Episode 37: Surviving Law School Moot Court

Lee Burgess: Hello and welcome to the Law School Toolbox Podcast. Today we are talking about how to find success during your 1L Moot court experience. Your Law School toolbox hosts are Alison Monaghan and Lee Burgess. That's me. We're here to demystify the law school and early legal career experience. So you'll be the best law student and lawyer you can be.

We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, the Catapult Conference, and the Trebuchet legal career site. Alison also runs the Girl Guide to Law School. If you enjoy the show, please leave us a review on iTunes and if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolbox.com and we'd love to hear from you. And with that, let's get started.

Alison Monahan: Welcome back. Today we're gonna be talking about doing mood court and rocking your first semester oral argument, which is something that most one Ls are gonna end up doing second semester of your first year. But if you've already finished moot court, this advice might still be helpful if you're going to take part in some other type of advocacy competition.

So Lee, let's start off what actually is moot court?

Lee Burgess: So moot court is something that I think all law schools have in one form or another, and it's basically to give 1Ls exposure to drafting appellate arguments and then actually standing up in front of judges and doing an appellate argument. Some schools have a written component that's part of the course, and so you actually have to write an appellate brief. Sometimes you only will write part of it. Sometimes you'll write the entire thing, but you usually just write one side. So you're either representing either the plaintiff for the defendant, or if it's criminal, possibly the government or the defendant. And then, you know, sometimes you only are responsible for writing even one issue in the brief.

So. There are so many different ways to do this, but there's usually a written component and then the oral component. Sometimes schools grade on moot court. My entire moot court experience was pass fail, but that was partly because it was run by a student run moot court council with faculty advisors.

And so I guess they didn't wanna give them the power to grade us. I'm not really sure. But but a lot of schools have at least either part or all of it be graded. So it really depends. It's usually somehow linked to your law school legal writing program.

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Alison Monahan: Yeah, I mean, that was the way that it was for us.

You know, we got, I think partners teamed up and we had to team up on different issues in an appellate brief to write one side of it. And then I guess we both had to argue, I mean, we must have both argued. So it was like teams of two and different people were arguing each issue as I recall.

Lee Burgess: Yeah. We had to argue one side.

And then we argued against like another team that had all briefed the other side but.

Alison Monahan: Right. Exactly. And I think it was split, so it was like two separate issues.

Lee Burgess: Oh, okay.

Alison Monahan: So you were like, you and your teammate were jointly responsible for one side of the argument, but it was like two separate sort of distinct arguments as I recall.

Lee Burgess: And then did you guys have real judges or alumni come and become judges for the appellate's arguments?

Alison Monahan: Yeah. It was definitely like a team of people you had never seen before,

Lee Burgess: Mm-hmm.

Alison Monahan: Who were judging you. I don't remember exactly what they were, but they were definitely practicing lawyers and they were definitely pretty scary as I recall.

Lee Burgess: I know, I think I think some of the alumni took it pretty seriously.

Alison Monahan: They were. Oh yeah. I mean, I think, you know, we might've even had like a sitting judge on the panel and like partners in law firms.

Lee Burgess: Mm-hmm.

Alison Monahan: I mean, it was definitely, these are people who are pretty intimidating as I recall.

Lee Burgess: Yeah. And I think just anytime that you stand in front of a panel of anybody and, and speak to them is intimidating alone.

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If they are judges are practicing lawyers, I mean, I think if you've never seen a real appellate argument it is definitely set up to be intimidating.

Alison Monahan: Right. And it's not the, you know, it's the sort of thing where. Like they're not just letting you kind of like give your little speech, you know?

I think sometimes people think like, oh, I'm just gonna go in and I'm gonna prepare my argument and I'm gonna like read my argument.

Lee Burgess: Mm-hmm.

Alison Monahan: But that's not really the way that this works, unfortunately.

Lee Burgess: Yeah. I think that's one of the things that makes, you know, moot court so intimidating for law students.

And then of course what makes oral advocacy at the appellate level such a craft is you do have to really understand that, although you might go in there with all these things that you wanna say. The dynamic is you're just going to be interrupted and peppered with questions. And so it, you have no control over really the content of the argument.

Which is what really makes it a challenge.

Alison Monahan: Right. And I think that's why it's challenging to prepare for, because you sort of have to be ready to jump off in all these different directions. And you know, sometimes people get really intimidated if they're asked, if they're asked questions in an oral argument.

But really, you know, and this is the same in real life, like that's an opportunity for you to actually convince the judges of your position. I mean, you know, I think we've all read even stories of the like Supreme Court arguments where people, you know, the judges are like, I don't actually know for sure which way I come down on this.

Like the briefs are all really good.

Lee Burgess: Mm-hmm.

Alison Monahan: And if I'm asking questions, it's because I actually want an answer. I'm not doing it to be difficult.

Lee Burgess: Right.

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Alison Monahan: And so, you know, I think approaching your moot court argument in that spirit. Of, it's not that they're trying to throw you off your game by asking you these questions.

It's thinking about how can you prepare you know, how can you prepare your argument basically so that you're, you're able to go off on these tangents and respond when someone actually has a question.

Lee Burgess: Yeah. You really have to have a mastery of the material and a comfort level with the material that you can discuss in an intelligent way.

Alison Monahan: Yeah, and I think a lot of that is like, you know, thinking about how you're gonna prepare, like we think that you're preparing a speech. That's not gonna be as effective as thinking about other ways to, you know, thinking about like, well, what are the key questions?

Lee Burgess: Mm-hmm.

Alison Monahan: You know, what are the, what are the gray areas in the brief?

Like put yourself in the position of the judges. Like, what would I ask myself? What would I ask this person about if I was a judge? You know, you wouldn't be prepared to respond to all of that.

Lee Burgess: No, it's very true. Do you remember, wasn't it a few years back, you and I went to an event hosted by Above the Law where David Latt was interviewing folks who were some of the attorneys preparing for the arguments at the US Supreme Court on Proposition eight.

Alison Monahan: Yeah, that was interesting.

Lee Burgess: That was interesting. 'Cause I, as we talk about this, I'm remembering them talking about prepping for those or arguments and, you know, these, these attorneys who are, you know, well seasoned and have argued at the Supreme Court over and over again, which I mean, if, talk about being at the top of your craft if you're somebody that they bring in to just make arguments at the Supreme Court.

Alison Monahan: I know I saw a funny thing on that note about I guess Apple recently hired Ted Olson

Lee Burgess: Oh.

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Alison Monahan: To to go against the subpoena from the FBI.

Lee Burgess: Mm-hmm.

Alison Monahan: And they put out a press release, something to the effect of like, we're prepared to go to the Supreme Court.

And all the lawyers are like, we know that you hired Ted Olson.

Lee Burgess: Exactly.

Alison Monahan: Like there's no mystery here. We know where this is heading.

Lee Burgess: But I thought what was so interesting when we were at this talk and, and this talk was so legal, geek, like oriented, it was so funny. I mean. Everyone in there, it was like we were all using legal speak and con law terminology and I was thinking that if anyone in there wasn't a lawyer in law school, you would've had no idea what was being talked about.

Alison Monahan: And been bored out of your mind.

Lee Burgess: Yeah. But but I thought it was interesting that even these attorneys who do this for a living who are known to be at the top of their craft, they do such significant preparation of these mock arguments where they have other of the attorneys that work on the project, peppering them with questions because it, even at that level, it is very hard to manage an argument like this.

Alison Monahan: Oh yeah. And it, there's actually a fascinating, I got a tour of Georgetown Law School one time and they actually have an exact replica of the Supreme Court chambers.

Lee Burgess: Oh, wow.

Alison Monahan: And it's, they have one, and so they're like, for basically every major Supreme Court case, like we get phone calls and it's basically like whoever calls first gets to use this, whichever side calls first gets to use this to prep.

Lee Burgess: Hmm.

Alison Monahan: And it's literally like the exact, you know, the furniture is the same.

Lee Burgess: Wow.

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Alison Monahan: The carpet is the same. Like everything is the same. So, and that's where they do their prep work. So it's like when they walk in there, it's not. Like, oh, I've never done this before. And I think that's the feeling that ideally students need to go in with too, is like.

Yeah, this is the first time you're doing an oral argument, but you, it's sort of like taking an exam. You don't want it to be the first time you've ever thought about how to do this.

Lee Burgess: Exactly.

Alison Monahan: And practiced it.

Lee Burgess: And practiced it. And realize, I think that the fact that it is set up to be intimidating, I mean, I know that every time I've stood in an appellate courtroom, and I have not argued at the appellate level at all, but I've watched other people do it.

These, these courtrooms are all set up to be very intimidating. Usually the justices are like raised above you somehow,

Alison Monahan: Right.

Lee Burgess: And like are looking down at you.

Alison Monahan: Yeah.

Lee Burgess: I know the ninth circuit is that way as well. And you know, it's even in my law school. I mean, we did it in one of the lecture halls and the judges, you know, we sat, stood at the podium like where a professor was stand and then the judges sat up in the seat so they could look down at us. You know, I mean, it's-

Alison Monahan: Yeah, it's very hierarchical.

Lee Burgess: It is very, very hierarchical. Have you been to the ninth Circuit building in San Francisco?

Alison Monahan: I'm not sure I've ever been there, actually.

Lee Burgess: The old bank, it's like, or it's like either, I can't remember if it's an old bank or there's an old federal reserve. There's like a vault in it. There's still like an old vault.

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It's all marble, and so everything's very booming.

Alison Monahan: Yeah. I've been to the First Circuit arguments a lot when I was clerking in Boston. We would always go to the First Circuit arguments and, but yeah, I mean there's like a very particular courtroom architecture and it's set up that way for a reason.

Lee Burgess: Mm-hmm.

Alison Monahan: And you know, I think particularly for people who are reluctant public speakers, this can be really intimidating.

Lee Burgess: Yeah. You know, I, some of my friends really had a lot of nerves around this even in law school, and were like throwing up in the bathroom before arguments. If you are nervous about public speaking, I think it's something you wanna think through.

Just how you're gonna get through this experience.

Alison Monahan: Yeah, and I mean, I think, you know, I think practicing it and even if some cases, like if you know what classroom it's going to be in or you know what room it's gonna be in, you might even be able to sort of sneak in there after hours and like have some friends like peppery with questions and that kind of thing.

Lee Burgess: Mm-hmm.

Alison Monahan: Anything you can do to just kind of get more comfortable in the setting. But I think also recognizing that like. This is a stressful experience for everybody.

Lee Burgess: Yeah.

Alison Monahan: You know, no, almost no one's gonna walk in there and be like, oh yeah, I totally got this. Like, I'm, I know more about this than like the people are asking me questions.

That's just not the way it works.

Lee Burgess: Yeah. Yeah, no, I think that's really true.

Alison Monahan: I remember I did my oral argument with like, the worst case of laryngitis ever. I can literally barely speak.

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Lee Burgess: Oh God.

Alison Monahan: Which was actually probably good in a way because it kind of took the pressure off of like, I have to be perfect to just like, I really hope that I can drink enough honey teas for my voice to last, for the, you know, half hour that I'm gonna be in there because I, I mean, what am I gonna do? I might fail the class if I don't like they literally can't speak.

Lee Burgess: Mm-hmm.

Alison Monahan: I mean, in the end, somehow I got like the best oral argument in the group award. Mm-hmm. But I don't know how that happened. I think it was like a sympathy vote.

Lee Burgess: So I think the nice thing that most schools do, I think especially for folks who really are intimidated by this process is oftentimes moot court. At least part of it is pass fail. I hear that pretty consistently from students.

Alison Monahan: Yeah. I mean it's, it is, you're doing it mostly for the experience. Yeah. You know, it's not, this is not something where it's like it's gonna determine the course of your law school future.

This is just something that you have to do for the experience and like maybe you like it and maybe you don't, but I think treating it as, you know, this is an experience I'm gonna to get the most out of it as I can, but I'm not gonna worry so much about like, did I say something wrong or whatever.

Lee Burgess: Right.

Alison Monahan: Is probably the best way to approach it.

Lee Burgess: I think that's true. I think the other challenge for students is with the time management piece of it. 'Cause if you like this sort of work it can become a huge time suck and usually this happens not too far out from final exams.

Alison Monahan: Mm-hmm.

Lee Burgess: And so oftentimes I have to really tell students that as much as you're having fun working on moot court, you have to cap the amount of time right. That you spend on it, because if it is pass fail you cannot spend 40 hours the week before your oral argument preparing in lieu of studying for final exams. Because in the grand scheme of things, that's not going to be reflected on your transcript.

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Alison Monahan: Right, exactly.

It's like, yeah, it's nice to be able to put like, oh, you know, you got the award for whatever, but it doesn't actually, you know, if, if you flunk all of your other classes as a result. It's not gonna end up paying off.

Lee Burgess: Yeah. That being said, I would not ignore it because you never know who the judges may be.

Turned out that one of the judges on my panel was on my callback interview at my big firm job and,

Alison Monahan: Nice.

Lee Burgess: We were standing in the elevator and she's like, I know you and I don't know how I know you. And it took a while for us to come up with the fact that she had been on my panel. And so it was a really good thing that I had been well prepared.

Alison Monahan: Mm-hmm.

Lee Burgess: That I also won the oral argument award. And because I think it helped in that interview because she, she definitely remembered me enough that a year later, it was still like in her mind, who I was, and if she'd had a negative association with me, I'm sure that she would've remembered that too.

Alison Monahan: Right, yeah. If you'd been the girl who stood up and went like, well, yeah, I don't really know. That's like a great question.

Lee Burgess: Right.

Alison Monahan: I didn't like really research that, so. Yeah.

Lee Burgess: Yeah, whoops.

Alison Monahan: Yeah, I mean, you know, this is the beginning of your professional reputation and you don't wanna get this reputation for being a slacker, for being unprofessional, for being unprepared.

But that being said, as with anything else, it has to be done within reason. And again, you know, I think this is the 80 20 rule. Like yeah, you could spend. 40 hours the week before researching like some really obscure piece of the law. But, you know, think about the people who are reading your briefs, like best case

scenario, they've kind of are familiar with the problem, they've read the briefs and they're ready to go.

Lee Burgess: Mm-hmm.

Alison Monahan: That's your best case. Like, they might not have even looked at them. You know, they're not going, they're not delving into like these obscure details that someone who's been working on this problem for months might know about.

Lee Burgess: Right.

Alison Monahan: And they're not trying to trip you up.

Lee Burgess: No, they're, they're not like.

Usually they're not trying to be mean, they're just trying to, you know, help you with the exercise.

Alison Monahan: They might be pointed, but they might not be mean.

Lee Burgess: That's true. Alright, so what about just the written part, if you have a written component what tips do we have to kind of help people be successful in writing this? Maybe their first persuasive brief that they've ever written.

Alison Monahan: Yeah. Well, I think we've got some good content on the website from one of our tutors who's taught legal writing for a long time about how to make a brief persuasive and you know, how to use things like the facts persuasively. And you might think, oh, the facts are objective, but that's not really true.

You know, you're trying to get sort of your view of the facts to be the view that's adopted by the court.

Lee Burgess: Mm-hmm.

Alison Monahan: Who are basically, you know, the people sitting in front of you. So, you know, I think we can link to those articles and people can take a look at that. But, you know, things about like basic organization you know, as we said, these are people who are reading your brief for the first time and they're gonna ask you questions so you can think about in the organization, like, what do you want them to focus on?

Lee Burgess: Mm-hmm.

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Alison Monahan: I think that's always a really key, you know, what, if you had to, you know, great trial lawyers are like this, you know, they can stand up and they can take this really complicated case and they can say, your honor. Ultimately, this comes down to three factors, and those factors are blah, blah, blah, blah, blah, blah.

That's the sort of mindset you wanna be in when you're writing your brief about like, well, what are my key takeaways? What are the really important things I want them to focus on? You know, what are my strongest arguments? And structure the brief so that those are really the focus and those are upfront.

Lee Burgess: Yeah. I'd like to think about it as really telling your version of the story. You know, you are, you are taking the reader on a journey, whether it's the judge or whoever you're writing to, and the more logical and organized you can make that journey, that's when it becomes really powerful. I always would find it interesting when you read really well crafted judicial opinions where they really can take you step by step where you're-

Alison Monahan: It seems inevitable.

Lee Burgess: Yes.

Alison Monahan: Conclusion. You're like, of course they had to come out this way.

Lee Burgess: Right. And, you know, the recently departed Scalia, I think is one of those you know, judges who could. Or justices who could write kind of these very logical arguments. And then you get to the end and I would just be like, no, I don't agree with you.

Even if I agreed with like three things you said, I still don't agree with you, but thank you for taking me on that journey. But, you know, I do think that that ability to boil things down and go step by step is, is part of the craft. Whether or not you wanna be a litigator even if you're a transactional lawyer and you're writing, you know, demand letters and things like that, again, being able to organize your work in a way that it just takes someone down a logical path is a really powerful skill to learn.

Alison Monahan: Absolutely. And I mean, it doesn't mean you can just ignore counter arguments. You know, in any situation you're gonna have things that do not support your case and you need to deal with those and deal with them directly.

But you know, you probably don't wanna start your brief by like countering some of your opponent's best point.

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Lee Burgess: Right, exactly.

Alison Monahan: That needs to be on like page five after everyone's already sort of skimming, you're like, oh yeah, right. They did address that. Okay, I'll make a note to ask about that.

Lee Burgess: Mm-hmm. And if you're struggling on where to find these organization ideas, I think it's always a good idea to look to some of the legal precedent that you're citing to. Oftentimes, whatever analysis you're doing is not something that's been completely, you know, never done before. You don't need to reinvent the wheel. Sometimes your case might be slightly different than something that has happened before, but you can take cues from opinions that you think make a lot of sense and lay out a similar argument. I think that's a really powerful way to learn how to, you know, craft your organization so it is easier for the reader to follow.

Alison Monahan: Right. And I think also if people have never seen an appellate brief before, I mean, hopefully your legal writing or moot court instructor has given you something to look at as a sample, but if not, you can actually pull these briefs, you know, everything that gets filed in a federal court or probably a state court, you know, they're all accessible. These are public documents. So, you know, in the federal court you might have to go and pay a couple of dollars to Pacer, which is, you know, 10 cents a page or something, I think.

But, you know, pull a couple of appellate briefs in famous cases and just look at them.

Lee Burgess: Mm-hmm.

Alison Monahan: I think that can be a great way to sort of get the feel of like what it is that you're trying to do here.

Lee Burgess: Yeah. I think that that's really true. And understand the tone of these persuasive briefs. 'cause I think that is the big shift when you write persuasively, is just to feel comfortable with that tone.

Alison Monahan: Yeah, absolutely. And I mean, in terms of the legal research, you know, get whatever help you can. If you're allowed to talk with your research librarians, that's a great place to go. If you're allowed to talk with your professor and office hours or you know, if it's student run or student advisor, like these are the

people who are there to help you and you shouldn't be struggling with this stuff like totally on your own.

And you know. Ask them the questions and get the help that you need so that you can actually get the research done.

Lee Burgess: Mm-hmm. I think that's really true. So once you've done your writing assignment, then it's time to prepare for-

Alison Monahan: Can we, can we touch on one more thing with the actual writing?

Lee Burgess: Oh, yes.

Alison Monahan: Which is, if you have to write with a partner that is a, you wanna try to get a partner that you actually trust and b, you know, this is sort of thing where you need a process and you need like, check-in points. I mean, I remember my moot court partner, who was a great friend of mine, I don't know how he even managed to do this, but literally the night before, like sometime at three in the morning before these briefs were due, he somehow managed to like, I can't remember what it was like either delete all the periods in the brief.

Lee Burgess: What?

Alison Monahan: Or like change some word by like doing a like find and replace. That made no sense. And it changed like a hundred words in the brief randomly. I mean, it was one of those things where you're like, you did what? Like why were you doing this at three in the morning?

Oh my gosh. And in this case, like luckily I actually had a copy of his like prior version that we could pull from. But you know, you wanna think about things like, are you gonna be storing stuff in Dropbox? Like, how are you gonna be trading drafts?

Lee Burgess: Mm-hmm.

Alison Monahan: You know, this sort of stuff. Like always, always, always, particularly if you have another person involved, like make sure you have backup copies of things, you know?

Lee Burgess: Yeah.

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Alison Monahan: You might wanna, every day save a new version with a new name just in case, because you never know what's gonna happen.

Lee Burgess: Yeah. And sometimes technology solutions can not be as fabulous as you think they are.

I know you and I have done collaborative writing on using Google Docs and it became a nightmare at some point.

Alison Monahan: Oh God, it's horrible.

Lee Burgess: It was horrible. So, you know, you can explore that as a tool, but I, I wouldn't recommend it. I think we abandoned that and just went to, you know, drafts of versions of Word documents.

Alison Monahan: Yeah. And I think the thing is like you just have to build in time at the end when you know you're gonna be stressed out and you know you're gonna be pressured to actually do things that seem simple, like combine your documents together. But it's like, well what if somehow someone's using a different size font, you know, stuff like this.

Like you can't just count on sort of like clicking your fingers at the last second and turning this stuff in. It's gotta be, you know, I would suggest like even like a day before, like you set a final deadline for writing with your partner and at that point you're only doing things like checking citations and making sure they're correct and you know, doing those final edits and not trying to like combine everything together and get it to be perfect.

Lee Burgess: Yeah, and citations I think are a big one. If you need to include citations, which I'm sure you do. Those take time to double check if you have not learned that yet so,

Alison Monahan: Take a lot of time.

Lee Burgess: Like a lot of time, and that is also not something to leave until the last minute. There are a lot of different things that you can do to make that easier on yourself.

You know, you can actually take the cases that you know you're going to use and then take your blue book and, you know, just create a cheat, a cheat sheet where you basically have the full citation of the case and what the short citation

would be you know, when you're fresh and you're not so tired, so you can pull from that, even copy and paste it into some things as necessary.

But you've gotta go through and double check that stuff because if you, citations are a mess, or your quotes are incorrect, that can really, really screw with your grade, but it can also make you look incredibly unprofessional.

Alison Monahan: Yeah. And you don't wanna leave the impression that you did not like dot your i's and cross your T's.

Lee Burgess: No. That is that going back to like working on your professional reputation, that is not the reputation you want to have.

Alison Monahan: Right, because at that point you're probably gonna get a very aggressive question as your first question.

Lee Burgess: Yeah.

Alison Monahan: So let's move on to oral argument.

Lee Burgess: Okay. So we've talked a little bit about different ways to repair, but one of the tips that was given to me by some attorneys who had done.

A lot of, or real or oral arguments, not just moot court oral arguments was to prepare using flash guards, and so once you've done your written brief and you kind of have your major points, like Allison was saying, you know, you have the, your best arguments that you kind of put them all in flash guards, maybe including some of the counter arguments to respond to the other side, and one of the things that I found difficult about preparing for an oral argument was the idea that you had to be able to talk in a not linear fashion. You know, you had to like. Be off the cuff for a lot of this stuff. So by having it on flashcards, you could shuffle the flashcards and then, you know, pull up kind of these different topics and get used to talking about them in any order.

And I felt like that really helped me be comfortable with the ad hoc nature of the argument. And so, you know, I wasn't so caught off guard when something weird was presented to me, or it's not weird, but something, somebody off the cuff or some different direction was presented to me. Did you do something like that to prepare, or how did you prepare?

Alison Monahan: To be honest, I'm not sure I like prepared that thoroughly. I mean, I think that sounds like a fantastic idea and I think it would be extremely effective. I think for

me, like I just basically had sort of a, you know, one page sheet in front of me with kind of the major points that I thought were likely to come up.

And I just kind of went with it.

Lee Burgess: Yeah.

Alison Monahan: I mean, I'm not sure I really like practice that much. I, I mean, I think I went in and I think the flip side of this is like, it's not, you wanna go in totally unprepared to say something as well, because there is the possibility that they will let you talk for a minute or two.

Lee Burgess: Right.

Alison Monahan: So, you know, I think for me, like I kind of prepared the first like, you know, two minutes of what I thought I might be able to get out and maybe I got 30 seconds of it out,

Lee Burgess: Mm-hmm.

Alison Monahan: Before they started being like, okay, great. Well we wanna talk to you about this.

Lee Burgess: Yeah.

Alison Monahan: I mean, I'm like a pretty good speaker on my feet, so I think I just kind of, you know, winged it basically.

Lee Burgess: Yeah, I think I had a one page sheet of kind of my main bullet points that I wanted to get through, and so every time I had a break and got a chance to go back to my own speech, I kind of could start on different points. You don't, you typically don't get everything out, but at least you have a place to go back to.

I do think that that's a really good point.

Alison Monahan: Right, and I think that's key. You know, it's this kind is this weird combination of things that you wanna be sure that you basically get on the record and that you would prefer to talk about, but also really trying to respond to the questions that you get in a meaningful way.

I mean, sometimes what you see students, but also like real lawyers in oral argument do is kind of what politicians like to do, where they ask, they answer a question, which is not actually the one that they were asked.

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Lee Burgess: No, that never happens.

Alison Monahan: So, you know, that is not really typically effective at an appellate argument because as we spoke about earlier, you know, basically they're asking these questions because they actually really want an answer.

And so if you refuse to provide that answer, it's likely not gonna end up in your favor in the end.

Lee Burgess: Yeah, I agree. What about practicing in the mirror or even recording yourself?

Alison Monahan: Yeah.

Lee Burgess: A lot of people hate doing this stuff. I don't, I don't personally enjoy watching myself on video.

Alison Monahan: I don't think, I don't think anyone enjoys it.

No, but that's sort of the point.

Lee Burgess: Right.

Alison Monahan: I mean, just accept that you're probably not gonna like it and you're gonna look worse and be harsher on yourself than anyone else would be on you. But there are things that you can, you know, typically, if this is something that's very new for people, there are things that you know, you probably need to correct.

You know, so things to look at are like, what are you doing with your hands? Are your hands distracting? Like, are, are you making like, crazy facial expressions or gestures? You know, are you, where are you looking?

Lee Burgess: Right.

Alison Monahan: You know, if you're, if someone has asked you a question, and this can be tricky too, when you have a panel, you know, you wanna, basically, you wanna be looking.

Back to the person that asked the question in large part, but not also ignoring everyone else on the panel. So there's this art to sort of making the person that you're speaking to feel like you're talking with to them, but also not making other people feel excluded.

Lee Burgess: Mm-hmm.

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Alison Monahan: You know, these are things like you can record or you can just have people give you feedback on it.

I mean, I think recording yourself in general is fantastic and also very painful.

Lee Burgess: It is. I mean, if we went back and listened to our very, very first online webinars and courses that we did four years ago for this, this company,

Alison Monahan: I mean, I remember sort of thinking like that was like really weird. I can't believe I'm sitting and talking to a computer in a room by myself.

No, it just seems normal.

Lee Burgess: I know, I know. But when I have listened to some of that older stuff, whether I. Come across it, you know, in combing through materials or things like that. Sometimes I listen to it and go, wow, we've come a long way. Because when you do listen to yourself, when you do practice over and over again, you become much more comfortable.

If we'd started this podcast years ago, I don't think it would've been as entertaining.

Alison Monahan: Well, and I mean even, you know, the earlier episodes are probably a little more forced.

Lee Burgess: Mm-hmm.

Alison Monahan: But I mean, there also, there are things you can't do anything about. I mean, we sometimes get comments like, people hate our voice, and it's like, well, sorry, that's my voice.

Lee Burgess: Exactly. I can say that about myself.

Alison Monahan: Thank you. But I mean, I think there, you know, there are things, I think, again, this is often a particular issue for women. Sometimes people have, for example, like very high pitched voices and you know, can you do something about that? Can you not do something about that?

I don't know, like, should you do something about it? It's just something to be aware of. Like if you have certain speech patterns, you know, for example, if you say um a lot or like a lot

Lee Burgess: Mm-hmm.

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Alison Monahan: Or you, you know, I can sometimes switch into like California Valley girl, probably that's not the place for that.

Lee Burgess: Right. Yeah.

Alison Monahan: You know, so you wanna be your voice and your tone and everything else should be like your most professional self.

Lee Burgess: Yeah.

Alison Monahan: And that's hard when people get nervous. I mean. You did speech in theater, so do you have any sort of practical tips for people, you know, you're freaking out like minutes before walking in, what can they do to sort of calm down and like activate their voice?

Lee Burgess: You know, I think, well I'm always a big fan of going back to the breath but. I also think that one of the ways you can cope is by trying to make it a little bit less about yourself and feel like you are playing a role of this more professional persona.

Alison Monahan: Mm-hmm.

Lee Burgess: To me, I think, you know, having had a background in, in theater and performing that when I get dressed up in a suit to go do this sort of stuff, it really isn't me. It is this version of myself.

Alison Monahan: Right.

Lee Burgess: And then it becomes a lot less anxiety inducing because it's not as personal. And I think that for me is something that's always been very helpful. And I, I kind of, I've always thought that part of the law is interesting that we do all dress up, you know?

Alison Monahan: Right. In in England, like, you know, they put the wigs on and stuff, which I always thought would be super cool.

Lee Burgess: Yeah. So you really. You really are kind of outside of yourself, and I think the more that you can realize that this isn't personal, that this isn't, you know, going down and shaking your core, I think it can be much easier to cope with the anxiety, but you know, preparing yourself for it, taking deep breaths and just

remembering that the worst thing that will happen is that maybe you don't win your oral argument award.

Alison Monahan: Right. You'll live. It's just very important. I also I've always liked the sort of Wonder Woman posing

Lee Burgess: Mm-hmm.

Alison Monahan: That is popular, particularly at women's conferences these days where, you know, basically you do your power pose, whether it's in the bathroom or you know, in the.

Room where you're prepping, but you know, you literally like spread your legs apart, put your hands on your hips and sort of look like Wonder Woman. And I know there are theories that it actually really like, I don't know what it's doing, like raising testosterone or something.

Lee Burgess: Mm-hmm.

Alison Monahan: But you know, it basically makes you, like, it puts you more in that mindset of like, yeah, I can do this. Like I've got this.

Lee Burgess: Yeah. And so much of it is just presenting yourself with confidence. And I think that's just. About practicing law in general, no matter what you do if lawyers smell fear, they're gonna be more hostile to you.

Alison Monahan: Yes.

Lee Burgess: So, the, as much as you can practice being confident or faking confidence, I think it's really important.

Alison Monahan: Right. And I think for people who are maybe not so naturally extroverted, it doesn't have to be the case that your confidence is this is sort of like, bombastic, like yelling and screaming, right? Like you can be, you can be very calm and very quiet, but also very confident. And part, you know, some of the most effective litigators are the people who don't yell and scream.

Lee Burgess: Right.

Alison Monahan: You know, if they are, if they're asked a question, they might take a deep breath, and then the answer that comes out is completely on point.

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Lee Burgess: Yep. And very thoughtful and clean.

Alison Monahan: That's, this is, yeah. Very extremely thoughtful and people have a lot of respect for that.

Lee Burgess: Mm-hmm.

Alison Monahan: So it's okay if, you know, you take the deep breath and then you answer.

It doesn't have to be this like blah all the time.

Lee Burgess: Right. True.

Alison Monahan: You don't have to be like the rabid dog.

Lee Burgess: Yes.

Alison Monahan: There are different ways to be comfortable.

Lee Burgess: Yeah.

Alison Monahan: But yeah, circling back to dressing the part, I mean, what are people supposed to wear here?

Lee Burgess: You know, you wear a suit and make it a conservative suit.

You know, your interview suit you. Like, if you don't have an interview suit yet, this is a great time to go get one. Which should be generally blue or black or pins, strips or fairly conservative. Because you don't want it to be distracting, you know? I think this is a bit more of a gray area for women than sometimes for men because I think men, it's like, well, I just go buy a blue or black suit and a conservative shirt and tie.

Alison Monahan: Right. Put a tie on, put a white or blue shirt on and you're pretty much done.

Lee Burgess: Right, exactly. I think for women, you know, there can be a lot of gray area. Even around the country there are different, you know, levels of acceptive quote unquote conservative wear. I don't think you need to. Ignore your own personal style, but make sure that nothing is distracting from your talk.

You know, I wouldn't wear loud or large jewelry. I wouldn't you know, wear like a hot pink shirt under my suit. You know, I wouldn't do things like that because I, I

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think dressing this part is really just putting you in this role. You want to look sharp, but you don't want your outfit to be what's speaking for you.

Alison Monahan: Right. And you wanna make sure you're comfortable, you know, if something doesn't fit or if your hair is in your face. I mean, this is even for guys, you know, think about the man bun, if you've got long hair. Yeah. Because you just don't wanna be playing with your hair and doing all these things that people do and they get nervous.

And you know, same thing with like distracting stuff on the podium. You know, probably a pink water bottle, like maybe not so great.

Lee Burgess: I did have someone in my class who put a pink water bottle in the podium and the judges. Laid into her about it because of how, first of all, they were like, you don't need a water bottle in the podium.

It's like 10 minutes or 15 minutes.

Alison Monahan: Yeah. I mean, I would question whether you need anything.

Lee Burgess: Right.

Alison Monahan: But, you know, put it behind the podium.

Lee Burgess: Right.

Alison Monahan: But, but wasn't there some debate recently where one of the candidates got in trouble for like, got ridiculed for drinking too much water or something?

'Cause it showed nerves. I don't know. Yeah. But you know, I mean, I would say, I was gonna say maybe you should use a cup for your water, but then what if you knock the cup of water over, you know.

Lee Burgess: You should hydrate before. Yeah. And just, I mean, this typically is not a long experience. I think you just hydrate before and you go for it.

Because all of these little things that you can have, you know, an ink pen or a water bottle or stuff like that. Those are just gonna be crutches that you're gonna end up playing with.

Alison Monahan: Yeah. It's like these nervous, these nervous ticks are basically what you wanna avoid. I mean, yeah. Don't have a pin, you're not gonna be taking notes, you know?

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Lee Burgess: Right. Exactly. Or like, I'm currently, while we're doing this podcast, I'm playing with a hair tie in my hands, you know, I would never want to have like a hair tie.

Alison Monahan: Yeah. No. I'm actually like, you know, I'm, I'm kneading my hands in a knot. And these are the things you just wanna pay attention to. Yep. You know, basically like if you know that this is an issue, I think just putting your hands on the podium

Lee Burgess: Mm-hmm.

Alison Monahan: You know, lightly resting them. And if you see, if you notice that you start moving them around a lot, just sort of like returning to that focus of like, just put them down.

Lee Burgess: Exactly.

Alison Monahan: Don't move them around. But ultimately, I mean, this is a learning experience.

Lee Burgess: Exactly. And I think that's the biggest thing is, is that just try and keep a little bit of a sense of humor about it.

Don't take it too seriously. It is a learning experience. Even if you, you know, go beyond moot court and do advocacy competitions at your school or even join an advocacy or a negotiations team or something like that, that may even travel to competitions. The, sure, the stakes may feel high, but this is all to learn your craft. And so each time you do these, you're going to better your craft. You're going to be better at it. You're not supposed to be as well seasoned as the attorneys who are arguing in front of the Supreme Court, you know?

Alison Monahan: Right. And they're also always improving. And you know, I think that's another takeaway is like afterwards, think about how things went.

Like, did they go well? Did they go poorly? Like are there things that you would change in the future and not just for you, you know, you can watch your classmates, you can watch the other people,

Lee Burgess: Mm-hmm.

Alison Monahan: This is how you learn to be a better lawyer.

Lee Burgess: Yep. Oh, I forgot one thing to help manage nerves. It's one of yours.

And my favorites.

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Alison Monahan: Oh yeah?

Lee Burgess: The listening to the playlist.

Alison Monahan: Oh.

Lee Burgess: I know, I don't know why I didn't think about that, but this is one of, I know you and I used to do this before exams and I think it can actually be a great thing to do, especially if you're one of those people who can pick up nerves from other people.

Alison Monahan: You just go put on your earphones, put on your playlist, your power playlist.

Lee Burgess: Yep.

Alison Monahan: And just zone out, I mean, at that point, five or 10 minutes before your moot court oral argument. You're not gonna be like learning anything that's gonna make a difference. The only thing that's gonna make a difference is if you go in focused and you go in ready to go.

Lee Burgess: Mm-hmm.

Alison Monahan: And you know, maybe it's a guided meditation for some people if you have really strong nerve issues, but you know, for me it's like, oh, I might just listen to like an upbeat song.

Lee Burgess: Mm-hmm. Yeah. Because that can help you just not get distracted. I think the only time in all my years of performing that I ever got on stage and had things go horribly, terribly wrong was I was backstage goofing around with my friends instead of paying attention to what I had to do. And then I went out on stage and I totally forgot the words to a song that I had performed in public probably like 20 times.

Alison Monahan: Wow.

Lee Burgess: Yeah, because I was just not, I didn't have my head in the game.

Alison Monahan: You weren't in the right head space.

Lee Burgess: No, I was like, I was just messing around backstage, goofing off, and then it was like, oh wait, what am I doing here?

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Alison Monahan: Oh, yeah, where am I? Oh, I'm in front of an audience.

Lee Burgess: I'm in front an audience, other people. Oh, whoops. You know, so, so yeah, just doing whatever you need to do to get in your own head space and try different things out, because I think if you can figure out what works for you, then you can use it for exams, you can use it at work, you can use it for lots of different things, so.

Alison Monahan: Yeah, you're, you're entering a high pressure profession, so these are the things to start thinking about now.

Lee Burgess: Yeah. All right. I just wanted to make sure we didn't forget that one. 'cause that's always a fun one. Maybe we should blog about what is on our, our power playlist.

Alison Monahan: True.

Lee Burgess: I know.

Alison Monahan: Good idea.

Lee Burgess: All right.

Alison Monahan: I'll make a note.

Lee Burgess: We'll work on that. All right. With that, we are out of time. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on iTunes. We'd really appreciate it and be sure to subscribe so you don't miss anything.

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