

Handout 18
Oral Argument

A. What is an oral argument?

In an oral argument, the lawyers for each party stand up in front of a judge or a panel of judges to explain their legal arguments and answer the judge's questions. Before the oral argument, the lawyers submit written briefs, which are persuasive documents explaining the facts of the case, the relevant law, and the lawyers' analysis. By the time the oral argument begins, the judges have usually had a chance to read the lawyers' briefs. That means the judges already have some knowledge about what is going on in the case, and they might have some questions in mind that they want to ask the lawyers.

B. What does an oral argument look like for a summary judgment motion?

In this case, the plaintiff Kenji Davis is moving for summary judgment. That means, according to Kenji (the "moving party,") two things are true:

- (1) There are no important facts in dispute; both sides agree about what happened.
- (2) Kenji should win as a matter of law because his First Amendment rights were clearly violated. There is no need to go to trial; the judge should decide right now.

Meanwhile, the Defendant, the Ann Arbor School Board, wants to oppose the motion. Their goal is to convince the judge that the plaintiff does *not* win, because the law could be interpreted reasonably in favor of the Defendant.

For this exercise, there will be a few important differences between the class oral argument and a real life oral argument for a summary judgment motion.

Class oral argument	Real oral argument for summary judgment
The lawyers will argue in front of a panel of several judges.	Lawyers would argue in front of just one district court judge.
Each side will have many lawyers. Each lawyer will make just one argument, so that everyone gets to participate.	Each side would be represented by 1 lawyer, who makes all of the arguments. (Occasionally, two lawyers will split the arguments).
Lawyers will deliver an introduction to lay out the facts of the case and a roadmap, as well as a conclusion to sum up the arguments and ask the court for relief.	Usually, lawyers do not bother with an introduction or conclusion because the judge has already read the briefs, and the lawyers want to use all of their time for the legal arguments.
The plaintiffs will have a chance to rebut each point.	The moving party would only have one chance at rebuttal, after the opponent has finished.

C. What roles may students play during the class oral argument?

- Judges - The judges' job is to listen to the lawyers present their arguments, ask clarifying or challenging questions, and ultimately decide whether summary judgment should be granted -- that is, whether Plaintiff Kenji Davis should win without even going to trial. Judges are free to interrupt the lawyers with questions. When the judge interrupts, the lawyer should stop speaking, listen to the question, and immediately answer it before proceeding with his or her prepared arguments.
- Lawyers for Plaintiff - Kenji Davis's lawyers will present several arguments to persuade the court that Kenji's First Amendment rights were violated. These arguments include: the speech was not disruptive; the speech was political; the school engaged in viewpoint discrimination; the speech was not school sponsored; the speech does not raise legitimate educational concerns; and the speech is not lewd, vulgar, or socially inappropriate.
- Lawyers for Defendant - The Ann Arbor School Board's lawyers will present several arguments to persuade the court that a summary judgment for the Plaintiff is not appropriate. In other words, the Defendant's lawyers are arguing that Kenji's First Amendment rights were not clearly violated as a matter of law. These arguments include: the speech was disruptive; the speech was not political; the school did not engage in viewpoint discrimination; the speech was school sponsored; the speech does raise legitimate educational concerns; and the speech was lewd, vulgar, or socially inappropriate.

D. How do the lawyers use case law to support their arguments?

Lawyers should use controlling case law to help make their points. Here, the lawyers will be able to refer to *Tinker*, *Fraser*, or *Hazelwood*. Because everyone needs a chance to participate, each lawyer will only make one argument, and therefore should only refer to one case during his or her turn. Of course, real lawyers will incorporate many different cases.

Here are some ways to use a case.

- Cite the rule of law. Use the case to explain what the rule is that the court must follow.
 - Example: "In *Fraser*, the Supreme Court held that school officials may prohibit student speech that undermines the school's basic educational mission because it is lewd and vulgar. Kenji's speech fit this description. It is lewd because ..."
- Use persuasive language. You might wish to quote an opinion, even if the quote does not constitute the holding, because the language is especially persuasive.
 - Example: "The Supreme Court pointed out in *Tinker* that 'students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.' By censoring Kenji's speech, the Defendant was wrongfully trying to confine him to school-approved viewpoints. Therefore..."
- Analogize. Explain how the facts of the case are similar to the facts at issue here. Explain why, because *this* case is like *that* case, the outcome should be similar.

Unit 5: Lesson 7

First Amendment Rights in Schools

- Example: "There was no substantial disruption in *Tinker*. There, the school day continued without disturbance; there were no interruptions in school activities and no interference with classes. The same is true here because..."
- Distinguish. Explain how the facts of the case are different from the facts at issue here. Because the facts are different, the outcome should be different too.
 - Example: "In *Hazelwood*, the speech was clearly school sponsored because the content of the newspaper was supervised and approved by school officials. In contrast, no school official purported to approve the message on Kenji's T-shirt..."

Now you try. Refer to *Tinker*, *Hazelwood*, and *Fraser* (Handouts 3, 5, and 6) and think of another way that you can use one of them for each of the purposes below.

(1) Cite the rule of law.

(2) Use persuasive language.

(3) Analogize.

(4) Distinguish.