Preparing and Writing the Brief

Do not underestimate the importance of your brief or the amount of a good brief time it will take. In addition to composing 30% of your preliminary score, a good brief provides you with an outline for your oral argument. Putting in the hard work during brief-writing will help you to clarify and organize your arguments, making you a more effective oral advocate. Below are tips for writing a successful brief:

- **READ THE RULES.** The Rules of the Davis Competition provide information regarding the brief as well as how it will be scored. Review the score ballot for the breakdown of each element’s point value.

- **START EARLY.** Try to finish the substantive aspects of your brief with a full day to spare. Formatting, table of contents, and table of authorities all take much longer than you think. It is easy to lose points due to sloppy and rushed formatting.

- **MAKE A DETAILED OUTLINE.** Break down your argument into several main points with subtopics. A clear outline will make your brief easier to read and will ensure that you have covered all the necessary arguments. Additionally, a clear outline will give you a leg up in preparing for oral argument. Use your section headings to clearly and persuasively articulate your outline. Headings should provide a complete summary of your argument for the reader.

- **BE CLEAR.** It is very likely that all briefs will contain the same general arguments. The ability to articulate your arguments persuasively, clearly, and succinctly will help your brief stand out from the others.

- **MAINTAIN STRUCTURE.** The best way to ensure clarity is to maintain structure in every element of the brief. Maintain structure through use of your outline, but also maintain a structure in each individual paragraph. Start each paragraph with a topic sentence. Reiterate your point clearly at the end of each paragraph. It might sound formulaic, but your reader does not want to guess at point you’re trying to make.

- **BE ACCURATE.** Your submitted brief is a commitment to the Court that you have fairly, accurately, and truthfully represented the facts and the law. Attempts to distort or misrepresent case law or the facts will harm your credibility before the Court.

- **BE CONCISE.** A longer brief is not necessarily a better brief. The problem has been simplified so that it can be answered effectively within the page limit. Don’t add extraneous arguments simply to fill up space, and don’t get bogged down trying to include every possible argument.
INCLUDE A PRAYER. At the end of your brief, state clearly and concisely the specific action you are seeking from the Court.

PROOFREAD. Do not rely on spell check. If you have a partner, proofread each other’s sections. Spelling and grammar errors are the easiest ways to lose points in an otherwise flawless brief. When you’ve finished proofreading, proofread again.

Preparing for Oral Argument

Preparing for oral argument can be daunting. The most effective way to prepare is to know the record. Dedicate significant time to reviewing record to ensure that you know the facts of the case and the procedural history (especially the rationale of the lower court judges). Once you have done this, the following tips can also aid you in preparing for oral argument:

- Be familiar with the cases cited in the lower court opinions. The judges are aware of these cases because they have read the record. It would be wise to make sure you know the facts of these cases and how the opinions help and hurt your argument.

- When referring to cases during your argument—whether included in the lower court opinions or not—be knowledgeable about the facts of the case or the cited court’s legal analysis. You are master of the cases you cite and you should be prepared to discuss these cases.

- It is impossible to anticipate every possible question that could be asked during oral argument, but it is possible to prepare for many of them. Prepare a list of the five worst questions you could possibly be asked (whether it’s because you don’t know the answer or because the answer harms your argument), and work to answer those questions. Practice answering easy and hard questions out loud. This allows you to polish your answers, spot weaknesses, and it ensures that you don’t waste valuable speaking time fumbling for an answer.

- Practice! Get used to saying the parties’ names out loud, and practice saying the names of the cases. Practice transitioning from one argument to the next. Being comfortable with the language of the case and speaking your arguments out loud is the best way to ensure that you do not get tripped up on your own words.

- RELAX! This is a fun experience, designed to give you good memories and a bond with your classmates. You can all reminisce about the hapless defendant and complain how mean Krystal and Elliott were in oral argument. Get a good night’s rest before your arguments and do your best.
The Oral Argument

Every person has their own style when it comes to the oral argument, and each oral advocate’s arguments will sound different. The best advice is to be confident and comfortable in your argument. These additional tips can help an oral advocate when presenting his or her argument:

- Begin your argument with “Mister/Madam Chief Justice, and may it please the Court.” Introduce yourself and the side you are representing.
- Begin with a short roadmap that briefly lays out your argument. This should be no more than two to three sentences. Lead with your strongest point and tell the Court exactly what you want them to do.
- You may use your outline and notes while you present your oral argument, but you should not read or recite your notes during the argument. Make eye contact with the Court and avoid getting caught up in your paperwork.
- Be prepared to present your argument in a logical order, but be ready for the Court to take you off track and ask you about your third point instead of your first.
- Your oral argument will be interrupted with questions from the judges. Be prepared to smoothly transition between questions and arguments.
- When asked a question, ANSWER IT. Be clear and honest, and do not try to ignore or maneuver around a question. If you don’t know the answer to a question, be honest with the Court. If possible, answer a question with a simple “yes, your Honor,” and “no, your Honor” before diving into your analysis or a more complicated answer.
- Do not panic if you make a mistake or lose your train of thought. This happens to everyone at some point. Take a moment, gather your thoughts and move on. If you don’t draw attention to your mistake, the Court will move on with you.
- Be professional, respectful, and calm. An oral argument is like a very formal conversation with the Court, and you should maintain an appropriate level of deference to the Court at all times.
- Conclude your argument by asking the Court to do something. This is an opportunity to tell the Court exactly what you would like it to do (e.g., “For the foregoing reasons, Respondent respectfully requests that the Court AFFIRM the decision of the Appellate Court.”).

What NOT to do:

Everyone makes mistakes, but some mistakes are more avoidable than others.

- Never tell the Court you will “get to it later.” If you do not understand the question,
politely ask the Court to repeat it or rephrase it. You will earn a follow up question and the ire of the judges if you ignore or dodge a question.

- Do not respond to a question with “That's a good question, Your Honor.” The Judge knows it’s a good question (that is why he or she is asking it).

- Do not refer to a case as “Smith v. Jones.” The correct terminology is “Smith against Jones.”

- Do not rush to answer a question. It is acceptable (and encouraged) to take a moment and compose your thoughts after being asked a question. It is better to know what you want to say before beginning to answer the question. When you answer, speak slowly and carefully.

- Do not lie to the Court. The Court knows the facts of the case, the case law, and more about the law in general. Any attempts to lie or misrepresent the facts or the law will severely harm your credibility with the Court.

- Know when to quit. Avoid summarizing every point you have made to the Court or needlessly repeating information. Simply tell the Court what you need to in clear and simple language and sit down.