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**“MAY IT PLEASE THE COURT”:
A PROPOSAL TO MAKE ORAL ARGUMENT A FORENSICS ACTIVITY**

BY MICHAEL J. RITTER*

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Summary. Oral Argument^{TM1} is a debate–extemp hybrid event modeled on an oral argument before the Supreme Court of the United States. The topic is always whether the Supreme Court should overrule a prior case. The format is modeled as a 1-on-1 debate round format and moot court (not mock trial), but the judge’s decision of who wins is based on ratings in five categories: (1) demeanor/speaking style; (2) knowledge of the case specified in the topic; (3) quality of the case and rebuttal; (4) responsiveness to questioning; and (5) sources.

INTRODUCTION

Several attributes of Cross-Examination Debate (CX) and Lincoln-Douglas Debate (LD) excite students. Those attributes include quick rates of speech (spreading), the perceived objectivity of a highly-technical note-taking system (flowing), the seemingly endless universe of potential sources of evidence, and the virtual absence of any rules limiting what arguments may be presented and how they are presented. But these attributes, which excite some students, repel other students, parents, educators, former competitors, and outsiders to whom the community tends to refer as “lay.” These attributes also raise serious pedagogical questions about how well these skills transfer to collegiate, workplace, and professional settings.

To address concerns raised by CX practices, which have been widely adopted in LD, the National Speech & Debate Association (NSDA) has sanctioned two other debate formats: Public Forum Debate (PFD) and Student Congress. PFD was designed to discourage spreading and flowing by having a “lay” judge assigned to every round. A primary purpose of PFD was to reconnect the speech

¹ Oral Argument is a trademark of The Forensics Files. TFF provides a reasonably priced license to pilot Oral Argument at tournaments on its website: www.theforensicsfiles.com.

and debate community with the larger community by encouraging members of the larger community to judge and learn about speech and debate. But the practicalities of running tournaments have often required placing judges with CX and LD backgrounds in PFD rounds. As a result, PFD has been influenced by the practices in CX and LD that PFD was created to avoid. Student Congress, in which students advance based on speaker points, has successfully avoided spreading and flowing, and it also has institutional analogues beyond the debate community: legislative bodies. CX, LD, and PFD do not. But despite the benefits of Student Congress, the number and complexity of procedural rules, varying quality of bills and resolutions, the wide variety of topics, and the number of competitors are often barriers to entry and success, and present scheduling challenges for tournament hosts.

This article proposes that the forensics community sanction a new debate event: Oral Argument. Oral Argument is a pretend oral argument in front of the U.S. Supreme Court. It is not “mock trial,” in which students must learn evidentiary rules, make objections, represent clients, or role-play as witnesses. Rather, the two sides argue to the (pretend) Supreme Court that it should overrule a prior decision. Oral Argument models how lawyers argue cases before not only the U.S. Supreme Court, but appellate courts throughout the United States. Appellate courts differ from trial courts in that appellate courts decide cases based on the facts of the case and the law alone, without witnesses, evidentiary objections, or juries. Oral Argument lacks many formalities required in moot court competitions in law school, but still maintains requirements for a proper demeanor and level of professionalism that is expected of anyone who enters a courtroom. This includes an extemporaneous speaking style in presenting.

There are four significant departures from existing debate formats. First, the topic will always be whether the Supreme Court of the United States should overrule one of its prior cases and must be in the same format: “Resolved: The Supreme Court of the United States should overrule its decision in [insert selected supreme court case].” Second, sources are limited to the U.S. Constitution, U.S. Supreme Court decisions (including majority, concurring, and dissenting opinions), briefs filed in the Supreme Court, and to law journal articles published by law schools. Third, judges are instructed to award points in five categories: (1) demeanor/speaking style; (2) knowledge of the case specified in the topic; (3) quality of the case and rebuttal; (4) responsiveness to questioning; and (5) sources. The side with more points wins, and the winner is not based solely on

who the judge believes did the better debating. Fourth, in Oral Argument, there is a judicial questioning period instead of cross-examination by an opponent. A similar format, called “moot court,” has successfully been used by the YMCA, colleges, and law schools throughout the country, and provides the same educational benefits of CX, LD, PFD, and Student Congress while avoiding those events’ drawbacks and barriers to entry and success.

TOPICS & RESOLUTION WORDING

In Oral Argument, the topic will always be whether the Supreme Court of the United States should overrule one of its prior cases and must be in the same format: “Resolved: The Supreme Court of the United States should overrule its decision in [insert selected supreme court case].” “Overrule” means “to overturn or set aside (a precedent) by expressly deciding that it should no longer be controlling law.”² Thus, the resolution would always be whether the Supreme Court should overrule a prior decision. The following are some examples:

Resolved: The Supreme Court of the United States should overrule its decision in *Citizens United v. Federal Election Commission*.

Resolved: The Supreme Court of the United States should overrule its decision in *Vernonia School District 47J v. Acton*.

Resolved: The Supreme Court of the United States should overrule its decision in *Harlow v. Fitzgerald*.

These topics allow competitors to argue issues that are nearly identical to topics they debate in CX, LD, and PFD. For example, *Citizens United* (Campaign Finance) was the NSDA topic for PFD in January 2013; *Vernonia* (Probable Cause for School Searches) is the NSDA topic for PFD in September and October of 2016; and *Harlow* (Qualified Immunity) will be the NSDA topic for LD in November and December of 2016.

The consistent topic format provides four benefits over the current topic wording and selection process of the other debate formats. First, the uniformity of topic wording prevents seemingly odd topic wordings that often do not comport with the literature. This makes it easier for competitors to research the core issue of the topic and actually address the topic question. Second, the uniformity of topic wording will prevent the necessity of topicality arguments and theory

² BLACK’S LAW DICTIONARY 1136 (“overrule”).

(agent-based or otherwise). Because the topic is whether a specific agent should perform a specific act, there is no need for a plan text or agent-specification theory, both of which often allow and encourage competitors not to address the topic question. Third, the uniformity of topic wording will ensure there is a significant amount of ground for both sides. The U.S. Supreme Court does not, in the vast majority of the cases it decides, rule on issues for which there is no ground for substantial disagreement. In other words, the Court does not hear and decide cases unless both sides have good arguments. This prevents topics from having a substantial, unfair side bias. Finally, the U.S. Supreme Court decides at least a few cases each year that are of significant interest to the American public. Because it is unlikely that the Supreme Court will be abolished any time soon, there are hundreds of years of prior cases and future Supreme Court cases that could supply perfect cases for Oral Argument topics.

The frequency of the resolution changes should be relatively limited, perhaps to one topic a semester or, at the very most, one topic every two months. Supreme Court cases are often complex and require a high level of thinking and explanation. If competitors and coaches honestly believe competitors and judges can grasp post-modern philosophical concepts, then competitors are as equally capable—if not more so—of understanding Supreme Court cases. This does not mean there is not a lot to material on each topic. As noted briefly in the Introduction and discussed more in-depth later in this article, Oral Argument likely has a broader appeal than the existing debate formats, in significant part, because of limited research burden on competitors and coaches. Thus, having the resolution change only once a semester—similar to some moot court competitions in law school competitions—would ensure that competing and coaching Oral Argument does not become unduly burdensome for competitors or coaches.

THE SOURCE LIMITATION & ENFORCEMENT

In Oral Argument rounds, sources and evidence are limited to quotes (or cards) from the U.S. Constitution, decisions/opinion from the U.S. Supreme Court (including majority, concurring, and dissenting opinions), any brief filed in the Supreme Court, and law reviews articles published by a law school's journal. The vast majority of these resources are available online for free without a LexisNexis or Westlaw subscription. This allows schools, coaches, and competitors with any

size budget (or no budget at all) to be able to access the materials to be able to compete.

The limitation on sources makes Oral Argument beneficial in ways CX, LD, PFD, and Congress are not, while permitting predictable literature-based ground for flexible and creative arguments. The limit on permitted sources circumscribes the universe of topic evidence to quotes (or cards) from Supreme Court justices in the case, briefs filed by the parties and *amicus curiae* in the case, and law review and law journal articles. This creates a “happy medium” between the highly restrictive source limitations in the Oral Interpretation events and the absence of any source restrictions in the debate events. The limitation on permitted sources will drastically reduce the research burden present in CX, LD, and PFD. The limitation also ensures competitors will research quality materials from law professors, lawyers, and judges, rather than blog entries and website text by often-unknown authors.

The limitation on sources does not necessarily prevent creative and philosophical-based arguments. Many legal scholars criticize and defend supreme court cases using, for example, feminist and critical race theories. As a concrete example, Business School Professor Ronnie Cohen and Law Professor Shannon O’Byrne co-authored an article in 2013, which was published in the UCLA Women’s Law Journal (published by the UCLA School of Law), criticizing *Citizens United* using feminist theory regarding the distinction between public and private spheres.³ Because this article is clearly on the topic of *Citizens United* and is contained in a law journal published by a law school, it is an easily findable and predictable source. Thus, Oral Argument’s source limitation still permits literature-based creativity that is relatively predictable.

The limitation on sources could be enforced through judge-based and competitor-based source challenges. Subject to the other rules for evidence challenges, a judge may inquire about a competitor’s source. If a judge determines the source is not permitted, the judge must verify this determination with the tournament director. If the judge and tournament director agree a competitor used a source that is not permitted by the rules, then the competitor who used the inadmissible source will be awarded no points for the source evaluation on the judge’s ballot.

³ Ronnie Cohen & Shannon O’Byrne, “Can you hear me now...Good!”: *Feminism(s), The Public/Private Divide, and Citizens United v. FEC*, 20 UCLA WOMEN’S L.J. 39 (2013).

A competitor may challenge an opponent's source only after the round and only *before* the judge has returned the ballot to the tournament director for tabulation. If a competitor challenges an opponent's source, the judge must verify a violation with the tournament director. If a judge determines a source is admissible, the competitor may challenge the judge's determination to the tournament director. If the tournament director disagrees with the judge, the tournament director may direct the judge to award the violating competitor no points for the appropriate category.

FORMAT & JUDGING CRITERIA

- 9 Minutes – Affirmative Case
- 3 Minutes – Judicial Questioning (Cross-Examination by Judge)
- 2 Minutes – Negative Flex Preparation Time (if taken)
- 12 Minutes – Negative Case & Rebuttal
- 3 Minutes – Judicial Questioning (Cross-Examination by Judge)
- 2 Minutes – Affirmative Flex Preparation Time (if taken)
- 3 Minutes – Affirmative Rebuttal

Oral Argument is an extemp-debate hybrid event. It has a one-on-one debate format but the winner of the round is not based solely on who, in the judge's opinion, did the better debating. Instead, the winner is decided by criteria similar that used for extemporaneous speaking events. The judging criteria allows the judge to consider who presented the better arguments in awarding points, but the side that presented the better case or arguments is not automatically the winner of the round.

The Oral Argument ballot will instruct the judge to award 0-2 points for five categories: (1) demeanor and speaking style; (2) knowledge of the case specified in the topic; (3) quality of the case and rebuttal; (4) responsiveness to the judges' questioning; and (5) sources. The ballot instructs the judge after the round to award points in each category and to total the points and add 20. Thus, the judge will award each side will receive 0 to 10 points. The required addition of 20 is to ensure that the points awarded will range from 20-30 total points. The ballot further instructs that the winner of the round is the side receiving the higher number of points, and the judge may not give the same total points.

The judging criteria will provide more information about why a competitor won or lost a round. For example, competitors and coaches will know from the

ballot alone, without the need for an oral critique: (1) the exact reason for being ranked lower than a competitor; and (2) areas/skills the competitor should focus on improving. It should also allay debaters' and debate coaches' concerns about having a complete subjective system by which the judge will decide the winner of the round.

The affirmative side's burden during the Affirmative Case is to present arguments why the U.S. Supreme Court should overrule the case specified in the topic. During Judicial Question, explained more in the next section, the judge will then have three minutes to question the Affirmative about the case specified in the topic and the Affirmative's arguments about overruling the case specified in the topic. The negative side's burden during the Negative Case & Rebuttal is to (a) present arguments why the U.S. Supreme Court should not overrule the case specified in the topic, and (b) respond to the Affirmative's case. During Judicial Question, explained more in the next section, the judge will then have three minutes to question the Negative about the case specified in the topic and the Negative's arguments about not overruling the case specified in the topic. The Affirmative will then have a rebuttal to respond to the Negative's case. An Affirmative competitor may "extend" arguments as necessary to respond to the Negative's rebuttal, but the intent of the rebuttal is not to respond to the entire Negative case or the Negative's entire rebuttal. Each side will have two minutes of "Flex Prep" during which the side taking their Flex Prep time may prepare and/or ask the other competitor for clarifications about the other side's case arguments.

Both sides receive at least twelve minutes of uninterrupted speech time. This is twice the amount of time each competitor has in PFD debate, and one minute less than in CX and LD Debate. As in CX and LD debate, each side will be cross-examined, and any time not used by the judge during Judicial Questioning will be yielded to the competitor, subject to further questioning by the judge within the Judicial Questioning Period.

JUDICIAL QUESTIONING & PREFERRED JUDGES

The biggest difference from the other debate events is the Judicial Questioning period, the cross-examination by the judge. As in CX and LD, each side will be cross-examined about their cases for a three-minute period. But instead of being cross-examined by the other side, the competitor is cross-

examined by the judge. The purpose of Judicial Questioning is not for the judge to point out which side the judge personally agrees with and which side the judge does not (although this often happens in real world oral arguments before actual appellate courts). The purpose is to have the judge test the competitor's ability to respond directly, honestly, politely, and deferentially to questions by an authority figure.

Judicial Questioning has benefits over competitor-led questioning. For Judicial Questioning, the competitor is rewarded for direct, honest, polite, and deferential responses to questioning. In competitor-led questioning in CX, LD, and PFD, competitor-led questioning encourages (1) avoidance of the questions; (2) self-serving dishonesty and inaccurate and misleading answers; and (3) posturing for perceived dominance. Most educators will likely agree that it is more important for students to learn how to directly, honestly, politely, and deferentially respond to questions than to avoid questions, lie, and bully other students. Furthermore, because competitors will be evaluated on how well they respond to judges in round, Judicial Questioning encourages competitors to treat judges of various backgrounds with respect instead of disdain.

There are a couple important questions about judge interaction with students during the round:

Q. What if the judge is improper in interacting with the students or the judge has bias on the topic?

A. The risk of improper judge conduct is low. First, tournament directors should attempt to avoid hiring judges with bad reputations for improper conduct regardless of whether Oral Argument is a sanctioned event. Tournament directors also have the ability to fire judges for improper conduct. Second, the YMCA and law schools across the country host moot court competitions in which the judge interacts with the competitors and improper conduct is a very rare occurrence. Third, even if a judge is biased on a topic, there is significantly less of a chance—compared to other debate events—that this will affect who wins the Oral Argument round. The judge will be instructed that who presents the better arguments will account for only 2 of 10 total points (or 20%) of the total score. Fourth, as in Student Congress and other events, it is preferable to find an experienced or preferred judge; in the case of Oral Argument, an experienced or preferred judge is someone familiar with moot court or Oral Argument or, at the

very least, is committed to cordiality, professionalism, and following the format in good faith. Fifth, Student Congress judges occasionally participate in rounds and thus Student Congress demonstrates responsible judges can participate in round without improper conduct.

Q. Where do I find judges for this event?

Preferred or experienced judges would former competitors, law students, and practicing/retired lawyers. A preferred/experienced judge should be instructed that Oral Argument is a slight variation of moot court in which there is no “problem packet,” and the formalities of the judicial procedure and etiquette are not expected or strictly enforced, but the competitors should act with the professionalism and etiquette of anyone who enters a courtroom. In the event that a preferred judge cannot be timely located, an inexperienced, volunteer judge may judge an Oral Argument round. An inexperienced, volunteer judge should be provided with sample questions for clarification, prompts, and sources so *any* judge can participate during Judicial Questioning by reading a sample question verbatim.

Q. Would lawyers and law students be likely to participate?

A. Absolutely. Most teachers are familiar with the concept of professional development requirements. States throughout the country require lawyers to complete several hours of “Continuing Legal Education” (CLE) that may be satisfied by judging competitive events like moot court. Like a teacher’s professional development hours, CLE hours can be expensive to acquire. Thus, judging Oral Argument may give practicing lawyers an opportunity to obtain free CLE credit. And like college students, law students, especially those involved in moot court programs, would also be willing to judge either for payment or as a resume-building experience. The YMCA Youth & Government Program and law schools, which host moot court competitions throughout the country, are generally able to find enough lawyers to judge their competitions for free.

Q. What if an inexperienced judge volunteers, but in the round, doesn’t feel comfortable asking any questions?

It is actually a real-world experience for judges on a court not to ask questions. Justice Clarence Thomas has asked one question in only one case in the past decade. In Oral Argument, if a judge has no questions or runs out of questions before the Judicial Questioning period ends, the time is yielded back to the competitor to continue speaking, subject to additional questions by the judge during the remainder of the Judicial Questioning period. In a worst-case scenario, a competitor has twelve minutes of uninterrupted speech time.

Q. What if a competitor is a novice and does not understand the other side's case? How will they be able to clarify points?

First, understanding everything an opponent says is not as crucial to winning an Oral Argument round as it is in CX, LD, and PFD. Responding to the other side's arguments will result in more points, but Oral Argument ballots instruct judges not use unanswered or "dropped" arguments as the sole reason for decision. As a practical matter, because each side speaks only one or two times, there will often be too many "dropped" arguments on both sides for any judge to fairly decide the round on that basis alone. Second, each side is afforded a two-minute "Flex Prep" period to prepare responses to the other side's case. "Flex Prep" permits the competitor to ask clarification questions about the opponent's case. So even if a novice is at a total loss for how to respond, they will still (a) have their own case to present and (b) have two minutes to ask about the opponent's arguments.

While the idea of judges participating may be foreign, and initially scary, to speech and debate coaches, it has actually proven in other organizations not to present significant issues of unfairness or improper conduct. Instead, it has the benefit of training students to professionally interact with other and to answer questions directly, honestly, politely, and deferentially.

DIFFERENCES FROM "MOCK TRIAL" & "MOOT COURT"

Oral Argument is not "Mock Trial," in which students must (or even may) make objections, represent clients, or role-play as witnesses. Oral Argument is a type of "Moot Court" in which the two sides argue to the (mock) Supreme Court that it should overrule a prior decision. However, Oral Argument will lack most

of the formalities expected in Moot Court, but still require the level of professionalism and conduct that is expected of anyone entering a courtroom.

Unlike Moot Court, there is no “problem packet” in which the competitors are asked to represent fake clients in a fake factual scenario. Rather, Oral Argument would proceed as though the Supreme Court is having oral argument on a motion for rehearing in the specified in the topic. This necessarily assumes the Supreme Court has the authority to timely rehear the case specified in the topic and to overrule it. Oral Argument does not begin with a bailiff calling the case, involve judges wearing robes, or require the sides to make announcements. Instead, each round will proceed in the style of other debate events.

PEDAGOGICAL BENEFITS OF ORAL ARGUMENT

Oral Argument offers several pedagogical benefits that have been empirically proven by the success of the YMCA’s Youth & Government Program and law schools’ moot court programs. The previously discussed benefits include: (1) broad appeal promoted by a decreased emphasis on spreading, flowing, topicality, and theory arguments; (2) manageable research burden due to the source limitation; (3) ensuring fair and equal ground based on the requirement that the resolution always focus on a previously decided Supreme Court case; (4) predictable literature-based ground for flexible and creative arguments; (5) networking opportunities and community involvement due to the ability to attract lawyers and law students to judge; and (6) encouraging direct, honest, polite, and deferential responses to questions and not training students to avoid questions, lie, and bully students during cross-examination.

In addition to the previously discussed benefits, Oral Argument offers several other benefits to competitors. First, like Student Congress, there is a directly analogous societal institution for Oral Argument: presenting arguments to courts. As Colling (2012) noted: “more debaters end up lawyers than . . . legislators.” Student Congress provides direct training of students to become legislators or participants in a legislative body. There is no direct, real-world analog for CX, LD, and PFD. Thus, Oral Argument provides the most likely-to-be-used real-world skills out of all of the debate events. The ability and skills to present a case and defend are also required in other situations such as presenting business ideas in a boardroom or defending a master’s or doctoral thesis.

Second, Oral Argument not only has an analogue in the real world, but also in colleges and in law schools, which raises the possibility of scholarships. Like CX (and somewhat unlike LD, PFD, and Student Congress), there are active moot court programs in colleges and law schools. Thus, participation in Oral Argument could assist students in obtaining scholarships to college and, eventually, law school.

CONCLUSION

Oral Argument has the potential to fill the pedagogical gap left by CX, LD, and PFD. It allows students to debate nearly identical topics as the other debate events, and does not reward flowing, spreading, or avoiding questions. Like Student Congress, Oral Argument provides students with skills to participate in directly analogous situations in the real world. The skills students develop in Oral Argument are more likely to be used after high school and college because more forensics competitors become lawyers than legislators. These skills are used not only by lawyers, but professionals, academics, and other individuals in a variety of settings.

RESOURCES

Free Resources on Oral Argument

www.theforensicsfiles.com

Full Text of Supreme Court Cases

<https://www.supremecourt.gov/opinions/opinions.aspx>

<http://caselaw.findlaw.com/court/us-supreme-court>

<http://supcourt.ntis.gov>

<http://loc.heinonline.org/loc/LOC?index=usreportsloc>

HeinOnline—Accessible through NSDA Portal

Briefs Filed in Supreme Court Cases

<https://www.justice.gov/osg/supreme-court-briefs>

http://supreme.findlaw.com/supreme_court/briefs.html

http://www.americanbar.org/publications/preview_home.html

Audio-recordings of U.S. Supreme Court Oral Arguments

https://www.supremecourt.gov/oral_arguments/argument_audio.aspx

Transcripts of U.S. Supreme Court Oral Arguments

https://www.supremecourt.gov/oral_arguments/argument_audio.aspx

Video-recordings of Texas Supreme Court Oral Argument

<http://www.texasbarcle.com/CLE/TSC.asp>

Law Review & Law Journal Articles

HeinOnline—Accessible through NSDA Portal

http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/free_journal_search.html

Moot Court – Written Resources

<https://law.duke.edu/students/orgs/mootcourt/tips/>

<http://blog.legalsolutions.thomsonreuters.com/law-school-1/tips-moot-court-tryouts-7-steps-preparation/>

<http://lawschool.about.com/od/lawschoolculture/a/mootcourt.htm>

<https://www.wcl.american.edu/org/mootcourt/2009-10/WhatisMootCourt.cfm>

<http://www.law.uci.edu/academics/professional-skills/ucilaw-moot-court/benefits.html>

http://cisgw3.law.pace.edu/cisg/moot/Winning_the_Moot_Court_Oral_Argument.pdf

Moot Court – Videos of Moot Court Rounds

2008 Davis Moot Court Winning Oral Argument

<https://www.youtube.com/watch?v=GALrNK6Kk3o>

The 2015 Ames Moot Court Competition - Final Round

<https://www.youtube.com/watch?v=SF11IEBoFAE>

Enrique Schaerer—Yale Law School Moot Court Finals

<https://www.youtube.com/watch?v=riq-MURml7s>

2014 Ames Moot Court Competition - Final Round

https://www.youtube.com/watch?v=Y-gA1_2My-E

The 2013 Ames Moot Court Competition - Final Round

<https://www.youtube.com/watch?v=MnF7gFSSPC8>

Vanderbilt University Law School 2009 Moot Court Competition

https://www.youtube.com/watch?v=RumvwaidN_Y

DEBATING WITH/ABOUT DISABILITY: A REJOINDER

BY MATTHEW G. GERBER*

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The recent issue of *NJSD* which centered on the intersection of competitive academic debate and disability functioned to enrich and advance an important conversation in the contemporary debate community. The questions surrounding accessibility in debate for people with both physical *and* cognitive disabilities have largely been un-asked in academic publications, and in light of that, the essays in the recent special issue are a welcome and appreciated contribution. The authors whose work appeared in that issue should be commended for sharing their perspectives on an issue that has been invisible, yet pervasive, in the debate community since its beginnings.

That being said, I believe I am in a unique position to offer a brief rejoinder, or a series of minor repairs if you will, to some of the arguments made in the most recent issue of the journal. I am a rhetorical critic by profession, and I am also a long-time, "veteran" policy debate coach. I have been in my current position as Director of Debate at a large college program for fourteen years, and I toiled as an assistant coach at another large and nationally successful program for five years prior to assuming my current role. I have been a part of the debate activity as a participant or coach for over twenty-five years, well over half of my life. I have described myself to colleagues as a debate "lifer"; someone who is dedicated to the debate enterprise as a way of being. Having now cemented my status as a debate dinosaur, it is safe to say that I have been around this game long enough to remember a time when questions of accessibility and disability in debate were not questions at all. The subject was simply ignored, and disability was often viewed as a sign of weakness, even in a seemingly progressive community like ours. In the early 1990s, when I was an undergraduate debater, the culture of the community was one of 'tough-mindedness,' and physical sacrifice in order to

achieve success. If you needed sleep, or water, or healthy food at tournaments, or some assistance carrying seven plastic tubs of evidence across a snowy campus, most often you were on your own, particularly if you were a student at a small college program without a coaching staff. Thus, for this old-timer, the recent wave of scholarly attention to the subject, and the appearance of actual in-round strategies involving questions of accessibility or accommodation for debaters with disabilities, is both a welcome and overdue development.

I also believe that my role as a parent to a child with a severe cognitive disability gives me some unique insight into the myriad questions and issues surrounding disability and debate. My son, who is now eight years old, is on the autism spectrum. He is “high-functioning” in some areas of his cognitive development (which is to say that his intellect is equivalent to that of a typical four-year old), medium-functioning in others, and low-functioning in still other areas. Like many people with autism, he struggles with language usage and comprehension. In fact, it is in this area where his “function” is the lowest. Like any parent, I entertained ideas about what paths my son might take in his life, and just as a baseball coach might wish for his son to grow up playing ball, I dreamed of one day introducing my son to the wonderment and gospel of debate. Sadly, as he has gotten older, I have started to come to the realization that he will likely never be able to participate in debate, at least in its current (and traditional) conception. As Richter put it, “some issues with debate . . . are intractable.”⁴ Competitive public debate, at all levels, will *always* involve reading and the cognition and comprehension that follows (at least for neuro-typical individuals), the *ability* to speak, the *ability* to comprehend the agreed-upon rules of the game such as time limits, not to mention the inherent nature of competitive debate as game whose *point* is to outsmart and strategically outmaneuver one’s opponent. What would competitive debate even resemble for a severely cognitively disabled student? None of the essays in the recent special issue address this question, and I would argue that the *competitive* nature of debate likely precludes the kind of wholesale rethinking of the activity that would have to take place in order for a student with a severe cognitive disability to meaningfully participate.

⁴ Zach Richter, *The Disabled Person’s Struggle in Round & Beyond: Taking Back Formerly Ableist Educational Spaces in the post-ADA Generation*, 4:3 NAT’L J. OF SPEECH & DEBATE 12–14, (2016).

As rhetorical critics, and as scholars whose work centers on the analysis and criticism of argument and public discourse, we should take care to ensure that the words *we* use are emancipatory and invoke the values of deliberative democracy. Specifically, the words we use to describe and represent disability, and debaters who have disabilities, should be chosen carefully so that the voices of disenfranchised members of the community can be included. I would even go so far as to argue that as rhetorical critics, experts in the usage and impact of discourse, we should be held to an even higher standard. For example, a few years ago at the 2015 NDT (National Debate Tournament), one of my debate teams had a post-round discussion with a judge that is illustrative of my point here. The judge in this particular debate was a former college debater, a very successful one, and was also a tenured professor at a prestigious university. He had also at that time recently celebrated the release of a critically acclaimed scholarly book on rhetoric. It is fair to say that this individual made a poor choice of words when he repeatedly described one of my debaters as seemingly having “intellectual paralysis.” It is also fair to say that rhetoricians, of all people, should be more aware of the language they use to represent disability. We should know, better than any other actors in the public sphere, that words matter.

It is with this example in mind that we can analyze Richter’s article on disability and debate. As I mentioned previously, I am in solidarity with the ultimate goals and purpose described in Richter’s essay: a less able-ist debate space that is more self-reflexive and introspective with regard to how it interrogates questions of disability. However, I take issue with some of the primary arguments put forth by the author. First and most obviously, Richter repeatedly fails to employ people-first language, and refers to “disabled people,” and the “disabled person’s movement,” at numerous points in the essay.⁵ By employing the phrase “disabled people” rather than “people with disabilities,” Richter discursively foregrounds the notion of *difference* and *deviation* that is culturally assigned to disability, and places the disability or impairment before the *personhood* of the subject. Richter also ignores decades of scholarship that addressed this question years ago; as Halmari noted: “The early 1990s saw a cluster of publications in psychological and educational literature, proposing a ‘people-first’ approach, where premodified nouns (disabled people) were to be replaced by postmodified nouns (people with

⁵ *Id.*

disabilities).”⁶ If the goal of Richter’s essay is to outline the parameters of an emancipatory and accessible debate space for people with disabilities, the author should take care to avoid rhetoric that re-inscribes exclusionary conceptions about the nature of disability. As scholars who are *all* in solidarity with regard to the overall cause in question here, I would remind all of us, myself included, to take great care with our language choices.

Second, Richter argues that “debate as an enterprise has been un-reflexive about the level of accessibility at events.”⁷ I disagree. Could the debate community be *more* reflexive about these issues? Of course. There is always room for more pragmatic, feasible accommodation at tournaments and in the activity writ large. However, I believe it to be both unfair and inaccurate to describe the community as in total disregard to the needs of debaters with disabilities. I have personally witnessed the debate community’s response to debaters with both physical and cognitive disabilities, and again, while there is work to be done in this area, there is also good work *being done* in this area. Tournament directors make room assignment accommodations for debaters and judges with disabilities that affect their mobility, or for participants with recent injuries that limit their mobility. Judges are sensitive to the growing number of students who are on the autism spectrum, or who have sensory disorders. Some debaters have even taken the radical measure of communicating with their judges and opponents, before the round, about measures to keep the pace of the debate at a reasonable rate because of cognitive processing disorders. That said, like the rest of society in general, the debate community has been more successful at accommodating debaters with physical disabilities than for those with cognitive disabilities, which are often invisible or harder to notice, but also ultimately more of an impairment to one’s ability to participate in debate. So, while the debate community has not been as bad at accommodating disability as Richter indicates, it is still not a safe or meaningful space for people with severe cognitive disabilities, at least in its current manifestations.

⁶ H. Halmari, *Political Correctness, Euphemism, and Language Change: The case of ‘People First,’* 43 J. OF PRAGMATICS 828–840 (2011).

⁷ Richter, *supra* note 1, at 12–14.

Third, Richter argues that there is no such thing as a person who is “too disabled” to debate.⁸ I disagree. This will be an unpopular statement, but sadly, there are in fact, some people whose level of cognitive function makes it impossible for them to participate in competitive debate as it is currently conceived. Richter fails to describe what a competitive debate involving four students with severe cognitive disabilities would entail. Some students lack the physical ability to speak, and also lack the cognitive capacity to communicate through written language. What would competitive debate and forensic education entail for that student? What changes to the debate format could be made to account for such an impairment? For other students, even those who have speech, the notions of time limits, rules, taking turns, reasonability, rationality, etc. are simply not attainable. This is not to deny their personhood, or their agency, or their value, but rather to simply say that for some students with disabilities, the competitive debate game, as it is currently structured and conceived, will hold little meaning or value. I also take serious issue with Richter’s assertion that forensic education for people with disabilities is “key to life within the current system.”⁹ This statement is legitimately frightening for a parent (who happens to be a forensic educator), who is grappling with the reality of raising a child who will likely *never* be able to engage in the kind of self-advocacy that Richter describes here. Rather, my son, and an entire generation of people with autism, will grow into adulthood with an acute need for assistance from caregivers, family members, therapists, and social workers. There are, in fact, many, many people who will never possess the cognitive abilities to advocate on their own behalf. For those people, in Richter’s world, life is precarious because they weren’t able to participate in competitive debate. I find this position to be both frightening for the aforementioned reasons, and dangerously naïve and over-simplistic. Self-advocacy is certainly a laudable therapy goal, and a life-skill that people with disabilities should be given the opportunity to reach. However, for the many others who cannot attain that level of mental development, the outcome need not be a death sentence, as Richter describes. If indeed my son’s future in our society and culture is precarious, and I do believe it is, his lack of forensic education in the skilled use of argument and logic is not a proximate contributing cause of that condition.

⁸ *Id.*

⁹ *Id.*

Finally, Richter advocates “crip optimism,” or a radical movement aimed at “redesigning the world for all body types, mental, psychiatric, and health statuses.”¹⁰ Unfortunately, readers of this essay are left with more questions than answers in regards to how “crip optimism” could be applied to the debate context. It is fairly easy to surmise ways in which physical disabilities or impairments, or afflictions, or injuries, could be reasonably accommodated in the context of a debate tournament. It is more difficult and challenging to imagine what types of changes might be feasible, if any, toward the goal of making the debate space accessible to people with severe cognitive disabilities.

Like autism, dyslexia is a cognitive disorder that affects the ability to process and decode language symbols in neuro-typical ways. Nelson and Miller argue persuasively that for debaters with dyslexia, the fast-paced reading style that is emblematic of contemporary policy debate could be a barrier to participation, given that dyslexia is also often characterized by difficulties with pronunciation, stumbling over words, and other problems.¹¹ While I agree that debaters with dyslexia face challenges with regard to being able to *compete* and *win* in the debate activity, I think the authors conflate participation with competitive success in this case. Dyslexia isn’t necessarily a barrier to participating in competitive debate, but it might seriously hinder one’s ability to have *competitive success* in the activity, at least as it is currently configured (fast speaking, ability to code language cues quickly, etc.). Nelson and Miller argue that debaters with dyslexia may be deterred from ever joining in the activity in the first place if they perceive little chance of competitive success. This may be true, but how does that differ from any number of other competitive co-curricular activities? Consider the example of the potential high school football player. A young man is thinking about going out for the football team, even though he is already a Junior. He begins to think about the nature of football, and the inherent requirements to have success in the game. He lacks physical size, speed, strength, is not an overtly competitive person, and has no experience playing the game. He decides that his chances of competitive success in football are slim, and so he opts not to try out.

¹⁰ *Id.*

¹¹ Natalie Nelson & Joshua H. Miller, *Dyslexia and Debate*, 4:3 NAT’L J. OF SPEECH & DEBATE 5–7 (2016).

There was no barrier to his participation, per se, he probably would have at least made the team, but his chances of having competitive success in the game were seriously limited because he had difficulties with basic, fundamental aspects of the game of football. Success in the game of football required characteristics that this young man did not possess, he recognized that fact, and chose not to participate. With *any* competitive activity, there is the risk that one will lose; that someone else will be better; that another debate team will have better evidence, that your opponent will be more prepared. There is risk of failure built into the debate activity just as with any other competitive activity. So, again, I think the conditions associated with dyslexia might negatively impact one's speaker points in a debate, or affect one's ability to "cover" all the arguments in the 1AR, and thus could result in losses; in failure. However, the condition itself does not prevent access to the activity, rather one's chances of winning the debate games. The authors argue that increasing font-size for evidence being read by debaters with dyslexia is a simple accommodation designed to "enable dyslexic individuals to read more efficiently and accurately," and thus have more competitive success in the activity, thus removing a potential deterrent to joining the activity in the first place.¹² Another accommodation might involve wholesale changes in the predominant style of contemporary policy debate. Gerber argued that the entire debate enterprise was at risk of fast-talking its way right out of existence because of the inherent exclusion of public audiences that is concomitant with that inaccessible style of debate.¹³ A conscious slowing-down of the speaking style in policy debate seems like a necessary step if one's goal is broader accessibility.

Dillon's essay on accessibility and debate camps goes the farthest of the essays in the special issue in terms of attempting to outline a list of practical, reasonable accommodations that debate camp directors should consider for debaters with disabilities.¹⁴ While some of Dillon's suggestions are probably too ambitious given the logistical and budgetary constraints faced by most summer workshops, the goals and purpose here are laudable. In particular, as someone who has

¹² *Id*

¹³ Matthew Gerber, *Toward Public Sphere Intercollegiate Policy Debate* 30 CONTEMPORARY ARGUMENTATION & DEBATE 76–88 (2009).

¹⁴ Kiranjeet Kaur Dillon, *Accessibility & Debate Camps*, 4:3 NAT'L J. OF SPEECH & DEBATE 10–11 (2016).

directed a medium-sized summer debate workshop for the past fourteen years, I find Dillon's conclusion that camps should hire two accessibility coordinators, and also a separate staffer whose "sole responsibility" is to coordinate and supervise a quiet room for campers, to be simply not feasible. For a large summer workshop with hundreds of students and a large staff, I think the author's suggestion could be a possibility, but for smaller or medium sized workshops with limited resources or non-profit status, it seems problematic and unrealistic. Dillon's other suggestions, particularly the idea of allowing campers to self-disclose any accessibility needs in advance, are both reasonably simple to implement, and impactful in terms of offering camp directors some practical guidance about the intersection of disability and debate camp.

In conclusion, I hope this essay has served to deepen and enrich the important discussion begun in the preceding issue of the *NJSD*. Primarily, I am in agreement with the authors whose work was included in the special issue on disability and debate; and I am certainly in a position of solidarity with those scholars in terms of the ultimate goals of their project. Debate is a wonderful activity, and it should be open and accessible to as many people as possible. That said, there are certain populations for whom *any* version of the debate activity will not be attainable, or a meaningful pursuit, and I have done my best to delicately identify this reality herein. Secondly, I have illustrated the importance of language choice with regard to how even rhetorical critics, those trained to understand the power of words, represent and *talk about* people with disabilities. Our word choices and representations play out in material ways, particularly with regard to disability. When we refer to people with disabilities, it should always be in a way that foregrounds personhood and agency rather than placing primacy on impairment.

BOOK REVIEW

THOMAS A. HOLLIHAN & KEVIN T. BAASKE

ARGUMENTS & ARGUING:
THE PRODUCTS AND PROCESS OF HUMAN DECISION MAKING (3rd ed.)
(Long Grove, IL: Waveland Press, 2016)

BY NICK J. SCIULLO

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Hollihan & Baaske's new edition of *Arguments & Arguing* is an engaging text, well written, and with ample examples and notes. The text is highly recommended for classes in argumentation, persuasion, public controversy, and deliberation. While scholars aren't likely to get anything new from this textbook, undergraduate and high school students most certainly will. Furthermore, although the audience is broader than debate coaches and participants, the chapters on academic debate are engaging, and debate and forensics educators ought to consider this textbook for classroom use. New to the third volume is a chapter on visual communication, as well as more discussion of multimedia.

There are several features that make this text ideal for the college and even the high school classroom. Each chapter has a summary, key terms, activities, and recommended reading sections. This helps with lesson planning as well as directing students' attention to key material. The ample notes also provide a starting point for more advanced students to conduct research in argumentation. Of note, the text is not weighed down with the theoretical material that can sometimes be a challenge for scholars and students—pragmadilectics and symbolic logic, for example. The citations are a good mix of argumentation and debate resources with the journals of record in rhetorical studies well represented (*Quarterly Journal of Speech, Argumentation & Advocacy*, etc.). A glossary also provides a useful study tool for students. The notes include texts through 2015,

demonstrating Hollihan & Baaske's new edition is timely as well as the continued relevance of argumentation studies to the issues of the day.

The book follows traditional argumentation textbook order: introducing argumentation and rhetoric (Chapter 1), providing for the foundations of argumentation (Chapter 2), audience analysis (Chapter 3), language and argument (Chapter 4), critical thinking (Chapter 5), types of argument (Chapter 6), grounds for argument (Chapter 7), building arguments and doing research (Chapter 8), refuting arguments (chapter 9), and visual arguments (Chapter 10). Chapters 11-16 consider argumentation in specialized fields including two chapters (Chapters 11-12) on academic debate. The coverage is ample and although it would be easy to write that a few more pages should be included here or there, the book is both reasonable in depth and breadth.

One notable omission, or more charitably one area under covered, is the discussion of argumentation and identity. Scholars looking for gender, cultural, or racial differences in argumentation, language, or a discussion of the continued relevance of identity in academic debate will need to look elsewhere. It is a shame that the authors could not include a discussion of these ideas given their salience in public discourse and academic debate. Furthermore, where more meaningful discussions of race could be had, the discussion seems deliberately obscure. When discussing the conflict between Palestinians and Israelis, Hollihan & Baaske prefer the generic "Arab" to describe the people with whom Israelis are in conflict.¹⁵ Sure enough, I suppose, but this is an opportunity to recognize Israel's systemic colonizing, otherizing, and killing of Palestinians, and engage in a nuanced discussion of competing claims and historical interpretations.

The unnamed Palestinians or the Israeli state's systemic violence might seem to distract from this review, but because the reader confronts it so early in the text, Palestinians haunt the reader. In Appendix C, the authors provide Prime Minister of Israel Benjamin Netanyahu's March 3, 2105 Address to a Joint Session of Congress,¹⁶ which of course received attention from commentators across the

¹⁵ THOMAS A. HOLLIHAN & KEVIN T. BAASKE, *ARGUMENTS & ARGUING: THE PRODUCTS AND PROCESS OF HUMAN DECISION MAKING* 13 (3rd Edition) (Long Grove, IL: Waveland Press 2016).

¹⁶ *Id.* at 323–30.

political spectrum. Yet, absent context, the textbook seems book-ended by pro-Israel rhetoric. Netanyahu's speech is presented without a discussion of the February 26, 2015 Israeli arson perpetrated at the Greek Orthodox Church in the Old City or Israel's February 9, 2015 declaration of "closed military zones" displacing many Palestinians communities. These are opportunities to extend dialogue, weigh evidence, and focus on language, yet the authors fail to do this.

Likewise, there are times when the authors' writing might be read as ablest. For example, phrases like "blind hatred" have the potential to harm.¹⁷ To be sure, there is plenty of evidence to suggest that vision incorporates components beyond the physical ability to see, and indeed might not even require physical sight, but the authors do not provide readers with a justification for that language choice. Given the increased study of abilities in rhetoric and debate research, I hope the authors, in a fourth edition, will consider justifying or revising this language.

These concerns, which are of course open to argument, aside, the text is an approachable entry into argumentation studies. Textbooks on argumentation are difficult to select with some seemingly too theoretical and others over-emphasizing academic debate or failing to mention it. Hollihan & Baaske have made a serious contribution to argumentation studies, and their work should continue to be read in classes until the fourth edition is published.

¹⁷ *Id.* at 67.