

# Sand Traps and Other Hazards at Oral Argument



Tips for anticipating, avoiding, or escaping them

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***“Making the simple complicated is commonplace; making the complicated simple, awesomely simple, that’s creativity.”***

**— Charles Mingus**

With planning and forethought, your ordinary prep will help you clear most of the unusual hurdles.



**The judge starts cross-examining you about your client's worst act.**

**It's a trap!  
Don't debate the facts!  
Know what to concede!  
Stay on message!**





**You step to the podium loaded for bear but it turns out the panel is a sea of blank faces.**

**Deliver a TED talk using your bullet-pointed outline.  
(no longer than  $\approx 60\%$  of your time)**



**One judge is silent but her  
body language screams,  
“Your client - fit?  
Give me a break.”**

Acknowledge her skepticism,  
which might spark a  
productive conversation.

**During prep, you realize  
you made a mistake in your filing.**



**Don't panic!**  
You have lots of options depending  
on the nature and extent of the mistake.

**“Let’s assume we agree with you. Can’t this just be handled at the trial level at a review and redetermination or permanency hearing?”**

This kind of question reflects an error in the court’s understanding of our cases.

Correct them – respectfully.





The panel invites  
you to go  
outside the record.



Is the information

*actually*

out of bounds?

**The panel invites  
you to go  
outside the record.**



**If it is,  
*answer*  
the question  
*succinctly*  
even if it's  
good for your client.**

**An appellee eagerly volunteers favorable information *way* beyond the record.**

Mass. R. App. P. 22(c) is an option but it should be used sparingly.



**“When’s the last time you saw your [child] client?”**



Visit your client a month before argument.

**Your turn!**

