

# PREPARING FOR ORAL ARGUMENT IN THE UNITED STATES SUPREME COURT

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## I. INTRODUCTION

Many articles offer excellent advice on how to present oral argument in the United States Supreme Court.<sup>1</sup> This Article offers advice on how to prepare for the argument. The advice reflects the preparation method that I used at the United States Department of Justice. In developing that method, I adapted ideas and practices of my colleagues to suit my temperament and work habits. I am hopeful that the readers can, in turn, adapt the ideas offered in this Article to their own use.

My preparation method reflects the current Court's practice of drilling most oral advocates with questions for most of their argument time. Because it is rare to encounter a cold Court these days, it makes no sense for an advocate to spend time preparing a canned, linear spiel. The advocate should instead spend his time anticipating the Justices' questions and preparing answers to them. In doing so, the advocate must identify the small handful of key points that have to be made during oral argument. The advocate should be able to express each key point in one simple and memorable phrase or sentence. The advocate should also be able to answer each question in a way that steers the Court to one of those key points.

To sum up the preparation method that I use and commend to the reader: work backwards from questions. The rest of this Article describes how to do that. The process has three stages: anticipating questions, composing answers, and rehearsing those answers. At each stage, one essential objective is to identify the key points of the case and devise memorable, forceful statements on each one.

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1. See, e.g., John W. Davis, *The Argument of an Appeal*, 26 A.B.A. J. 895 (1940); Robert H. Jackson, *Advocacy Before the United States Supreme Court*, 37 CORN. L.Q. 1 (1951); E. Barrett Prettyman, Jr., *The Supreme Court's Use of Hypothetical Questions at Oral Argument*, 33 CATH. U. L. REV. 555 (1984); William H. Rehnquist, *Oral Advocacy*, 27 S. TEX. L. REV. 289 (1986); Stephen M. Shapiro, *Oral Argument in the Supreme Court of the United States*, 33 CATH. U. L. REV. 529 (1984).

## II. ANTICIPATING QUESTIONS

### A. *Passive vs. Active Preparation Strategies*

When a lawyer begins preparing for oral argument, she may want to dive right into the facts and the law. Under that impulse, she may reread the record from cover to cover and the relevant cases from start to finish. This approach is passive, indiscriminate, and incomplete. It is not enough for the advocate to *know* the record and the precedent; she must be able to *use* them at oral argument to answer questions and make affirmative points. To do so, the advocate must systematically identify what questions from the Court the material is likely to generate and what oral responses will be most effective.

Under the system that I developed, I kept my brief on the merits (including any reply brief) in front of me on the desk. I initially spent most of my time reviewing every single line of that brief with the objective of thinking up questions that each line might prompt the Justices to ask. When a question occurred to me, I wrote it down. Especially at the beginning of the process, I devoted my time to generating questions in this way, rather than answering them.

As the list of questions grows, the advocate will see that most of the hard questions clump around a limited number of issues. Those are the issues at the heart of the case. They are the matters for which the advocate must compose key points.<sup>2</sup> The following section describes the method and rationale for anticipating questions based on a line-by-line review of the brief.

### B. *Rationale and Method of Scrutinizing Brief*

The reason that preparation should revolve around the advocate's brief is that the brief is what the Justices have with them before, during, and after the oral argument. Before the argument, the Justices have read the advocate's brief line-by-line. As they did, they no doubt found things that they did not understand, things that they agreed with, and things that they disagreed with. The Justice may well have marked up the brief with notes and underlining so that he could ask about various passages at the oral argument. After the argument, a Justice may use the brief in deciding how to vote and write an opinion.

Preparation for oral argument must take into account that the briefs are the Justices' main source for learning about and deciding the case. One objective of an advocate's oral argument is to convince the Justices that they can confidently rely on that advocate's brief. The advocate can achieve that

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2. See *infra* Part II.

objective with an argument that lifts the key points out of the brief, impresses them into the Justice's minds, and leaves them with an impression that the advocate's position is coherent and workable.

When the advocate picks up his brief on the first day of preparation, he must scrutinize it. To do this, the advocate must set aside pride (or shame) of authorship, because they can lead to an unfruitful focus on the elegance or awkwardness of the prose. Rather than being self-conscious and superficial, the advocate's scrutiny of the brief needs to have a dual nature. One part is backward-looking, recollective, and personal. The other part is forward-looking, predictive, and impersonal.

On the one hand, the advocate should actively attempt to recall the decisions that he made when writing the brief. He should remember, for example, the unfavorable facts that were smoothed over; the ambiguous statutes, regulations, or constitutional provisions that were claimed to be unambiguous; and the gap between the precedent that was cited and the case at hand. This is the retrospective, essentially deconstructive part of one's scrutiny. To write the brief, the advocate had to simplify and shape the facts and the law into a coherent whole. Now the process should be reversed, so that the brief is disassembled into the sometimes unruly facts and uncooperative legal principles that were woven together.

The toughest questions from the bench often concern matters that were elided in writing the brief. Therefore, as the advocate recollects the factual and legal elements of the case, he should imagine how they might be turned into questions from a Justice. The imagining should encompass both what was included in the brief and what was left out. Facts that were omitted from the brief's statement of facts may well be the subject of questions; so may lines of precedent that, the advocate's research revealed, led nowhere. The imagining should encompass both easy and hard questions, friendly and hostile ones, innocent ones and ones with ulterior motives.

### *C. The Method as Applied to Particular Sections of the Brief*

The Supreme Court requires a brief on the merits to include more than just a statement of facts and an argument section. So, too, the Justices often require advocates at oral argument to answer questions that do not pertain directly to the relevant facts and the relevant law. Moreover, questions about the record and precedent often range beyond what is set forth in the brief. Nonetheless, those questions usually are prompted by the Justice's scrutiny of the briefs. Accordingly, the advocate should use the brief to anticipate the questions that

must be answered by going outside the brief.<sup>3</sup>

The review process should begin with the cover of the brief. The caption may prompt questions about, for example, who the parties are (including their domicile, their occupation, and their history); how they are related to one another (for example, by familial or corporate ties); why they brought this suit or were named as defendants; when they entered the lawsuit; why certain parties dropped out of the case; why entities or individuals whom one might have expected to be named in the case were not named; and whether the alignment of the parties reflected in the caption accurately reflects the various interests. The questions that Justices ask about the personnel of the lawsuit may be the same questions that occurred to the advocate upon entering the case.

The first page of the brief, which sets forth the question or questions presented, can be another fruitful source of questions. Is there a dispute about what questions are properly before the Court? Were the questions properly raised below? Where in the record is it indicated that the questions were presented? How did the courts below rule on the questions presented? Where does the record reflect those rulings? Have the respondents restated the question presented? If so, what is the significance, if any, of that restatement? Have any amici curiae attempted to inject additional issues into the case? If so, what is counsel's position about whether and how those issues should be addressed? Are there any factual wrinkles that might prevent the Court from squarely addressing the questions presented? Are there potential legal barriers, such as the existence of an adequate and independent state ground for the judgment below? If the case presents more than one question, how are the questions related? Is it necessary for the Court to decide all of the issues? How might its ruling on one issue affect its ruling on another?

The next major section of the brief, the statement of jurisdiction, also can generate questions. The advocate should anticipate questions about the statutes and the procedural rules (including the timing rules) that governed the jurisdiction of each court below. Particular care is warranted for cases from a state-court system. Each such system has distinct features that may be second-nature to the advocate but strike a Justice as peculiar or, at least, sufficiently unfamiliar to prompt a question.

In reviewing the statement of facts, an advocate should do at least five things for each factual assertion. First, review the parts of the record that support the assertion. Second, recall whether the evidence supporting the assertion is weak or disputed. Third, identify what, if anything, the opponent

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3. Ultimately, as discussed in Part III, the answers should direct the Justices back to the brief.

(or its amici) says about that factual assertion.<sup>4</sup> Fourth, determine how the assertion is relevant to the case. Fifth, consider how the legal analysis might change if the fact asserted were changed or omitted. Going through these steps will spark additional questions that should be written down.<sup>5</sup>

The steps just described entail preparation of a defensive nature. The advocate must also scrutinize the statement of facts to devise an affirmative strategy. In particular, the advocate should decide which factual issues she should downplay and which she should play up. Facts to be downplayed will not be raised at oral argument except in response to questions from the bench, and those responses should be brief. Facts to be played up may well be raised before the Justices pose questions about them; or, if they are raised in response to questions, the advocate will dwell on those facts to the extent necessary to buttress a key point. In sorting out the facts to be downplayed and those to be played up, the advocate should aim to identify one or two particularly helpful ones.<sup>6</sup>

The process of reviewing the argument section resembles that for reviewing the statement of facts. For each legal assertion, the advocate should reread the judicial opinion, statutory provision, regulatory provision, or constitutional provision that was cited in support of that assertion. For each source, the advocate should develop a one- or two-sentence description of the source; an explanation of how it supports the advocate's overall position in the case; responses to questions challenging the advocate's reliance on that source; responses to questions about the original reasoning underlying the source (including judicial decisions, which, notwithstanding *stare decisis*, are always open to reexamination<sup>7</sup>); and responses to what the opponent or its amici have to say about the cited source or the assertion for which the advocate has cited it.<sup>8</sup>

In reviewing the argument section, as in reviewing the statement of facts,

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4. This is one of the occasions on which the advocate will consult the brief of the opponent and any amici supporting the opponent. The advocate also should consult the other side's briefs in anticipating questions about the parties, the questions presented, and jurisdiction.

5. As the advocate rereads portions of the record cited in the briefs, she should put a checkmark next to the citation in the brief's table of authorities or otherwise keep track of which cites have been reviewed. By the end of the preparation process, the advocate should have reviewed every citation.

6. For example, the parties challenging the constitutionality of a congressional redistricting plan in *Abrams v. Johnson*, 521 U.S. 74, (1997), quite effectively used at oral argument the Department of Justice's own description of the plan as the "max black" plan. *Id.* at 80. The Court held that the plan was unconstitutional.

7. See Davis, *supra* note 1, at 897.

8. This is another occasion on which the advocate will be reviewing the other side's briefs. See also *supra* note 4. It is suggested that this way of reviewing the other side's briefs—in the course of anticipating questions stemming from a close review of the advocate's own brief—is a more active, focused method of review than merely rereading the other side's briefs from cover to cover, with no particular purpose other than to refresh one's recollection.

the advocate must think strategically. Specifically, she must begin to identify the weakest and strongest points in her argument. The preparation method described in this Article assumes, based on the author's experience, that this identification process can be accomplished primarily by determining, respectively, which arguments are most likely to draw the most numerous and difficult questions and which responses will most effectively answer those questions.

Finally, the advocate should not ignore the "conclusion" section of the brief. More than anticipating, the advocate should *hope* to be asked what disposition is appropriate if the Court rules in her favor. The Court usually remands a case for further proceedings of some sort. The advocate should anticipate questions about what issues would remain to be sorted out if the Court decides the case favorably to the advocate; whether there is any dispute about which issues should be left for remand; how the Court's ruling on the issues before it might affect the resolution of issues left for remand; whether (and, if so, why) the Court should include in its opinion any instructions for the courts below on remand; and whether the Court might need, in further proceedings or in a future case, to address any of the issues left for remand.

The line-by-line review process forces the advocate to review every factual and legal assertion with an eye towards anticipating how it could come up at argument. The process recognizes that the advocate's brief is one of several windows that the Justices use to view the case. The process forces the advocate to think about how to use the oral argument to convince the Justices that her brief provides the clearest, most complete view.

#### *D. Imagining Oral Argument*

An advocate can anticipate questions most effectively by putting himself in the shoes of the Justices. To do so, the advocate must keep in mind that the Justices function both as a group and as individuals. Both the group and each Justice have a history that the advocate should learn as much about as possible. Those functions and that history account for many of the questions at oral argument.

As a body, the Justices have two main tasks. The task most immediately at hand at the time of oral argument is to decide the case correctly. Then comes the task of writing an opinion that is persuasive and leads to appropriate results in future cases. In approaching these tasks, the Justices' collective disposition is independent-minded and skeptical. Their collective intelligence is as high or higher than the advocate who appears before them. They are smart enough to realize that they do not know as much about the case as does the adequately prepared advocate.

These group characteristics prompt certain types of questions. The collective skepticism generates questions to this effect: "Aren't you sugar-

coating the facts when you say . . . ?" or "Isn't there a critical difference between the case you have cited and yours . . . ?" The weight of their decision as precedent in the future prompts questions such as: "If we rule in your favor in this case, how do we decide the next case that comes down the pike, with the following slightly different facts?" The weight of past precedent generates questions such as: "If we decide this case in your favor on this rationale, what do we say about our prior decision *X v. Y*?" Justices' opinion-writing duties lead to questions the essence of which is: "How do we state the holding in this case?" In short, a large proportion of the Justices' questions simply reflect their desire to do their jobs as well as possible.

The advocate should also try to anticipate questions from individual Justices. Each Justice has his or her own jurisprudence. It consists primarily of the opinions that the Justice has written and, secondarily, of the votes that the Justice has cast while on the Court. The Justices know that academics will scrutinize their jurisprudence for coherence and consistency. Each Justice expects or hopes that the advocate who appears before the court will be able to explain how a ruling in the advocate's favor will square with the Justice's own jurisprudence.

To predict questions from individual Justices, the advocate should determine how each one voted in all relevant precedent. The advocate must also read that precedent carefully and prepare to answer questions by individual Justices about how a vote in favor of the advocate's position squares with that Justice's record. In preparing these answers, the advocate should bear in mind that the Justices remember their past opinions with varying degrees of clarity. For that reason, the advocate should anticipate both straightforward and sophisticated questions about the precedent—ranging from the simple question "What did we hold in that case?" to more subtle ones concerning, for example, the voting alignments and the distinguishing facts.

An advocate can greatly enhance his ability to predict questions from individual Justices by listening to oral arguments. This has become much easier now that so many oral arguments are available on the Internet. An advocate will benefit even by listening to cases that concern issues unrelated to those presented in the case for which he is preparing because certain Justices favor certain questions. Justice White, for example, liked to ask questions that took this form: "If we reject the argument you just made, do you lose?"<sup>9</sup> Chief Justice Rehnquist likes to ask: "What's your best case [for the argument that you have just made]?" Justice Scalia likes to ask questions about how the text of statutes or regulations supports an advocate's position. Justice Kennedy likes to ask questions related to ensuring that individuals are treated fairly by the

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9. The question remains a useful one to bear in mind, even though Justice White is no longer on the Court.

legal system. The advocate can collect specific instances of these sorts of questions by listening to oral arguments. In addition, the advocate can better imagine what questions the Justices might ask by learning the sounds of their voices.

With a little imagination and research, the advocate will find that each line of the brief sparks many questions. The advocate need not worry about having too many questions. It is better to anticipate questions that never get asked at oral argument than to hear questions at oral arguments that one never anticipated. The advocate should keep in mind that anticipating the questions is half the battle. It is therefore suggested that the advocate avoid the temptation in the initial stages of preparation to craft perfect answers to all of the questions that start to crowd into his head. Instead, the advocate should attempt to flush out all of the possible questions that are generated through a line-by-line of the brief.

### III. COMPOSING ANSWERS TO ANTICIPATED QUESTIONS

If the advocate follows the method described in Part II, she will have imagined dozens of questions. She also will have begun to see a pattern to the questions. The hardest questions cluster around one or a few issues. This is the heart of the case. Only after the advocate has identified these key issues can she prepare effective answers to all of the questions. An effective answer leads the Court to the advocate's statement of her position on the key points.

Nonetheless, the advocate should not postpone preparing preliminary answers until she believes that she has identified virtually all possible questions. For one thing, that may never happen! For another, it becomes tedious and anxiety-provoking to spend all of one's time anticipating questions without planning answers. Finally, it is not necessary to anticipate all possible questions. One main objective of anticipating questions is to identify the heart of the case. The heart of the case will become clear before the advocate has identified all possible questions.

Every answer to a Justice's question may have as many as three parts: (1) a response of three words or fewer; (2) an explanation of item (1); and (3) a transition to a key point. For each anticipated question, the advocate should decide which parts the answer must include and what each part will contain. It is suggested that some questions will warrant only the first item—the briefest possible response; the rest will require all three items.

Questions warrant only an answer of one to three words when they are wholly and obviously incidental to the case. Examples of such questions

include most questions about geography<sup>10</sup> or the identity of the judges who decided the case below. After the concisest-possible response, the advocate should immediately return to the point that she was making when the question arose. The advocate should not plan to use this sort of question to demonstrate her knowledge of the case's trivia. Rather, the advocate should show, by her succinctness and rapid return to the original point, appropriate control over her presentation. This is a small but easy way of gaining credibility. It depends, of course, on a complete knowledge of the case's trivia.

Most questions sufficiently relate to the case that they deserve, in addition to an answer of three words or fewer, an explanation. However brief the explanation, it disrupts the argument enough that, after the explanation, some transition back to the affirmative presentation will be needed. The best transitions follow the explanation seamlessly. Making such transitions is most likely when the advocate has, before the argument, anticipated the question and decided on not only the point to which the answer to the question will lead, but also the smoothest, shortest path to get there.

In composing transitions, the advocate may find it helpful to think of questions as springboards. The posing of a question creates tension. The tension takes the form of suspense, mostly on the part of the Justice who posed the question, but also on the part of the other Justices. The advocate must gauge the amount of potential energy created by the question in order to know how far it will carry her. In general, the advocate should plan to jump from the explanation to the most closely related key point. This will be one of the points around which, the lawyer should have noticed when compiling anticipated questions, most of the questions cluster.

The key point to which the answer to a question will come closest is usually, but not always, the point that the advocate was making when the question was posed. In that event, an effective transition lands the advocate farther along in making the point that she was making when the question was asked.

An example may help. Suppose that, when a question is posed, the advocate is emphasizing the evidence in the case that she has determined most helps her cause. The question probably will relate to that evidence. For example, if the evidence consists of testimony by a particular witness, the question might be, "What else did Witness X testify about?" or "Didn't Witness Y testify to the contrary?" Although these questions may lie a similar distance from the point that was being made when the question arose, they may warrant slightly different transitions.

The answer to the first question—"What else did Witness X testify

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10. Justice Blackmun was famously fond of asking geography questions in cases set in Minnesota.

about?”—might take the form: (1) two- or three-word answer—“hiring policies”; (2) optional explanation—“One of the claims at trial, which is no longer at issue in this Court, was that the policies had a discriminatory impact.”; and (3) transition—“X’s key testimony for the issue before this Court concerned [two- or three-word description of the subject matter of the evidence being discussed before the question was asked], because [continue with original point].”

The answer to the second question—“Didn’t Witness Y testify to the contrary?”—might take the form: (1) one- or two-word response—“no”; (2) brief explanation—“Instead, Witness Y testified that [explain how testimony differed from Justice’s understanding].”; and (3) transition—“Witness Y’s testimony was thus fully consistent with Witness X’s testimony, and Witness X’s testimony was critical because [continue with original point].” Alternatively, the answer to the second question could take the form: (1) “Yes, but . . .”; (2) “The trial judge found Witness Y’s testimony incredible”; and (3) “The trier of fact credited Witness X’s testimony, which is critical because [continue with original point].”

In answering a question, the advocate should not always lead the Court back to the point that she was making when the question was asked. When an advocate displays a dogged determination to do so, the argument will feel jagged or inflexible to the Court. Furthermore, a question often gives the advocate a chance to change from one point to another point that has not yet been made or not yet been made adequately. This opportunity will be especially welcome when the advocate has finished, or failed to impress the Court, with the point that she was making when the question arose.

Accordingly, the advocate should plan more than one transition for each anticipated question. This does not require the composition of hundreds of transitions, even if the advocate has anticipated hundreds of questions. A single transition to key point “A” may work for many different questions. For example, a variation on one of the transitions suggested above—“the critical evidence was . . .”—may work for many questions concerning evidence that is irrelevant or unhelpful to the advocate’s cause. A similar transition—“the controlling case [or ‘principle’] is that . . .”—may serve as a transition from many questions concerning irrelevant or unhelpful precedent.

This Part has described the shape that most answers to anticipated questions should take. The shape is what a dense rubber ball would look like if grommets were inserted at opposite ends of the ball and attached to cables that attempted to pull the ball apart. The answer begins with a sharply focused response, widens to an explanation as dense and pure as possible, and then sharpens again to a point.

#### IV. REHEARSING QUESTIONS AND ANSWERS

Before the argument the advocate should spend as much time as possible talking about the case while on his feet. Well before the advocate feels ready to do so in front of others in a moot court, he should rehearse before an imaginary set of Justices. Indeed, the advocate can use this process not only to refine, but also to compose the substance of his presentation.

Moot courts are a necessary form of rehearsal, but they are not a sufficient form for three reasons. First, they are complicated and time-consuming enough to arrange that having more than a few is impracticable. Second, they are formal and anxiety-provoking enough that they are really helpful only at an advanced stage of preparation. Finally, their format and number of participants precludes the quiet solitude that the advocate needs to think deeply about the case.

It is recommended that the lawyer begin rehearsing out loud and on his feet when he is about one-third of the way into the preparation period. The advocate should do the rehearsal in a quiet room where he will not be disturbed for a decent chunk of time. The advocate may wish to disconnect the phone and lock the door. The advocate may also want to have a source of white noise (such as an open window); this will minimize self-consciousness about his own voice. The objective of these measures is to give the advocate time and space to learn the spoken language of his argument.

The advocate should decide in advance how much time he will spend arguing the case to the imaginary Court. At the beginning, five or ten minutes should be plenty. As the argument date approaches, the advocate should extend the amount of time to as long as one hour. Hour-long sessions should be alternated with the sessions equal to the actual amount of argument time the advocate will have. This alternating pattern of rehearsal times conditions the advocate and teaches him what time will permit.

For the decided-upon period of time, the advocate should stand behind a rostrum (or its equivalent) and argue the case before a Court envisioned as completely as possible. To start, the advocate may want to have an imaginary Justice pose one of the questions from the list that the advocate is compiling. The advocate should then give an answer that takes the shape described in Part III. The answer must end with the advocate's statement of his position on the key point that is most closely associated with the question. In making that statement, the advocate often will think of another question that might be prompted by the point. If so the advocate should answer that question next. If not the advocate should pose to himself another question at random from the list of anticipated questions.

Although the advocate should remain in character for the designated period, he should stop and start again if the first attempt at an answer does not work. Indeed, the advocate should consider whether the first attempt has any

awkward wording, is unfocused, is too long or difficult to understand, or might needlessly raise additional questions that would sidetrack the advocate from reaching the affirmative point. Then the advocate should attempt to answer the same question in light of these considerations. The advocate should continue this oral editing of the answer until he is satisfied.

Because the answer does not end when the advocate has supplied the particular information sought by the question, the advocate must also consider where he wants the answer to lead and how to get there in the limited time available. This is obviously important for the hard questions that go to the heart of the case. The answers to these questions are the key points that the advocate must make whether or not the questions are ever actually posed. It is equally important, however, for questions that are relatively far removed from the heart of the case. The advocate can use much argument time answering the latter type without making headway unless he has anticipated them, formulated the most concise possible answer, and determined how to lead the argument back to the key points.

This process has several useful effects. It helps the advocate get feelings of nervousness and self-consciousness out of his system. It helps him determine the best way to argue the case with the spoken word. It helps the advocate become fast on his feet by anticipating directions that questioning might take and developing the appropriate footwork.

After the rehearsal time ends, the advocate should sit down and analyze the argument. The advocate should write down any additional questions that he anticipated. The advocate should write down the answers that he composed during the rehearsal. Most importantly, the advocate should begin to identify the key points—the small handful of assertions to which the answer to all questions must lead in order for the Court to decide the case in the advocate's favor. The key points emerge with repeated rehearsals. By repeatedly thinking about where the answer to every conceivable question must go, the advocate will discover that only a limited number of destinations exist. These are the key issues—the heart of the case. By deciding how to make the answer to every conceivable question as concise as possible, the advocate will learn that his position on each key issue can be expressed in a single sentence. That sentence is a key point. Each point, of course, can be elaborated. The elaboration should answer the questions that cluster around the key point.

Once the advocate has identified the key points and the appropriate elaboration for each, he should then prepare and rehearse his affirmative presentation—the presentation that he would make if uninterrupted by questions. As a rule, the presentation should last not much longer than half of the time allotted for argument, which usually means fifteen minutes. Although this might seem too short, it is not. If the Court does not consume the additional time with questions, the advocate will win its gratitude by ending early.

The advocate should incorporate the affirmative presentation into his later

rehearsals. To do so the advocate should try to do the presentation in the allotted time while answering anticipated questions. This process forces the advocate to make his key points in different orders and with appropriate transitions. It also should enable the advocate to learn the affirmative presentation well enough not to need a script of it. Although the advocate may wish to have such a script at the argument, the advocate should rely primarily on a one- or two-page outline limited to key phrases and cases.

#### V. CONCLUSION

Though discussed separately in this Article, the processes of anticipating questions, composing answers to them, and rehearsing the answers should overlap. The advocate should begin composing answers to possible questions before all possible questions are identified. The composition process should occur as much as possible while the advocate is standing up and rehearsing aloud. Together, these processes should help the advocate at oral argument to answer nearly all questions in a way that leads to her position on key points.

