. More importantly, this paper is also based on the expressed views of many Supreme Court justices. Through surveys of Texas appellate judges on the topic of oral argument, the views expressed by Supreme Court justices in continuing legal education panels concerning oral argument, and lectures by justices at the author's Appellate Advocacy class at the University of Texas School of Law, the Justices of the Texas Supreme Court have provided a treasure trove of information directly from the proverbial horse's mouth.

### A. Court-centered focus of appellate advocates.

It is the author's personal prejudice, albeit shared by many appellate advocates, that the focus of any attorney's approach to oral argument should be based primarily on the needs and concerns of his or her audience, the Court. Although it is true that the attorney can only account for his or her own conduct and performance in oral argument, the more important aspect of the argument is the decision that will ultimately come from the court. Accordingly, the focus of this paper will be how the lawyer can best help the Texas Supreme Court do the Court's job.

This court-centered approach to oral argument is shared by many very skilled appellate attorneys who regularly practice before the Texas Supreme Court. In the past, many of these attorneys have generously submitted to interviews by this author concerning their various approaches to oral argument before the Texas Supreme Court, both in preparation and in performance. Their views are strikingly similar and may reasonably be said to constitute a consensus concerning how oral

argument should be approached. This paper will attempt to identify those areas of agreement, but it will also identify some areas where different lawyers pursue their shared goals differently. Were it not for their candor and generous contributions, the views expressed herein would not be done so with nearly as much confidence. To all the justices and all the appellate attorneys who have so generously contributed their thoughts, I am deeply indebted and thankful.

### B. Structure of this paper.

This paper divides oral argument into three separate sections. The first section concerns the goals of oral argument. It addresses the general and specific goals for oral argument that are the objectives or the targets at which the advocate aims. The second topic is preparation. Preparation is divided into substantive preparation and performance preparation. The third and final topic is presentation. Presentation can be divided into the substance of the presentation and presentation skills.

## II. THE GOALS OF ORAL ARGUMENT BEFORE THE TEXAS SUPREME COURT.

The general and specific goals of oral argument will largely dictate the focus of oral argument preparation and presentation. By understanding the goals to be accomplished, the advocate can better prepare for oral argument. The better the oral argument preparation, the better the oral argument presentation. The following are some of the primary goals articulated by accomplished advocates before the Texas Supreme Court.

### A. Helping the court to the greatest possible extent.

The ultimate goal of oral argument should be to help the Court do its job. The Court's job is to write opinions on important issues of jurisprudence. Because the Supreme Court has discretion whether or not to take a case, any case that the Court takes is presumably one that the Supreme Court considers to present an important issue of jurisprudence. If there was only one answer to the problem presented by the case law, a per curiam decision would be far more likely than an invitation for oral argument. Therefore, when the Supreme Court extends an invitation to the parties to present oral argument, the Court will be making a decision to choose between two competing proposals on how the case should be resolved. The consensus view among Supreme Court advocates is that helping the Court to do its job and to make that decision should be the primary goal of both sides in an oral argument.

The goal of helping the Court do its job can also be understood in comparison to the opposite approach—one that focuses on the advocate instead of the Court. Law students engaged in moot court are understandably more focused on how their presentation is going to be judged than on how the case should be decided. In the real world, however, where it is the decision that matters and not the advocate's performance, the court-oriented approach is the better approach.

### **B. Proper framing of the issue.**

The ability to frame an issue can be instrumental in determining the outcome of that issue. There are literally dozens of ways that an issue could be framed, each with its own intended or unintended emphases. Picking the right angle on the issue gives an advocate the power to point the discussion in a particular direction. There are few considerations in oral argument more important than how the advocate frames the issue.

From the Court's perspective, the proper framing of the issue would join the issue as it is addressed by both sides. Because the ultimate job of the Court is to decide between two competing views on how the Court should state and interpret the law, the best way to frame the issue would be to encompass both sides' competing approaches in a unified statement of the issue.

To help the Court do its job, the issue should be framed in as pointed and in as incisive a way as possible. General statements of the issue, by definition, do not penetrate to the level of the specific decisional ruling. By framing the issue with respect to the narrowest ultimate point of decision, the advocate moves the Court immediately to the dispositive issue in the case, avoids wasting time on developing the issue, and helps the Court spend the maximum amount of time on exploring the pros and cons of each side's proposed decisional rule of law.

### **C. Propose and defend the proper decisional rule of law.**

The basis of the Court's ultimate decision and opinion will be the Court's decisional rulings of law. Focusing on the rule of law the advocate wants the Court to hold in its opinion helps the Court to more easily decide the ultimate issue in the case. In contrast, if the Court does not understand what holding is being requested, the Court, at best, will have to spend considerable time trying to understand the advocate's position. By making the proposed holding of law crystal clear at the outset, an advocate quickly progresses to the most fruitful topic of discussion – the reasons for and against the proposed decisional rule of law.

### **D. Make the best use of the first ninety seconds.**

The first ninety seconds of the advocate's oral argument may be the only opportunity that the advocate has to frame the issue, focus on the proposed decisional rule of law, and provoke the Court into analyzing the case along the initial lines suggested by counsel. Particularly in the Supreme Court, where the judges always come prepared to ask many pointed questions, the first ninety seconds is a unique opportunity for the advocate. Because the Court may listen to the first ninety seconds and then ask questions that take the attorney in a different direction, the first ninety seconds present the best opportunity to engage the Court along the advocate's own preferred angle on the issue. If the Court believes the advocate is offering a truly valuable insight into the issue at hand and into the choice the Court must make, then the advocate may win an additional minute or minutes from the Court to develop that particular idea.

Condensing the argument into one sentence, and then stating that sentence at the very beginning of the argument has many advantages. It focuses the Court on the precise angle on the issue that the advocate wants the Court to consider. It may intrigue the Court enough to allow the advocate to expand and elaborate on his or her approach to the issue. It communicates a level of insight and preparation on the part of the advocate that may lead to sharply focused questions at the heart of the case as the advocate has just framed it. By focusing on the heart of the issue at the outset, precious time is saved, and the ball is advanced into the reasons for the competing decisional rulings of law being proposed by the opposing sides.

### **E. Focus on the jurisprudential issues.**

Another goal of the oral argument before the Texas Supreme Court should be to focus on the jurisprudential issue on which the Court granted the petition for review. Straying away from that jurisprudential issue probably wastes time and distracts the Court's attention from the arguments and points that can make the difference in the Court's ultimate decision. Focusing on how the jurisprudence would be more coherent with the advocate's proposed decisional rule of law, and why the opponent's proposed ruling is not coherent with the surrounding fabric of Texas jurisprudence, can give the Court an important basis to rule in the advocate's favor. Some of the most persuasive arguments focus on the fairness and justness of a proposed holding, and in particular on the fairness or appropriateness of the result that would come from applying that holding to the facts of other cases that may later come up for review.

**F. Manage the precious time effectively.**

The Supreme Court currently gives both sides only twenty minutes to argue, and petitioner will usually have fifteen minutes for the opening argument if it wants to save the maximum five minutes for rebuttal. Supreme Court advocates almost always would prefer to have more than twenty minutes to argue their case to the Court, but the reality of time limits is otherwise. The advocate's task must be to develop a strategy for oral argument that will manage that precious and small amount of time as effectively as possible. Because there literally is no time to waste during oral argument, the advocate must ruthlessly edit prepared remarks into the most concise and incisive remarks possible. Complex thought must be simplified. Long sentences must be turned into short sentences. Unnecessary thoughts and phrases must be discarded. Time management must be one of the advocate's overriding concerns.

**G. Identify the 6 to 12 key points in support of the proposed holding.**

While there may be countless points that could be offered in support of the advocate's proposed holding, one goal for the oral advocate should be to identify the 6 to 12 most persuasive points. Because time is limited, and because the Court's questions deserve attention more than the advocate's own prepared remarks, a real premium should be placed on identifying the most persuasive points. One universally experienced post argument thought is, "I wasn't able to make all the points I really wanted to make." Identifying the most persuasive points is the first step toward finding a way to actually make many of those points as possible during oral argument.

**H. Extend the argument beyond the briefs.**

The Supreme Court obviously is not interested in a regurgitation of the information contained in the briefs. Because the Court expects the parties to join the issue and discuss the advantages and disadvantages to the jurisprudence of adopting one holding as opposed to the other, the goal of oral argument should be to make the oral argument start where the briefs end. To do this, the oral advocate will not only have to join the issue, but will have to synthesize the clash of respective positions into an oral argument concerning the decisive point on which the choice between decisional rulings will ultimately turn.

**I. Provoke questions and issues with answers to questions.**

Because time is short and the Court will spend most of its time asking questions, the opportunity to make

points needs to be developed from the opportunity to answer particular questions. Some of the advocate's statements can be calculated to provoke questions from the Court that would elicit the opportunity to give particular answers. Those answers can, in turn, provoke additional questions in order to give answers that make additional points that the advocate believes will further develop the presentation.

**J. To be persuasive, be comprehensible.**

In order to persuade, the advocate will have to be understood. To be understood, given the shortness of time and the complexity of the issues, clarity and conciseness in oral expression is key. Two methods of preparation help an advocate be comprehensible. First, in order to formulate an answer that can be expressed with the appropriate level of economy and clarity, the advocate will need to have anticipated the question in advance. Second, it helps to rehearse the argument before an audience. If colleagues or even family members listen to the argument and do not understand it, the advocate probably will not be all that comprehensible or persuasive to Supreme Court.

**K. Protect and enhance your credibility.**

The oral argument will have to be devised so that credibility is maintained at all times, and enhanced if possible. Beyond candor, concessions concerning the limitations of the facts or the existing case law should be made strategically. Statements concerning the record and the law must be completely accurate.

**L. Be the master of the record and the law.**

The advocate before the Supreme Court should have mastered the body of relevant law to the point where he or she is the state's most knowledgeable expert on that area of law at the time of oral argument. The advocate should be prepared to discuss the facts and opinions of any particular case that might be raised by the opponent or the Court. Similarly, if there are questions concerning what is contained in the trial record, the advocate should have anticipated the question to the point where the record page cites can be offered. Also, it requires a mastery of the record to be able to truthfully to say that there is nothing else in the record beyond X and Y.

**III. PREPARATION FOR ORAL ARGUMENT**

Keeping in mind the above listed goals, the essential foundation for the oral argument is the advocate's preparation. Advocates frequently spend two full weeks preparing for oral argument. Based on the author's

survey on preparation for Supreme Court oral argument, virtually all oral advocates focus on the following basics of preparation.

#### **A. Basics.**

The first step in preparation is to gather all the briefs, all of the record, and all cases that were used in the briefing process. The advocate first re-reads those briefs. Most practitioners always read chronologically from the first brief to the last, although some always reverse the process and begin with the petitioner's reply brief. Six to twelve of the key cases are then read in order to establish the background of these most important cases. An abstract of the record is then reviewed. Additional excerpts may be culled based on what the advocate anticipates will be the object of questions or otherwise be important in oral argument.

Even though the briefs contain many arguments, most experienced practitioners will only focus on two or three issues that they believe are most important to the Court. On these key issues, the advocate tries to identify all the questions that could be raised by the Court during oral argument. All possible answers are identified, and then those possible answers are ranked and ordered from the most persuasive to least persuasive in descending order. The advocate will consult with colleagues to discuss the argument and to help anticipate potential questions and to evaluate the potential answers. Normally, no more than two answers will be given to a particular question during oral arguments. The advocate then creates an outline of the argument.

Once this process is complete, the next step is to practice. Some advocates practice privately; others practice in front of someone else. Advocates generally adhere to the motto that practice makes perfect. The advocate streamlines and polishes the argument to the greatest extent possible.

#### **B. The importance of preparation.**

Most supreme court advocates try to set aside approximately two weeks before oral argument to start preparing. Over-preparation is the rule. Advocates approach the process from the viewpoint of, "I have to master everything." The common experience is one of total immersion in the law and the record. Also, most oral advocates redevelop their thinking concerning their argument based on their oral argument preparation. Most advocates make significant and material changes between initial brief preparation and the oral argument.

The fact that an advocate's understanding of the issue develops after the brief is completed, but before oral argument, may be attributable to the oral advocates

focus on addressing the concerns of the Court. Focusing on the Court's likely concerns and questions makes advocates more sensitive to the vulnerability of their position as expressed in the brief. Determining what points would have to be conceded in order to maintain their credibility and coherence makes advocates think more deeply about the core truth of their position.

Briefs tend to focus on advancing the party's position. This is particularly true of the petitioner's reply brief, which is the brief least likely to focus on rebutting the other side's position. Even the respondent's brief may focus more on supporting the lower court's decision rather than responding to and contesting the position advanced in the petitioner's brief. The petitioner's reply brief will likely respond to and rebut the respondent's positions, but is again likely to focus on establishing the importance of the case jurisprudentially in the hope that the Supreme Court will take the case. Given these circumstances, it is not surprising that oral argument preparation becomes a more focused opportunity for an objective assessment of the relative merits of the opposing parties' positions.

The focus on self-criticism during oral argument preparation is furthered by obtaining input from colleagues in informal moot court sessions. Receiving pointed criticisms from colleagues about the weaknesses of certain positions and areas of concern not previously appreciated by the advocate often generates additional insight into how to better articulate a position and how to better justify it.

#### **C. Developing a flexible approach to answering the Court's questions.**

Anticipating the Court's questions must be tempered with flexibility. The good oral advocate will go where the Court wants to take the advocate. Advocates who resist directly answering the Court's concerns risk alienating the Court and missing the opportunity to persuade. The need to build in a significant amount of flexibility to address the Court's concerns during argument suggests that an advocate should not prepare a particular script or try to adhere to one particular logical flow of the argument.

#### **D. Question and answer modules.**

Preparing questions and answers in discrete modules is one means of building flexibility into an oral argument outline. Instead of constructing an outline that has a long logical flow, particular questions and points may be developed discretely. This modular approach to answering the Court's concerns necessarily requires that the advocate consider alternative transitions from point to

point, instead of just following one particular flow of points.

#### **E. Sowing questions in the mind of the Court.**

If the focus of preparation is on the Court instead of on the advocate, it requires a fair amount of skill for the oral advocate to steer the Court. Some advocates call this skill being provocative; others call it sowing questions in the mind of the Court. Preparing answers to anticipated questions that raise other potential questions may indirectly steer the Court. The Court may or may not take the opportunity to follow a provocative statement with a particular question. When that happens, however, the Court and counsel have connected in a very meaningful way.

#### **F. Focusing on the jurisprudential consequences that flow from a proposed rule of law.**

Analyzing the jurisprudential consequences that result from a particular decisional rule of law is one of the most important tasks in preparing for oral argument. Articulating a rule of law raises a number of natural questions. How is the proposed rule going to change law? How will it be consistent with the law? How will it be applicable to another set of facts? Is the rule consistent with what other states are doing? Is the law in other respects consistent with the proposed decisional rule? Good lawyers prepare for oral argument by analyzing both sides' respective proposed decisional rules and by anticipating these questions.

#### **G. Framing the issue for the Court.**

One of the most important things any advocate can do in an attempt to steer the Court is to frame the issue. If an issue is framed one way, it may have a great deal more persuasive impact than framing it another way. A well framed issue will focus on the primary decisional point. Each side has a rule they want the Court to adopt. The key to framing the issue is to both identify where the parties disagree and to explain to the Court why they disagree. Ultimately, it is the "why" of the disagreement that becomes the most important issue to the Court in deciding the case.

The primary decisional point is the point that, if won, will decide that case. By focusing on the primary decisional point, the advocate can create a shortcut around some of the issues raised by opposing counsel and some of the issues that are more peripheral to the case.

#### **H. Identify the weak points that can be conceded.**

After identifying the primary decisional point, the advocate should identify the weak and peripheral issues

that distract the Court from the core of the case. Doug Alexander describes this process as limiting the battlefield to as small an area as possible. When missiles come in from the other side that are not aimed at the advocate's battlefield, and are outside of it, the advocate chooses not to defend against those attacks. Missiles that do come into the battlefield, however, will be vigorously contested. Preparing an argument with a keen eye toward abandoning weak issues and focusing on the core of the case furthers the goals of utilizing the limited time to the best possible advantage.

#### **I. Formal and informal moot courts or practice arguments.**

Because the great majority of the time in oral argument before the Supreme Court will be spent answering questions, it can be very helpful to prepare for oral argument with formal or informal moot courts or practice arguments. Most lawyers prefer discussing the case with colleagues rather than bringing in outside attorneys to conduct a formal moot court. Some lawyers believe that informal discussions, with their more conversational tone, is more similar to the actual interaction with the Court. Some favor this approach because they believe moot courts are unlikely to replicate the actual questions that would be asked by the Court. In contrast, supporters of formal moot court point to the fact that the moot court replicates the stress inherent in actual oral argument. Retired judges can be brought in to judge a moot court to accomplish that objective. Regardless of the approach, focusing on questions and answers is a key aspect of preparing for effective oral argument. Oral advocates previously surveyed vary in how much time they spend in preparing for questions and answers, from 40 to 90 percent of their total preparation time.

#### **J. Practice and rehearsal.**

Whether the focus is on answering questions or in preparing remarks, practice and rehearsal are key to oral argument preparation. Most advocates will spend a great deal of time alone, speaking their argument. Some argue in front of a mirror, and others argue to a video camera. Developing an easy connection between the brain and the tongue is an important part of these rehearsals. Sentences or phrases that have been uttered countless times before the actual oral argument presentation are far less likely to make the advocate tongue tied. These rehearsals make the advocate more comfortable and confident when they actually appear before the Supreme Court.

**K. Scripting and editing your argument.**

Because time is short and because distractions must be strenuously avoided, the process of scripting and editing an argument can be a valuable tool. Sentences that are too long to be comprehensible to the human ear should be edited down to a digestible number of words. Arguments that do not ring well to the ear can be revised until they sing. This process focuses on the details of word choice that can promote comprehension and persuasion and avoid distracting and confusing the court. Most importantly, this script will ultimately be condensed into an outline. The script should never see the podium inside the Supreme Court building. While scripts are an excellent device for editing and sharpening the advocate's focus, an actual script on the podium impedes direct communication to the Court. The script should be thrown away before leaving for court.

**L. Deciding on visual aids.**

The process of thinking through the pros and cons of a visual aid also will help sharpen the focus in preparation for oral argument. If visual aids of any kind are going to be used, almost all lawyers and judges reject the use of posters or enlargements and prefer handouts. Many advocates prefer not to use any visual aid at all. They believe visual aids of any size can distract from the advocate's presentation and result in disengaged observers.

**M. Focusing on the principal cases.**

Although all advocates are concerned about mastering the principal cases that are likely to be discussed during oral argument, advocates differ on how they approach this task. Some advocates will master every case cited in all of the briefs, by memorizing the facts, the holdings, and the reasons for the holdings. Other advocates will focus just on a few key cases, choosing not to waste their time on cases that are not likely to be discussed during oral argument.

**N. Identifying key portions of the record.**

In any particular case, a few facts can be outcome determinative, and it is often helpful for the advocate to be precise concerning the key facts contained in a specific portion of the record. The ability to cite a page and line of the record concerning key testimony or an exhibit communicates to the Court that the advocate is focused on the right issues and that they are completely atuned with the Court concerning the nuances and details of the record point at issue.

**O. Identify cases written or authored by particular justices on aspects of your case.**

Although prior Supreme Court cases are important sources for precedent and persuasion, it can be helpful to focus on related cases written by each current member of the Court so that the advocates can discuss those cases when responding to questions from that particular justice. Frequently, justices ask questions that bear on issues on which they have previously written. Being fully conversant with the nuances of their cases and how they apply to the case being argued is an important part of oral argument and preparation.

**P. Preparation during the hours immediately preceding the oral argument.**

Oral advocates differ significantly on how they approach the last few hours before their oral argument. Some advocates will cram as much information as possible into their heads in the final hours of preparation. These advocates believe this helps them better remember the argument and better achieve a higher intensity level for the argument. Other advocates, such as Roger Townsend, prefer to calm themselves and to clear their minds before the argument. These advocates believe that they can perform better if they are relaxed and open to the Court's concerns. My personal preference is to do whatever is necessary in preparation for oral argument to be as confident and comfortable as possible when I actually assume the podium.

**IV. PRESENTATION OF ORAL ARGUMENT**

After all of the preparation is completed and the time for oral argument finally arrives, the actual presentation of the oral argument requires focus and flexibility. The keys to persuading the Court during your presentation are considered below.

**A. Approach the podium with confidence and a minimum of materials.**

As soon as the Supreme Court justices take their seats on the bench, advocates should assume they are being judged. To create the right initial impression, it is important to sit at counsel table with a completely professional and prepared demeanor. When the chief justice calls for the advocate's side of the argument, the advocate should already have the materials arranged for carrying to the podium. The advocate should not waste time arranging materials or waiting for the Court to look up at the advocate. After waiting approximately 3 seconds, the advocate should invoke the familiar "May it please the Court" and then launch directly into the oral argument.

**B. Use the first ninety seconds to engage the Court and to make your most important point before the Court begins asking questions.**

Most lawyers believe that the first ninety seconds of their argument is the most important opportunity to frame the issue and steer the court. This is the time to place the argument in the best possible light for winning. Lynne Liberato believes that reducing the argument to a one sentence description will normally permit the advocate to at least state his or her position at the very beginning of the oral argument.

The author has previously studied how Supreme Court advocates use their first ninety seconds and cataloged the different approaches that advocates employ to utilize that time. There are basically five groups of approaches that advocates employ for their first ninety seconds. Those approaches are: law oriented, fact oriented, methodology oriented, context oriented, and attack oriented. Each of these approaches has variations, and they are briefly summarized below.

There are several different varieties of the law oriented approach. The first is the “here is legal issue” approach. This approach uses the first 90 seconds to frame the issue and may explain how the opponent has incorrectly framed the issue. The second variety focuses on identifying and applying the controlling case law. The third variety appeals to core precedent or legal doctrines. The final law oriented type of approach focuses on the correct jurisprudence for the Court to follow or the jurisprudential effect of the Court’s possible rulings.

The fact oriented approach to the first ninety seconds may involve the advocate going straight to a key fact that is dispositive of the case. A second type of fact oriented approach uses the first 90 seconds to describe the facts of the case generally, but briefly.

The third approach to the first 90 seconds is the resolution oriented approach. The first variety says, “I have the simple solution to this mess that the other side has created.” The second variety presents a test that the advocate suggests that the Court use to resolve this case and similar future cases.

The fourth approach to the first 90 seconds is the context oriented approach. One variety of this approach offers a road map of the advocate’s argument. A second variety attempts to summarize the advocate’s argument for the Court. A third identifies the issue over which the parties are clashing and attempts to explain why they are clashing.

The fifth category of approach is the attack approach. In one version of this approach, the advocate attacks the court of appeals’ judgment and reasoning.

Another version of the attack oriented approach attacks the opponent’s credibility.

On some occasions, none of these approaches are utilized because the Court asks questions before the advocate has a chance to say anything. In each of these circumstances, the Court’s first question irrevocably changes the first 90 seconds of the oral argument.

**C. Embrace the Court’s questions and make your case out of answers to those questions.**

The key component of the Court oriented approach to oral argument is to embrace the Court’s questions as the most important part of oral argument. These questions certainly deserve primacy because they reflect the particular objects of the Court’s concern. Unlike the preparation phase, where the advocate attempts to anticipate the Court’s possible concerns, during the oral argument the advocate focuses on the Court’s questions, which are the concrete expressions of their actual concern. Thorough preparation will allow the advocate to better understand the Court’s stated question and possible unstated subtext. Drawing upon the advocate’s preparation, the advocate offers the very best and most concise answer first. If permitted, a second concise point may be offered in answer to the question.

**D. Concede what you must.**

Frequently, the Court will ask questions to see if the advocate is going to concede the perceived weaknesses of their argument or whether they will simply fight on every issue. The smart advocate will concede limitations or weaknesses of the argument and immediately follow by identifying the related core concept that is not part of the concession that they will vigorously defend.

**E. Don’t talk over the Court’s questions.**

The advocate should stop immediately if and when the Court begins to interrupt the speaker to ask another question. Consistent with the Court oriented focus, whatever the advocate is saying is of far less value than the Court’s question. This has the added benefit of signaling to the Court that the advocate appreciates the Court’s questions and values those questions and the opportunities they present to inform and to persuade.

**F. Don’t miss the softball questions.**

One difference between good and not so good advocates is whether they recognize “softballs” – questions that are favorable to the advocate and permit them to make a key point to the rest of the Court. These softballs must be recognized and hit out of the park. Softball questions are often intended to be a means by

which one justice communicates with another justice, using the advocate as foil. The unprepared advocate may mistake softballs as an attack on the advocate's position. The resulting argument on an issue that was otherwise favorable to the advocate could be one of the worst possible moments for any oral advocate.

**G. Use an answer to one question to transition to another key point.**

Draw upon your preparation to make the best use of the opportunity to answer questions and to transition from your answer to another important point. The initial answer cannot be given short shrift, but should instead fully answer the Court's question in one or two sentences. A transition sentence connecting the answer to the next point will probably be appreciated by the Court.

**H. Focus on the justness of your position.**

To bolster the jurisprudential argument, the good advocate will apply the proposed holding or reasoning to the facts of future, hypothetical cases and then demonstrate that the result of applying the advocate's proposed rule is far more just and jurisprudentially coherent than applying the opponent's rule. This furthers the goal of focusing on the jurisprudential issue which is at the heart of the Court's concern.

**I. Don't run the stop sign.**

Treat the red light on the podium as a red light at an intersection. While the Supreme Court does not cite and ticket advocates for running the red light, the violation will be just as apparent. Smart advocates will begin their conclusion and summary when the yellow light goes on and will conclude their oral argument before the red light is turned on.

**V. CONCLUSION**

The goals, preparation, and presentation of the oral argument should all be of a piece. The opportunity to argue before the Texas Supreme Court and to affect Texas jurisprudence is truly one of the great professional experiences for any appellate advocate. With any luck, helping the Court to do its job will also pay dividends to the advocate and the advocate's client.