

*Achieving Variety Through a Spiral Curriculum*

Sue Provenzano, Northwestern University School of Law

[s-provenzano@law.northwestern.edu](mailto:s-provenzano@law.northwestern.edu)

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**MATERIALS**

- ❖ **Workshop Outline**
- ❖ **Mock Spiral Module Exercise**
- ❖ **Oral Argument Spiral Curriculum Exercises**
- ❖ **Bibliography**

## Workshop Outline

***What is a spiral curriculum?*** In a spiral curriculum, core concepts or skills are introduced and then revisited at ever-higher levels of rigor and depth. The upward-spiraling loops increase difficulty by adding new knowledge, new or more advanced applications of previous knowledge, or further practical experience. New learning is linked to previous learning to promote reinforcement and retention, while the growing difficulty promotes competence and, ideally, mastery.

- **Workshop Goals**

- Observe the modeling of a spiral curriculum in an appellate advocacy course
- Design two classes in a mock spiral module for a doctrinal course
- Leave with ideas for implementing a spiral curriculum to promote variety and solidify student learning in your courses

- **Workshop Structure**

- Introduction to the Spiral Concept: What Is It, Why Use It, and How It Promotes Learning and Variety
- A Model Spiral: Appellate Advocacy's Six-Phase Approach to Oral Argument
  - Phase 1: Intuitive brainstorming
  - Phase 2: Observing
  - Phase 3: Analytical and reflective debriefing and writing
  - Phase 4: Integrating and applying to student's own work
  - Phase 5: Dissecting and critiquing at a high level
  - Phase 6: Capstone – creating and presenting a sophisticated argument
- Your Turn: Adapt the Spiral to a Doctrinal Course Module
  - Design two classes for the module
  - Present your ideas for the classes
  - Group discussion about how the classes achieve spiral sequencing, improved learning, and variety

**Mock Spiral Module Exercise**  
*Building a Spiral Module in Employment Law*

**Background:** You are teaching a survey course in Employment Law. One objective is for your students to learn the concept that employment is presumed “at will.” At-will employment means either party may end an employment relationship without notice or cause.

Employment at-will is a default presumption, modifiable in several ways. One way to modify the presumption is with a contract that specifies the term of employment or the reasons for termination. Another is the tort of wrongful discharge, which applies, for example, when an employer fires an employee for doing something that the law requires her to do – such as reporting for jury duty or testifying truthfully in court. Yet another is a statutory enactment, such as a law *requiring* good reasons for termination or *prohibiting* reasons for termination.

**Exercise: The Three-Class Module:** Assume that Class 1 has already been planned. Class 1 will introduce the at-will concept and its exceptions with a short hypothetical where an employer fires an employee but refuses to provide a reason. Students will discuss the following using only the knowledge they bring to the course: (1) What gives an employee job security? (2) Does this employee have any job security? (3) Even if the employee lacks job security, do you think the employer should give a reason for the termination? Students will then read two cases that define and apply employment at-will and a contractual and tort-based exception.

Class 1 is the spiral’s first loop. It introduces the at-will presumption and its exceptions in a manageable and intuitive manner – through a relatable hypothetical that elicits students’ responses based on prior knowledge and experience. Students then supplement their real-world knowledge and intuition with formal *legal* definitions of at-will employment and its exceptions by reading and analyzing a case. The foundation has been laid, and awaits higher-level learning.

**For classes 2 and 3,** discuss as a group how you can build the spiral skyward so that students internalize and develop a more sophisticated understanding of at-will employment and its basic exceptions. Your classes should exhibit spiral sequencing in four ways: (1) the same concepts are revisited, but (2) at a higher level of depth and difficulty, (3) new learning is related back to previous learning, and (4) in a novel manner or setting. Remember that you are aiming for retention, competence, and variety.

**When you are ready, please select a group leader to present your ideas and to explain how they achieve spiral sequencing and promote learning and variety.**

## Oral Argument Spiral Curriculum Exercises

### *Phase 1: Oral Argument Reflection Questions*

These reflection questions serve two key goals: (1) to prime your mind for the upcoming visit to the Seventh Circuit to observe oral argument; and (2) to establish foundational themes, concepts, and skills that we will build on during our study of argument this semester.

Please spend 15-20 minutes writing down your thoughts about these nine questions based on your prior learning, experiences, and readings for this class. We'll discuss everyone's reflections in class.

1. What are the primary purposes of oral argument from the court's perspective?
2. What are the primary purposes of oral argument from the advocate's perspective?
3. What makes for an effective opening to an oral argument?
4. Categorize the kinds of questions that appellate judges ask during argument.
5. What are the biggest potential mistakes an oralist might make?
6. Identify three vital steps to good preparation for oral argument.
7. What argument styles have you seen that you believe were effective? What argument styles have you seen that you believe were ineffective? Why?
8. In his article *Snatching Victory, Arguing to Win*, Kenneth Berman, a Boston appellate lawyer, contends that lawyers should not summarize their arguments at the end. Do you agree? Why or why not?
9. Commentators have proposed various methods of managing the appellate caseload crisis. Robert J. Martineau has suggested cutting back on oral argument by, for example, using supplemental briefs, written questions to the advocates, and roundtable discussions. In your reading for this class, senior Circuit Judge Myron Bright disagrees and contends that oral argument with less formal court opinions would be the better solution. Which of these two approaches do you favor, if any? What other approaches might work?

## *Phases 2 and 3: Oral Argument Observation, Analysis, and Reflection Paper*

### **Field Trip Reflection Paper**

On Friday, September 16, we will visit the Seventh Circuit Court of Appeals to observe oral argument. Your work product resulting from the field trip will be a reflection paper assessing your experience observing an appellate argument.

As the syllabus indicates, your reflection paper must be **posted to our Google Site by 8:30 a.m. on Wednesday, 9/21**. This will allow us to review each other's reflections on the arguments. On Thursday, 9/22, we will devote some class time to discussing our own and each other's reflections.

### **Due Date and Word Limit**

Your reflection paper must be posted to our Google Site **on or before 8:30 a.m. on December 1st**. Your paper **may not exceed 1000 words** (about 3 pages of Times New Roman, 12-point type). The reflection paper is an ungraded, but required assignment for completing the course.

I have posted two sample reflection papers in this folder to give you a sense of how others approached this work last year.

### **Assignment Goals**

The primary goals of this assignment are the following:

- Observe and critique advocates and judges in action
- Use your observations and critiques to begin developing your own argument style

### **Assignment Description**

Please write about the arguments in **only one case** from Friday's observation. Write an essay with your reflections on the following points:

- **The basics:** What is the subject matter of the case? What are the issues on appeal? Did the attorneys clearly articulate the issues for the judges?
- **Advocate style and persuasiveness:** What did you think of the attorneys' demeanor? Appearance? Tone of voice? Did they carry themselves, speak, and argue in a way that added or detracted from persuasive value? Did they seem prepared? Did they answer the judges' questions directly and succinctly? Did they seem knowledgeable about the law and the facts? How did the appellant's attorney handle rebuttal? Which attorney did a better job and why?
- **Judicial behavior:** What questions did the judges ask? Could you tell if

any judges were predisposed to a position? Could you tell if the judges agreed or disagreed on an issue? Did they genuinely seem to need clarification on an issue, or were they asking loaded questions? Did any of the judges express anger or exasperation with an attorney or the attorney's argument?

- **Overall reflections:** What did you find most persuasive about each attorney's argument? If you were on the judging panel, who would prevail? Did anything else strike you as interesting or unique about a particular argument?
- **Takeaways for you:** What did you take away from this experience to help you develop your own style as an oral advocate?

### ***Phase 4: Short In-Class Arguments***

- For the last six weeks of the course, in each class two or three people will deliver a 7-minute argument on an assigned issue
- Short Argument “Rules”:
  - The arguers may choose to receive questions either during or after the argument
  - In either case, the argument + questions may not exceed 7 minutes
  - The class will serve as judges
  - The class and I will provide 7 minutes of feedback for each oralist
- Oral Argument Resources Content Area on Blackboard
  - The short in-class argument schedule is posted here
  - Combination of handouts, articles, and links

### ***Phase 5: Dissecting and Critiquing United States Supreme Court Arguments***

In this phase, we spend a class period listening to, dissecting, and critiquing audio-taped U.S. Supreme Court arguments by Supreme Court specialists in private and government practice. We take a particularly deep dive into the concept of appellate theme, and the skill of handling questions from the bench. For the class discussion notes, please contact me at [s-provenzano@law.northwestern.edu](mailto:s-provenzano@law.northwestern.edu).

***Phase 6: The Final Oral Argument***  
**Sample Completed Rubric**

<p><i>Introduction</i></p> <ol style="list-style-type: none"> <li>1. Greeting and Context <ul style="list-style-type: none"> <li>○ Did you introduce yourself?</li> <li>○ Did you tell the court whom you represent?</li> <li>○ Did you identify the issues on appeal and the relief you are requesting from the court?</li> </ul> </li> <li>2. Hook <ul style="list-style-type: none"> <li>○ Did you present the crux of your argument in a simple, appealing manner, in a way that grabs the court’s attention?</li> </ul> </li> <li>3. Roadmap <ul style="list-style-type: none"> <li>○ Did you provide a brief overview of your argument?</li> </ul> </li> </ol>	<p><b>Comments:</b> Compelling and hard-hitting introduction. As noted by the panelists, excellent “hook” using the “wrong place at the wrong time” concept and tying it directly to the legal question before the court.</p> <p>You told the panel the precise results you were seeking in clear and accurate procedural and substantive terms. And you included a brief roadmap of the direction of your arguments.</p> <p>But, as the panel also mentioned, the “zig-zag” back to the sentencing issue after you had already covered it slowed the pace of an intro that otherwise moved along nicely.</p>
<p><i>Body of Argument</i></p> <ol style="list-style-type: none"> <li>1. Overall Approach <ul style="list-style-type: none"> <li>○ Did you start with your strongest argument and continue in a logical manner?</li> <li>○ Was each argument a stand-alone “modular” argument that you could jump to at any point?</li> <li>○ Did you stick to a few points essential to victory and avoid making too many arguments?</li> <li>○ Were your arguments positive and affirmative, not defensive?</li> </ul> </li> <li>2. Structure and Support <ul style="list-style-type: none"> <li>○ Did you state your proposition for each argument before supporting it with reasoning and detail?</li> <li>○ Did you make effective use of authority, reasoning, facts, and potential implications to support your arguments?</li> <li>○ Did you take the arguments back to your client’s situation to show the “import” of the law?</li> </ul> </li> <li>3. Conclusion <ul style="list-style-type: none"> <li>○ Did you thank the court and ask for relief?</li> <li>○ Did you respect the time limits?</li> </ul> </li> </ol>	<p><b>Comments:</b> Overall, you utilized the proposition-proof method very effectively, boiling down key reasons in support of your arguments. But most impressive was your thorough and effective command of the record and the precedent. You demonstrated a real knack for drilling down to the heart of a case or a record fact and clearly and forcefully emphasizing that information to the panel.</p> <p>For example, you compactly organized the “knowledge” element into the key categories of evidence and then went directly into the evidence that failed those categories. Terrific job emphasizing the DEA agent’s failure to recognize the coca paste as contraband and that in Scofield, the D’s presence around more obvious drug trade implements was not sufficient to meet the element. Likewise, effective use of Cruz and its parallels to this case, and the most favorable language in Dunlap about the D’s probable use of the drugs for his own benefit, not for distribution.</p> <p>As the panel noted, though, the knowledge argument is not the strongest one, and it may have been more beneficial to start with control. But you were so successful in handling this issue that this point is largely academic.</p>



<p><i>Response to Questions</i></p> <ol style="list-style-type: none"> <li>1. Overall Approach <ul style="list-style-type: none"> <li>○ Did you treat questions as opportunities, not inconveniences?</li> <li>○ Did you answer the question directly (e.g., yes, no), and then explain why?</li> <li>○ Did you provide a confident, coherent, and succinct explanation of your answer?</li> <li>○ Did you avoid interrupting the judge?</li> <li>○ Did you remain cool in the face of tough questioning?</li> </ul> </li> <li>2. Substance <ul style="list-style-type: none"> <li>○ Did you answer questions honestly, and accurately represent the law and facts?</li> <li>○ Did you concede when you needed to but avoid unnecessary concessions fatal to your case?</li> <li>○ Did you display understanding of the judges' needs and concerns?</li> <li>○ Did you transition smoothly back into your argument?</li> </ul> </li> </ol>	<p><b>Comments:</b> This panel asked some of the toughest questions of all and you really handled them well. You maintained a deferential but very assertive stance in which you shot answers right back to the panel with amazingly speed, clarity, and accuracy.</p> <p>For example, as Judge Hochman noted, you “grabbed the text message by the horns; it was a great strategic choice to confront this evidence as directly as you did. Emphasizing that the jury would have had to “speculate” RT’s awareness of the drug lingo was the most effective way to attack the government’s use of this evidence.</p> <p>In general, you did an excellent job with pithy turns of phrase that cut off questioning. For example, there wasn’t much the judges could say after you pointed out that “presumptive awareness is not actual knowledge.” Another effective tactic was going back to important back-drop rules to emphasize favorable standards, e.g., “mere presence is not enough,” and the need to prove knowledge of illegality.</p>
<p><i>Speech and Delivery</i></p> <ol style="list-style-type: none"> <li>1. Volume <ul style="list-style-type: none"> <li>○ Was the court able to hear you?</li> </ul> </li> <li>2. Speed and Clarity <ul style="list-style-type: none"> <li>○ Was your speech clear and deliberate?</li> <li>○ Did you use precise but simple language and basic sentence structures?</li> <li>○ Did you maintain a pace the judges could follow?</li> </ul> </li> <li>3. Body Language <ul style="list-style-type: none"> <li>○ Did you maintain eye contact?</li> <li>○ Did you avoid reading?</li> <li>○ Did you keep gestures natural and minimal?</li> <li>○ Did you maintain good posture?</li> </ul> </li> </ol>	<p><b>Comments:</b> Extremely effective delivery and use of personal style. You balanced an understated confidence with a deferential approach. Instead of using excessive volume to persuade (a common problem), you used quick, compelling answers and catch-phrases to accent your arguments.</p> <p>Great eye contact and rapport with the panel as well.</p> <p>But, watch your speaking speed. Although a quick response time is excellent, the rapidity with which your words came out was too fast at times.</p>
<p><i>Overall Impression</i></p> <ul style="list-style-type: none"> <li>○ How convincingly did you analyze and argue the substantive issues?</li> <li>○ How well did you know the record, your brief, and the law?</li> <li>○ How well-prepared were you for the judges' questions?</li> <li>○ Did you maximize strengths, minimize weaknesses, and maintain credibility?</li> <li>○ Did you treat the court with respect?</li> </ul>	<p><b>Comments:</b> Absolutely outstanding argument, as your judges noted. Your panel were a group of tough critics and you really wowed them. You combined an effective affirmative presentation with smart substantive answers and a wonderful appellate style.</p>

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