SPRING SEMESTER

Professor Chiovaro
January 10, 2006

Semester Overview

- Appellate Brief – Due March 13, 2006
- Conference
- Oral Arguments
  - Mandatory
    - » Preliminary Rounds - weeks of March 20, March 27
    - » Elimination Rounds – April 6,7,8, and April 17
  - Partners, but graded and advance individually
- Check RWA web page and 3rd floor on a regular basis
- Bailiff or Juror

Appellate Advocacy

Purpose of Appellate Review:

- **Enforce existing rules of law**
- **Clarify law**
- **Possibly change law**
- **Correct error**

Appellant Process

- **Losing party files a Notice of Appeal in the trial court**
- **The record is prepared and sent to the appellate court**
- **The parties files briefs**
- **The court hears oral argument, deliberates, and issues a written opinion**
  - **Oral argument is becoming less frequent**

Limitations on Appellate Review

- **Must be *reversible error***
- **The appellate court will address only errors committed by the trial court (not by trial counsel) that were preserved for appeal**
- **Generally, only final orders may be appealed**
- **Appellate courts consider only facts in record**

Appellate Briefs

Purpose of a Brief

- PERSUADE, PERSUADE, PERSUADE
- Convince the court to desire the same result you do,

  AND
- Give the court a sound legal basis on which to base its decision

Brief Format

- Check Local Court Rules
- RWA Format
  - Carter Briefs in Appendix "C"
  - Carter Brief handout
  - RWA Rules

Sections of the Brief

- Cover and Title Page
- Questions Presented
- Table of Contents
- Table of Authorities
- Opinions Below
- Jurisdictional Statement
- Constitutional Provisions, Statutes, Involved
- Standard of Review
- Statement of the Case

Sections of the Brief

- Summary of the Argument
- Statement of the Case
- Summary of the Argument
- Argument
- Conclusion
- Certificate of Service
- Certificate of Compliance

I KNOW WHERE I'M GOING, BUT HOW DO I GET THERE?

How to Persuade

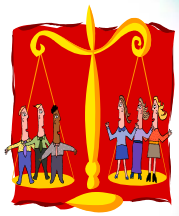
- Organization is key
- Emphasize favorable law
- Emphasize favorable facts
- De-emphasize unfavorable law and facts

Theory of the Case

- A persuasive theory is a view of the facts and law that supports your position
- The persuasive theory must be supported by the facts and the law

Some Examples

- Kid wants XXXXX
- Paula Jones
- Andrea Yates
- Assisted Suicide
- Alimony



The Argument

1. Get the ATTENTION of the judges.
2. Choose your words carefully.
3. Motivate the judges

Organization

- No one way
- Room for individuality
- Same memo structure can apply
- Don't be afraid to experiment

Organization

Argumentative Point Heading
Persuasive Thesis Paragraph

A. First Element: Argumentative Point Heading
   - Restate outcome
   - Favorable statement of specific rule
   - Description of Case A
   - Description of Case B
   - Argument using Case A and B

B. Second Element

Organization

Argumentative Point Heading
Persuasive Thesis Paragraph

A. First Element: Argumentative Point Heading
   - Restate outcome
   - Favorable statement of specific rule
   - Minor Point Heading
   - Description of Case A
   - Description of Case B
   - Argument using Case A and B
   - Minor Point Heading

B. Second Element

Persuasive Thesis Paragraph

- Write a Persuasive Thesis Paragraph.
  - Provide a road map.
  - Incorporate your theory
  - Favorably state the general rule

Credibility

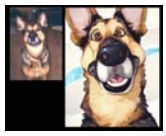
- Argue with credibility
- Is "spin" a bad word?
- Don't hide from unfavorable facts or law
- If there is bad law, distinguish it
- If there are bad facts, show why they are irrelevant or relatively unimportant

Key Concepts

- The "Phrase that Pays"
- To analogize to a case, be general
- To distinguish a case, be specific
- Minimize case presentation

Homework Assignment

- For next week's class, prepare a point heading and argument for the provocation issue of the Harvey Woodley Problem



Where to Begin on Homes v. Zion

- Study the Record
- Develop a theory of case for each issue
  - Marshal law for support
  - Marshal facts for support
- Create a hierarchy of Arguments
- Identify opposing arguments and how to refute