GUIDE
FOR
COUNSEL

IN CASES TO BE ARGUED

BEFORE THE

SUPREME COURT OF
THE UNITED STATES

October Term 2004

CLER$$038X

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SUPREME COURT OF THE UNITED STATES

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I. INTRODUCTION

This guide is designed to assist attorneys preparing cases for argument before this Court, especially those who have not previously argued here. It is not a substitute for the Rules of the Supreme Court. Counsel should become familiar with the revised Rules, effective May 1, 2003.

The Clerk will notify counsel when the Court enters an order noting probable jurisdiction, postponing jurisdiction, or granting a petition for a writ of certiorari. Counsel will be furnished written instructions by mail concerning general information and preparation of the joint appendix. A specification chart will be provided that clearly shows the colors to be used for the covers of briefs. Please read these materials carefully, as they set forth certain steps counsel must take. Any questions counsel have respecting *cases to be argued* shall be directed to the Clerk through the Merits Cases Clerk, Denise McNerney, 202–479–3011. Since all records are kept by docket number, it is important that counsel have at hand the Supreme Court docket number when seeking information. IMPORTANT: The Merits Cases Clerk must be notified immediately of any changes, including a change of counsel.

II. ARGUMENT

Oral arguments are normally conducted during October through April. A 2-week session is held each month with arguments scheduled on Monday through Wednesday of each week. Rule 28 contains additional information concerning oral arguments.

When your case has been calendared for argument, the Clerk will send an appropriate notice to counsel, together with an argument form to be completed and returned promptly to the Clerk. Please note that after the argument schedule is set, the Clerk cannot make changes. If counsel have any longstanding professional or religious commitments or for some reason cannot appear for oral argument on any date in the future (particularly within the two argument sessions following the due date of respondent's brief), these matters must be called to the Clerk's attention by letter with a copy to opposing counsel. To the extent possible, the Clerk will endeavor to schedule the oral argument to avoid conflicts. Please advise the Clerk of any necessary accommodations (*e. g.*, a wheelchair), to permit the Clerk and the Marshal to make suitable arrangements for counsel at the argument tables.

No personal computers, cellular phones, cameras, PDAs, or any other electronic devices are allowed in the Lawyers' Lounge or the Courtroom. They must be checked in a locker at the Court.

Arguing counsel and co-counsel must report to the Lawyers' Lounge on the first floor of the Court between 9 and 9:15 a.m. on the day of argument. Coats, hats, and papers of arguing counsel and co-counsel may be left in the Lawyers' Lounge. The Clerk will brief counsel concerning procedures and protocol and answer questions. This normally takes about 15 minutes. Identification cards will be issued to arguing counsel and those counsel authorized to sit at the argument tables. When only one counsel will argue, the Court will accommodate three co-counsel at the table. If divided argument has been granted and two counsel are to

argue, the Court will accommodate each arguing counsel and one co-counsel per each arguing counsel at the table.

After you have met with the Clerk and received your identification card, you should report immediately to the Courtroom officials inside the railing to be assigned an appropriate seat. You should advise the Courtroom officials if you are scheduled to move the admission of an attorney. Unless you make other arrangements with the Marshal, the white light on the lectern will be activated when five minutes of your allotted time remains. The red light will be activated when your time has expired.

The Court convenes at 10 a.m. and normally hears two cases in the morning. If afternoon arguments are scheduled, they begin promptly at 1 p.m. Counsel are required to be at the backup argument table when the preceding case is being argued. Please confer with the Courtroom officials to verify the order of argument, and bear in mind that occasionally cases may conclude earlier than planned. Counsel in a day's third case must be at the backup table when counsel in the second case have vacated this table and moved forward to the argument table. There have been instances when argument on the third case commenced before the noon recess, and counsel in the fourth case were expected to be at the backup table while the third case was being argued. It is important, therefore, that counsel advise the Courtroom officials if they must leave the Courtroom for any reason while prior cases are being argued.

When the Chief Justice announces that the Court will now hear argument in your case, you should *immediately* proceed to the front counsel tables. If you are counsel for the petitioner, you should proceed promptly to the lectern—do not wait for the Chief Justice to issue an invitation. Remain standing at the lectern and *say nothing* until the Chief Justice recognizes you by name. Once he has done so, you may acknowledge by the usual: "Mr. Chief Justice and may it please the Court . . . ." *Do not* introduce yourself or co-counsel. Under the present practice, "Mr." is only used in addressing the Chief Justice. Others are referred to as

"Justice Stevens," "Justice O'Connor," or "Your Honor." *Do not* use the title "Judge." If you are in doubt about the name of a Justice who is addressing you, it is better to use "Your Honor" rather than to mistakenly address the Justice by another Justice's name.

You should assume that all of the Justices have read the briefs filed in your case, including *amicus curiae* briefs. Expect questions from the Court, and make every effort to answer the questions directly. If at all possible, use "yes" or "no," and then expand upon your answer if you wish to. If you do not know the answer, it is suggested you so state. On one occasion, instead of responding to a question from a Justice, an attorney posed a question to the Justice, only to have another Justice chastise him for asking a Justice a question.

If a Justice poses a hypothetical question, you should respond to that question on the facts given therein. In the past, several attorneys have responded: "But those aren't the facts in this case!" The Justice posing the question is aware that there are different facts in your case, but wants and expects your answer to the hypothetical question. Answer, and thereafter, if you feel it is necessary, say something such as: "However, the facts in this case are different," or "The facts in the hypothetical question are not the facts in this case."

Be careful when you answer a hypothetical question posed by a Justice. A "yes" or "no" answer might be suitable for a narrow question. Nevertheless, your answer should be carefully tailored to fit the question. A simple "yes" or "no" in response to a broad question might unintentionally concede something and produce a follow-on question the answer to which is damaging to your position.

You should speak in a clear, distinct manner, and try to avoid a monotone delivery. Speak into the microphone so that your voice will be audible to the Justices and to ensure a clear recording. Avoid having notes or books touch the microphones, since this interferes with the recording process. Under no circumstances should you read your argu-

ment from a prepared script. You should be knowledgeable about what is or is not in the record in your case. Justices frequently ask counsel if particular matters are in the record. If you are asked a question that will require you to refer to matters not in the record, your answer should so state; then proceed to respond to the question unless advised otherwise by the Justice. *Never* interrupt a Justice who is addressing you. Give your full time and attention to that Justice—do not look down at your notes and do not look at your watch or at the clock located high on the wall behind the Justices. If you are speaking and a Justice interrupts you, cease talking immediately and listen.

When other Justices ask questions before you complete your answer to the first Justice, you should take a commonsense approach in determining which of the questions should be answered first. You might consider responding to the last question, indicating, if you believe it to be the proper thing to do, that you will answer that question first before completing your answer to the prior question. Alternatively, you may indicate to the last questioner that it would assist you in making your response if you could first conclude your answer to the first Justice's question, at which time you would complete your response to the first Justice. There is no definite rule of protocol. However, ordinarily if two Justices start to speak at once, the junior Justice will withdraw in deference to the senior. Perhaps by analogy you could respond to the senior Justice's question first, then address questions from junior Justices.

When the Marshal activates the white light—the 5-minute warning—you should be prepared to stop your argument in five minutes. When the red light comes on, terminate your argument *immediately* and sit down. If you are answering a question from a Justice, you may continue your answer and respond to any additional questions from that Justice or any other Justice. In this situation you need not worry that the red light is on. Do not, however, continue your argument after the red light comes on.

If you are counsel for the petitioner and have planned for rebuttal argument, do not ask the Chief Justice how much time you have remaining—it is your obligation, or that of your co-counsel, to keep track of your time. When counsel for the petitioner arrives at the podium to make the rebuttal argument, the Chief Justice will announce how many minutes of the allotted time are remaining. When counsel desires time for rebuttal, or when divided argument has been authorized, arrangements may be made with the Marshal, *before the case is called*, to have the white light flashed at a specified time before the five-minute warning. Regardless of how many attorneys argue in a case, only one is permitted to present rebuttal argument. If two counsel argue for the petitioner, the one who argued first should be the one to present rebuttal.

Your argument time is normally limited to 30 minutes. You need not use all of your time. You should not attempt to enhance your argument time by a rapid fire, staccato delivery. Ordinarily, the Justices will know whether you are making your first argument before the Court. Be assured that some first-time arguments have been far superior to presentations from counsel who have argued several times.

Ordinarily, counsel for the petitioner need not recite the facts of the case before beginning argument. The facts are set out in the briefs, which have been read by the Justices.

Be careful to use precise language. In one case, counsel stated, "The Supremacy Clause does not apply in this case." A Justice responded: "The Supremacy Clause applies in every case. Perhaps counsel meant that the statute in question does not *conflict* with the Supremacy Clause."

Be careful not to use the "lingo" of a business or activity that is not widely understood. The Court may not be familiar with your "lingo." For example, you should not say "double-link connector" or "section 2b claims" unless you have explained what those terms mean. Similarly, do not use the familiar name of your client during argument. For instance, say "Mr. Clark denied the request" rather than "Buddy denied the request."

Your argument should focus only on the question presented in the petition that was granted. Do not deviate from it.

A Justice will often ask counsel seeking to establish a new precedent: "Do any cases from this Court support your position?" Be ready for the question, but be careful to cite only those cases that truly support your position. Do not distort the meaning of a precedent. The author of the opinion is likely to be a member of the Court and to have a remarkable memory of exactly what the opinion says. If you are relying on a case that was announced by a "plurality opinion," be sure to mention that there was no "opinion for the Court" in the case.

Do not refer to an opinion of the Court by saying: "In Justice O'Connor's opinion." You should say: "In the Court's opinion, written by Justice O'Connor."

Know the record, especially the procedural history of the case. Be prepared to answer a question like: "Why didn't you make a motion for summary judgment?" You have the opportunity to inform the Justices about facts of which they are not aware. Justices frequently ask: "Is that in the record?" Be prepared to answer. It is impressive when you can respond with the volume and page where the information is located. It is also quite effective to quote from the joint appendix. Do not make assertions about issues or facts not in the record.

Know your client's business. One counsel representing a large beer brewing corporation was asked the following by a Justice during argument: "What is the difference between beer and ale?" The question had little to do with the issues, but the case involved the beer brewing business. Counsel gave a brief, simple, and clear answer that was understood by everyone in the Courtroom. He knew the business of his client, and it showed. The Justice who posed the question thanked counsel in a warm and gracious manner.

For an excellent example of a counsel who was intimately familiar with her client's business, see the transcript of argument in *United States v. Flores-Montano*, 541 U. S. ——

(2004). The case dealt with the searching of vehicle gas tanks by customs agents at an international border. Government counsel had a total grasp of why and how the agents conducted the searches and provided convincing explanations to all questions posed by the Court.

If you quote a document verbatim (*e. g.*, a statute or ordinance), tell the Court where to find the document (*e. g.*, page 4, appendix B to the petition).

Do not bring numerous volumes to the lectern. One notebook will suffice. Please note that a legal sized pad does not fit on the lectern properly. Turning pages in a notebook appears more professional than flipping pages of a legal pad. Some brave counsel know their cases so well that they argue without any notes. It has been said that preparing for oral argument at the Supreme Court is like packing your clothes for an ocean cruise: You should lay out all the clothes you think you will need, then return half of them to the closet. When preparing for oral argument, eliminate half of what you initially planned to cover. Your allotted time passes quickly, especially when numerous questions come from the Court. Be prepared to skip over much of your planned argument and stress your strongest points.

Some counsel find it useful to have a section in their notes entitled "cut to the chase." They refer to that section in the event that most of their time has been consumed by answering questions posed by the Justices. This allows them to use the few precious minutes remaining to stress their main points.

Remember that briefs are different from oral argument. A complex issue might take up a large portion of your brief, but there might be no need to argue that issue. *Merits briefs should contain a logical review of all issues in the case. Oral arguments are not designed to summarize briefs, but to present the opportunity to stress the main issues of the case that might persuade the Court in your favor.*

Counsel for respondents are often effective when they preface their argument by answering questions that petition-

er's counsel could not answer or answered incorrectly or ineffectively. This can often get you off to a positive start.

Rebuttal can be very effective. But you can be even more effective if you thoughtfully waive it when your opponent has not been impressive. If you have any rebuttal, make it and stop. There is no requirement that you use all your allotted time.

When a Justice makes a point that is adverse to you, do not "stonewall." Concede the point and proceed with your argument.

Do not "correct" a Justice unless the matter is *essential.* In one case a Justice asked a question and mentioned "waiver." Counsel responded by stating that a "forfeiture" rather than a "waiver" was involved. The distinction was irrelevant, but the comment generated more questions and wasted valuable time.

If a question seems hostile to you, do not answer with a short and abrupt response. It is far more effective to be polite and accurate.

In appropriate cases, suggest to the Court that bright-line rules should be adopted and suggest what they should be.

Attempts at humor usually fall flat. The same is true of attempts at familiarity. For example, do not say something like: "This is similar to a case argued when I clerked here."

Do not denigrate opposing counsel. It is far more appropriate and effective to be courteous to your opponent.

If your argument focuses on a statute, regulation, or ordinance, be sure that law is printed in full in one of your pleadings so that you can refer the Justices to it and they can be looking at it during your argument.

Exhibits can be useful in appropriate cases, but be very careful to ensure that any exhibit you use is appealing, accurate, and capable of being read from a distance of about 25 feet. Be sure to explain to the Court precisely what the exhibit is. Counsel must advise the Clerk of an intent to use an exhibit as soon as possible. For a good example of an exhibit used at oral argument in this Court, see *Shaw* v. *Reno,* 509 U. S. 630, 658 (1993).

Avoid emotional oration and loud, impassioned pleas. A well-reasoned and logical presentation without resort to histrionics is easier for listeners to comprehend.

Do not argue *facts.* Argue to the question or questions of *law* presented in the petition for a writ of certiorari that was granted.

The Supreme Court is not a jury. A trial lawyer tries to persuade a jury with facts and emotion. At this Court, counsel should try to persuade the Court by arguing legal theories.

If your opponent is persuasive on a certain theme during argument, especially one that was not anticipated, you should address that issue at the outset of argument or rebuttal argument rather than adhere to a previously planned presentation. You take a great risk if you ignore a persuasive point scored by your opponent.

Anticipate what questions the Justices will ask you and be prepared to answer those questions. If a case with issues similar to yours was previously argued in this Court, consider obtaining a transcript of the oral argument in that case to review. That might help you anticipate questions that those Justices who heard the previous case might ask in your case.

If a counsel stumbles on a question from the Court or does not fully answer it, it is a good tactic for an *amicus curiae* counsel supporting that counsel's side to begin argument by repeating the question and answering it correctly and completely. The *amicus* counsel will have had time to reflect on the initial question and perhaps develop a better answer.

In a divided argument, it is effective for counsel to inform the Court of their argument plan. For example, petitioner's counsel might say: "I will cover the Fourth Amendment aspects of this case and counsel for the *amicus* will argue the Fifth Amendment issues."

It is appropriate for co-counsel to occupy the arguing counsel's chair when the latter is presenting argument. Except in extraordinary circumstances, co-counsel do not pass notes to arguing counsel during argument.

The quill pens at your argument table are gifts to you—a souvenir of your having argued before the highest Court in the land. Take them with you. They are handcrafted and usable as writing quills.

Promptly and quietly vacate the front argument table after the Chief Justice announces that "the case is submitted." You can move to the back-up table if you wish to listen to the next argument.

Many attorneys find it very educational to attend a Courtroom session before their scheduled argument day. If you choose to do this, feel free to come by the Clerk's Office and introduce yourself to the Clerk. The same applies to the Marshal.

Appropriate attire for counsel is conservative business dress in traditional dark colors (*e. g.*, navy blue or charcoal gray).

To obtain a copy of the transcript of your argument, contact Alderson Reporting Company, 800–367–3376 or 202–289–2260. Transcripts are posted on the Supreme Court Website (www.supremecourtus.gov) ten to fifteen days after the close of the argument session.

A good source of information for arguing counsel is Chapter 14, Oral Argument, found in *Supreme Court Practice* (8th ed.) (commonly known as "Stern and Gressman"). Another good source is Frederick, *Supreme Court Appellate Advocacy: Mastering Oral Argument.*

III. COURTROOM SEATING

If arguing counsel desires to reserve space in the public section, counsel shall contact the Marshal's Office *after* completing and returning the argument form to the Clerk. A letter concerning reservations, including the names of guests, should be sent to: Marshal, Supreme Court of the United States, Washington, D. C. 20543. The Marshal, *depending on available space*, will endeavor to accommodate as many of your guests as possible—not exceeding six spaces per side. When two counsel are arguing on a side, the maximum per each is four, if space is available. When your

guests arrive at the Court on the argument day, they should check coats, hats, briefcases, cameras, electronic equipment, reading and writing materials, and similar items in the first-floor (Courtroom level) cloakroom that is located inside the building near the front door. They should then proceed to the Marshal's Office, which is located to the right as you face the main entrance to the Courtroom. An attendant, seated at a small table in the hallway outside the Marshal's door, will receive your guests. Guests must be escorted through the metal detectors and into the reserved seating area of the Courtroom.

Members of this Court's Bar are invited to sit inside the brass railing. Before entering, they will be required to report to the Clerk's assistant who is seated adjacent to the statue of Chief Justice John Marshall in the Lower Great Hall on the ground floor. Use the north entrance door (Maryland Ave. side of the building) to reach the check-in desk. The north entrance opens at 7:30 a.m. The Supreme Court Bar check-in process normally begins at 9:00 a.m. Show the assistant an identification card and your name will be checked against the Bar membership roster. Inform the assistant if your name is different from the one used when you were admitted to the Bar. Bar members will be issued a pass and directed to proceed to the Courtroom on the first floor. Seating is on a first-come, first-seated basis. When the Bar section is filled, remaining Bar members will be seated in the Lawyers' Lounge where arguments can be heard through a speaker. Bar members are asked to wear professional business attire.

Courtroom seating is extremely limited. Spectators are seated first come, first seated, either for an entire argument or on a short (three minute) rotation to view proceedings. Groups can *request* reserved seating of up to 15 persons by writing the Marshal of the Court as far in advance as possible.

If you or a guest needs a hearing impaired device, please request assistance from the Marshal's Office.

IV. DECISIONAL PROCESS

After a case has been argued, the Court will have a Conference, and the case will be assigned to a Justice to write the majority opinion. Opinions may be handed down at any time after the argument. The only information the Clerk or his staff can give you in this regard is that cases argued during the Term are usually decided before the end of June.

Opinions are released in the Courtroom on any day the Court is sitting, but usually on Tuesday or Wednesday when the Court sits for oral argument and on Monday when the Court sits for the announcement of orders and group Bar admissions. Counsel should also be aware that in June the Court frequently adds additional sittings during the week to announce opinions. Counsel may call the Clerk's Office or Public Information Office on Friday afternoons to learn the schedule for the coming week. Opinions are typically announced at 10 a.m. and are released to the public and news media—in both written and electronic form—as they are read from the Bench. When an opinion is announced, an Assistant Clerk will call arguing counsel and advise them of the ruling. However, due to time zone differences, counsel might not be notified until several hours after the media have had access to an opinion.

Please do not ask the Court to telefax or read the entire opinion to you. Opinions are available on several websites and from commercial vendors who disseminate them by electronic means. You can arrange for someone in the Washington metropolitan area to pick up a copy of the opinion at the Court. The Clerk's Office will e-mail and mail a copy of the opinion to arguing counsel and counsel of record the day it is released.

The judgment or mandate of the Court will be issued by the Clerk following the end of a 25-day period after the release of the opinion, unless a petition for rehearing has been timely filed. Rule 45.

If the petitioner prevails, the Clerk will provide for an award of costs, if appropriate, in the judgment or mandate.

Rule 43. Only the costs of printing the joint appendix and the docketing fee may be awarded.

V. INFORMATION

The Clerk and the staff wish to be helpful to counsel and will endeavor to answer all requests to assist them in their visit to the Supreme Court.

The Court's Website (www.supremecourtus.gov), provides access to the docket, slip opinions, Court calendar, argument calendar, Bar admission forms and instructions, Rules of the Court, guides to filing paid and *in forma pauperis* petitions, order lists, granted/noted lists, the automated docket, merits briefs in cases to be argued, this Guide, and other information about the Court. Counsel can also obtain the status of cases on the Supreme Court docket by calling the Clerk's Automated Response System (CARS) at 202–479–3034. Callers should have the Supreme Court docket number available. A synthesized voice will provide callers with current case status information.

The Supreme Court is located at the corner of First Street and Maryland Avenue, N. E., directly across from the United States Capitol, and is easily reached by taxi or Metro (subway) from Ronald Reagan (National) Airport. The Union Station rail terminal and the Capitol South rail and Metro terminal are within walking distance. The building is open from 9 a.m. to 4:30 p.m., Monday through Friday. Arguing attorneys and co-counsel may enter through the north door (Maryland Ave. side of the building) after 7:30 a.m. The building is closed Saturdays, Sundays, and holidays. It is accessible to persons with disabilities through the Maryland Avenue entrance. There is virtually no parking available in the vicinity of the Supreme Court building.

Topcoats, raincoats, umbrellas, hats, cameras, and recording devices are not permitted in the Courtroom. Members of the Bar and spectators in the public section can use writing materials. A checkroom is located at the front of the building on the Courtroom level.

There are many hotels in the Washington metropolitan area, several of which are in the vicinity of Capitol Hill within walking distance of the Court. A detailed map of the Supreme Court and its immediate surrounding area will be furnished by the Clerk's Office on request. A map is also included on the Court's Website.

Some hotels check regularly for the release of the argument calendar and will communicate with counsel respecting reservations. Except for inclement weather, there is normally no reason why counsel in the last argument would be required to stay in the Courtroom beyond 3 p.m. Accordingly, airline reservations can be made for departures after 5 p.m. from Ronald Reagan (National) Airport and 6 p.m. from Dulles Airport and Baltimore-Washington International Airport, with no difficulty in meeting scheduled departures.

The Supreme Court Historical Society has a gift shop on the ground floor of the Court building where counsel can purchase mementos. A cafeteria, snack bar, and public telephones are also located on the ground floor.

The Court has a large, residential corps of journalists who follow its docket closely. No interviews or news cameras are permitted in the Court building; however, they are allowed on the front plaza, and, on argument days, reporters frequently wait there to talk to counsel after argument has concluded.

Courtroom artists, who are employed by various news organizations, may be contacted in advance to commission a sketch on the day of oral argument. The Public Information Office will provide the names and phone numbers of such artists upon request.

Frequently used telephone numbers are found in the appendix.

VI. RECORD

If the certified record of the proceedings below has not been filed previously in this Court, the Clerk will request the clerk of the court possessing the record to certify and

transmit it to this Court. Consequently, if counsel desire to have the record remain in the lower court for a short period of time, counsel must notify the Clerk's Office immediately. Rule 16.2.

VII. JOINT APPENDIX

The primary responsibility for preparation of the joint appendix (except in cases of an *in forma pauperis* petitioner) is placed upon counsel for the petitioner or appellant, who should begin such work *immediately.* The parties are urged to agree as quickly as possible upon the contents of the joint appendix. Rule 26.2.

If the parties cannot agree upon the contents, counsel for the petitioner, within 10 days of the order granting the petition for a writ of certiorari,* shall designate the portions of the record the petitioner intends to print. This is required by the Rules and it is imperative that top side counsel keep bottom side counsel informed. Counsel for the respondent shall make any counter designations within 10 days after receipt of the petitioner's designation. No cross designation may be made by the petitioner. These dates must be adhered to unless extended by the Clerk. Rule 26.2.

Counsel for the petitioner must keep the Clerk advised respecting any disagreement or the dates when the designations are made. Copies of the designations *need not* be forwarded to the Clerk.

The printed joint appendix must be filed with the Clerk within 45 days from the date the petition is granted. Rule 26.1.

Because the entire record is always available to the Court for reference and examination, only those significant portions of the record, which have not been included within a brief and are directly relevant to the issues being briefed, shall be included. The briefs may always cite and rely upon portions

*This part and subsequent parts of the guide refer only to grants of certiorari, but the same instructions pertain to appeals and, in general, to original jurisdiction cases. Rules 17 and 18.

of the record that have not been designated for printing in the joint appendix. Counsel must not attach to their briefs any documents (*e. g.*, exhibits, transcript) from the record that should have been contained in the joint appendix.

On the parties' request, the Clerk may allow preparation of the joint appendix to be deferred until after the briefs have been filed. Deferral is not favored. It is appropriate only when the portions of a bulky record that need to be printed in the joint appendix cannot be determined until the issues have been sharpened in the parties' briefs. Rule 26.4.

The joint appendix is a document separate and apart from the brief on the merits and is not to be physically attached thereto. The following guidelines shall be followed:

1. The color of the cover shall be tan. Rule 33.1(e). The cover must:

(a) bear all six items specified in Rule 34.1, including the name, address, and telephone and fax numbers of the respective counsel of record for the parties.

(b) have two lines at the bottom:

(1) the date when the petition for certiorari was filed (or when the appeal was docketed); and

(2) the date when certiorari was granted (or when jurisdiction over the appeal was noted or postponed).

2. (a) Rule 26.5 requires that the joint appendix be prefaced by a table of contents.

(b) Rule 26.1 requires that the joint appendix contain the following:

(1) the *relevant* docket entries in all the courts below;

(2) any relevant pleadings, jury instructions, findings, conclusions, or opinions;

(3) the judgment, order, or decision under review; and

(4) any other parts of the record that the parties particularly wish to bring to the Court's attention.

(c) The Court does not require the inclusion in the joint appendix of any of the foregoing items in subparagraph 2(b) *which have already been reproduced in a booklet-format*

petition for certiorari, brief in opposition, or other specified documents. Rule 26.1. In that event, the joint appendix must contain a notation directing the Court to the place where such items appear. Of course, if the material previously printed is only a few pages long, it would be advisable to reproduce it in the joint appendix for the convenience of the Justices. The Court, however, does not want lengthy material already printed to be reproduced in the joint appendix. If the parties nevertheless desire to reprint the opinions, judgments, orders, and decision below in the joint appendix, they must be reprinted in full, without deletions.

3. The joint appendix must be arranged so that the various documents appear chronologically to the extent possible. Documents or items not in the certified record *must not* be reproduced in the joint appendix.

4. If no docket entries appear in the record, counsel for the petitioner must prepare as a substitute a chronological list of the important dates on which pleadings were filed, hearings held, and orders entered. The provisions of Rule 26 for the printing of the docket entries require only the printing of entries relating to substantial and relevant matters, unless a procedural step is germane to the issues presented.

5. The name of the lower court must appear at the beginning of each item printed in the joint appendix.

6. The title of the case must be printed at the beginning of the first item, and the opinions and judgments must likewise carry the title. *The title need not be printed on any other papers*, but a parenthetical note must be inserted, *i.e.*, (Title omitted in printing).

7. Jurats and certificates or affidavits of service may be omitted and an appropriate parenthetical note printed in their stead, *i.e.*, (Jurat omitted in printing), (Certificate or affidavit of service omitted in printing).

8. Any deletions not specifically noted shall be indicated by asterisks.

9. So that testimony reprinted in the joint appendix may be compared with the original copy, the page at which it

appeared in the transcript must be indicated in brackets immediately before the statement set out. Rule 26.5.

10. The size of type and page requirements for material reproduced in the joint appendix, including that which is photographically reproduced, are set forth in Rule 33.1. The text must be typeset (*e. g.*, hot metal, photocomposition, or computer typesetting) and reproduced by offset printing, photocopying, or similar process. The text must be Roman 11-point or larger type with 2-point or more leading between lines. The typeface must be similar to the Century Schoolbook font used in current volumes of the United States Reports. Type size and face shall be consistent throughout. See Rule 33.1(b) concerning quotations and footnotes. Counsel should refer to the memorandum to brief-printing companies, that will be forwarded under separate cover, to serve as a guide in brief preparation.

To enable the Clerk to insert in the judgment an appropriate award respecting costs, the petitioner, at the time the joint appendix is filed or soon thereafter, must file with the Clerk an itemized statement from the printer of the cost of preparing 50 copies, unless increased by the Clerk, of the joint appendix, and must serve a copy thereof on each of the parties to the proceeding. Rule 26.3.

VIII. BRIEF FOR PETITIONER

The color of the cover must be light blue. Rule 33.1(g)(v).

The brief for the petitioner (40 copies) must be filed with the Clerk within 45 days of the order granting the petition. Rule 25.1. Extensions of time to file briefs on the merits by either side are not favored. The form and content of the brief on the merits are governed by Rules 24 and 33.1. The brief must not exceed 50 pages and the print must be Roman 11-point or larger type with 2-point or more leading between lines. Footnotes shall be 9-point or larger. Do not attempt to reduce, compress, or condense the typeface in order to increase the content of the document. Briefs produced on a personal computer using word processing software are con-

sidered to be standard printing and are acceptable if the type size and face are no smaller than that contained in current volumes of the United States Reports. Such briefs should not be double-spaced. Please note that any appendix to a brief must be limited to relevant material, and counsel must not include in an appendix arguments or citations that properly belong in the body of the brief. Rule 24.3.

Applications to exceed the page limitations are not favored and should be submitted only in the most extraordinary case. Rules 22 and 33.1(d). Counsel must submit such applications promptly, thus enabling counsel to modify the proposed brief and timely file it if the Circuit Justice denies the application to exceed the page limitations.

Errata sheets will not be accepted for transmittal to the Court, nor will the Clerk's staff assume responsibility for making changes to a brief. It is the responsibility of counsel to read a brief *before* it is submitted to the Clerk and to make appropriate changes as necessary. If a brief has been filed with the Clerk and not circulated to the Court, counsel may arrange to have a representative come to the Clerk's Office to note the changes in the 40 copies of the brief on file. Opposing counsel shall be informed of such changes immediately. After a brief has been circulated to the Court, and if there is some extraordinary reason for doing so, the Clerk will consider receiving 40 copies of a "corrected" brief for transmittal to the Court. Under no circumstances will an errata sheet or letter from counsel concerning errors be sent to the Justices.

IX. BRIEF FOR RESPONDENT

The color of the cover must be light red. Rule 33.1(g)(vi).

The brief for the respondent (40 copies) must be filed with the Clerk within 35 days after the date the petitioner's brief is filed. Rule 25.2. The form and content of the brief on the merits are governed by Rules 24.2 and 33.1. Applicable guidance concerning type size and face and related matters is contained in Part VIII, above.

X. REPLY BRIEF

The color of the cover must be yellow. Rule 33.1(g)(vii).

The reply brief for the petitioner (40 copies) must be filed with the Clerk within 35 days after the date respondent's brief is filed or received by the Clerk one week before the scheduled oral argument date, whichever is earlier. Rules 24.4. and 25.3.

XI. SUPPLEMENTAL BRIEF

The color of the cover must be tan. Rule 33.1(g)(iv). Although a supplemental brief (40 copies) is permitted, it is limited to those matters contained in Rule 25.5 and must be filed before the case is called for argument. No brief shall be filed after argument except upon leave of the Court. Rule 25.6.

XII. *AMICUS CURIAE* BRIEF

The color of the cover of an *amicus* brief in support of petitioner must be light green. An *amicus* brief in support of the respondent must be dark green. Rule 33.1(g)(xi) and (xii).

An *amicus* brief (40 copies) must be submitted within the time allowed for filing the brief for the party supported. It must specify whether consent was granted, and its cover must identify the party supported or indicate whether it suggests affirmance or reversal. Consult Rule 37 for information concerning consent and motions for leave to file.