



PROGRAM MATERIALS

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Oral Advocacy: Winning Your Case at Oral Argument

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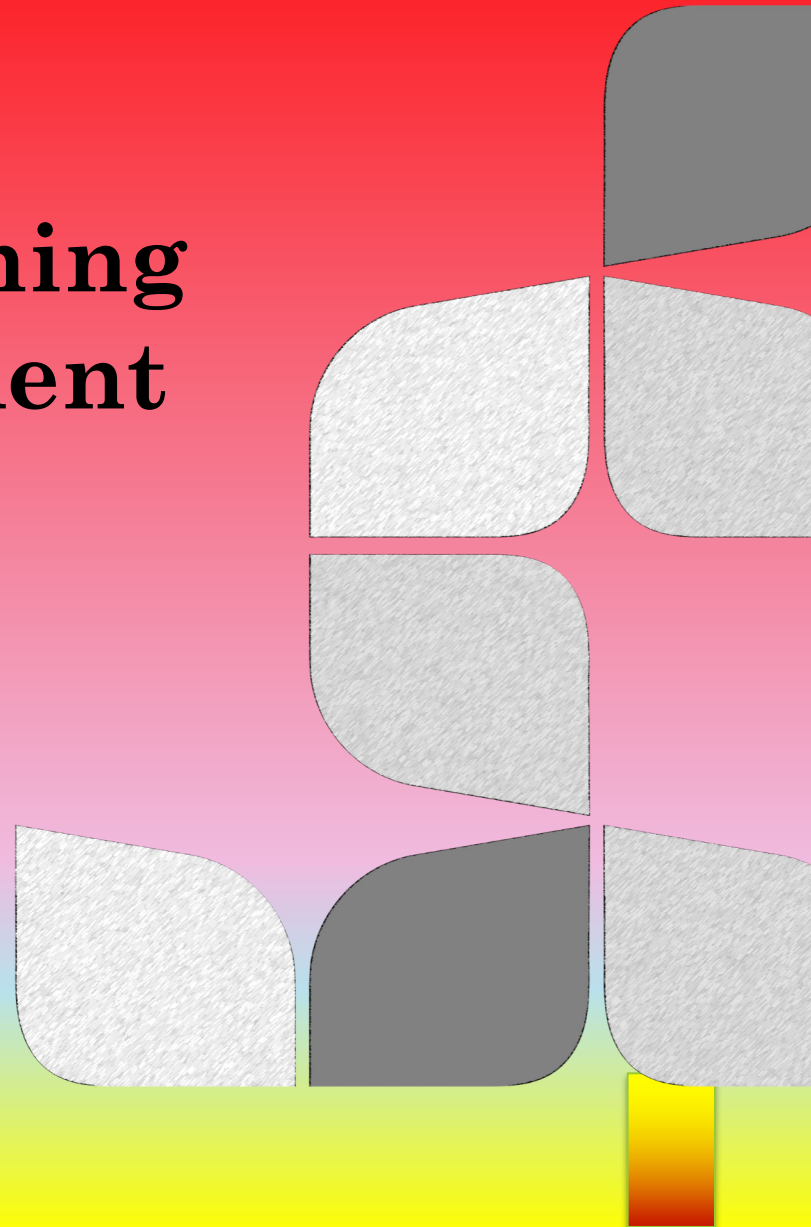


Oral Advocacy: Winning Your Case at Argument

Charles R. Macedo

May 4, 2026

**Amster
Rothstein &
Ebenstein** LLP



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No humans were hurt in making this presentation, but AI assisted in its preparation.



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About our Presenter

Charles R. Macedo

Charles R. Macedo is a seasoned intellectual property attorney with deep expertise at the intersection of emerging technologies, data-driven businesses, and commercialization. He is recognized as an author, thought leader and frequent lecturer in intellectual property, blockchain, artificial intelligence/software, and data monetization. With a technical background in physics and decades of experience guiding Unicorns, startups, financial services firms, and technology innovators, he has developed IP strategies as they launch and monetize new product lines resulting in collections of hundreds of millions of dollars of royalty revenue.

J.D. 1989, Columbia Law School; B.S./M.S., Physics, 1986; former Law Clerk to Hon. Daniel M. Friedman at U.S. Court of Appeals for the Federal Circuit.



AGENDA

1

Hon. Daniel M. Friedman and Why Oral Argument Matters?

2

Friedman Framework for Oral Advocacy

3

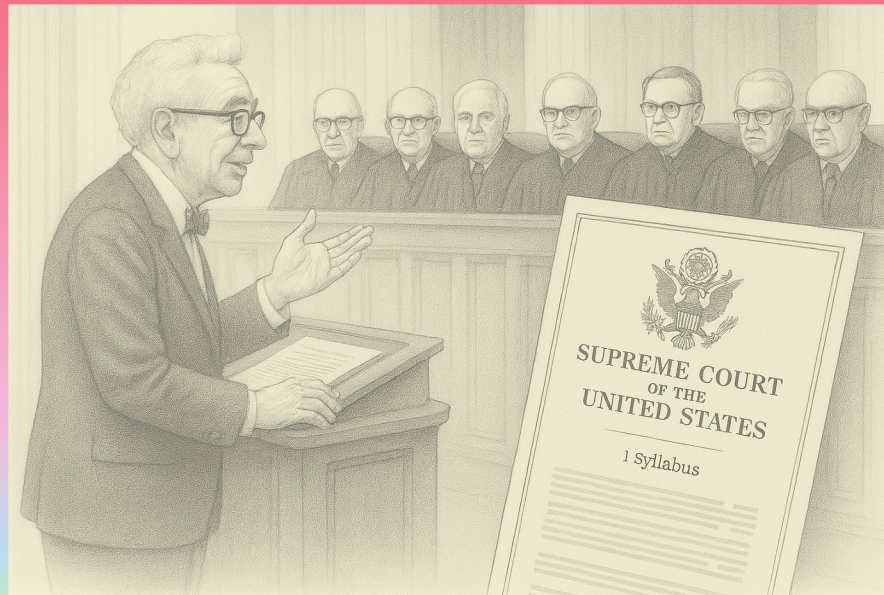
Understanding and Adapting to your venue

4

Tools for your oral argument

1

HON. DANIEL M. FRIEDMAN AND WHY ORAL ARGUMENT MATTERS?



Hon. Daniel M. Friedman

Hon. Daniel M. Friedman (1916–2011)

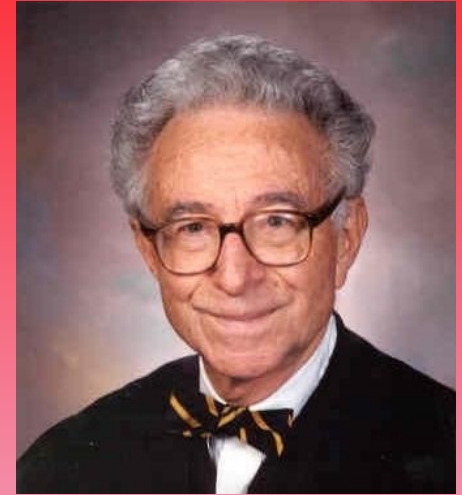
A Legacy of Appellate Excellence

Judge Daniel M. Friedman was a titan of American jurisprudence, uniquely defining the art of oral advocacy from both sides of the bench. Over a distinguished career spanning seven decades, he served as:

- **Acting Solicitor General of the United States**
- **Chief Judge of the U.S. Court of Claims**
- **Circuit Court Judge and Senior Circuit Court Judge at the U.S. Court of Appeals for the Federal Circuit.**

His wisdom is uniquely persuasive because it was forged in the highest stakes imaginable. Judge Friedman argued over **80 cases before the U.S. Supreme Court**, maintaining a formidable record of success that earned the profound respect of the Justices.

Having navigated the "hot bench" of the nation's highest court more than almost any peer, he understood that oral advocacy is a critical tool for judicial decision-making. His legacy teaches that **clarity, candor, and precision** are the ultimate forces in the pursuit of justice.



Friedman's Framework for Effective Appellate Advocacy

“Winning on Appeal”,
by Daniel M. Friedman

“Winning on Appeal” is a key resource on appellate advocacy, distilling Judge Friedman's exceptional experience as both a leading Supreme Court advocate and an accomplished appellate judge.

The article reframes oral argument as a focused judicial dialogue rather than a prepared speech and explains how to address a highly engaged bench.

Friedman provides practical guidance for anticipating judicial concerns, responding effectively under time constraints, and supplying the court with the precise tools necessary to support a sound and well-reasoned decision.

Winning on Appeal

by Daniel M. Friedman

This is a how-to-do-it piece. There is no adequate substitute in appellate advocacy for doing it. Thus this article will set forth practical considerations and suggestions based on a quarter century of my experience. This time was spent exclusively in appellate work, most of that in the Supreme Court of the United States but also in the United States courts of appeals.

First, a few general observations about appellate practice:

1. Perhaps the most important requirement — and one that many lawyers ignore — is to present your own affirmative case. A well-constructed and well-written brief should leave no doubt in the mind of the reader that the position is correct. It is not enough for the appellant to show that the lower court erred. That court's grounds for decision may be vulnerable, but even to invalidate that reasoning does not necessarily mean that the court's judgment will be reversed. The appellate court may discern other grounds on which the judgment should be upheld.

Similarly, to refute your opponent's argument does not ensure victory, since there may be other grounds for upholding his position. It is therefore essential to an effective brief that it affirmatively establishes the party's case. Of course, while establishing the affirmative case, the errors in the other side's position will be exposed. The appellant will also expose the errors committed by the lower court. Frequently, an effective presentation of one side's case will go a long way toward refuting the other side and permit rather brief treatment of its arguments.

2. Do not simply reargue the case you presented in the lower court. A brief or oral argument that convinced a trial

court did or did not commit reversible error.

3. Avoid significant emotional involvement in your case. Under our adversary system, the function of the lawyer is to make the most effective presentation on behalf of his client. It is not his role to decide whether his client is right; that is the function of the court, not the lawyer.

Personal Attacks

An effective presentation of a case requires the lawyer to deal not only with its strengths, but with its weaknesses, as well as the strengths of the other side. To deal with them, you must be aware of them. If a lawyer becomes convinced that his client's position is totally correct and his opponent's case totally without merit, he loses the objectivity essential to effective advocacy.

A good brief must take account of the weaknesses as well as the strengths of both sides. If a lawyer becomes so convinced of the rectitude of his client's position that he can see no merit in anything the opponent argues, he will lose a substantial degree of effectiveness in representing his client.

In preparing his brief and oral argument, a lawyer inevitably becomes convinced of the soundness of his position, and there may be times when he finds it difficult to understand how the decision could go other than in his favor. A lawyer whose brief and oral argument do not carry the stamp of conviction and certainty is not an effective advocate. But every good advocate is aware of the weaknesses in his case and the strengths in his opponent's, and presents his case to reflect those considerations.

4. Do not make personal attacks upon your opponent, his lawyer, or the lower court that decided against you. Although such comments may give you and your client personal satisfaction, they will harm rather than aid his cause. They add nothing to the analysis of the case, they are likely to antagonize the court, and they may create sympathy for your opponent. If you are the recipient of a personal attack, whether on your skill or your integrity, it is best to ignore it and stick to arguing the case before the court.

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Vol. 9, No. 3, JUDGING (Spring 1983),
pp. 15-19, 59-60 (7 pages)
<https://www.jstor.org/stable/29758788>

Why Oral Argument Matters



**Judges read
briefs first**



**Questions reveal
concerns**



**Oral argument
clarifies key issues**



**Credibility is
established**

Judge Friedman's Perspective

THE PURPOSE OF ORAL ARGUMENT



The purpose of oral argument is to help the judge decide cases.

It is not helpful to merely repeat what is in the brief.

The Real Goals of Oral Argument

CLARIFY THE DECISIVE ISSUE



CLARIFY THE DECISIVE ISSUE

Sharpening the focus to the core point of law or fact that will determine the case's outcome.

ADDRESS JUDICIAL CONCERNS



ADDRESS JUDICIAL CONCERNS

Anticipating and directly answering the specific questions and doubts that judges have.

DEMONSTRATE CREDIBILITY



DEMONSTRATE CREDIBILITY

Building trust with the court through absolute candor, honesty, and professional conduct.

EXPLAIN CORRECT RULE



EXPLAIN CORRECT RULE

Articulating a clear, persuasive, and legally sound rule of law that the court should apply.



FRIEDMAN FRAMEWORK FOR ORAL ADVOCACY

First Rule: Simplicity

1

Be clear and direct

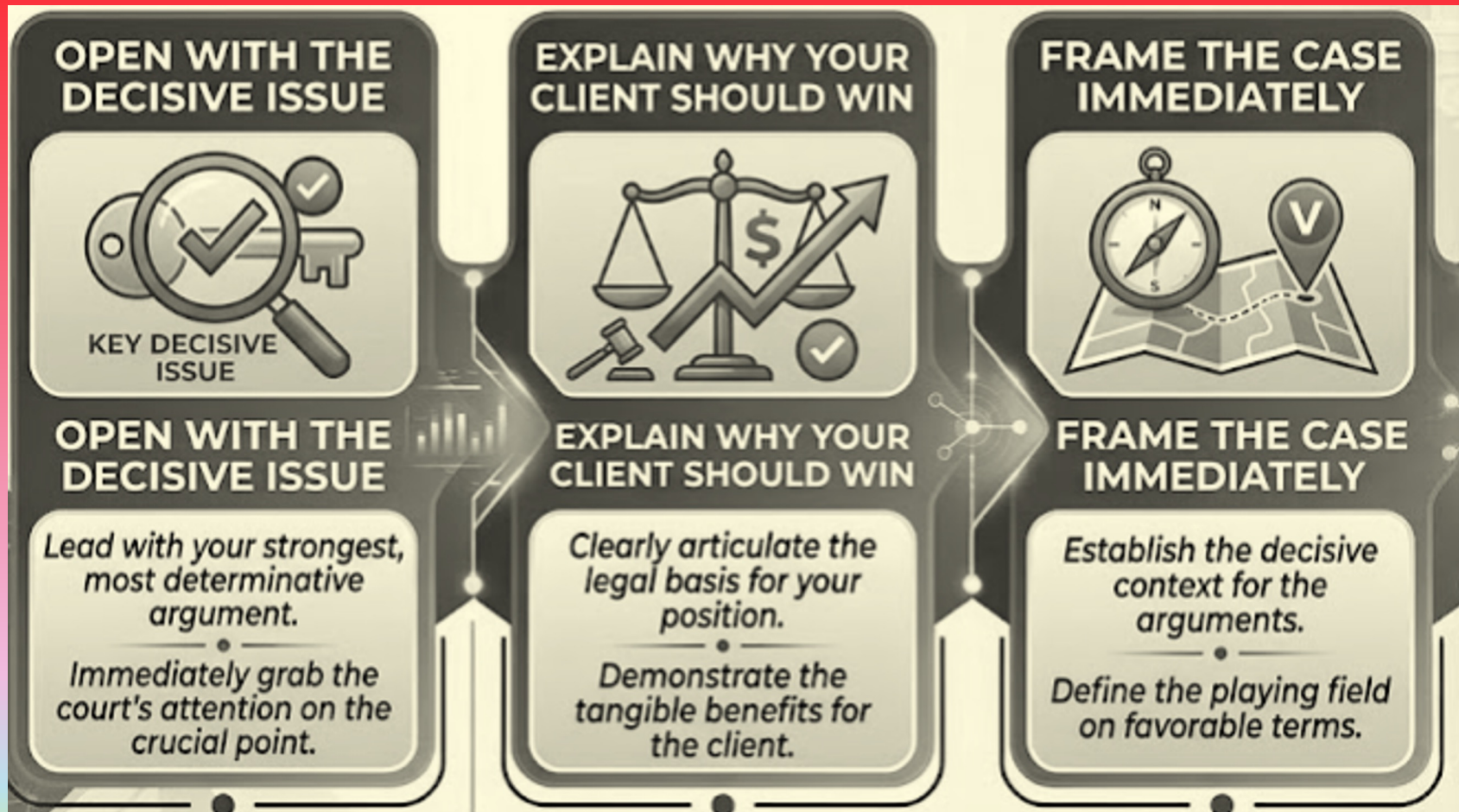
2

Focus on the key issue

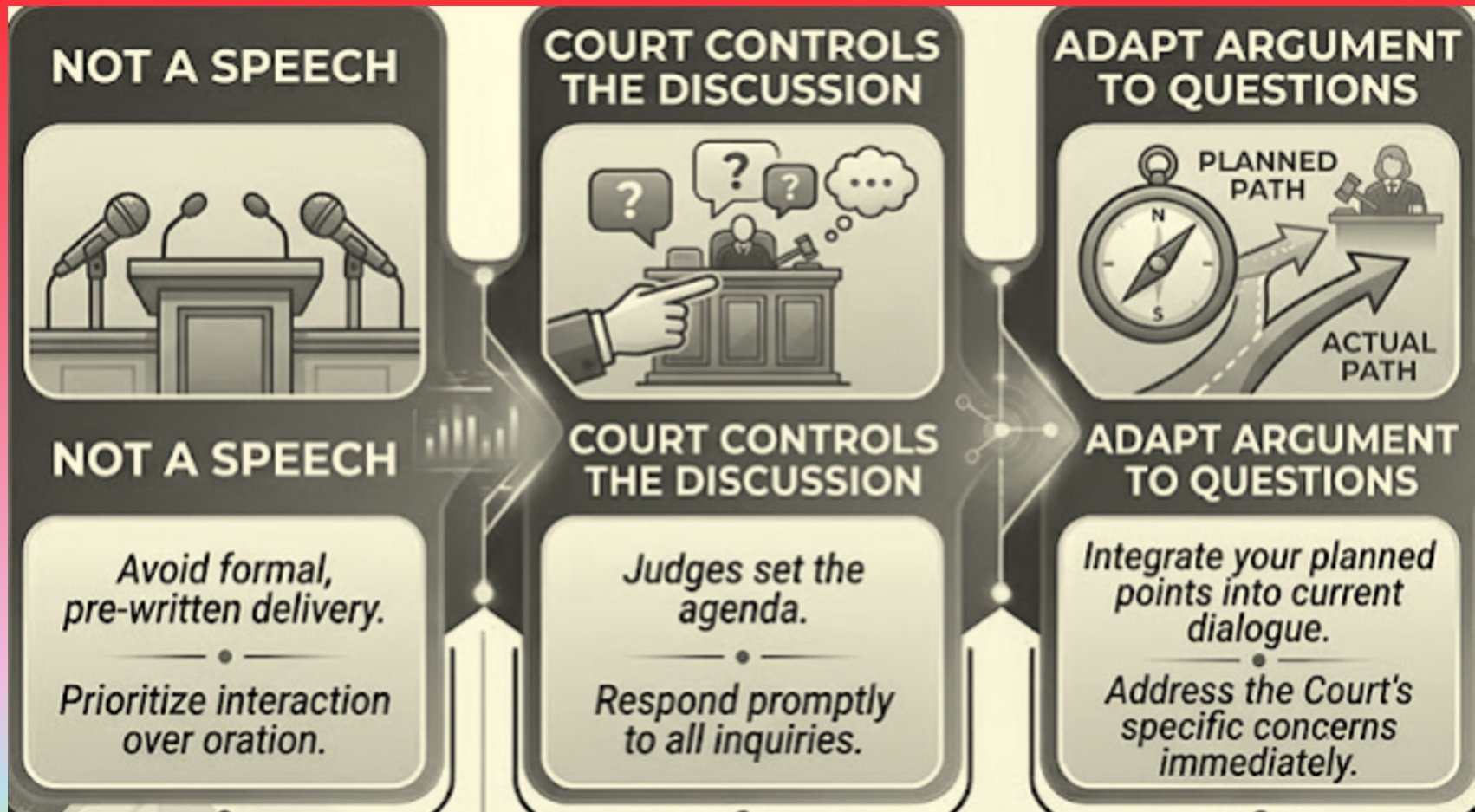
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Avoid unnecessary complexity

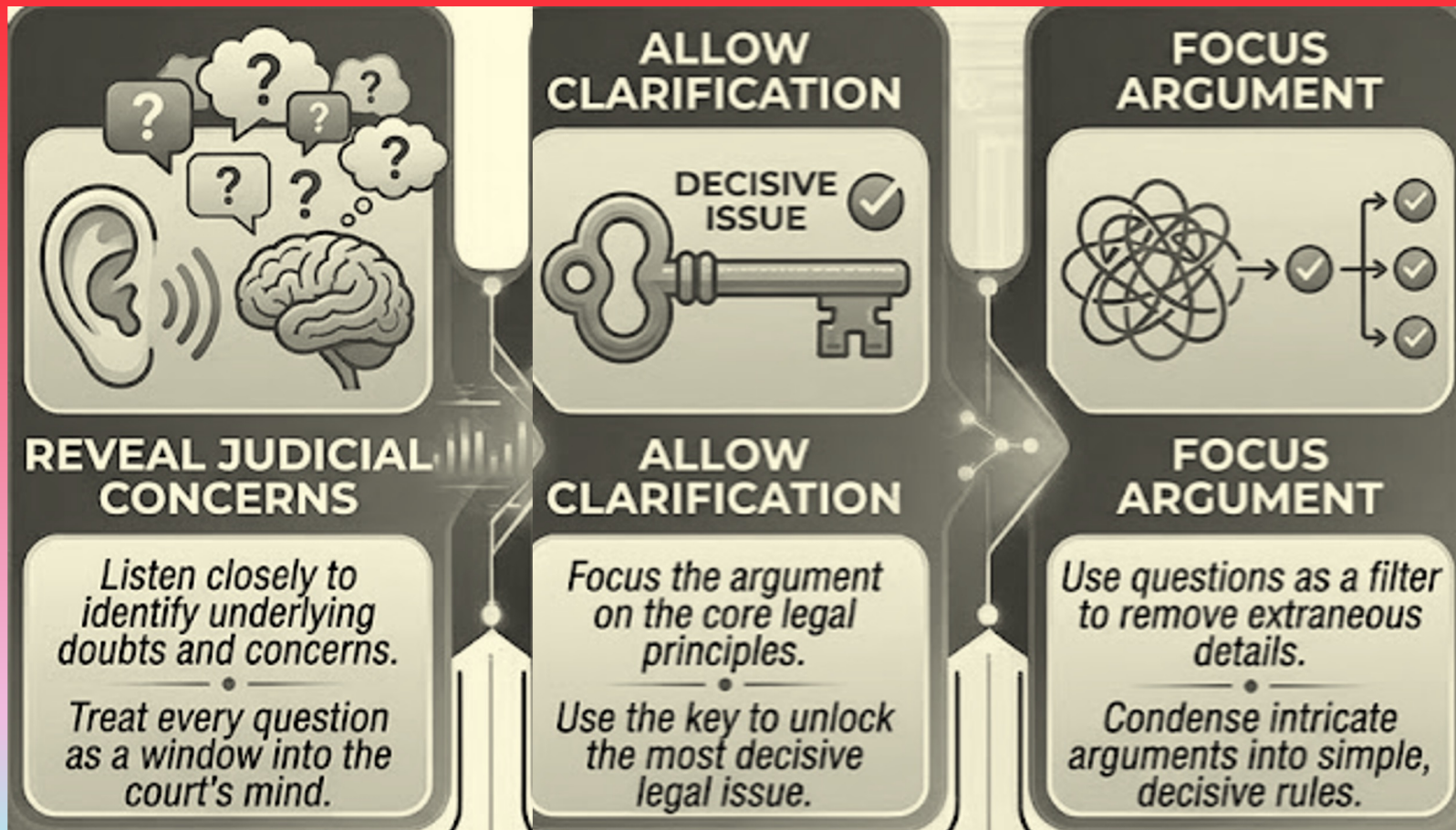
Start With the Winning Point



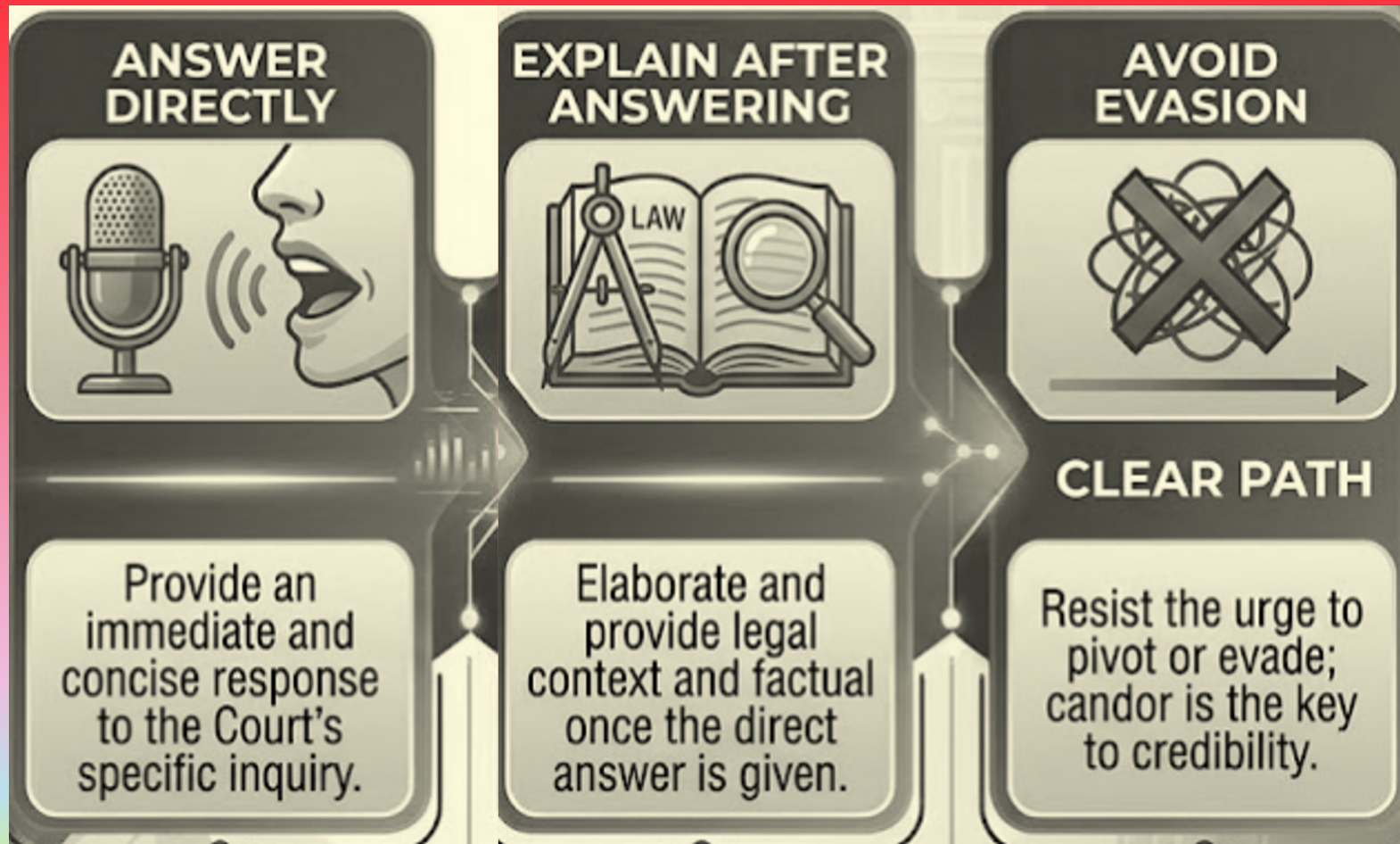
Oral Argument Is a Conversation



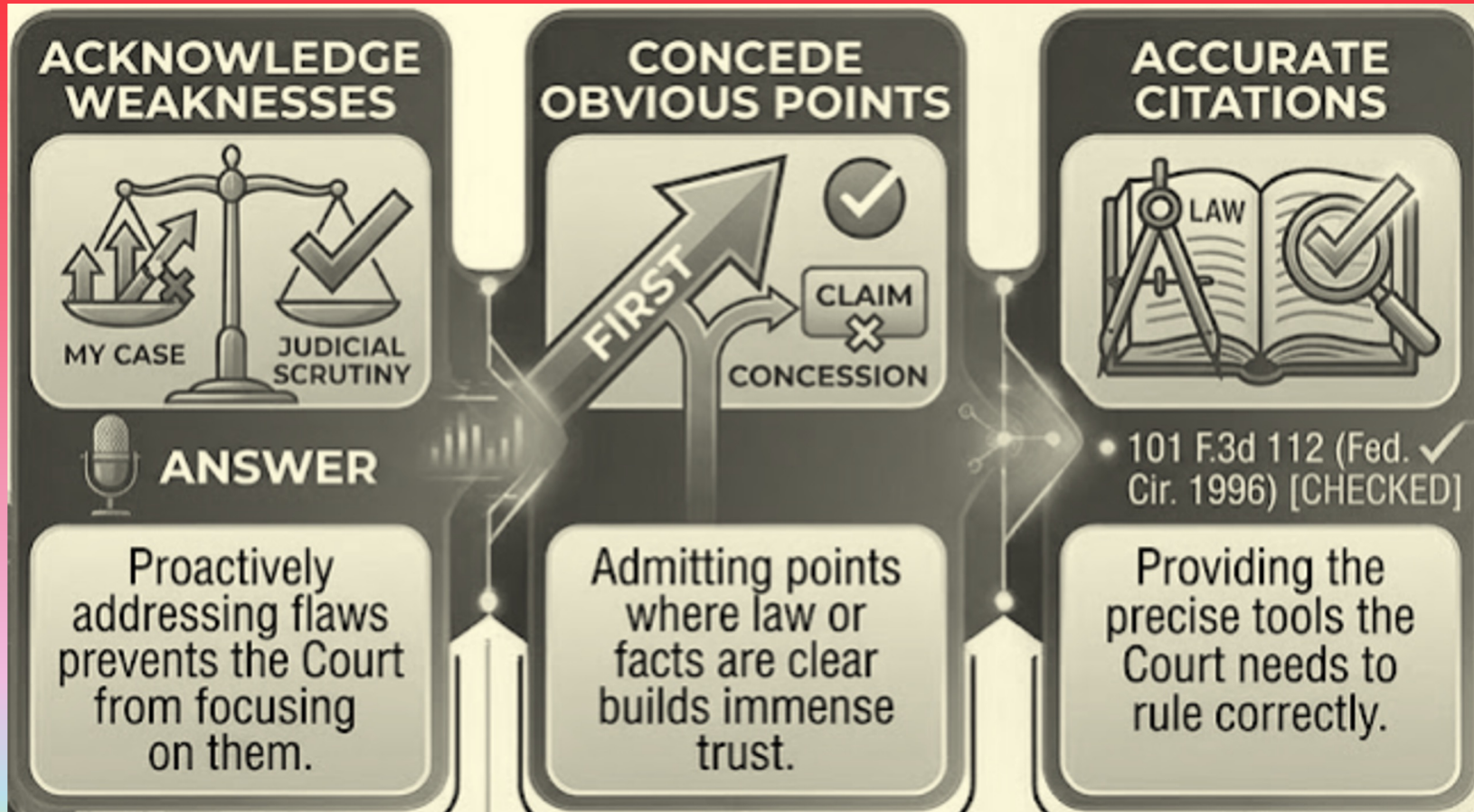
Questions Are Opportunities



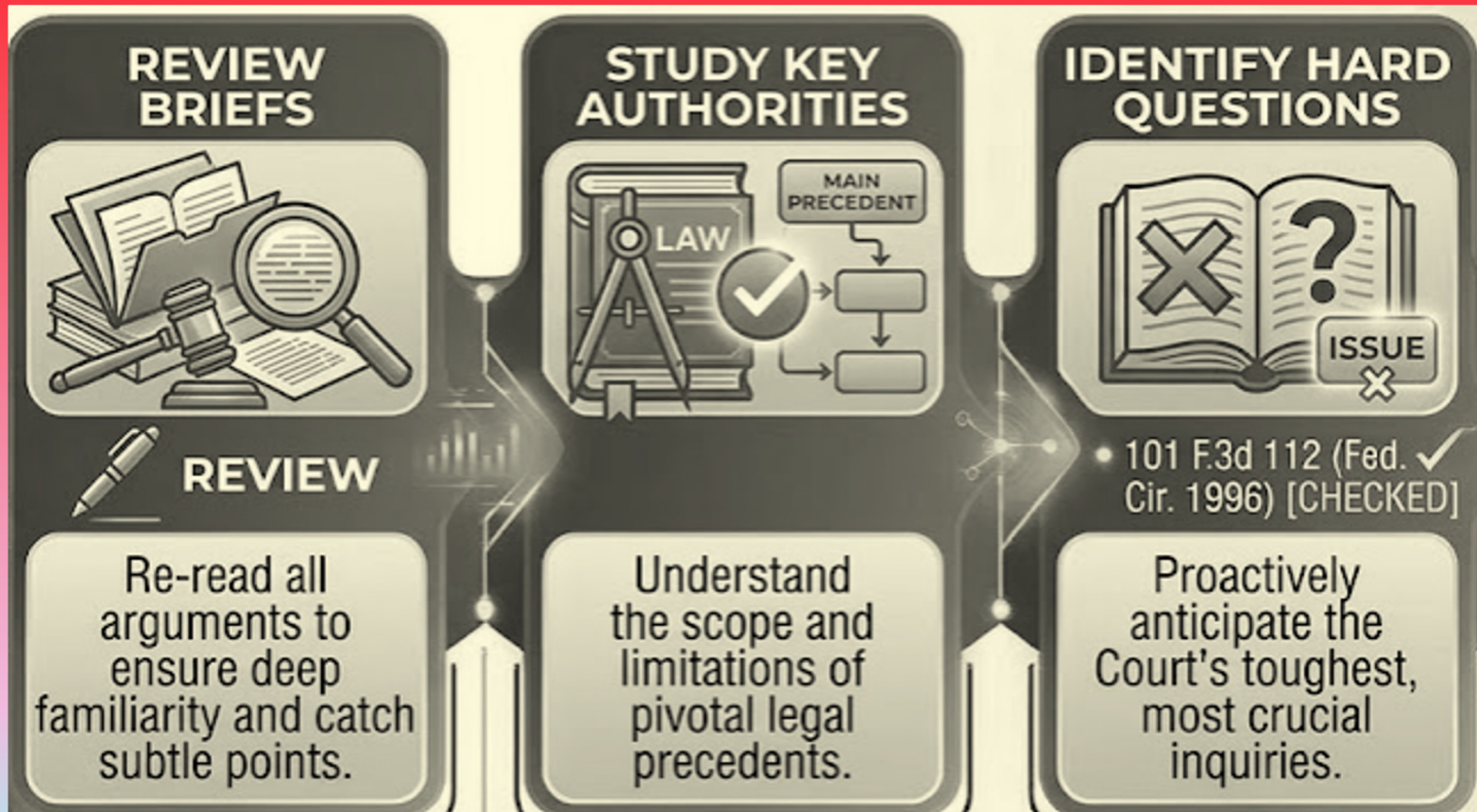
Answer the Question First



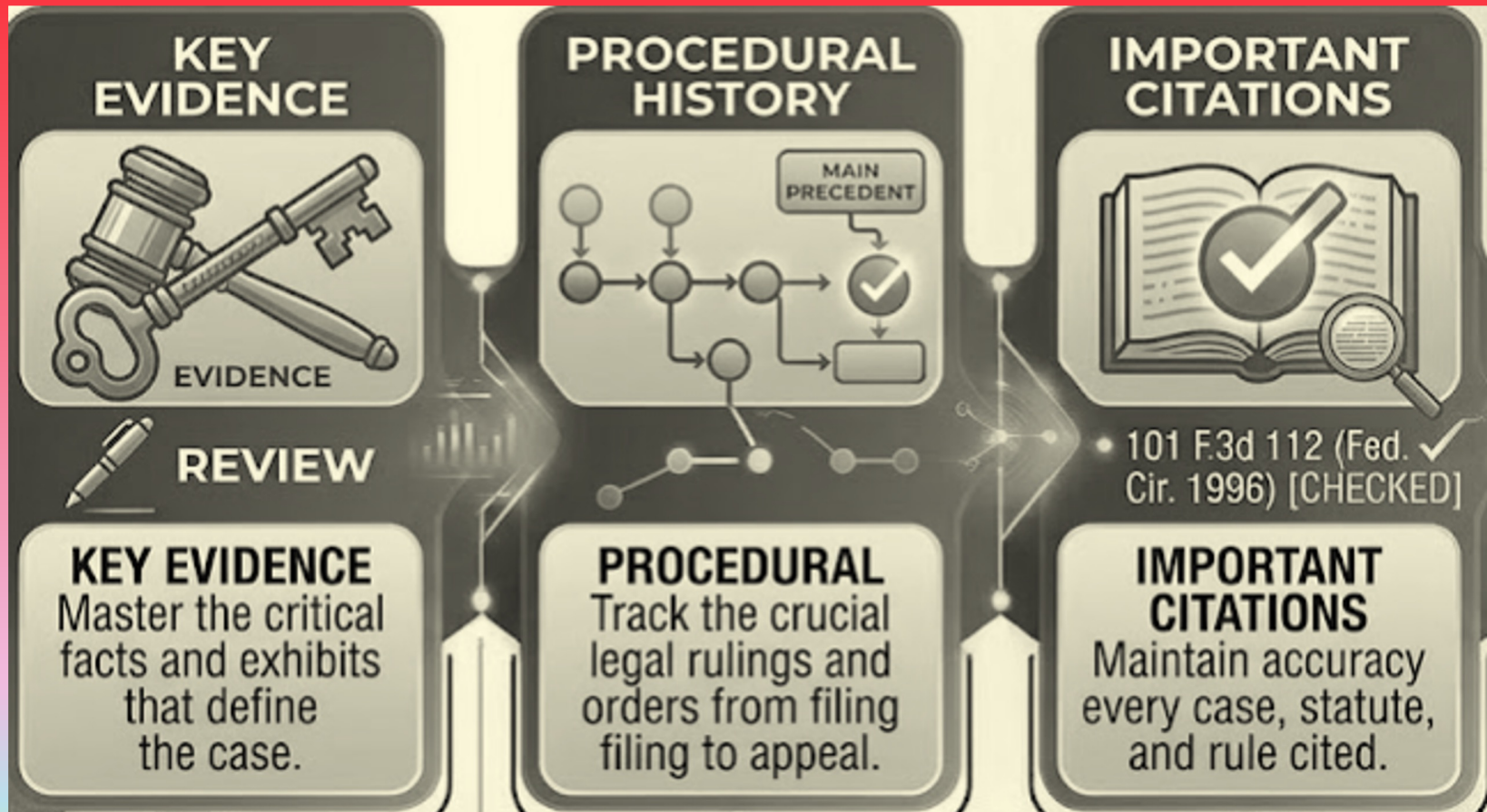
Credibility Is Essential



Preparing for Oral Argument



Know the Record



Standard of Review



DE NOVO

Full Review of Law

Appellate court reviews legal issues from scratch, without deference to the trial court's ruling. Applies to pure questions of law.



ABUSE OF DISCRETION

Highly Deferential

Appellate court only reverses if the trial's discretionary ruling was unreasonable, arbitrary, or capricious.



CLEAR ERROR

Facts Must Be Plainly Wrong

Appellate only reverses findings of fact if it has firm conviction that a mistake was clearly made. Applies to factual findings.

Moot Courts



PRACTICE ARGUMENTS

Refine your legal presentation in a simulated courtroom setting.

Gain confidence and polish your delivery with constructive feedback.



TEST ANSWERS

Anticipate and formulate responses to difficult judicial questions

Identify weak points and strengthen your your legal reasoning.

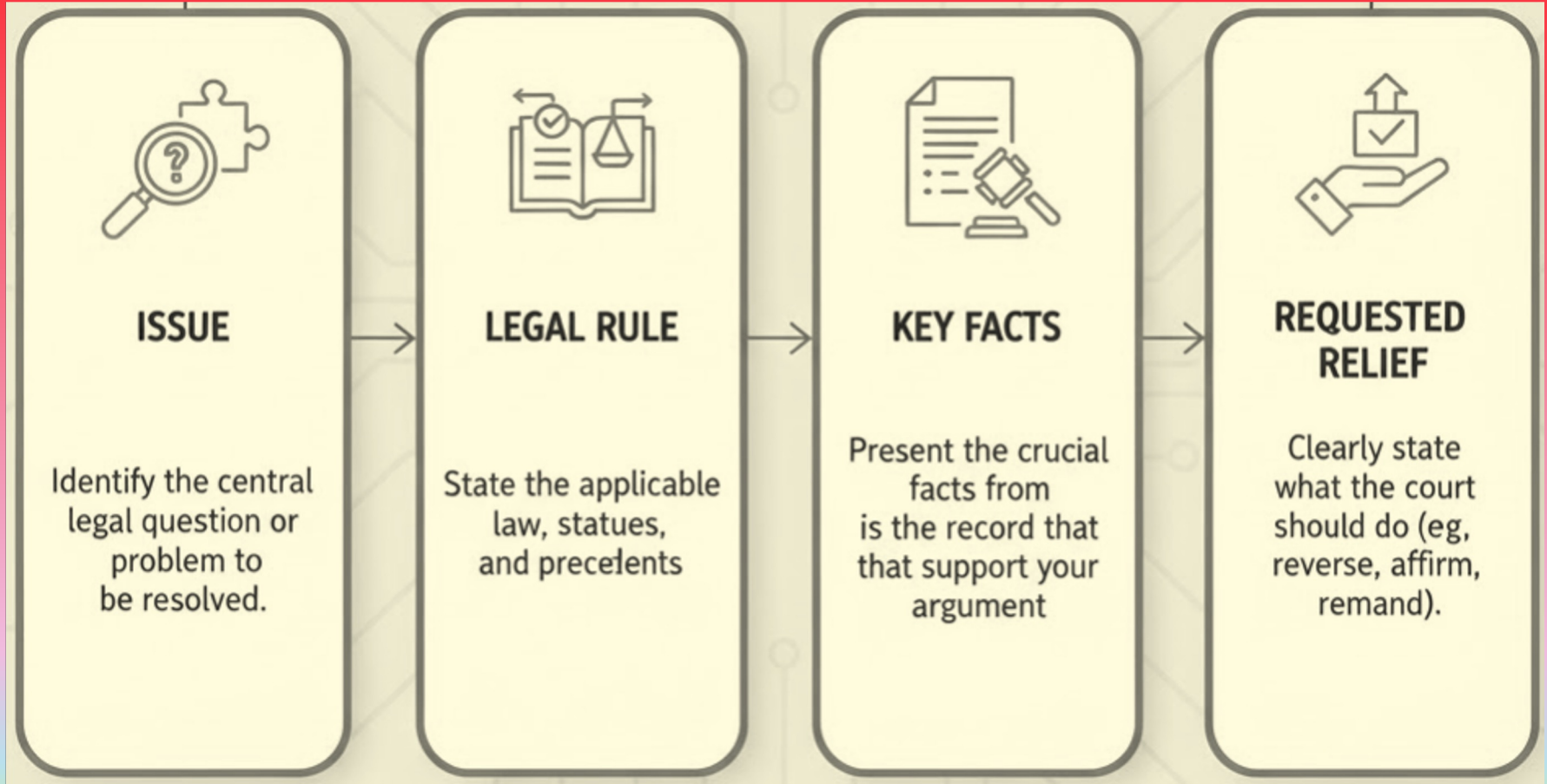


IMPROVE TIMING

Learn to allocate time effectively and conclude within limits

Ensure all key points are covered concisely.

Structuring the Argument



Managing Time



PLAN FIRST TWO MINUTES

Craft a concise opening that states the issue and your winning point.



FOCUS ON KEY ISSUES

Prioritize time for the decisive legal questions, not minor details.



RESERVE REBUTTAL

Save time to address your opponent's main points or court concerns.



KNOW WHEN TO STOP SPEAKING

Conclude once your points are made. Don't speak just to fill time.

3

UNDERSTANDING AND ADAPTING TO YOUR VENUE



ADMINISTRATIVE AGENCY

Patent & Trial
Appeal Boards



FEDERAL COURTS

District Court
Appellate Court
U.S. Supreme Court



NEW YORK STATE COURTS

Superior Court
Appellate Division
Court of Appeals

Administrative Advocacy



**EXAMPLE: PATENT
TRIAL AND APPEAL
BOARD**



TECHNICAL ISSUES



SPECIALIZED JUDGES

Strategy for Agency Arguments



**FOCUS ON
RECORD**



**TECHNICAL
CLARITY**

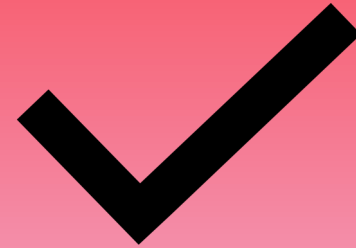


**STATUTORY
INTERPRETATION**

Federal District Court Advocacy



Example: Southern
District of New York



Motions and factual
issues

District Court Strategy



**EMPHASIZE
FACTS**



FAIRNESS

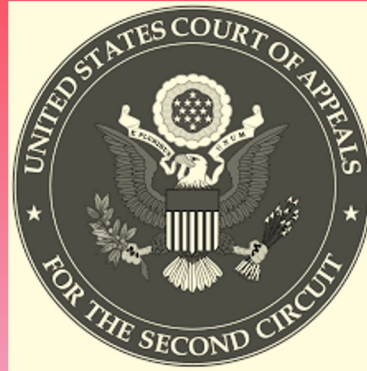


**PRACTICAL
CONSEQUENCES**

Federal Appellate Courts



**FEDERAL
CIRCUIT**



**SECOND
CIRCUIT**



**FOCUS ON
LEGAL ERROR**

Appellate Argument Characteristics



PANEL
QUESTIONING



LEGAL
PRINCIPLES



LIMITED TIME

Appellate Advocacy Strategy



FOCUS ON PRECEDENT
AS APPLIED TO THIS
CASE



STANDARD OF REVIEW

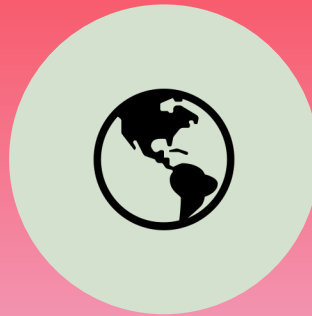


LEGAL RULE

U.S. Supreme Court Advocacy



**INTENSE
QUESTIONING**



**NATIONAL
IMPLICATIONS**



**SHORT
ARGUMENT TIME**

Supreme Court Strategy



CONCISE
ANSWERS



RULE
IMPLICATIONS



INSTITUTIONAL
CONCERNS

New York Trial Courts



NEW YORK
SUPREME COURT

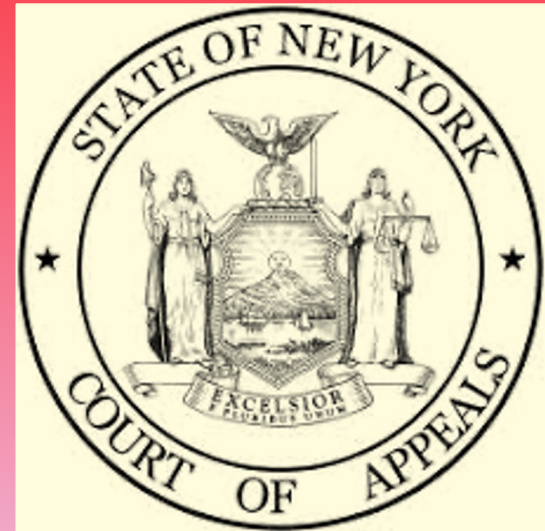


TRIAL-LEVEL
ADVOCACY

New York Appellate Courts



APPELLATE
DIVISION



NEW YORK COURT
OF APPEALS

Characteristics of NY Appellate Arguments



Strict time limits



Fast questioning



Focus on
precedent



TOOLS FOR YOUR ORAL ARGUMENT



Responding to Difficult Questions



**ANSWER
DIRECTLY**



**REMAIN
CALM**



**RETURN TO
THEME**

Handling Hostile Questions



ACKNOWLEDGE
CONCERN



EXPLAIN RULE



MAINTAIN
PROFESSIONALISM

Avoiding Common Mistakes



**READING
FROM NOTES**



**REPEATING
BRIEFS**

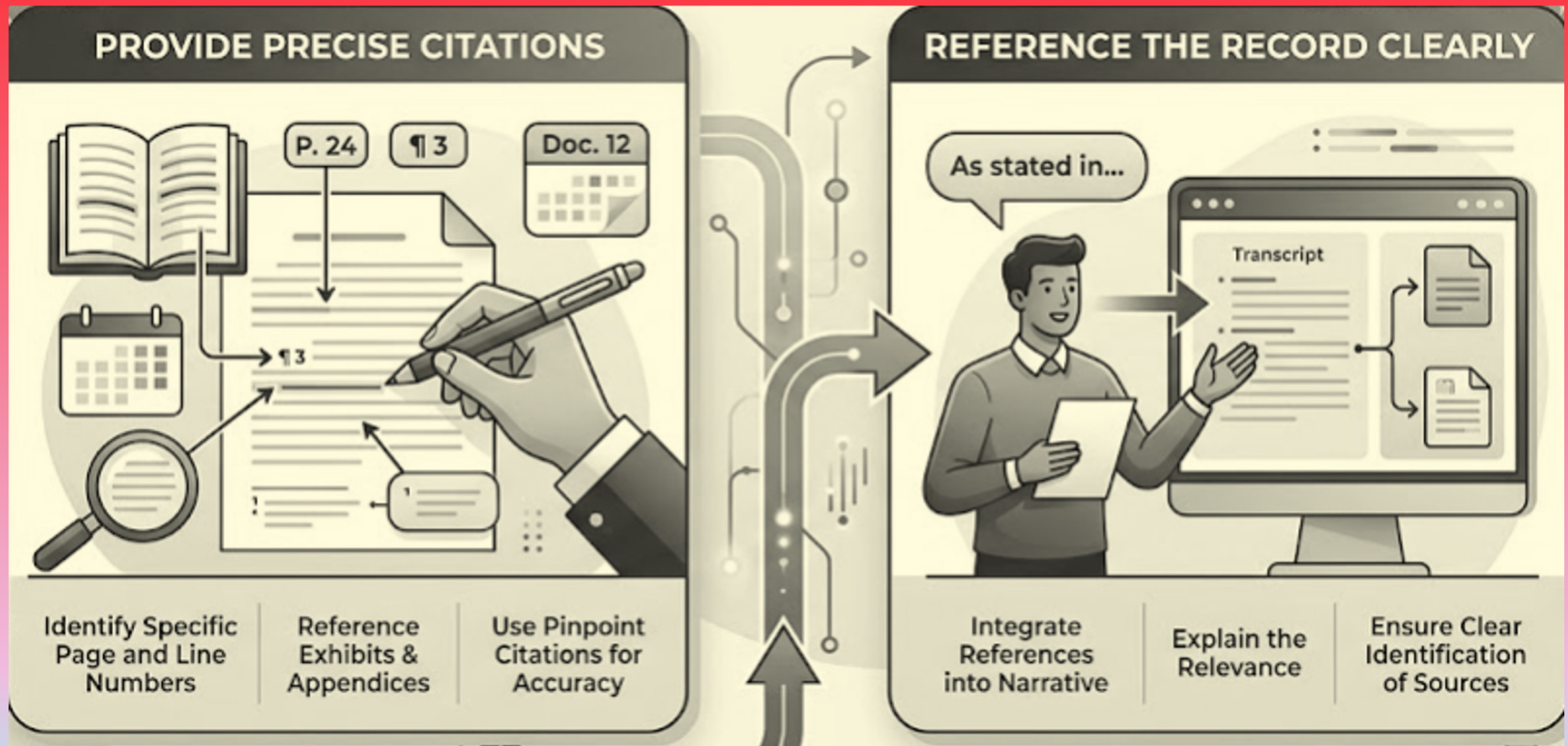


**IGNORING
QUESTIONS**

Speaking Effectively



Using the Record



Professionalism

1

Respect
opposing
counsel

2

Respect the
court

3

Maintain
composure

Ethical Duties



CANDOR TO THE
TRIBUNAL



ACCURATE RECORD
CITATIONS



DISCLOSE ADVERSE
AUTHORITY

Friedman's Key Lessons



SIMPLIFY
ARGUMENTS



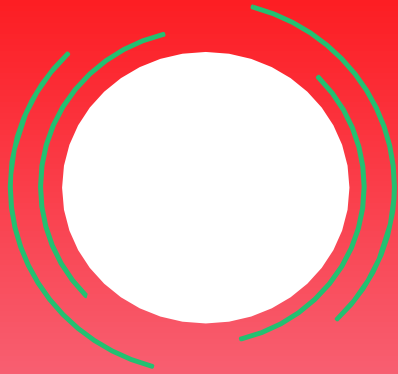
FOCUS ON DECISIVE
ISSUES



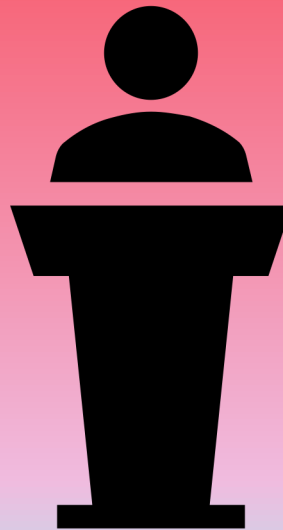
ANSWER QUESTIONS
DIRECTLY

Practical Checklist

<input checked="" type="checkbox"/>	Know the issue
<input checked="" type="checkbox"/>	Know the record
<input checked="" type="checkbox"/>	Know the standard of review
<input checked="" type="checkbox"/>	Know the relief sought



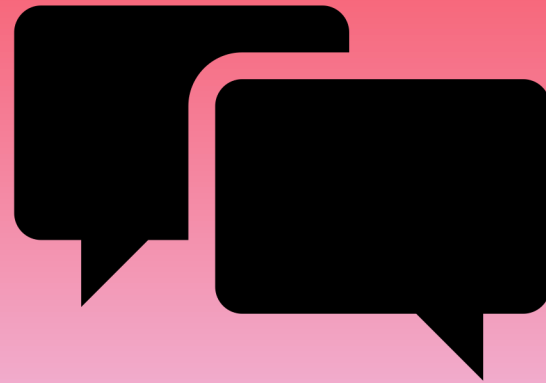
CLOSING ARGUMENTS



Final Advice

Oral argument helps courts
reach the correct result

Questions and Discussion



Connect with Our Presenter



Amster
Rothstein &
Ebenstein ^{LLP}



ARE LLP



CHARLES R. MACEDO