

## 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

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).

## 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 to your client. 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, type **34 ucla l rev 431** in the *Find this document by citation* text box, which is found in the left frame of the Westlaw page and most other 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 cites 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

“scope of review” (“standard of review”) “excluded expert testimony”

Parentheses in a Natural Language search designate an alternative search term.

### 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 +2 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 on the toolbar.

### 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 access Westclip, click More on the toolbar, then select WestClip from the drop-down list.

For more information about search methods, WestClip, and KeySearch, 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 900,000 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.

To view lists of briefs databases on Westlaw, click Directory on the toolbar to access the Westlaw Directory. Under the *Litigation* heading, click Briefs. In the Briefs section, 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, remember to use KeyCite, West's citation research service, 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 access KeyCite Alert, click **More** on the toolbar, then select **KeyCite Alert** from the drop-down list.

### 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 Cite

One way to access the quoted text is to use the Find service with the pinpoint cite; i.e., if you type 914 f2d 849 in the *Find this document by citation* text box and 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 this document by citation* text box and click **GO**. When the case is displayed, click **Locate in Result** in the left frame to display the *Locate Search Terms* text box. Type "rudimentary duty of safekeeping" 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.

### QuoteRight®

QuoteRight is a research tool that automates quotation checking. It is available in the software application version of WestCheck (as opposed to WestCheck.com). To use QuoteRight, download the WestCheck software at [west.thomson.com/software](http://west.thomson.com/software).

## 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 "depouse 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 best can I 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 Writt, 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.)

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 still good law and to track new citations. As noted on page three, you may find WestCheck.com or KeyCite Alert helpful tools for citation checking. Use KeyCite to check the status of authority relied upon by your 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 *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, access SCT-ORALARG, restrict your search to the title field (ti) and type

ti(metro & grokster)

To retrieve transcripts that discuss a prisoner's right to free exercise of religion, access SCT-ORALARG and type

prisoner inmate /s relig! /s right! free!

### Natural Language Search

To retrieve transcripts that discuss the application of the Controlled Substances Act to medicinal marijuana, access SCT-ORALARG, select the Natural Language search method, and type

application of the controlled substances act to medicinal marijuana

