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Prep, Panic & Poise: Inside An Associate's First Oral Argument

By **Jeff Overley**


Fraser Holmes

Law360 (November 24, 2025, 9:23 PM EST) -- Fraser M. Holmes followed a long professional path to a Texas court's lectern. He'd been a baseball blogger, travel writer and social studies teacher before appellate law beckoned. After years of toil, a milestone moment — his first oral argument — finally arrived, but as justices took the bench, his heart sank: "Oh, my God. I think I've just forgotten my entire argument."

The abrupt amnesia couldn't have come at a worse time: In mere seconds, Holmes would walk to a microphone, center stage in a cavernous courtroom, and field a flurry of questions from Texas appeals court justices. It was an opportunity only made possible by years of law school, more years of clerkships, and a pivotal choice by his boutique firm — Houston-based Hicks Johnson PLLC — to bypass its partners in favor of an associate who'd never argued a case. And now the associate's brain was blank.

"You may take over the podium," Third Court of Appeals Chief Justice Darlene Byrne told Holmes as he searched his mind for an opening statement he'd spent weeks practicing at work with his colleagues and at home with his two beagles.

Countless lawyers have frozen in the face of intense pressure — it's a universal human response, but it usually doesn't end in excruciating embarrassment. Holmes described his startling memory loss — and what happened next — in an interview with Law360 about the preparations, experience and lessons of his inaugural argument.

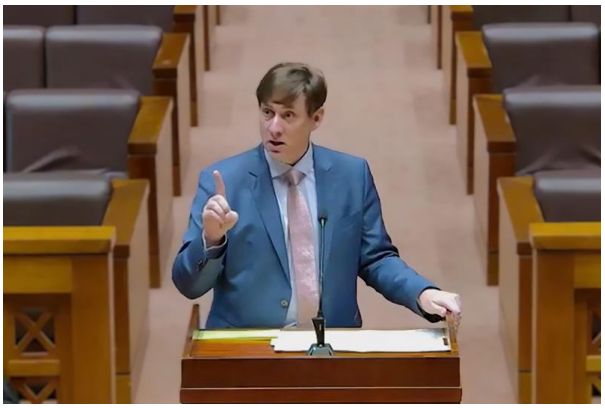
As with the debut arguments of most appellate attorneys, Holmes' argument occurred in a relatively low-profile case. The case, Smith v. Ranger Excavating, involved a construction site supervisor's trip-and-fall injury and Holmes' attempt to revive the supervisor's lawsuit, which a lower court had rejected.

Low-profile arguments with rookie advocates typically don't get much public attention, but they're essential first steps for aspiring legal orators. Entrusting young lawyers with arguments has become especially crucial, experts say, as law firms bulk up their appellate teams and increasingly loop in appellate specialists at the outset of litigation.

Hicks Johnson, which was founded in 2007 and also has offices in Chicago, has exemplified that trend. It's been expanding its appellate practice, it recently hired appellate veteran Andrew Gould, and it

entrusted Holmes to deliver his debut argument before a three-justice panel of a prominent state appeals court.

That debut occurred last month, and as Holmes sat at his counsel table, there was no sign that he was suddenly at a loss for words. And no such sign ever became visible — Holmes strode to the courtroom microphone while smiling, nonchalantly straightened his tie and ran his fingers through his hair, and spoke clearly while rarely glancing at notes he'd brought to the lectern.



At a Texas appeals court, Fraser M. Holmes of Hicks Johnson PLLC in October delivered his first oral argument. (Third Court of Appeals at Austin)

It ultimately wasn't enough — the appeals court this month affirmed the lower court's ruling — but Holmes' client didn't even wait for the appellate decision before reaching out and asking him to handle another upcoming argument.

This interview has been edited for length and clarity.

You earned multiple degrees and worked a variety of jobs before pursuing a legal career — tell me a bit about all that.

I am from Dallas originally, and I went to a little liberal arts school in Arkansas called Hendrix College. I started thinking I wanted to be a professor, and I got into [the University of North] Carolina [at Chapel Hill], but I realized pretty quickly that academia wasn't going to be for me. It's just a very difficult world.

[After earning a master's degree], my then-girlfriend and I moved to Oakland, California. I freelanced, and I had a blog about the [Oakland] Athletics and the [San Francisco] Giants, and I wrote itineraries for a travel firm. But I wanted something a little more rewarding, so I moved back to Texas, and I taught eighth grade social studies for a year in Fort Worth, which was the most difficult thing I've ever done. I was working in a low-income area, and it's challenging just generally to talk about, you know, the Missouri Compromise to a group of 13-year-old students. But it's really, really difficult when they have much more important things to worry about.

And then, my folks are lawyers; they never pushed me to go to law school, but more and more, [I started thinking], "Hey, maybe this is something I would want to do." And so I applied to [the University of Texas at Austin School of Law] and I got in. That's my circuitous path to law school.

What legal work do your parents do?

My dad, he's a transactional lawyer. He and I represent the true disconnect between litigators and transactional attorneys, because I don't really have any idea what he does, and I don't think he really has any idea what I do. My mom was a criminal attorney for a long time; she worked in the Dallas public defender's office, and she has been a criminal district court judge in Dallas County since 2006.

You had two clerkships before joining Hicks Johnson. What lessons stand out?

My clerkship with [U.S. District] Judge [Sam] Sparks [in the Western District of Texas] was really unique, because I was his last clerk; in final six months of the clerkship, he was in a senior living facility, and I

would drive out to see him, so that was really interesting. I learned a lot from Judge Sparks, of course, and he had former clerks who were assistant United States attorneys — I learned a ton from them about criminal justice mechanics.

My clerkship with [U.S. Circuit] Judge [Bridget S.] Bade on the Ninth Circuit was like a 4L year — you're doing the same things you did in law school, but in a practical way. I saw probably 30 arguments when I worked with Judge Bade, and it's invaluable, because you learn what good advocates do and avoid doing. You learn how the judges' questions are indicators of what they're thinking. And I think the best advocates take those indicators and focus their message toward those indicators. Clerking is so incredible because it is an apprenticeship in a way that I don't think a lot of jobs are anymore. So you learn directly under an incredibly intelligent, committed public servant.

Why did being an appellate lawyer — no pun intended here — appeal to you?

What attracted me to grad school is the intellectual activity of putting together sources [of information] and becoming super knowledgeable about them, so you can present a position and an argument. That drew me to academia, but I lacked a real-world thrust to what I was doing. What I really like about being an appellate lawyer is that I get to do those intellectual things, do those puzzle-piece things, think about how to persuade somebody, and do it in a way that benefits at least one person, which is the client, and that has a real-world impact.

Do you envision being a generalist, like many appellate lawyers, or specializing in certain practice areas?

I would love to be a generalist. The thing I love is that your goal is to become an expert [in a specific topic], so you can talk to a neutral observer with objective questions and try to get them to a subjective point. The aspect I find most interesting is not necessarily the substance. It's the — I don't want to call it performative, because that feels a little artificial — but it's the process that is really interesting to me.

There's an eternal debate about how much oral argument really matters. What's your view?

I will start with paraphrasing my judges [for whom I clerked]. Judge Bade's point on it, like a lot of appellate judges, is that it is much easier to lose at oral argument than to win.

Also, judges come in with expectations shaped by briefing, and I understand [why people ask], "How much can you do, really, when there are already papers on it?" But in difficult cases, you cannot reach every question during briefing; it's just too much. Even if you can, you might do so in a way that not all the panel [comprehends]. A judge may say, "OK, I think I understand, but explain it." That's what the value is: It's helping judges understand nuanced, trickier points, and doing it in a way that reaffirms the credibility of your argument and the credibility of you making the argument.

After your clerkships, what drew you in 2023 to Hicks Johnson?

I knew I wanted to join a litigation boutique, because those were the places to get real responsibility and real opportunities. And Hicks Johnson absolutely has done that. The proof is in the pudding — within months of committing to developing our appellate practice, they gave an associate an oral argument before a Texas intermediate court.

Also, the Houston market is suffused with really good lit boutiques, but I felt a real emotional

connection with the people at Hicks Johnson. They seemed committed to being strong professionals, committed to thinking about the law and working hard for clients, but also cared about their coworkers and demonstrated a dedication to keeping them at the firm.

And recently, I suffered a personal loss; it happened on Friday, and on Saturday, I got a knock on my door, and I had flowers from my firm for consolation. That speaks to why I wanted to come here — that emotional connection is not fake. People genuinely care about each other. And this is a really stressful, time-intensive job. It was important to me to come to a place where I was going to spend time with people who cared about me as a person, in addition to the work I was doing, and that's this place to a T.

An attorney's first U.S. Supreme Court argument always interests appellate lawyers. Far less attention is paid to an attorney's first argument anywhere, which happens before they can even imagine arguing at the U.S. Supreme Court or a state supreme court. How do you view the importance of that very first argument?

It's important to get arguments as quickly as possible because — and I'm stealing this from my mentors at the firm — it is a rep thing. I worked really, really hard to prepare. But there were still things in the argument that there's no way I could have prepared for. And the only way I could be prepared in the future is to experience it live.

The Supreme Court strikes me as a little unique because of how professionalized that bar has become. I would hesitate to speak with any authority about those folks. But I certainly think that, like you said, they had to start somewhere. And because of how specialized it is, there's value in arguing at state and federal intermediate courts, because they work in different ways. You learn that what is effective in one venue is not necessarily effective in another.

That actually gives me an idea for a separate story — maybe we'll talk down the line about that. For now, why did this case make sense for your first argument?

So, Andrew [Gould] had a really great relationship with the [law firm] client, which came to Andrew and said, "Hey, we have an oral argument, and we think you would do a good job on it." Andrew and firm leadership, to their everlasting credit, said, "You know what? This is a case with a relatively straightforward legal issue. The record is not thousands of pages long." And so they said, "Why don't we give our associate a chance? It's a good way to get him experience."

I'm curious about your professional preparations, like moot courts, as well as personal preparations, such as a special meal — some lawyers, for instance, eat salmon the night before arguments, because [former U.S. Solicitor General] Don Verrilli famously once said it was brain food.

Well, I will say that from now on, my preparations will include eating salmon.

During most of my preparation — and I must have looked like a lunatic when I was doing this — I talked out my argument to myself in my house. I talked to my dogs about my argument. And for all things legal, I love the writing aspect, but writing is much more effective if it's written like people talk, because we talk in a more straightforward way. And so it didn't make sense to write a lot of notes — I needed to prepare by speaking. And I [ended up having] moments in the argument where I thought, "I have talked to myself about this answer."

I also did do a moot with Andrew and another partner at our firm, Marc Tabolsky, which was so incredibly helpful. They're super busy, and I was grateful for them to take time.

In the run-up to the argument, how was your confidence?

Oh, I was nervous. I was very nervous. But I've talked to a lot of partners here — people who have argued over and over again, and who are incredibly good — and they get nervous, too, and that made me feel better. You learn to use energy positively and make sure you can handle anything. And the only way to do that is to know [your case] really, really, really well. So, I am actually grateful I felt nervous. If I had been complacent, I might not have been as well-prepared.

Did you do anything distinctive, such as meditation, for your nerves?

I don't think I did anything as formal as meditating. But I was very conscious of the importance of taking breaks, just mentally. So I took half an hour every day and watched a "30 Rock" episode, because I love "30 Rock." It was a good way to think about something else, laugh and wipe my mind of serious things for a silly, well-written sitcom.

What about the night before and the morning of your argument?

Andrew and I stayed at a hotel in the middle of Austin, right off The Drag, a stretch of Guadalupe Street at the western border of [the University of Texas'] main campus. There's a lot of restaurants and bars, and I was like, "I don't know how much sleep I'm going to get, because it might be really loud." And I never sleep well in hotels. But I got more sleep than I was anticipating.

I remember waking up early and putting together my notes; that was the last bit of prep to really nail down what was important, what I needed refreshers on. And it turns out I used my notes in my opening statement and then never again.

Yeah, I saw you glancing at notes when the argument began, but you quickly stopped using them. And let me ask, your opposing counsel [Wade C. Crosnoe of Thompson Coe Cousins & Irons LLP] is very experienced. How did that affect you?

To be honest, I knew that whoever was going to argue against me was going to have more experience than I did. And if I had thought more about it, I might have been intimidated, but I wasn't even focused on who was on the other side. I was so focused on what I was trying to say. Maybe if it had been [U.S. Chief Justice and former Principal Deputy U.S. Solicitor General] John Roberts, I might have been intimidated. But I was so locked in that I didn't really even think about who my friend on the other side was.

What was the scene like at the courthouse?

The Third Court of Appeals is linked via a very long hallway to the Texas Supreme Court, and we happened to see the Texas solicitor general right before we were arguing. Andrew knows the solicitor general, so we chatted with him. And my mom came to the argument, so I met her outside the courtroom, which is really, really beautiful. Even when I was on the Ninth Circuit, a lot of our courtrooms were not very big — they're sort of fancy, big rooms. But this felt like a proper [courtroom] — it was a huge space with pews and was very, very august. It was really cool — an incredible opportunity right out of the box.

Chief Justice Darlene Byrne started the proceedings with lighthearted comments, saying, "We are broadcasting this on our YouTube channel, so, you know, gussy up your hair and contact all your family members ... to see this later in front of the fireplace with your children and pups." Did that put you at ease?

I don't really remember. There was a moment, I have to be honest, right before I got on — and I've heard other people have this [same experience] — I had about 15 seconds where my mind went completely blank.

It was like, "I think I have forgotten literally everything I was about to talk about for the next 20 minutes." And I got up, and it came back. That's mainly what I was thinking about during introductory remarks: "Oh, my God. I think I've just forgotten my entire argument."

Wow, that's a gut check moment. I'm glad it all came back to you. And so, regarding the actual case, you were arguing for reversal of a lower court. Does that differ, in terms of dynamics, from arguing for affirmance?

I think it can be different. One of the nice things as an appellee trying to preserve the judgment below is that you have a judgment below, right? I think about it like replay review in sports, where you need something clear and obvious to overturn the decision on the field, whereas to have it upheld, you just have to show that it's not wrong.

And so, in some circumstances, that leads to argument differences as the appellee — you're just saying, "Listen, maybe [the lower court's decision] wasn't perfect, but it wasn't wrong enough for this court to do anything." As the appellant, it has to be a little more affirmative — "There is something wrong here, this is why it's wrong, and this is what needs to be reversed."

Looking back, which argument moments stand out in a good way?

I will say that I had to rewatch my argument, because I don't remember a whole lot of it; I kind of blacked out of it. But what I was really pleased about was my rebuttal. And I give a lot of credit to Marc Tabolsky for that. When we mooted, he said, "You should have some points you want to raise on rebuttal, because it will be easier than trying to listen and pick up what you want to rebut — you'll have too many points, and it'll be scattershot."

So I went in knowing some of the things I wanted to hit. And I think the flow of my rebuttal felt very organic. So I was really, really pleased with my last two and a half minutes. I thought I did a good job there.

Any moments you could have handled better?

What I have heard really skilled advocates say is that the cardinal sin of appellate advocacy is not answering a question — a judge asks a direct question, and you don't give a direct answer. I had an exchange with the chief justice about [Occupational Safety and Health Administration] violations where she asked a question two or three times before I understood what she was asking. So I wish I had been a little more direct.

The other thing is, I felt like I was moving around a lot — I thought I looked like, "Man, I'm moving my

hands, all that stuff." I've talked to a number of people who've said, "No, I don't really see that." But that was what struck me — that maybe I was being a little twitchy. So that's something I need to focus on.

I agree with the people you've talked with; your hand gestures seemed natural to me. What else did people tell you afterward?

Andrew's observation was that the justices and I had a good rapport. So I was pleased to hear that. The folks that I talked to said, "Yeah, that was a hot bench, but that's kind of what benches are like nowadays." So the timbre of the argument did not seem noteworthy to anybody I talked to.

You mentioned rewatching — did you do so, as Chief Justice Byrne suggested, with anyone else?

I did. I was with my dogs — my dogs watched it with me. They were nonplussed.

And I sent it to my family and some friends. I have a really good buddy I sent it to, and he was like, "This video is an hour long — I will try to find some time to watch it."

What are your dogs' breeds?

I had two beagles. Now I have one. She's a beagle mix.

Was that the personal loss you referenced?

Yeah, my dog died on Friday. The one I still have is named Jessie. The one I lost was Dickens.

I'm so sorry. Sincere condolences. You mentioned that your mom attended your argument — what did having her there mean to you?

It was kind of nerve-wracking to have another person there watching, but it was also a really nice support for me, and it's been nice getting to talk with her about it. Obviously she's incredibly experienced in the law, but she's not experienced in this aspect — she doesn't know appeals. So it was really nice to get her thoughts. I don't know how objective they were, given that she's my mother, but they were nice to hear.

What were her thoughts?

One thing she said that I was glad to hear was that it appeared very natural — that I was acting as myself. And people say all the time, "Don't try to be somebody you're not, because if you aren't you, you will get found out."

That's an easy thing to say, but it's a harder thing to execute — we have these expectations of, "This is what an advocate is supposed to look like. This is what an advocate is supposed to do." And I was grateful to hear that I had the command of the subject matter and the proceedings to feel comfortable being myself in that environment.

Did you do anything to celebrate after the argument?

We did actually go out to lunch at a little Austin diner; Andrew offered to buy me a drink, and I graciously declined that request — I said, "I think if I had a drink right now, I would fall asleep." I was so

tired. I was so worn out.

Now that you've rested up, is anything on tap for your second argument?

The client reached out and said, "Hey, we watched the argument, and we thought he did an incredible job. We would love to have him do this appeal that we have before the Fifth Circuit." Later, a conflict came up, so I will not be handling that matter, but I do anticipate additional client opportunities for me soon.

And it was incredibly rewarding to hear directly from the client how pleased they were. It kind of gets back to why I was so excited to do appellate work to begin with: It's everything I enjoyed about graduate school — becoming an expert, trying to convince others of your position, etc. — with the real-world impact of getting to help someone with your work product.

I think sometimes, at least for me, practicing law can get a little abstract, so it's nice to be reminded that the work you did was actually to help someone, not just to show off how smart you are.

--Editing by Brian Baresch. Video editing by Steven Trader.
