



## Legal Argument #1

# Argument #1 - Introduction

### **SUMMARY KEYWORDS**

Advocacy Club, argument, facts, presented, decision-maker, legal, accomplish, theme, boot camp, evidence, persuasive, prepare, episodes, hollander, law, opposing parties, understand, witnesses, trial

This is the Advocacy Club Bootcamp on Substack. My name is John Hollander. This episode will present an introduction to legal argument. We have already gathered information, assessed that information, used what we have learned to prepare for examinations, and learned to conduct those examinations and cross examinations. Now, we will apply what we have presented to the decision maker in a legal argument.

There is almost nothing in the Boot Camp that deals with law. We deal with facts, this does not mean that the law is irrelevant. Far from it. The law shaped how we decided what facts to present, the order in which we presented them and what facts not to present. It also informed how we attacked the facts presented by our opposition.

However, when it comes to legal argument, you have to wrap the facts and the law together. Typically, the parties will have minor skirmishes over what the law provides. Most often, parties will contest whether the facts support one or another proposition of law. It is the facts that form the basis of most arguments.

When we prepare for legal argument, we have a huge advantage over when we began the trial or the hearing. And that is we know what the decision maker knows. The decision-maker is not allowed to take into account anything that was not presented in the form of evidence. You know exactly what the decision-maker knows. Okay, let's work with that.

You have already presented some form of your theme. But that does not mean that you are locked in stone when you decided what theme to present. By the time the hearing is completed, you will be able to determine what is the best and most applicable theme to get you where you want to go. And so, when you conduct your legal argument, it will be the use of that theme, as well as the other components of your presentation, which will lead to your Call to Action, which is what you want the decision-maker to do with everything you have presented.

When you present your legal argument, you must be mindful that there are two sides of the story. After all, litigation in the common law world is a trial of opposing parties. They have adverse interests, and they put different spins on the evidence that's been presented. So you should take into account the way your opposition will be treating the evidence that you both heard.

Your theme should reflect that. Just because one theme will get you to the best possible place doesn't mean that's the appropriate theme to use. If your chances of accomplishing what you set out to do are improved by taking a another position. And that leads you to change where you want to start and where you want to end after you have heard all the evidence and are preparing your final legal argument.

Legal argument may be persuasive. It is your objective to make it persuasive. But you should understand that the decision-maker has heard all the evidence and decision-makers are very human. They will be reaching conclusions about which witnesses to believe, which witnesses to sideline, which facts are considered to be the most important. It is difficult for counsel, when they prepare their legal argument, to sort out what the decision-maker will consider to be important.

It may be that you have to persuade the decision-maker though one or another fact or witness or document outweighs another. But you should understand that the decision-maker may already have come to an interim conclusion as to what to accept and what not to accept and what weight to give to one or another piece of evidence.

So, as you prepare for your legal argument, understand that there are different ways to approach it. And one of those ways will be the one that the decision-maker chooses.

We've said this several times during the course of the Boot Camp, but civil litigation is a relative competition. Yours should be better than theirs. It does not mean that yours has to be perfect. But as you prepare your legal argument, take into account what the other side has to say and do a better job than they do. Take the facts that have been presented. Weave them into your argument in a way that is the most persuasive you can accomplish. It may not be perfect, and in fact, it may not be the best possible, but it is the one that you choose because, for all the right reasons, others are not as effective in your opinion. You are, after all, a professional, not a scientist trying to accomplish perfection. You are trying to accomplish the best possible with the circumstances that you have.

In the coming episodes, we will be talking about the components of legal argument: your opening line, your roadmap, using point first to make the points and establish your position. And finally, the Call to Action, what you want the decision maker to do with what you have said and for the reasons that you provided.

For now, your job is to look at what you've accomplished as rationally and as objectively as you can and try to determine what impact you have already had or what impact the evidence has already had on the decision-maker. And it is that that is the raw material that you have to work with. The techniques that follow in the next episodes will help you get there.

So this is the Advocacy Club Boot Camp on Substack My name is John Hollander. Thanks for listening.