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COURT OF APPEALS
STATE OF NEW YORK

VIDEO ORIENTATION RE ARGUING AT
THE COURT OF APPEALS

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Official Court Transcriber

1 MR. KLEIN: Hi, I'm Andy Klein and I'm the Clerk
2 of the New York State Court of Appeals. And the purpose
3 of this video is to provide you with a brief orientation
4 regarding arguing at the Court of Appeals. My intent is
5 not to make you a more effective appellate litigator. The
6 purpose of this video is simply to make you more
7 comfortable when you come to argue at the Court,
8 especially if it's your first time at the Court. So with
9 that said, let's start this.

10 The Court of Appeals is located on Eagle
11 Street in Albany. The main entrance is a bronze
12 revolving door. When you come through the bronze
13 revolving door, you'll be met by one of our Court
14 Officers. The Court Officer will check you in, put
15 you through a magnetometer, and if you have any
16 baggage with you, put the baggage through an X-ray
17 machine.

18 Once you've cleared the security screening
19 process, you'll be escorted to one of four rooms
20 outside of the Courtroom, at which point you can
21 either engage in further preparation for your
22 argument or simply relax. The four rooms are the
23 Anteroom, the Attorneys' Lounge, the Attorneys'
24 Library, and the John Jay Room. Each of these rooms
25 is viewable on our virtual tour which is on our

1 website, so you can get some familiarity with the
2 rooms before you even get here.

3 Now, if you have any special needs with
4 respect to arguing, such as a mobility limitation, a
5 hearing impairment, that you're going to be
6 accompanied by more than three co-counsel - - because
7 we have limited seating at counsel's table - - please
8 advise the Clerk's Office of your need in advance,
9 and when you come here, we will be able to
10 accommodate you. If you've forgotten to give advance
11 notice, then when you come into the Court, please
12 tell the Court Officer of your special need, and the
13 Court Officer will immediately tell somebody in the
14 Clerk's Office and we'll still be able to accommodate
15 you.

16 Now, the Courtroom opens fifteen minutes
17 before argument begins. Argument starts at 2
18 o'clock, unless you've been otherwise notified ahead
19 of time. When you first come into the Courtroom, you
20 will be met by our Chief Security Officer who will
21 direct you to the counsel's table at which you should
22 sit. The appellants sit to the left of the Courtroom
23 as you face the bench, and respondents sit to the
24 right of the Courtroom. If you bring your clients
25 with you, please have them sit behind the railing

1 that separates counsel from the audience. Clients
2 are not allowed at counsel's table.

3 When the Judges are about to come into the
4 courtroom, our Court Crier will bang the gavel and
5 say: "Judges of the Court." At that point,
6 everybody should stand. The Judges will then enter
7 the Courtroom through a door behind the bench and
8 they will stand next to their seats in the Courtroom.
9 The Court Crier will then call the Court to order.
10 The Judges will sit, and everybody in the Courtroom
11 should sit. We do not expressly tell you to sit, so
12 take your cue from when the Judges sit.

13 The Chief Judge may then make some
14 introductory remarks and will then call the first
15 case. When the first case is called, appellant's
16 counsel should take the podium that I'm standing at
17 right now and address the Court. There's a placard
18 on the podium that's right here (speaker points), and
19 it states the names of all of the Judges and where
20 they sit, so you'll always know who you're
21 addressing.

22 Appellant's counsel should state who he or
23 she is, who he or she represents, and the amount of
24 rebuttal time, if any, that they want. Rebuttal time
25 is very important, because we subtract your rebuttal

1 time from the overall time we've allocated for your
2 argument. So if you've been given ten minutes to do
3 your argument, and you want two minutes of rebuttal
4 time, at your initial time at the podium, you'll only
5 be given eight minutes. When there's one minute left
6 to your argument, a white light will come on. When
7 there is no time left to your argument, a red light
8 will come on.

9 Now, if you're in the middle of a thought
10 when the red light comes on, please do not stop
11 talking. Finish your thought. You may find that the
12 Judges of our Court will ask you questions even if
13 the red light has come on. If that's the case, just
14 go with the flow, and progress with your argument as
15 the Court directs.

16 When you've completed your argument, then
17 respondent will stand up, introduce who he or she is,
18 who he or she represents, and begin their argument.
19 Respondents are not entitled to rebuttal time. Now,
20 if you're a respondent and you're asked a question
21 before you even introduce who you are, please don't
22 get flustered. That happens. Just state who you
23 are, who you represent, and then calmly answer the
24 question.

25 When the respondent's argument time is

1 complete, appellant then gets up and does their
2 rebuttal. Then when the rebuttal is complete, your
3 argument is over. At that point, you should either
4 quietly leave the Courtroom, or if there are other
5 cases that you'd like to watch that day, then please
6 take a seat among the audience.

7 We ask all counsel to be courteous at all
8 times in the Courtroom. Please do not do anything to
9 distract arguing counsel or the Judges of our Court.
10 And that would include talking to your co-counsel,
11 noisily rustling your papers, or even nodding in
12 agreement or disagreement with anything that an
13 arguing counsel or a Judge might say during argument.
14 Our Judges have noted several times that they find
15 this latter practice distracting.

16 Now, all of our arguments are webcast live.
17 So if you have anything in your case that's
18 confidential that has been redacted from your brief,
19 please be aware of it and do not state it during the
20 webcast.

21 All of our webcasts are archived one week
22 after argument on our website. Additionally, we
23 provide transcripts of all arguments, and those are
24 also archived about one week after argument.

25 Now, I told you that I wasn't going to say

1 anything that was going to make you a better
2 litigator, but there are a couple of things in this
3 Court that are useful for you to know. First of all,
4 we have a very hot bench. They ask a lot of
5 questions. Now, it is a very common practice for an
6 appellate litigator to prepare a narrative to give to
7 a court, and I would by all means suggest you do so
8 for our Court. But don't expect to get much of your
9 narrative out, because our Court asks so many
10 questions. To get an idea of what our Court is like -
11 - what arguing before our Court is like, I would
12 suggest that you go to our website and look at some
13 of the archived oral arguments to get a sense of how
14 frequently our Judges ask questions.

15 And in that regard, when a Judge asks you a
16 question, please answer the question directly. It's
17 not uncommon for a litigator to be asked a question
18 that is off from where their point of emphasis is,
19 and they try and redirect the Court to their point of
20 emphasis. Our Judges have all read your briefs.
21 They're very well versed in your case. And so, if
22 they're asking you a question, they don't want to
23 hear just whatever you've emphasized in your brief.
24 They're trying to go beyond your brief. So try and
25 face the question head-on and answer it directly.

1 Also, frequently, our Judges will ask you a
2 hypothetical. I can't tell you the number of times
3 that counsel has said, "but Judge, that's not my
4 case." Our Judges know that a hypothetical is not
5 your case. They're well versed in what the facts of
6 your case are. But they're trying to ask you a
7 hypothetical to extrapolate from your case.

8 Relatedly, a question that the Court will
9 often ask you is, "counselor, what's the rule of law
10 that you want to have come out of this case."
11 Remember, the Court of Appeals sets the law of the
12 State of New York. And often, the rule that comes
13 out of your case could be something that goes beyond
14 the confines of your particular fact pattern. Oft-
15 times, the Court is dealing with novel issues of law.
16 So when you prepare for an argument before the Court
17 of Appeals, think what rule of law you want to have
18 come out of this case that will not only govern your
19 case, but that will govern cases that are like your
20 case.

21 So that's basically arguing before the
22 Court of Appeals in a nutshell. I hope this has been
23 of some assistance to you. In conclusion I would only
24 say that we have seven unbelievable Judges, a
25 majestic Courtroom, a nonjudicial staff that will do

1 anything they can to help you, and we hope that you
2 have a wonderful experience when you come to the
3 Court of Appeals.

4 Thank you.

5 (End of recording)

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