

# Using Westlaw® for Moot Court

Westlaw can help you prepare your brief and oral argument for moot court. This quick reference guide shows you where to find expert advice on writing an effective appellate brief and developing a successful oral argument, how to search for the legal authority you need to support your contentions, and how to expand and update your research with KeyCite®.

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**Category:**

Sharpening Your Skills

**Ideal for:**

2Ls and 3Ls participating in moot court

**Related materials:**

How to find cases

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Writing an Open Memo

Using Westlaw to Write a Brief

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Westlaw is available  
on the Web at  
[lawschool.westlaw.com](http://lawschool.westlaw.com).

For assistance, call  
**1-800-850-WEST**  
(1-800-850-9378).

For technical support  
you can also send  
an e-mail message to  
[west.support@thomson.com](mailto:west.support@thomson.com).

## Moot Court Resources

Westlaw provides resources that can help you prepare your moot court appellate brief and oral argument. These resources include

- articles and texts that provide tips for writing effective briefs and preparing strong oral arguments
- search methods and features that help you find the legal authority you need
- KeyCite, West's citation research service
- a large collection of online briefs and U.S. Supreme Court oral argument transcripts

## The Appellate Brief

### Articles About Effective Brief Writing

The purpose of an appellate brief is persuasion. As the authoring attorney, it is your job to persuade the court that your arguments should prevail and that the relief sought should be granted. Westlaw includes many articles and texts that provide guidance on how to write a persuasive brief. Just a few are listed below. As you consider the advice given in these articles, remember to follow your competition rules and the guidance provided by your instructor.

- Harry Pregerson, *The Seven Sins of Appellate Brief Writing and Other Transgressions*, 34 UCLA L. Rev. 431 (1986)
- Jacques L. Wiener, Jr., *Ruminations from the Bench: Brief Writing and Oral Argument in the Fifth Circuit*, 70 Tul. L. Rev. 187 (1995)
- Christine M. Durham, *Writing a Winning Appellate Brief*, 10-OCT Utah B.J. 34 (1997)
- Jean H. Toal, Robert A. Muckenfuss, and Shahin Vafai, *Four Steps to Effective Appellate Brief Writing*, 10-JUN S.C. Law. 37 (1999)
- Karl Linde, *Appellate Brief Writing—Some (Hopefully) Helpful Hints*, 25-DEC Wyo. Law. 18 (2002)
- Carol M. Henderson, *Tips for Writing an Effective Appellate Brief*, 169-JUN N.J. Law. 22 (1995)
- Robert R. Baldock, Carlos F. Lucero, and Vicki Mandell-King, *What Appellate Advocates Seek from Appellate Judges and What Appellate Judges Seek from Appellate Advocates*, 31 N.M. L. Rev. 265 (2001). (This article is a transcript of remarks made at a judicial conference.)

To retrieve an article by citation, use the Find service. For example, to retrieve 34 UCLA L. Rev. 431, go to [lawschool.westlaw.com](http://lawschool.westlaw.com) and sign on to Westlaw. At the home page, click **Westlaw Research** to display the Law School tabbed page. Type **34 ucla l rev 431** in the *Find by citation* text box, then click **Go**. The Find service is also available in the *Quick Search* section of the home page and in the left frame of most tabbed Search pages.

To retrieve additional articles and texts that discuss effective brief writing, access the Texts and Periodicals–All Law Reviews, Texts, and Bar Journals database (TP-ALL). Restrict your search to the title field (ti), and type **ti(effective winning writing /5 brief)**.

### Some Quick Advice from the Judiciary

In *What Appellate Advocates Seek from Appellate Judges and What Appellate Judges Seek from Appellate Advocates*, U.S. Court of Appeals Judge Robert Baldock describes the qualities he likes to see in a brief.

“ . . . a terrific brief that I enjoy is one that is very precise and gets to the point of the issues that have been raised, so that I know exactly what it is that you claim as an appellant. The brief needs to identify what the alleged reversible error is, taking into consideration the standards of review we have to apply, because that standard in many instances determines the outcome.”

And in *The Seven Sins of Appellate Brief Writing and Other Transgressions*, U.S. Court of Appeals Judge Harry Pregerson lists his seven sins of brief writing.

- Long, boring briefs
- Incoherent, unfocused, and disorganized briefs
- String citations and other poor use of authority
- Briefs with abusive language
- Briefs that ignore the standard of review or attempt to relitigate the facts
- Briefs that ignore jurisdiction
- The last minute emergency motion—usually filed at 4:00 p.m. on a Friday, before a holiday

### Use Westlaw to Find the Law

Westlaw offers two search methods—Natural Language and Terms and Connectors.

The Natural Language Search method allows you to use plain English to retrieve relevant documents. Enter a description of your issue to retrieve the documents that best match the concepts in your description.

With the Terms and Connectors search method, you enter a query consisting of key terms from your issue and connectors specifying the relationship between those terms. For example, you can require that your key terms appear in the same sentence or paragraph. In addition, Terms and Connectors searching allows you to restrict your search to a particular part of a document, called a *field*. Field restrictions help you refine your search result.

### Natural Language Search Example

To retrieve U.S. Court of Appeals cases that discuss the standard of review for exclusion of expert testimony at trial, access the U.S. Court of Appeals Cases database (CTA). If not already selected, click **Natural Language** and type

standard of review (scope of review) for excluded expert testimony

Parentheses in a Natural Language search designate an alternative search term. While Natural Language recognizes common legal phrases, to ensure that terms are processed as a phrase place them in quotation marks (e.g., “*obstructed view*”).

### Terms and Connectors Search Example

To retrieve Illinois state cases that discuss the standard of review on appeal of a summary judgment, access the Illinois Cases database (IL-CS) and type

scope standard /3 review /s “summary judgment”

### KeySearch®

KeySearch is a research tool based on the West Key Number System® that makes it easy to retrieve relevant cases and secondary sources, e.g., law review articles. KeySearch guides you through the selection of terms related to your issue. Based on your selections, KeySearch identifies the topic and key numbers most relevant to your issue and automatically provides an expert query for you. To access KeySearch, click **KeySearch** at the top of any page.

### Get the Most Recent Cases with WestClip®

WestClip runs Terms and Connectors searches at a selected frequency and delivers the results to you automatically. Use WestClip to monitor Westlaw for newly decided cases and other documents that may have a bearing on your argument. To create a WestClip entry, click **Alert Center** at the top right of any page. At the Alert Center Directory, click **Create Entry** in the *WestClip* section, then enter and save information as requested.

For more information about search methods, KeySearch, and WestClip, see *Using westlaw.com*, available at [west.thomson.com/westlaw/guides](http://west.thomson.com/westlaw/guides).

## Learn From Other Briefs

### Briefs Databases

Westlaw now includes a collection of more than one million briefs. Briefs are compiled in a variety of jurisdictional and topical databases to meet your research needs. Use briefs on Westlaw to learn how other attorneys have analyzed and argued issues similar to the ones you are arguing on appeal. Briefs can also provide insight on how the opposing counsel might argue the other side of the case.

Use the Westlaw Directory to view lists of briefs databases. Click **Directory** at the top of any page to access the directory, then click **Briefs** under the *Litigation* heading. At the Briefs page, click a database name to access the database, or click a folder name to view additional listings.

You can retrieve briefs by party name with a title field (ti) search. To search for briefs by issue, use the Terms and Connectors or Natural Language search method.

### **Moot Court Competition Briefs**

To view briefs submitted in prior competitions, access the Texts and Periodicals–All Law Reviews, Texts, and Bar Journals database (TP-ALL). Restrict your search to the prelim (pr) and title (ti) fields. Type

pr,ti(“moot court”)

## **Use KeyCite to Check Your Citations and the Citations Relied Upon by Opposing Counsel**

### **As You Research**

As you research, use KeyCite to make sure that your cases and statutes are good law and to find new citing references that update your research. Use KeyCite to check if cases and statutes cited by the opposing counsel are still valid or have been criticized.

Before you submit your brief, use KeyCite again to verify that your cases and statutes are still good law, and to check for very recent citations that may have a bearing on your case.

### **Automated Citation Checking with WestCheck.com**

Use WestCheck.com, an automated Web-based citation checking tool, to save time. WestCheck.com extracts citations from a word-processor document, checks the citations with KeyCite, and provides you with a results report. Access WestCheck.com at [www.westcheck.com](http://www.westcheck.com).

### **Monitor Citations with KeyCite Alert**

KeyCite Alert automatically notifies you when a new document is added to Westlaw that changes the KeyCite results for authority you’ve cited in your brief. To create a KeyCite Alert entry, click **Alert Center** at the top right of any page. At the Alert Center Directory, click **Create Entry** in the *KeyCite Alert* section, then enter and save information as requested. Another way to create a KeyCite Alert entry is to click **Monitor with KeyCite Alert** in the left frame when a document you want to monitor (e.g., case, statute, or regulation) is displayed in the right frame.

## **Verifying Quotations**

Before you submit your brief, check the accuracy of quotations by comparing the text in your brief to the text on Westlaw. For example, suppose that you want to check the following quote from *K.H. Through Murphy v. Morgan*, 914 F.2d 846, 849 (7th Cir. 1990): “Once the state assumes custody of a person, it owes him a rudimentary duty of safekeeping no matter how perilous his circumstances were when he was free.”

### Using a Pinpoint Citation

One way to access the quoted text is to use the Find service with the pinpoint citation. For example, at the Law School tabbed page, type **914 f2d 849** in the *Find by citation* text box, then click **Go**. Westlaw will retrieve the case at page 849. Browse the page for the quoted language and compare it to the text in your brief.

### Using the Locate Feature

If you prefer, you can use the Find command with the Locate feature to access the quoted text with the Locate terms highlighted. Begin by typing **914 f2d 846** in the *Find by citation* text box, then click **Go**. When the case is displayed, click **Locate in Result** in the left frame to display the Locate Search Terms page. Type **“rudimentary duty of safekeeping”** in the *Terms and Connectors* text box and click **Search**. Then click the right **term arrow** until the portion of the case from which the quotation is taken is displayed. Now you can check the text of the quote in your brief against the text on Westlaw.

## Oral Argument

As a moot court participant, you are required to participate in an oral argument. In actual practice, courts are generally quite selective in providing an opportunity for oral argument. When the opportunity for oral argument presents itself at the request of counsel or the court, you have a special opportunity to persuade the court that your arguments should prevail and the relief you seek should be granted.

### Some Thoughts on Getting Started

Judge Jacques L. Wiener, Jr., of the United States Court of Appeals, Fifth Circuit, suggests that you “depose yourself” with the following questions before you begin preparing your argument.

- If only a few cases are selected for oral argument, why was mine?
- If I were a judge on the panel what would I want to know? What questions would I ask?
- In light of the answers to questions 1 and 2, what issues truly warrant oral argument?
- What error or errors were committed in the trial court? Which of them truly constitutes reversible error?
- What is the standard of review for each error asserted?
- How much factual discussion is needed to support each assignment of error?
- How can I best make my position appear both legally and morally correct?

## Articles and Texts That Discuss Effective Oral Argument

Listed below are some articles and texts that provide tips for effective oral argument. As you consider the advice given in these articles, remember to follow your competition rules and the guidance provided by your instructor.

- Jacques L. Wiener, Jr., *Ruminations from the Bench: Brief Writing and Oral Argument in the Fifth Circuit*, 70 Tul. L. Rev. 187 (1995)
- Joseph L. Yannotti, *How to Succeed in Oral Argument*, 169-JUN N.J. Law. 30 (1995)
- Elaine Houghton, James Lynch, Kenneth Masters, and Ramona Witt, 1 Washington Practice, Methods of Practice §15.22 (4th ed.)
- Elizabeth Williams, 2 Texas Family Law Service § 13:88 and §§ 13:91-113:97
- Joseph R. Nolan and Charlene Caldeira, 41 Massachusetts Practice, Appellate Procedure §§4:1-4.7 (2d ed.)

To retrieve an article by citation, use the Find service. For example, to retrieve 70 Tul. L. Rev. 187, type **70 tul l rev 187** in the *Find by citation* text box, then click **Go**.

If you would like to search for additional articles or texts that discuss effective oral argument, access the Texts and Periodicals–All Law Reviews, Texts, and Bar Journals database (TP-ALL) and search with Terms and Connectors. Restrict your search to the title field (ti) and type

**ti(prepar! effective win succe! tip guide! /s “oral argument”)**

## Check Again with KeyCite and WestClip

Before you present your oral argument, use KeyCite to make sure that the authority you have cited is good law and to track new citations. As noted on page 3, you may find WestCheck.com or KeyCite Alert helpful tools for citation checking. Use KeyCite to check the status of authority relied upon by the opposing counsel.

You should also continue to use WestClip to check for new cases or other documents that address the issues in your argument.

## Review Supreme Court Oral Arguments

You may find it helpful to review transcripts of oral arguments made before the U.S. Supreme Court. They are available in the Transcripts of U.S. Supreme Court Oral Arguments database (SCT-ORALARG).

To retrieve a transcript by party name, restrict your search to the title field (ti). To search for a transcript by issue, use the Natural Language or Terms and Connectors search method.

### Terms and Connectors Searches

To retrieve the transcript for *eBay Inc. v. MercExchange, L.L.C.*, access SCT-ORALARG, restrict your search to the title field (ti) and type

**ti(ebay & mercexchange)**

To retrieve transcripts that discuss whether mandatory state limits on campaign expenditures violate the first and fourteenth amendments, type

**mandatory /s limit! cap! maximum /s campaign! /s expen! /p first fourteenth /5 amendment**

### Natural Language Search

To retrieve transcripts that discuss whether the consent of one occupant is sufficient for the warrantless search of a shared residence, type

**consent of one occupant sufficient for warrantless search of shared residence**

