



# **ORAL ARGUMENT**

**By The Honorable Thomas D. Waterman  
Justice – Iowa Supreme Court**



# ORAL ARGUMENT: OBJECTIVES

(per Scalia)

- Answer court's questions/resolve doubts
- Address new points (sur-reply)
- Reinforce key points in brief
- Sell yourself (trustworthy, forthright, knowledgeable, well-prepared, likeable)

# MINDSET

(per Scalia)

- “Discussion led by Judges”
- You’re like a junior partner presenting to senior partner (conversational but respectful)



# SUGGESTED PREPARATION

- Update research (file notice of additional authorities?)
- Know your audience
- Anticipate court's questions
- Do a moot court the week before
- Master caselaw and record
- Memorize beginning and closing; outline the rest (prepare “cheat sheets”)
- Arrive early

# GENERAL TIPS

- Oral argument should supplement rather than regurgitate written briefs
- Appellee's oral "sur-reply" to opponent's reply brief
- Be bold but not over the top (make it interesting, memorable)
- Begin and end strong
- Split the argument? (Scalia: Don't)
- Know when to sit down (don't snatch defeat from the jaws of victory)

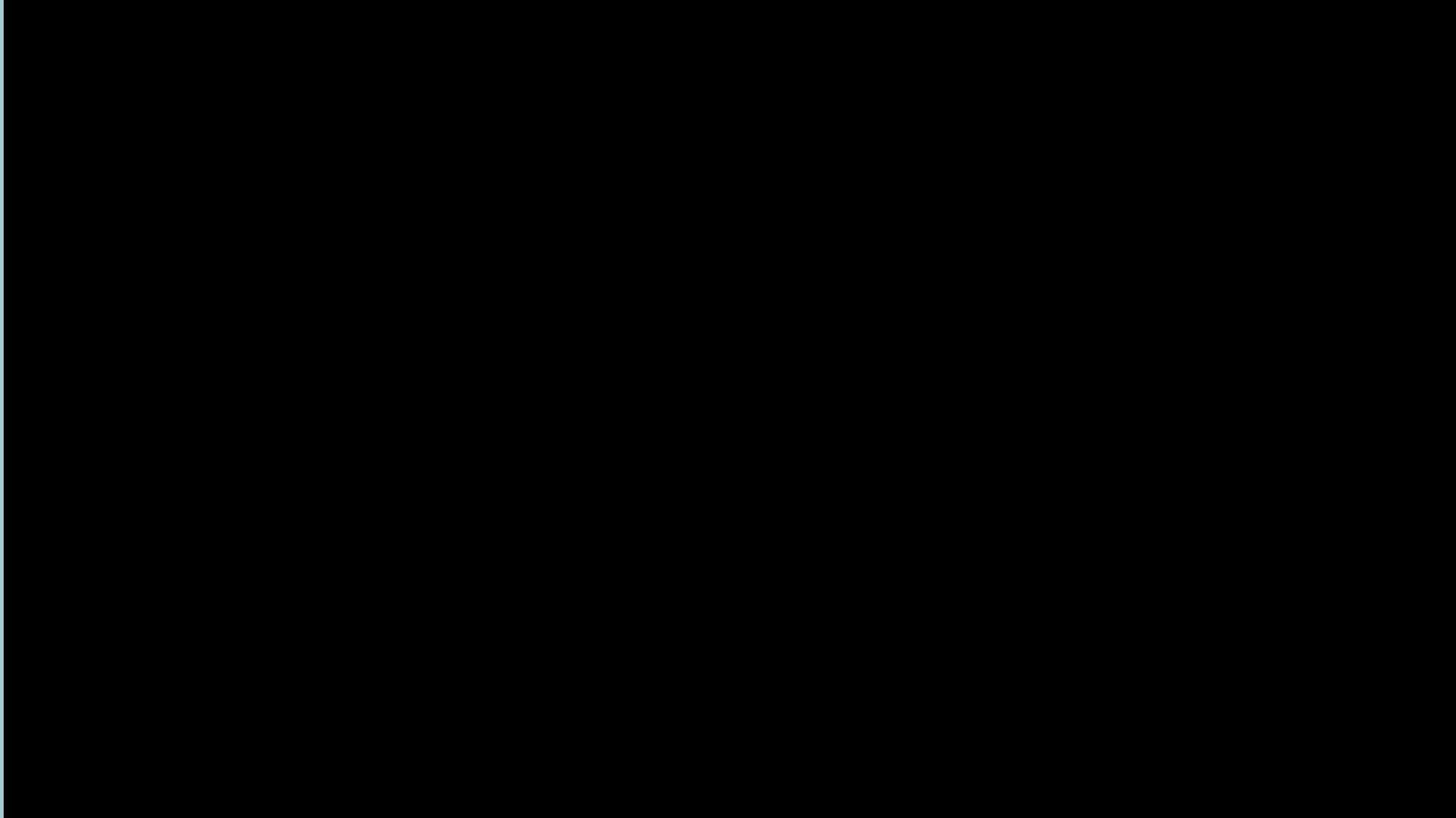
# GENERAL TIPS

- Maintain good eye contact with *all* members of court (don't read from notes!)
- Be flexible:
  - Consider court's questions to opponent
  - Always immediately answer court's questions to you (welcome slow pitches) (*Rieff* example)
  - Use checklists
  - Revise checklist during opponent's argument
  - Be careful with concessions, hypotheticals (stick to theme)
  - Use visuals? *See* Iowa R. App. P. \_\_\_\_ (requiring advance notice and handouts).

# TEACHABLE MOMENTS



# START STRONG



*State v. Buelow*, 951 N.W.2d 879 (Iowa 2020)

David N. Fautsch (Weinhardt Law Firm)

Oral argument held September 16, 2020

# END STRONG



*Carter v. Carter*, 957 N.W.2d 623 (Iowa 2021)  
Mark E. Weinhardt (Weinhardt Law Firm)  
Oral argument held January 21, 2021

# MY COUSIN VINNY



*State v. Casper*, 951 N.W.2d 435 (Iowa 2020)

Louis S. Sloven (Assistant Attorney General)

Oral argument held October 15, 2020

# ZOOM – STAND AND DRESS PROFESSIONALLY



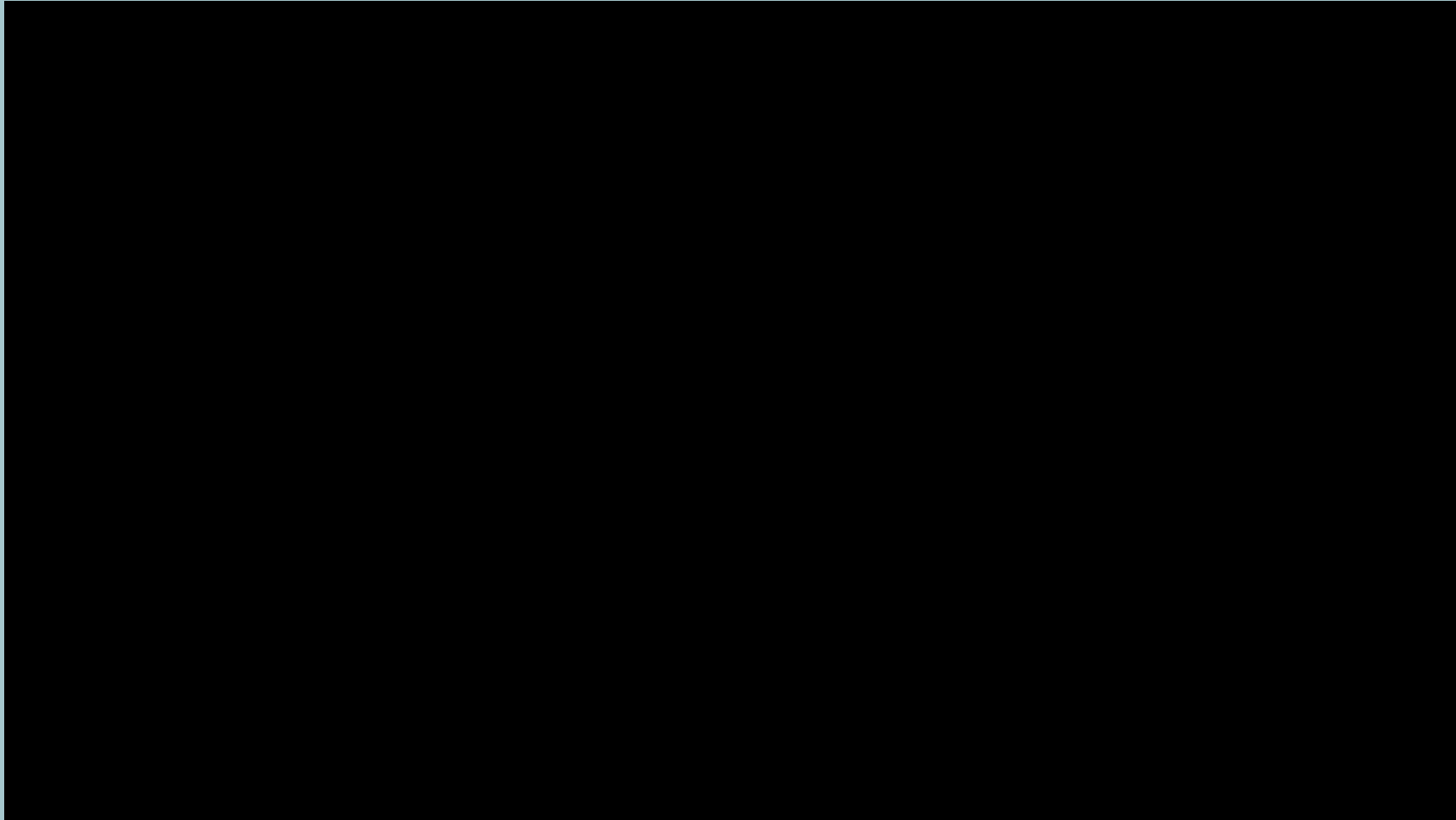
*Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646 (Iowa 2021)  
Brett R. Marshall (Lane & Waterman LLP) & Michael J. Meloy (Meloy Law Firm)  
Oral argument held December 16, 2020

# DON'T ARGUE WITH OPINION AUTHOR



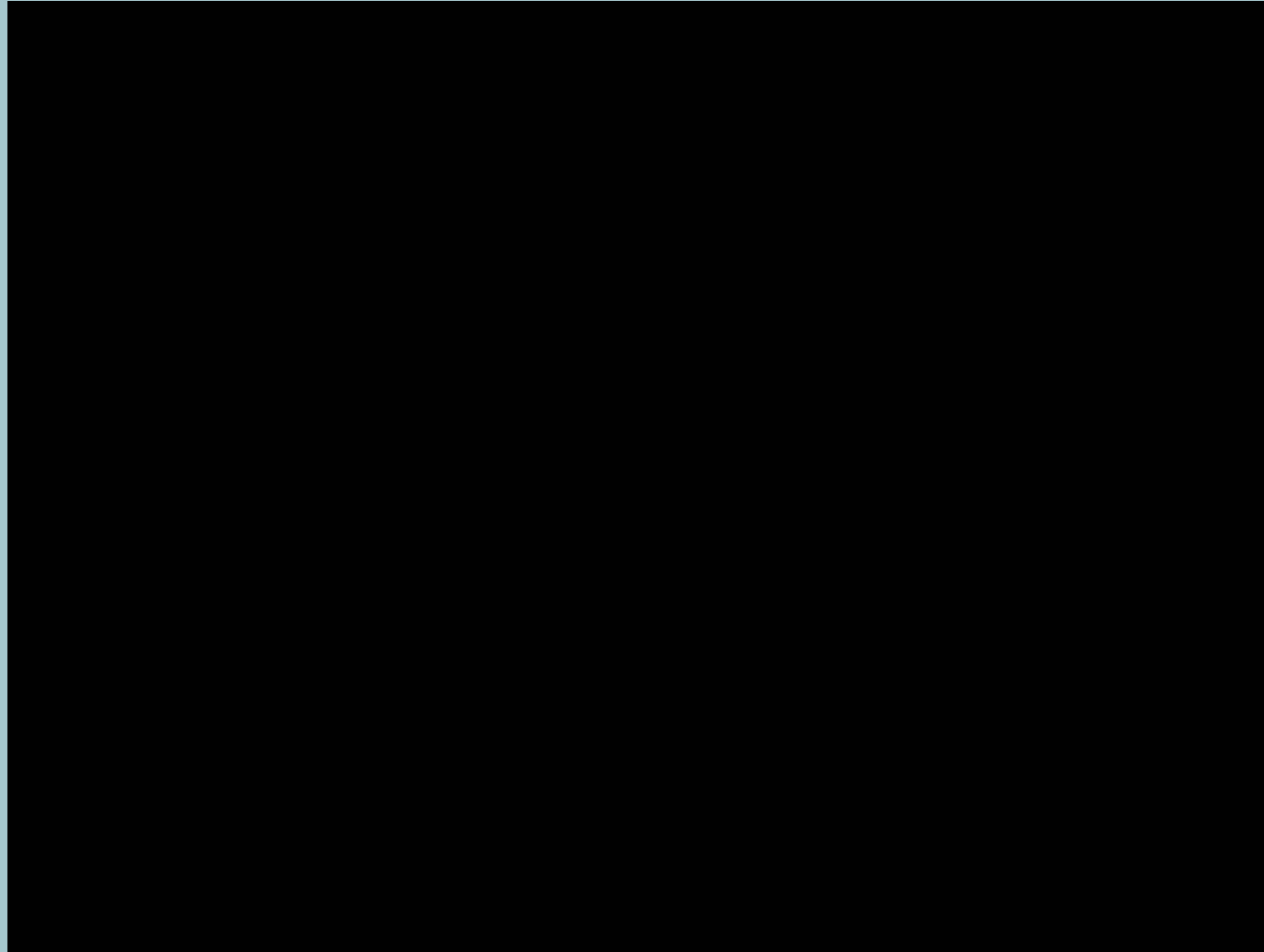
*Schmett v. State Objections Panel*, 973 N.W.2d 300 (Iowa 2022)  
Justice Mansfield & Gary D. Dickey (Dickey, Campbell & Sahag Law Firm PLC)  
Oral argument held April 13, 2022

# STAND YOUR GROUND



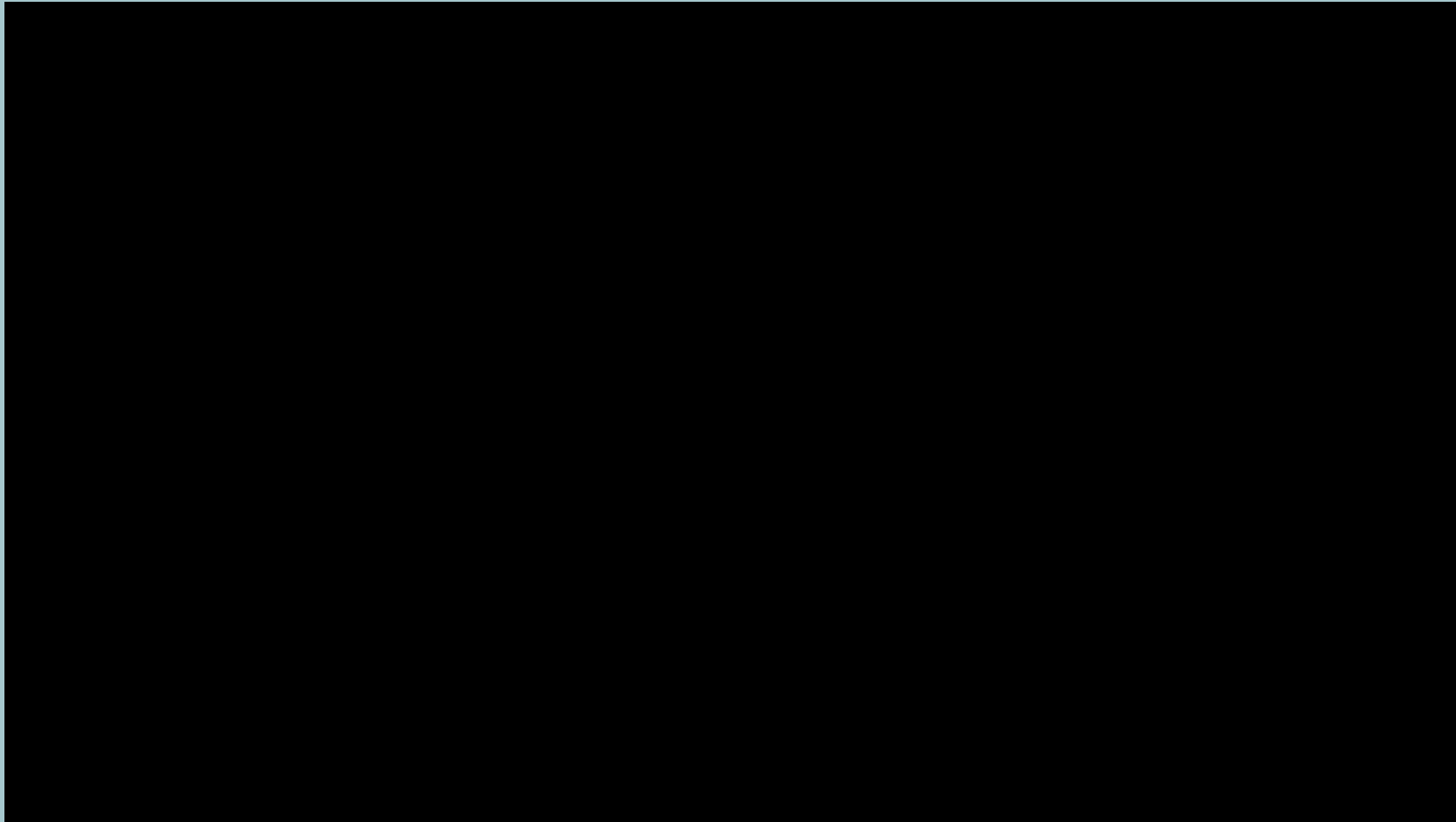
*Petro v. Palmer Coll. of Chiropractic*, 945 N.W.2d 763 (Iowa 2020)  
Justice McDonald & Alexander C. Barnett (Lane & Waterman, LLP)  
Oral argument held December 17, 2019

# CANDOR



*Doe v. New London Cmty. Sch. Dist.*, 848 N.W.2d 347 (Iowa 2014)  
Justice Waterman & Roxanne Conlin (Roxanne Conlin & Associates)  
Oral argument held April 2, 2014

# KNOW THE CONTROLLING AUTHORITY



*State v. McGee*, 959 N.W.2d 432 (Iowa 2021)

Justice McDonald & Vidya K. Reddy (Assistant Appellate Defender)

Oral argument held December 16, 2020



# DISTINGUISHING AUTHORITY



*State v. Folkers*, 941 N.W.2d 337 (Iowa 2020)  
Justice Oxley & Sharon K. Hall (Assistant Attorney General)  
Oral argument held March 10, 2020

# KNOW THE RECORD



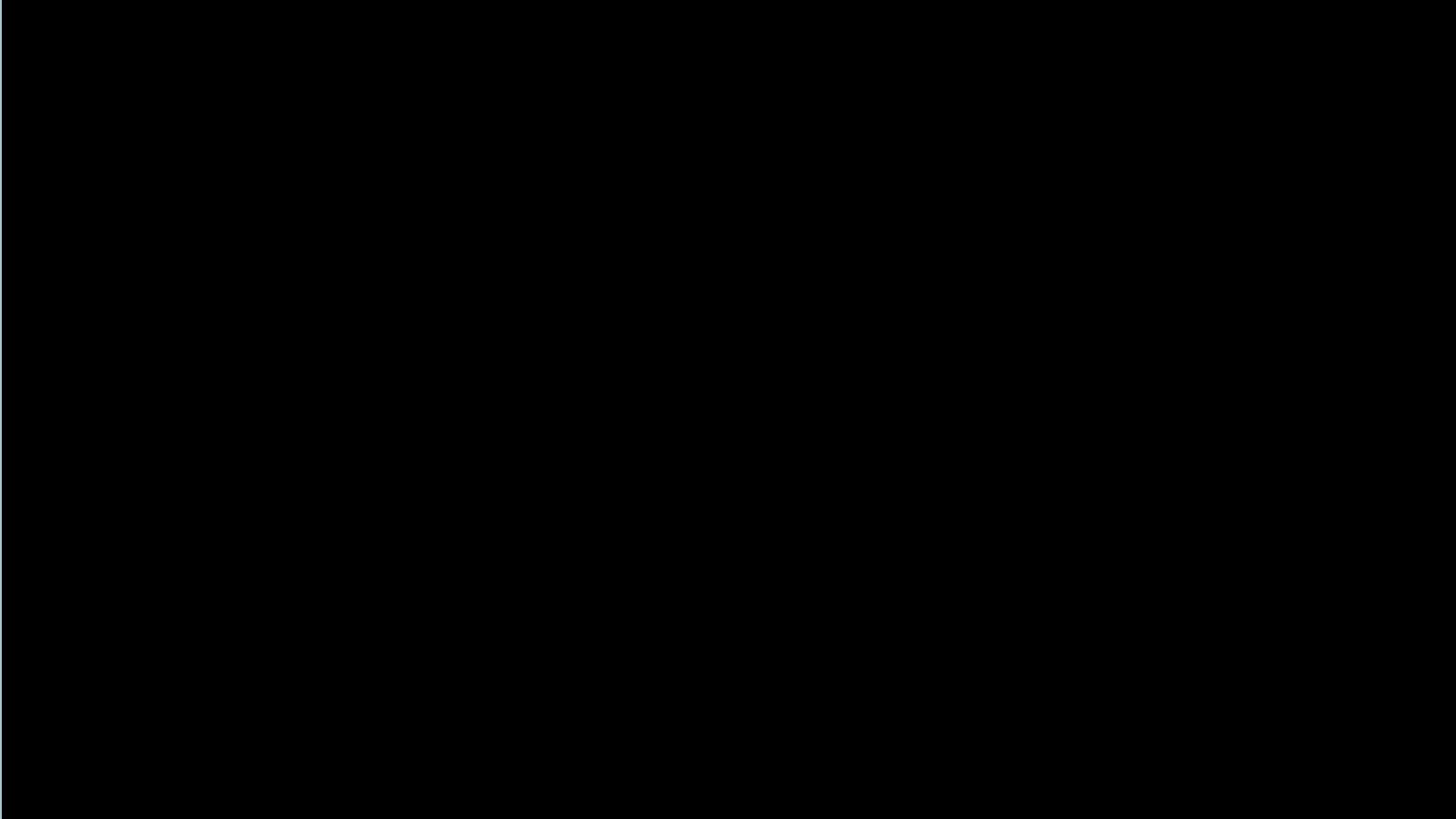
*Story Cnty. Wind, LLC v. Story Cnty. Bd. of Rev.*, \_\_\_ N.W.2d \_\_\_ (Iowa 2023)  
Justice May & Joshua Duden (Assistant Story Cnty. Att'y) and Brent Kahler (BrownWinick)  
Oral argument held April 11, 2023

# MISSTATING THE RECORD



*Irland v. Iowa Bd. of Med.*, 939 N.W.2d 85, 88 (Iowa 2020)  
Justice Wiggins and Justice Appel & Anagha Dixit (Assistant Attorney General)  
Oral argument held January 23, 2020

# DON'T GO OUTSIDE THE RECORD!



*Nationwide Mut. Ins. Co. v. Polk Cnty. Bd. Of Review*, 983 N.W.2d 37 (Iowa 2022)

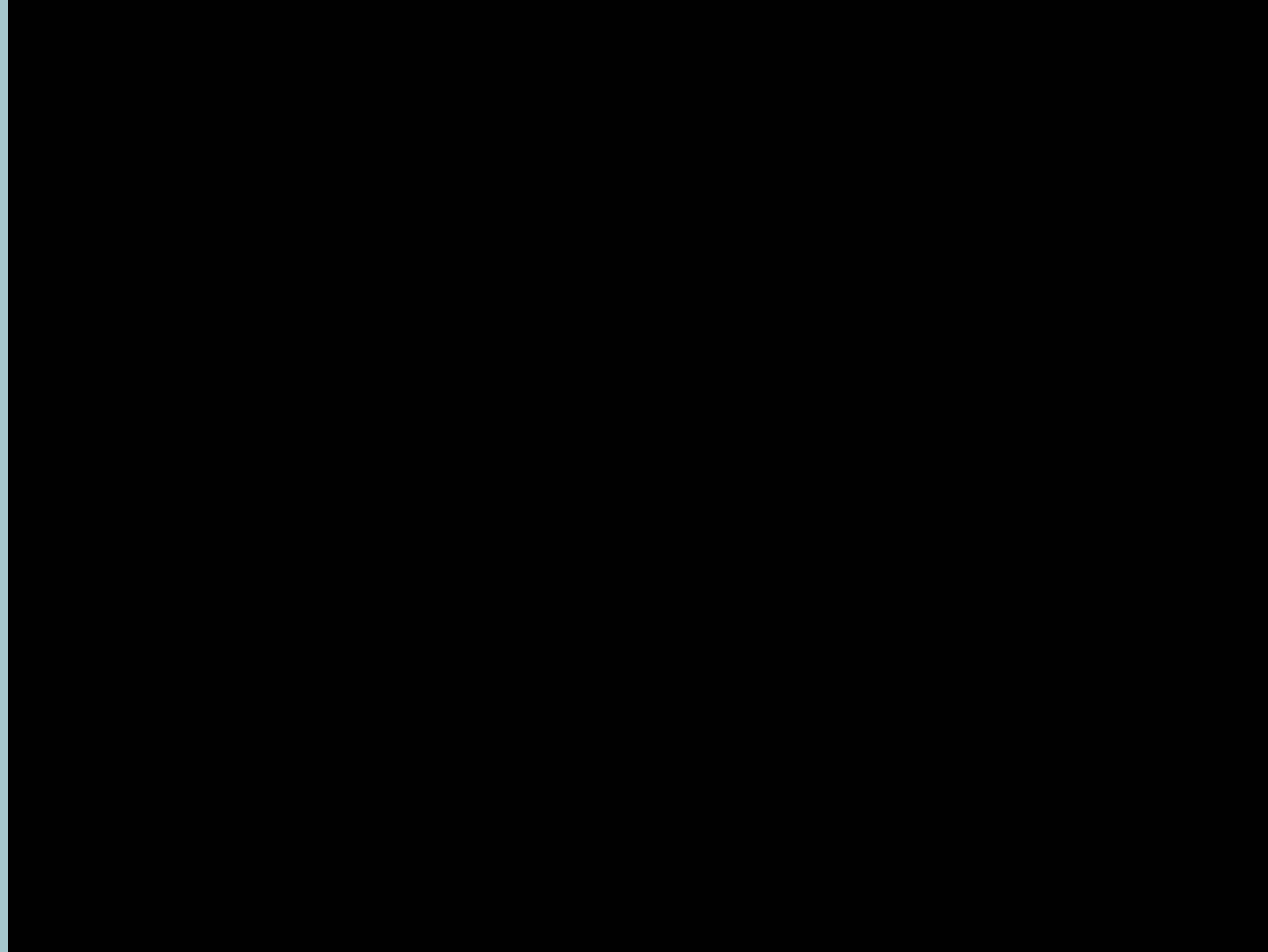
C.J. Christensen and J. McDermott & Sean P. Moore (BrownWinick) and Mark Taylor (Assistant Polk Cnty. Att'y) (not pictured)

Oral argument held September 15, 2022

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# CONCESSIONS & ADMISSIONS

# CONCESSION FROM ARGUMENT IN OPINION



*Book v. Doublestar*, 860 N.W.2d 576 (Iowa 2015)  
Justice Mansfield & Kevin Reynolds (Whitfield & Eddy, P.L.C.)  
Oral argument held January 22, 2015



We recognize the burden placed on alien defendants: “The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.” **But, in this case, that concern is substantially diminished by Doublestar's concession that it is subject to personal jurisdiction in Tennessee.** Doublestar does not identify any material additional burden it would face defending this case in Iowa instead of Tennessee. Nor does Doublestar contend it lacks the resources to defend this lawsuit in Iowa.

*Book v. Doublestar*, 860 N.W.2d at 595 (citation omitted) (quoting *Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal.*, 480 U.S. 102, 114, 107 S. Ct. 1026, 1033 (1987)).

# UNSOLICITED ADMISSION



*33 Carpenters Constr., Inc. v. State Farm Fire & Cas. Co.*, 939 N.W.2d 69 (Iowa 2020)

Justice Waterman & Edward F. Noethe (McGinn, Springer & Noethe PLC)

Oral argument held January 23, 2020



# TYPES OF QUESTIONS

- Elevator Pitch
- Limiting Principle
- Hypotheticals
- Practical Implications
- Softball
- Boxing in the Attorney
- Ramifications

# ELEVATOR PITCH



*Hedlund v. State*, 930 N.W.2d 707 (Iowa 2019)  
Justice Christensen & Thomas Duff (Duff Law Firm, P.L.C.)  
Oral argument held April 9, 2019

# WHAT'S THE LIMITING PRINCIPLE?



*Bonilla v. Iowa Bd. of Parole*, 930 N.W.2d 751 (Iowa 2019)

Justice McDonald & Rita Bettis Austen (ACLU)

Oral argument held April 9, 2019

# HYPOTHETICALS ARE FOR LINE DRAWING

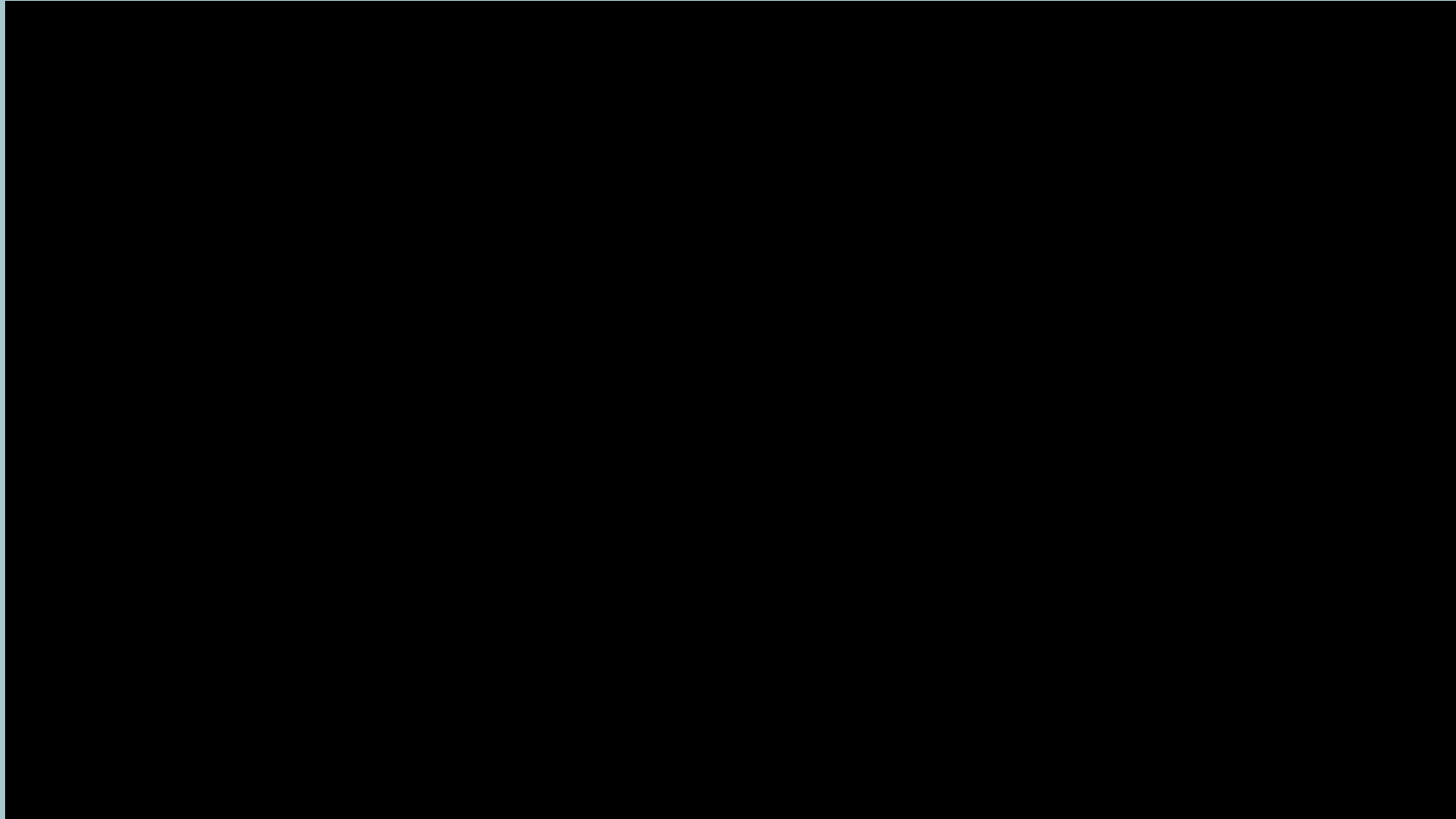


*Morris v. Legends Fieldhouse Bar & Grill, LLC*, 958 N.W.2d 817 (Iowa 2021)

Justice McDonald and Justice McDermott & Adam Zenor (Zenor Kuehner, P.L.C.)

Oral argument held January 21, 2021

# PRACTICAL IMPLICATIONS



*State v. Sewell*, 960 N.W.2d 640 (Iowa 2021)

Justice Waterman and Justice Mansfield & Robert G. Rehkemper (Gourley, Rehkemper & Lindholm, P.L.C.)

Oral argument held February 17, 2021

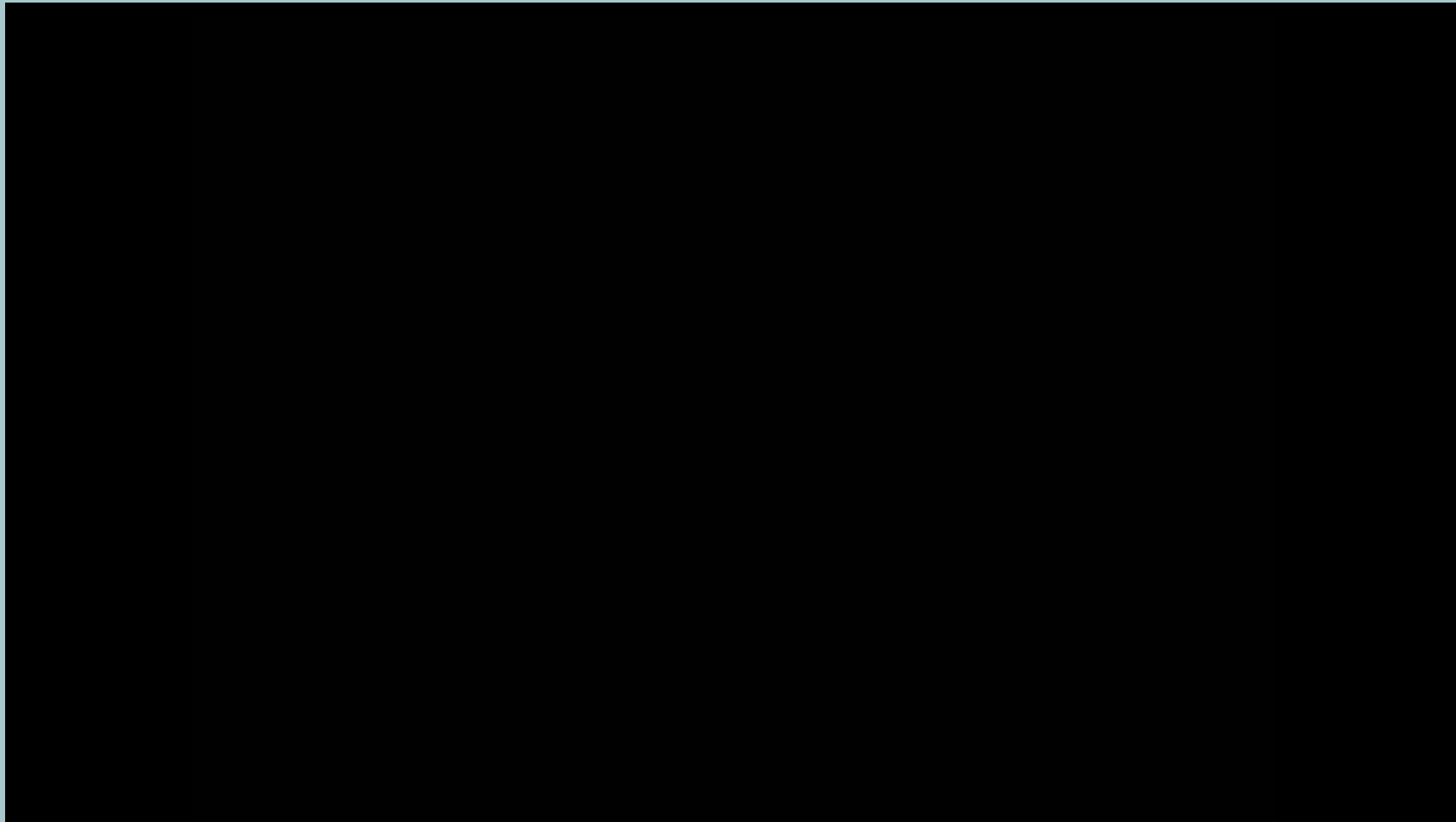


# BOXING IN THE ATTORNEY



*State v. Wright*, 961 N.W.2d 396 (Iowa 2021)  
Chief Justice Christensen & Colin Murphy (Gourley Rehkemper Lindholm, P.L.C.)  
Oral argument held September 17, 2020

# RAMIFICATIONS



*State v. Paye*, 865 N.W.2d 1 (Iowa 2015)  
Justice Waterman & Benjamin Parrott (Assistant Attorney General)  
Oral argument held April 8, 2015

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**ANY  
QUESTIONS?**