Nevertheless, there are two practical things that you must do in specific preparation for the oral argument. First, you must decide what points to argue and then prepare your argument. Second, you must gather the information that the court will expect you to know—to have at your mental fingertips—when you are at the podium.

13.3.1 DECIDING WHAT POINTS TO ARGUE

Your job on oral argument is not to present a summary of your brief.[9] Your short time at the podium will not be sufficient to discuss all of the issues and arguments that you raised in the brief. When planning your oral argument, identify the two or three points that are most necessary to convince the court of the justice of the result you seek. Frequently, these points will be those that could be resolved in favor of either party,[10] and thus, spending time on these points in oral argument will be particularly important. When deciding what points to argue, you may ignore points that you included for completeness but that are not crucial for your argument. For example, most statutory interpretation arguments include at least a short discussion of the statute's plain language, even if counsel believes that the plain language argument is a sure loser. In that situation, some unfortunate attorneys will begin an oral argument with what they plan to be a short discussion of plain language, thinking they will get past it and move to their more important arguments. Unfortunately, the court is not always in on the plan. As Florida Appeals Judge David Gersten warns, attorneys who try to address too many points may "get bogged down on questions on [their] weaker points and never get to the crux of [the] case."[11]

As you take notes on the points you will present to the court, write down citations to cases and statutes that support your assertions. Although you will not be reading from your notes, the act of writing down the points and their supporting authorities will help cement them in your mind.[12]

In your brief, you may have followed a CREXAC (Conclusion, Rule, Explanation, Application, Connection-Conclusion) model of analysis. When planning your oral argument, think in terms of a pared-down version of that model—more like "CRAC," if you will. That is, first, you should state the point, or the conclusion, that you want the court to agree with. Then support that conclusion by stating the rule that governs the

[9] *See, e.g.*, Karen J. Williams, *Help Us Help You: A Fourth Circuit Primer on Effective Appellate Oral Arguments*, 50 S.C. L. Rev. 591, 595 (1999).

[10] *Id.*

[11] Judge David M. Gersten, *Effective Brief Writing and Oral Argument: Gaining the Inside Track*, 81 Fla. B.J. 26, 29 (Apr. 2007).

[12] *See, e.g.*, Williams, *supra* note 9, at 594.

issue. If a case or statute is significant to your argument, you may mention it, but in oral argument, the rule is frequently more important than the citation to authority for that rule. On the other hand, you must be thoroughly familiar with all of the relevant authorities so that you may answer any questions about them. In addition, in some cases the relevant authorities become an important part of the argument.

Generally, the explanation part of the formula that was so important in the brief may be all but eliminated in the oral argument. The judges' eyes may glaze over during any lengthy recitation of authority case facts and holdings unless it is given in response to a specific question. How much support you should give for the rule varies from issue to issue. If the meaning of a rule, or which rule to apply, is at issue, you may need to spend more time talking about relevant authorities. In contrast, if you are arguing about how an established rule applies to the facts in your case, you should plan to go into more detail about your client's facts. Of course, you must still be prepared to discuss the relevant authorities if the court asks you questions about those authorities or about how they might apply to hypothetical situations.

After you have stated the rule and supported it (if needed), apply the rule to the facts by naming the particular facts that mandate the result that you seek. Remember that the meaning of the word *facts* in this context may vary from issue to issue. If the meaning of statutory language is at issue, for example, the facts may consist of the words from the statute. While the explanation section of the formula may be all but nonexistent in an oral argument, do not skimp on the application of law to facts. The judges will be particularly interested in why the facts of the case mandate the application of the rule in the manner that you suggest. Similarly, they will benefit from a detailed discussion of the result that occurs when the rule is applied to your facts.

Although planning your argument is useful, realize that you will rarely be permitted to proceed through the argument of an entire point without interruption.[13] Nonetheless, you should outline a full discussion of each of the points you plan to make during the argument. Doing so teaches you more about your case as you prepare to face the panel.

13.3.2 GATHERING INFORMATION

After you have planned your argument, make sure that you know the case, the issues, and the relevant authorities well enough to answer the court's questions. Although you should limit your prepared presentation to only two or three points, the court will probably ask you about othe

[13] *See, e.g., id.* at 598.