

THE TOP FIVE THINGS EVERY LAWYER SHOULD KNOW ABOUT HOW TO ARGUE AND WIN MOTIONS

BY MORLEY WITUS

1. Win the Motion Before the Hearing Begins – By Submitting a Superior Brief

Write a winning brief and you begin the hearing with a big head start over your adversary. If your papers are more concise and more persuasive, then you often will win the motion before the clerk calls your case.

2. Focus on your Strongest and Most Pivotal Points

Lead off with your three most important, most telling points. You may only have a few minutes to make your pitch. But no matter how long you are given, you need to keep your eye on the big picture and return to your strongest points. Don't stray too far on side paths.

3. Simplify the Facts and the Law

Your brief sets out the relevant facts and discusses the relevant statutes, rules, and cases. At oral argument, you generally should just mention the most crucial facts. Similarly, don't plan on analyzing several cases at oral argument – just feature your best case.

4. Don't Forget the “Non-Legal” Reasons You Should Win

Judges are human. Make sure to press the buttons that might make the judge want to rule your way. Remind the judge why ruling in your favor is the fair and reasonable thing to do, why it makes sense.

5. Come Equipped with Ready-Made Answers to Likely Questions

Anticipate weaknesses in your position, so you are prepared ahead of time to respond to skeptical questions from the judge or challenging arguments from your adversary. Carefully prepare simple, effective, concise responses in advance so you aren't left stammering while you try and think up a good answer at the hearing. If you get an unanticipated question that you don't know how to deal with, you can revert to the all-

purpose response: “Yes [or “no,” or “I’m not sure”] your honor, but in any event this case is readily distinguishable on the facts/law, because. . .”