UNDERSTANDING MOOT COURT

A Beginner’s Guide to Competing in Moot Court Competitions

Noaman Azhar
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**Introduction**

Moot Court is the term given to an appellate argument. An appellate argument is the argument made to the appeals court after a trial. Depending upon the facts of a particular case, an appeal can be made either after a completed trial or after a ruling by the trial court that warrants an appeal to review the ruling.

As a general overview, when an advocate makes a Moot Court argument, the advocate will predominantly argue the law to the appellate court. As an advocate, you are not trying to prove the facts of the case, you are attempting to convince the appellate court that the ruling or decision of the trial court, based on the facts of your case, was correct or incurred based on the law. Because a Moot Court argument is based primarily on the law, the advocate will attempt to persuade the appellate court by citing cases and statutes that support his/her interpretation of the controlling law on his/her issue.

Appellate judges will ask the advocate questions during his/her argument. This can be intimidating, but if the advocate views it as a conversation between himself/herself and the judges and understand that his/her role is to educate the judges on the legal issue he/she is arguing, the “fear factor” begins to disappear. Thorough preparation and understanding of the issue will erase the intimidation because, theoretically, the advocate should be prepared to handle any question thrown at him/her.

Hopefully, this packet will assist the advocate in his/her endeavor into the realm of appellate advocacy. The Board of Barristers’ goal is to help you become better advocates and prepare you for the “real world” practice. Whether you are discussing preliminary matters with a judge, arguing a summary judgment motion, or actually arguing an appeal, Moot Court will help you become a better advocate.
I. Preparation

A. Reading the Record

a. Importance of the Record

All Moot Court problems consist of 5-15 pages known as the record. The record is critically important because it lays out the undisputed facts of the case and explains the lower courts holdings and rationale. The advocate should place special importance on two types of facts listed in the record: procedural facts and historical facts. Procedural facts are important because they describe the process by which the case has traveled from the lower courts to the higher courts. Moot Court judges occasionally enjoy testing advocates on their knowledge of the procedural history of the case being argued, so it can be especially worthwhile to have a familiar grasp of the procedural facts.

The facts most often discussed in Moot Court rounds, however, are the historical facts of the case. The historical facts are undisputed and should never be argued in a Moot Court round. The historical facts are gathered at the trial level and are agreed to by both parties for the purposes of Moot Court. They are typically well balanced, giving each side an opportunity to have some factual basis to support their legal positions. The only time facts ought to be argued at the appellate level is when they are in dispute, but for purposes of Moot Court competitions the facts are never in dispute. As a result, the advocate should never “stretch” the record by assuming the facts say something they don’t, or inferring something beyond what the facts describe.

When reading the facts, it helps to first arrange the facts in chronological order. If the problem does not already list the facts in sequence, the advocate can benefit by organizing the facts in order. First, when facts are put in order, the importance of certain facts may appear more
glaring. Second, gaps in the facts will appear more obvious and help the advocate acquire a better sense of the case. It is also helpful to separate the beneficial facts from the harmful facts. This will help when preparing the statement of facts, which will be described later.

   Every fact listed in the record is written for a reason. Therefore, the advocate should pay special attention to every fact, and not just those facts that appear the most interesting and juicy. The advocate should know the historical facts of the case backwards and forwards because they often appear in the judge’s questions. In fact, it is recommended that an advocate read the record at least once a day during the final week of preparation for a competition so that they can become intimately familiar with all the facts of the case.

   Other than the undisputed facts of the case, the majority of the record consists of the holdings of the lower courts and their rationale, which can be found in the opinions delivered by the judges. Reading the holdings and rationale of these cases is critical for advocates because they explain the best arguments for each side and offer cases to support the arguments. This should always serve as a stepping stone in the process of researching all the cases on the issues. The opinions can also help an advocate organize his/her outline and argument because they are structured in a logical sequence.

   B. Researching Cases

   a. Extracting the Relevant Rules of Law

   After an advocate thoroughly reads and understands the record, his/her next job is to begin reading the cases that are cited in the record, and the cases that those cases cite. By reading cases on the issues, the advocate will gain a better understanding of how the relevant law has evolved over time, the arguments and different public policy reasons giving rise to the law, and the current state of the legal issues. When the advocate does this, certain rules of law will
become readily apparent to the advocate. The cases will help flesh out the most important rules of law, allowing the advocate to become more familiar with the most relevant points and critical legal issues.

b. Recognizing Factual Similarities

Recognizing factual similarities is critically important when arguing a case. When an advocate can demonstrate that a certain case has almost identical facts to the case at bar, and therefore the holdings should be congruent, it can be very persuasive. Similarly, when an advocate can demonstrate that a certain case has almost identical facts, but there is one or two distinguishing characteristics from the case at bar, and therefore the holdings do not correlate, it can be equally persuasive.

Almost every Moot Court problem is based on an actual case with similar facts about to be heard before the U.S. Supreme Court or a State supreme court. Consequently, the advocate can greatly benefit from finding that case and recognizing the factual similarities and the holdings from the case as it was heard in the lower courts. Beyond that golden case, there will also most certainly be a number of lower court cases with similar facts. It is the job of the advocate to find those cases and be able to use them when they support the advocate’s positions, and distinguish them when they do not.

c. Majority and Dissenting Opinions

Many advocates make the mistake of ignoring dissenting opinions. While the majority opinions are typically more helpful since they are controlling and often offer more analysis on the subject matter, dissenting opinions can also be extremely helpful. Dissenting opinions sometimes become majority opinions, especially at the U.S. Supreme Court level, when judges retire and are replaced by judges holding different views. Additionally, when judges are out
voted, they still care to be heard and therefore will write very persuasive and convincing arguments in their dissenting opinions. Those arguments can be used in Moot Court rounds as public policy and as general arguments to support the advocate’s position. Despite being dissenting opinions, many of the arguments written by justices, especially on the U.S. Supreme Court, are still persuasive and can operate to convince a judge of an advocate’s legal position.

C. Written Argument Preparation

a. Knowing Everything

Moot Court is unlike any other forensic or advocacy competition because the advocate actually interacts with the judges and is ruthlessly questioned by the judges. It is often frightening for advocates who appear in Moot Court competitions because they never know what the judges may ask. Sometimes judges ask easy or “softball” questions; other times judges will ask confusing or extremely complicated questions. Therefore, it is important for every advocate to do as much research and preparation as possible for Moot Court competitions. This way the advocate will know as much as he/she possibly can and will be able to adequately respond to any question a judge attempts to ask him/her.

b. Condensing the Argument to an Outline

After an advocate has done all the necessary research, found all the best cases, and compiled all the greatest arguments, his/her job is to condense everything into a short outline that they can be used when arguing. The outline should be a page or two in length and include all the necessary arguments, cases, and justifications the advocate wishes to address. However, the outline is just that, an outline. It should not be verbose or long and should not be meticulously read. Relying too heavily on the outline can become distracting and cause an advocate to be less persuasive. Rather the outline should be brief but comprehensive.
c. Sample Outlined Argument

I. MIRANDA DOES NOT REQUIRE A PRECISE FORMULATION OF WORDS TO CONVEY A SUSPECT HIS RIGHTS

A) This court noted that the adequacy of Miranda warnings are governed by their substance
- No magic words or ritualistic formulas are required
    - Miranda does not contemplate a precise formulation, rather, Miranda contemplates a fully effective equivalent
  - Duckworth vs. Eagon, U.S.S.C.
    - Focus is on whether a suspect was reasonably conveyed his rights.
    - This Case, the substance of the rights associated with Miranda were conveyed to petitioner
      - Could refuse to talk
      - Statements could be used against him
      - Right to the presence of an attorney
      - One would be appointed for him if he could not afford one
    - Door was informed of all 4 of these cornerstone rights on three separate occasions

B) Petitioner suggests he was never explicitly told he had the right to counsel during interrogation
  - Davis vs. United States, 1994, U.S.S.C.
    - This Court will guard against “transforming the Miranda safeguards into wholly irrational obstacles to legitimate police investigative activity.”
    - This court has historically declined to adopt a precise warning inserted into Miranda

C) Requiring officers to anticipate every situation where a Miranda right might be invoked is too heavy a burden
  - United States vs. Frankson, USCA 4th, 1996
    - All that police officers need to do is convey the general rights enumerated in Miranda.
    - The generality of the warning does not render the warning deficient
  - This Case, the Miranda warnings given to petitioner sufficiently apprised him of his right to an attorney
    - 3 different special agents, on 3 separate occasions, read Petitioner his Miranda rights twice from a Miranda card and once from a waiver form (statements were voluntarily given)
      - Prepared Cards – reduce the chances of error/assists police in performance of duties/protects rights of accused
    - Each time the agents informed the petitioner of his constitutional right to representation
      - “You have the right to the presence of an attorney.”
    - Door should have known his right to counsel began immediately and continued in time without qualification

II. PETITIONER NEVER AFFIRMATIVELY INVOKED HIS RIGHT TO COUNSEL

A) States before interrogation that he was unsure whether he wanted to speak with an attorney; and
B) Asked during the second interrogation if an attorney was present at that time

A) Door’s first remark about being unsure did not invoke his right to counsel
  - Davis vs. United States, 1994, U.S.S.C.
    - A mere reference to an attorney that suggests a suspect might be invoking his right is not enough
    - “Maybe I should talk to a lawyer” – ambiguous
    - Clarified – and suspect said he did not want an attorney
  - Here, Door’s statements is just as ambiguous – no clear expression

B) Door’s second remark about having counsel “right now” received proper clarification
  - Davis vs. United States, 1994, U.S.S.C.
    - Good police practice to clarify whether the suspect actually wants an attorney
      - Ensures the rights of the suspect are protected
      - Supports the interest of law enforcement by not forcing officers to make difficult judgment calls
  - This Case, Door’s remark was ambiguous
    - A reasonable person could construe the question as Door asking if an attorney was presently available – as opposed to actually requesting an attorney
    - Nonetheless officer Headwig still attempted to clarify Door’s question (record at 7)
    - Door’s remark was a question not a statement asserting his right
    - Before any further interrogation ensued, Door was asked yet again if he wished to speak without the presence of an attorney – and he agreed (record at 8)
III. Argument

A. Argument Structure

a. Introduction

The introduction is very important for each speaker. It gives the judges their first impression of the speaker and allows the first speaker for each team an opportunity to set the tone for their side. The first petitioner speaker’s introduction will typically last about 90 to 120 seconds. The introduction for the three other speakers will be substantially shorter and will typically last from 15 to 30 seconds. This is because the first petitioner speaker will be reciting the facts of the case and the other speakers will merely be offering their personal identification and the issues they will argue.

i. Personal Identification of the Advocates

Every Moot Court argument begins with the personal identification of the advocates. After an advocate commences with the “may it please the court” formalities, he/she immediately identifies himself/herself. There are two ways to introduce oneself. If the advocate is the first speaker, he/she may say, “My name is Allison Clayton, my co-counsel is Noaman Azhar.” If the advocate is speaking second, he/she may simply say “My name is Noaman Azhar.” It is important to remember to deliver one’s name slowly and clearly. If the judges have yet to fill out the top of their ballots with the names of each party, the clear delivery of one’s name can become important insofar as it helps the judge satisfy their ballots. Additionally, if the judge can clearly hear the advocate’s name then they may choose to address the advocate by their last name which can create a more comfortable atmosphere.
ii. Identification of the Parties

After an advocate identifies himself/herself, he/she identifies the parties in case he/she is representing. If the advocate is speaking first he/she will typically say “we represent the petitioner/respondent in this case, Mr. Chris Jenkins.” Often times the second speaker will not identify the party he/she represents because it may sound redundant.

iii. Brief Reference to the Issues Before the Court

The next step in the introductory portion of the argument is the statement of the issues. This is critically important for the first speaker. It is the job of the first speaker to frame the issues in such a way that they remain consistent with the record, but are still presented with a slight slant. For example, if the two issues being argued address the legality of a search and seizure and the sufficiency of a Miranda warning, they may be presented as such: “There are two issues before this court. The first issue deals with an illegal search and seizure implicating the 4th amendment, and the second issue deals with a deficient Miranda warning implicating the 5th amendment. I will address the first issues, and my co-counsel, Mr. Azhar, will address the second.” The second speaker need not go through the same formality. The second speaker may simply say, “as my co-counsel mentioned, I will be addressing the second issue on appeal, which deals with the deficiency in the Miranda warning given to the petitioner Mr. Jenson.” This provides the second speaker with an opportunity to get straight into the argument.

iv. Statement of the Case

The statement of the case is typically reserved for the first speaker on each side and is especially important for the first respondent speaker. It provides each side with their first opportunity to present its view of the case, and introduce a theme (while themes are predominantly used in mock trial competitions, they can be occasionally used in Moot Court
rounds when administered effectively). The statement of the case is naturally biased towards one side, but much more slanted than the statement of the issue. A typical statement of the case may read as follows: “This case is about government agents exceeding their authority and eviscerating the constitutional rights of innocent citizens.”

v. Brief Recitation of the Pertinent Facts

Much like the statement of the case, only the first speaker will offer a recitation of the pertinent facts, and typically only the first speaker in the round. The first respondent speaker may address a few facts he/she thinks are important or that the petitioner failed to mention. The first petitioner speaker will typically recite about 45-60 seconds worth of facts. The facts of the case will come directly from the record, and should not be fabricated or grossly twisted. However, each speaker will put a minor slant on each fact. This can be done by not making up facts or assuming things or reading in-between the lines of the record, but merely phrasing the facts in such a way that they stay consistent with the record but sound persuasive for one side.

vi. Argument Roadmap

Each speaker will deliver a roadmap of their argument immediately before he/she begins arguing the finer legal points of the issue. The roadmap is designed to elucidate the main two or three arguments. It is important not to say anything too argumentative when presenting the roadmap of the argument because it may cause a judge to begin asking questions before the crux of the argument is given. A roadmap may sound something like the following: “The petitioner is entitled to judgment for two reasons. First, the petitioner was given a deficient Miranda warning because it lacked a specific reference to counsel during interrogation, and second, the petitioner’s 5th amendment rights were violated when the petitioner affirmatively invoked his right to counsel and was never provided an attorney.”
vii. Sample Introductory Argument

May it please the court? My name is Allison Clayton. My co-counsel is Noaman Azhar. We represent the petitioner, Dom L. Door.

This case presents two issues. The first issue deals with Fourth Amendment search & seizure and the second deals with Fifth Amendment Miranda rights. I will address the Fourth Amendment search & seizure issue and my co-counsel, Mr. Azhar, will address the Fifth Amendment Miranda issue.

These constitutional violations arose when ICE agents relied on a confidential informant’s faulty description and mistook Door for a dangerous illegal alien.

According to page 2 of the record, based on this bad information, the agents swooped down on Door in the middle of a concert and asked him for identification. Door provided both his drivers license and United States Passport. The agents confirmed both forms of identification to be valid. As page 3 of the record indicates, after the ICE agents knew that Door was not their man, they nevertheless proceeded with a general investigation.

Instead of returning his identification, they asked to look in his backpack. Door initially refused, but eventually handed over the bag. Inside the backpack, the agents found a laptop computer and a fake driver’s license. The agents arrested Door and gave him a deficient Miranda warning. During the interrogation at the ICE offices following Door’s arrest, the ICE agents got Door to reveal the password to a file on the laptop. The file linked Door to an identity theft ring.

Before the trial began, Door asked to have the laptop and file excluded because the search violated his Fourth Amendment rights and the interrogation violated his Fifth Amendment rights. The trial court refused Door’s motion to suppress and Door was convicted of several identity theft crimes. The Court of Appeals for the Fourteenth Circuit affirmed the trial court’s decision. Door now seeks your review.

We start with the first issue, dealing with the Fourth Amendment. The agents did violated Door’s Fourth Amendment rights for 2 reasons

First, the agents exceeded the scope of the stop.

Second, the agents lacked reasonable suspicion to initiate the stop.
b. Argument

The crux of an advocate’s oral argument will be the actual argument itself. The argument will consist of main points and sub-points that include various cases, holdings, references to the record, and public policy considerations. The argument should be carefully crafted so that it follows in a logical sequence and structure similar to what is presented in the record.

i. Main Points and Sub-points

The crux of the written argument includes main points and sub-points. While the sub-points are typically not delivered as sub-points, it’s often helpful to list them as sub-points on one’s outline for organizational purposes. Depending on the issue argued and what’s offered in the record, an advocate will have either two or three main points. These main points will directly support the issue argued, and often times can be pulled from the main points argued in the record.

It is good practice to have two to four sub-points under each main point. The order of the sub-points is not critically important, but if they follow in a logical sequence it can be very helpful. As a general rule, it is always beneficial to begin your oral argument with your strongest argument. It sets a positive tone from the beginning, and prevents advocates from getting tripped up or flustered early.

ii. Inserting Cases

Every argument made in a Moot Court round must be supported by some authority. Unfortunately, personal opinions do not garner much weight in the eyes of judges. As expected, the most controlling authority in a Moot Court round will come from U.S. Supreme Court cases, followed by Court of Appeals cases. Federal district court cases as well as state court cases can be somewhat helpful when arguing a federal issue, where they are directly on point. Cases are
used to support your argument by demonstrating what other courts have held regarding a particular issue. Because Moot Court topics are typically chosen from current issues before state and federal courts, it is rare that an advocate will find the “perfect” case to support his/her position. As a result, most advocates will find cases that are helpful to their position and many cases that are damaging to their position.

When discussing a case, it is beneficial to first mention the name of the case, followed by the court it was heard in, followed by the pertinent facts, the holding, and the relevant rules of law. Offering the case in that particular order allows the advocate to demonstrate his knowledge of the case, and it also helps the judge follow along to. Often times, the best advocates are good story tellers. If an advocate can learn to recite the facts of a case as if telling a story to the judge, he/she can appear more engaging and entertaining.

“In the case of Miranda vs. Arizona, heard before the United States Supreme Court in 1966, an individual was detained after being identified by a complaining witness. The individual was taken down to the station house where he was thoroughly questioned by police officers. After two hours of interrogation the police were able to produce a signed confession and a written assertion from the detainee. The United States Supreme Court held that both the confession and assertion should have been suppressed because the individual was never informed of his right to the presence of counsel. In Miranda, the Supreme Court enumerated the rights that an individual must be apprised of when they are detained; specifically, the right to the presence of an attorney.”

It is important to note that when an advocate uses a case to support his/her position, it is good practice to know the case in its entirety. This is especially true when a judge is familiar with the case and will take the opportunity to make sure the advocate is just as familiar.

iii. Applying Record Specific Facts

After a case is referenced during oral argument, it is important to tie the case back into the issue being argued. This process can be easily done by first comparing the facts of the case referenced to the facts in the record. By drawing on the comparison, an advocate can then
contend that the holding by the court in the case referenced ought to apply to the holding in the problem case.

“Just like in *Miranda*, where the individual was not fully apprised of his right to counsel, and the evidence was subsequently suppressed; here, the petitioner was not fully apprised of his right to the presence of an attorney during an interrogation and therefore anything produced after he was detained also ought to be suppressed.”

iv. *Public Policy Arguments*

Public policy arguments are a common form of argument often used in Moot Court rounds that do not require an advocate to rely so heavily on a particular case. These arguments are inherently persuasive in nature and are typically offered because they are rhetorically pleasing. Public policy arguments are usually derived from dicta in cases and from legislation. Often times when an advocate is struggling to make an argument because he/she has little case law to support his/her contention, the advocate will rely on public policy considerations to strengthen the argument’s appeal.

“Your honor, this court should find in favor of the petitioner because as the Supreme Court has noted on a number of occasions the interrogation process can be coercive and oppressive. In fact, the Supreme Court has specifically stated that the inherent nature of an interrogation can operate to quickly overbear the will of the detainee, and that police often attempt to badger a detainee into waiving his/her *Miranda* rights.”

c. **Conclusion**

The oral argument conclusion is one of the most important parts of the argument. It is the last time the judge hears the advocate and is often times the last impression left in the judge’s mind. The conclusion should be articulately delivered and should properly summarize the position of the advocate and the team.
i. Prayers for Relief

In Moot Court, every argument is concluded with a prayer for relief. The prayer for relief should summarize your position in a few words and tell the judges what it is that you request. It is extremely important that the advocate has their prayer for relief memorized and practiced because it will be the last thing the judges hear from the advocate’s mouth. However, depending on the amount of time the advocate has before he/she must sit down, some prayers for relief will be slightly different than others.

There are three types of prayers for relief; long prayers, short prayers, and very short prayers. The long prayer for relief is typically given when the advocate has finished arguing his/her position or answering the last question from the bench, and there is still about 30 to 45 seconds remaining to argue. The long prayer for relief may sound like the following:

“Because the petitioner was given a deficient Miranda warning when he was detained, since the warning did not make an express reference to counsel during interrogation, and because the petitioner had his 5th amendment right to counsel violated when he affirmatively requested counsel, but was never provided an attorney, this court ought to reverse the judgment of the lower court, and grant the petitioner a judgment of acquittal, or in the alternative, remand the case for a new trial.”

The short prayer for relief should be given when the advocate has about 5 to 10 seconds remaining to argue and he/she wants to offer his/her prayer before time expires. The short prayer may sound like the following:

“Because the petitioner was given a deficient Miranda warning, and had his 5th amendment rights violated, this court ought to reverse.”

The very short prayer for relief is often used when an advocate has run out of time, but is still speaking because the advocate is responding to questions from the bench. This prayer should only include about five words and should be attached to the end of the advocate’s statement as if it were part the answer to the judge’s question. The advocate should be extremely

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careful not to give the judges the impression that he/she is taking extra time for the prayer after time has expired, so it should be deliver very subtly. The very short prayer for relief should sound something like the following: “Accordingly, this court should reverse.” When used in response to a judge’s question as time has expired, it may sound something like the following: “Yes your honor, in United vs. Davis, the Supreme Court held that clarifying questions are permissible; accordingly, this court should reverse.”

ii. Rebuttal

In Moot Court, only the petitioner is given an opportunity to have a rebuttal. The rebuttal typically involves a brief introduction followed by the reinforcement of two or three main arguments. The introduction to the rebuttal should involve a prepared 20-30 second speech that can be used in every round the rebuttal is given. The speech should reinforce the theme of the case and is typically purely persuasive in nature. After the brief introduction, the advocate delivering the rebuttal should focus on two or three points the advocate feels are the most important. The advocate should spend approximately one minute arguing each specific point.

The selection of these arguments should be based on where the two issues overlap, and where the judges focused their questions. It is critically important that the advocate delivering the rebuttal pay very close attention to the questions asked by the judges during opposing counsel’s argument, and to opposing counsel’s responses to those questions. This will allow the advocate an opportunity to actually rebut something opposing counsel said, and to offer a more satisfactory response to a question than opposing counsel offered. Doing so can serve to greatly impress the judges. As a result, the advocate delivering the rebuttal should be well versed on both issues because the judges may have some unresolved questions on the issue the advocate did not originally argue.
B. Argument Delivery

   a. Introduction

   The first ninety seconds of an advocate’s argument is often the most important. During those ninety seconds, it is the job of the advocate to capture the attention of the judges and gather interest from the bench. Justice Murray Cohen, who sits on the Court of Appeals, First District in Houston, noted than “an appellate advocate should ‘come out smokin’ in the style of former heavyweight champion Smokin’ Joe Frazier.” Therefore an advocate should begin his/her argument using words that will engage the court’s attention from the very beginning of the round. One way an advocate can do this is by choosing a “tag” line that captures the judge’s attention and casts or recasts the case in the light most favorable to the advocate’s position. Until attention is captured, it is impossible to maintain.

   b. Argument

      i. Answering Questions

   Answering questions from the bench is the crux of Moot Court. An advocate’s ability to directly, succinctly, and articulately respond to a judge’s question is the single most critical aspect of Moot Court and will almost always determine the winner and loser of a round. However, because an advocate can be pelted with a variety of different types of questions from the bench, it can become difficult to respond appropriately and persuasively to every question. As a result, when answering questions, an advocate should always: 1) listen carefully; 2) understand the question; 3) think before speaking; 4) respond directly; 5) be an advocate; 6) prepare in advance. See Prouter & Schultz, Introduction to Legal Writing and Oral Advocacy, 174-175 (1989). These helpful methods can be used to answer any type of question, and can create an opportunity for the advocate to separate himself/herself from opposing advocates by
demonstrating his/her knowledge of the substance and his/her ability to persuasively deliver that knowledge.

1. Frontloading Answers

Frontloading answers involves simply prefacing every answer with a “yes your honor” or a “no your honor”. Unlike professional athletes, advocates should never respond to a question using “well” or any other prefacing remark that may give judges the impression the advocate is unsure of his/her position or is not being direct with the judge. Prefacing every answer with a “yes” or “no” leaves the judge with a pleasant taste in his/her mouth because his/her question has been directly answered. It also satisfies the judge’s ego. Judges ask questions for a reason. Whether the judge wants to confuse the advocate, outsmart the advocate, or just toy with the advocate, a judge always wants his/her question answered. By prefacing every answer to a question with a “yes”, or a “no,” the advocate will satisfy the judge’s ego by directly answering the question.

2. Responding to Case Related Questions

Case related questions are a common type of question asked by judges. All judges in Moot Court competitions will be provided with a bench brief that instructs the judge on what cases are most controlling and persuasive on the issues. As a result, judges will most likely know the basic facts and holdings of the most prominent cases an advocate references and the cases the advocate chooses not to reference. Typically, case related questions will include asking the advocate to distinguish between the case and the facts in the record, reconcile two important cases, or simply recite the facts of a certain case and explain how it applies to the issues being argued.
When responding to case related questions it is very important that the advocate first know what case to which the judge is referring. After the advocate has identified the case the judge wants to hear about, the advocate should be prepared to recite the facts of the case as if he/she were they telling a story. Often times, the best advocates are great story tellers. By discussing the case like it is a story, the advocate can engage the bench and invite more questions. After discussing the facts of the case, it is good practice to deliver the holding of the case, followed by the reasons contributing to the court’s holding. Next, the advocate should either compare or distinguish the case just discussed with the other case the judge referenced or the case at bar. In doing so, the advocate will demonstrate his knowledge of the substance while being persuasive.

Judge: “Counsel, how is this case any different or similar to the case of Alvarez?”

Advocate: “Yes your honor. This case is very similar to Alvarez vs. Gomez, heard before the United States Court of Appeals for the 9th circuit. In Alvarez, an individual was walking down the street when he was approached by the petitioner. The petitioner then attempted to steal the individual’s wallet. The petitioner was then immediately arrested and taken down to the stationhouse. While there, he asked the officers if he could have an attorney. He specifically said “Hey man, can I have an attorney right now?” Despite his request for counsel, he was never provided an attorney. The 9th circuit held that denying him the right to counsel violated his 5th Amendment right to be free from self incrimination because the petitioner affirmatively invoked his right to counsel when he demonstrated an interest in counsel and referenced a point in time. Similarly here, the petitioner affirmatively invoked his right to counsel, as reflected on page 7 of the record, when he told Agent Headwig, “Can I have an attorney right now?” The statement made in this case, is almost identical to the statement made by the petitioner in Alvarez. As a result, when Agent Headwig failed to provide Door with an attorney, Door had his 5th Amendment right violated.”
3. Responding to Record Related Questions

As explained earlier, every Moot Court problem consists of 5-15 pages known as the record. On many Moot Court judging ballots, knowledge of the record is a common criterion. As a result, it is imperative that an advocate be extremely familiar with the record because judges will often test an advocate’s knowledge of the record by asking record specific questions. There are two common types of record related questions. The first is questions about the facts of the case. The second is questions about the lower court’s ruling.

Factual questions that are record specific can be easily answered by referencing the part of the record that explains the specific fact the judge has inquired about. In responding to questions about the facts described in the record, the advocate should always make a special point to cite to the record as frequently as possible. In responding to record specific questions that relate to the opinions of the lower court, the advocate need only cite to the page in the record the relates to the question and explain the lower court’s holding.

Judge: “Counsel, didn’t the lower court find that the ICE agents had reasonable suspicion to search Door since he was wearing a shirt that a confidential informant said he would be wearing.”

Advocate: “Yes your honor, the lower court did hold that the ICE agents had reasonable suspicion to search Door, as reflected on page 9 of record in the opinion delivered by Judge Bulluck. However, the tip given by the confidential informant was unreliable. I would like to direct the court to page 3 of the record where it states that the confidential informant said Door would be wearing a shirt with the phrase ‘I am an Illegal Alien but a Legal Human Being,’ emblazoned on the front. The shirt that Door was actually wearing, as reflected on page 4 of the record, displayed the phrase ‘Illegal Aliens are People too.’ As a result of the discrepancy in the shirt phrases, demonstrated on page 3 and 4 of the record, the lower court incorrectly held that the ICE agents had reasonable suspicion to search Door.”
4. Responding to Hypothetical Scenarios

Moot Court judges love to toy with advocates. One of the ways they often toy with advocates is presenting the advocate with a very difficult hypothetical scenario based on the position the advocate is attempting to argue. Hypothetical questions require the advocate to quickly think on his/her feet. However, because hypothetical scenarios can be difficult to grasp, it is especially important for the advocate to understand what the judge is asking, and what the hypothetical scenario turns on.

Hypothetical scenarios can best be answered by distinguishing the facts in the scenario from the facts in the case at bar. In distinguishing the facts of the case, it is always helpful to conclude by suggesting that the rule of law does not apply to the judge’s proposed facts. One of the best ways an advocate can gain some points in the round and really impress the judges is by conceding ground on a hypothetical scenario, but explaining to the court that the scenario is different in some way from the case at bar. The following example illustrates this point.

**Judge:** “Counsel, you’re suggesting that Door invoked his right to counsel when he said, ‘Can I have an attorney right now?’ Is that correct?”

**Advocate:** “Yes your honor. Even though it was a question, it was still an affirmative invocation of the right to counsel.”

**Judge:** “So counsel, hypothetically, what if Door had said ‘Do you ordinarily have lawyers at this station house?’ Is that an affirmative invocation of the right to counsel since Door referenced an attorney in the form of a question?”

**Advocate:** “No our honor. Under the facts that your honor presents that would not be an invocation of the right to counsel because Door did not reference a point in time nor did he ask if he could have an attorney. Under your honor’s facts, Door simply asked if attorneys are typically available. That is insufficient to invoke the right to counsel. Happily, under the facts in this case, however, Door not only demonstrated an interest in counsel by saying ‘Can I have an attorney,’ but he also referenced a point in time, which was the present, by saying ‘right now.’ As a result, his 5th amendment right was violated when he was denied counsel.”
5. Responding to Ultimatum Questions

When a judge feels like being particularly cruel to an advocate, the judge may present the advocate with a question that forces the advocate to concede the round in principle. The judge will put the advocate in a very difficult situation by asking the advocate if he/she will lose if the judge does not accept a particular argument, or any argument the advocate is attempting to elucidate. This will occur when the judge has understood the advocate’s argument but wants to test the advocate on the boundaries of the argument and see how far the advocate will stretch his/her argument.

When this occurs, it is important that the advocate remain honest with the court and not attempt to argue a futile position. The advocate should not abandon the argument entirely, but merely attempt to argue an alternative method that ultimately derives the same conclusion. Judges realize that argument’s are not invincible, so if a judge refuses to accept an important argument that is already fallible by nature, the advocate should hold strong to the principles of the argument while remaining truthful to the bench.

Judge: “Counsel, you argue that the Miranda warnings were deficient because they did not state an express reference to counsel during interrogation.”

Advocate: “Yes, your honor.”

Judge: “Well, if the officers had made an express reference to counsel during interrogation when arresting the petitioner, then would you lose?”

Advocate: “No your honor. While it’s true that the warning would be more legitimate if the officer had made an explicit reference to counsel during interrogation, the petitioner would still not lose because the officers violated the petitioner’s constitutional rights by failing to provide the petitioner with the right to an attorney when he requested one. Additionally, the petitioner would not lose because the search from its inception was invalid since the police officers conducting the search lacked reasonable suspicion to search the petitioner’s bag.”
6. Responding to Multiple Questions From the Bench

While some Moot Court rounds will only be evaluated by a single judge, most rounds will consist of a panel of judges, typically three, but sometimes five, seven, or even nine judges will sit on the bench. When a panel of judges is assembled to pummel advocates with questions, they sometimes ask advocates questions at the same time. When this occurs, it is the responsibility of the advocate to make sure he/she answers every question that is asked, and not just the most recent question.

The best way to do this is for the advocate to tell the judges the order he/she is going to answer the questions. This way the judges know the advocate is not consciously or unconsciously avoiding their question, but is just choosing to answer the questions in the order they were received or some other logical order. Answering simultaneous questions is one of the most difficult things an advocate may have to do in a Moot Court round because it requires poise and very good memory. As a result, if the advocate can properly pull it off, he/she can score a lot of points on the judge’s ballots.

Judge A: “Counselor, what does it take to invoke the right to counsel?”

Judge B: “And counselor, I would also like to know how you can say Door did invoke the right to counsel when he was simply asking questions?”

Advocate: “Yes, your honors. The answer to Justice A’s question can be found by turning to the Supreme Court, and the answer to Justice B’s question can be found by turning to the record. As a result, I will answer Justice A’s question first, followed by Justice B’s question. In response to your question, Justice A, the Supreme Court explained the bright line right to invoke the right to counsel in United States vs. Davis. In Davis, the Supreme Court held that to invoke the right to counsel, an individual must ‘articulate his desire to have counsel present sufficiently clearly’ for a reasonable officer to ‘understand the statement to be a request for an attorney.’ Here, Door did that, and this relates to your question Justice B. As reflected on page seven of the record, Door did ask a question, he said ‘Can I have an attorney right now?’ But that question was still an invocation of the right to counsel since it expressed an interest in an attorney, and referenced a point in time, which was the present.”
7. Responding to Arguments from Opposing Counsel

When arguing for the respondent or when giving the rebuttal for the petitioner, the advocate may have to respond to questions that relate to the opposing side’s argument. This often happens when a judge is very convinced by an argument that the other side made and would like to know if the advocate has a response to the convincing argument, or if the argument is simply invincible. Happily, there are no invincible arguments in Moot Court. Because Moot Court problems are written to give each side a chance to argue; there is always a response available to an advocate to rebut an argument made by the other side.

An advocate should always be prepared to point out a fact or some other distinguishing characteristic in an argument brought up by opposing counsel. These types of questions give an advocate the opportunity to shine by being persuasive, while making the other side appear foolish for leaving out something important. However, the advocate should also remember to remain tactful when pointing out a mistake or omission made by opposing counsel.

**Judge:** “Counsel, your opposing counsel brought up a very convincing argument using the case of *Alvarez vs. Gomez*, where the statements made there were almost identical to the statements made in this case. How do you respond, and how can you expect us to not rule the same way that the 9th Circuit ruled?”

**Advocate:** “Yes your honor, the facts in *Alvarez* are identical to the facts in this case in that the statements are almost carbon copies of one another. However, there is one significant distinguishing factor that my opposing counsel failed to inform this court. That is the fact that in *Alvarez* the statement was repeated 3 times, and the court noted that the frequency of the repeated statement lent credence to the argument that the individual was invoking his right to counsel. Here, however, the statement was only made once. Therefore, this court should not rule in the same way the 9th Circuit ruled in *Alvarez* because the statement here was repeated with much less frequency.”
8. Responding to Questions on Co-Council’s Argument

When a judge feels the need to be especially mean, he/she may ask one of the advocates to argue his/her co-counsel’s position. When this occurs, it is rare that the judge will ask the advocate to argue his/her co-counsel’s position for the entire time allotted to the advocate, but rather argue one of co-counsel’s sub-arguments. This typically happens to the second speaker when a judge did not receive a satisfactory explanation from the first speaker about their argument. This may also happen to the first speaker if the judge does not know that arguments related to the second issue will be addressed by the second speaker. In rare instances, a judge may do this to an advocate when he/she cannot find else with which to befuddle the advocate on, so judge resorts to asking the advocate to argue his/her co-counsel’s issue.

The best way to handle this type of question is by first pointing out to the judge that this is an area of law that the advocate’s co-counsel will argue. Secondly, and most importantly, the advocate should still attempt to answer the question to the best of his/her knowledge and not shirk the responsibly of answering the question because it is not on his/her assigned issue. An advocate can lose a lot of points by telling the judge that he/she does not know the answer because it concerns an issue assigned to a teammate to argue. Likewise, an advocate can earn a lot of points by demonstrating knowledge of both his/her argument and his/her co-counsel’s argument.

Judge: “Counsel, didn’t the ICE agents have reasonable suspicion to search Door’s bag since he appeared nervous.”

Advocate: “No your honor. And this is something my co-counsel will address in more detail, but to briefly answer your question, the ICE agents did not have reasonable suspicion because nervousness alone, according to the Supreme Court, is insufficient to prolong a stop and search. In fact, at the time that Door provided a valid form of identification, all reasonable suspicion evaporated, and therefore all questioning should have ceased, and the ICE agents should have allowed Door the opportunity to leave.”
9. Transitioning

Perhaps the most difficult thing to do in a Moot Court round is to effortlessly transition from the judge’s question back into the advocate’s argument. This often occurs when the advocate is arguing before a cold bench. When this happens, a judge will interrupt the advocate, ask a question, and expect the advocate to answer the question and then return to the original argument. This can be especially difficult when the judge asks the advocate a question that relates to the middle or end of the advocate’s argument.

The best way to answer the question is by giving a simple and short answer and then transitioning back to the point where the advocate left off. If the advocate feels that the judge wants a longer explanation, the advocate would be better off spending a couple of minutes explaining the answer to the judge’s question by covering the entire second or third argument as it relates to the judge’s question, and then transitioning back to where the advocate originally left off.

Advocate: “Here, the ICE agents did not cover all of their bases when they failed to mention to Door that he had the right to presence of counsel during interrogation.”

Judge: “Counsel, did Door invoke his right to counsel?”

Advocate: “Yes your honor, Door did invoke his right to counsel. As reflected on page 7 of the record where Door stated “Can I have an attorney right now?” That statement was an affirmative invocation of the right to counsel since it referenced an interest in an attorney and a point in time. In addition to having his 5th amendment right violated when he was not given an attorney, Door was also given a deficient Miranda warning because the ICE agents did not cover all of their basis by failing to mention to Door that he had the right to presence of counsel during interrogation.”
ii. Demeanor

Courtroom demeanor is a frequently used judging criterion in Moot Court. However, an advocate’s courtroom demeanor is often not judged by how erect he/she sits, whether he pulls out the chair for his female co-counsel, or whether he/she appears nice to the other team. Instead, an advocate’s demeanor is determined by how well he/she converses with the bench, how poised he/she remains under the intense pressure of difficult questions, how pleasant and receptive he/she appears to the judges, and how much eye contact he/she make with the judges.

Contrary to popular belief, Moot Court is not a debate, a long cross examination, or an oratory speech. Rather, Moot Court is a conversation between the advocate and the bench. An oral argument does not involve simply answering the judge’s questions and throwing out as much law an advocate can invoke during the allotted time. To the contrary, an oral argument ought to be a discussion the advocate has with the judges in a conversational manner. While some judges may appear adversarial, for the purposes of Moot Court, they are simply playing a role. As a result, the best advocates are those who talk to the judges and not at the judges.

One of the easiest ways to prevent a round from carrying a conversational tone, and instead causing the round to become tense, is by losing one’s poise. Judges will intentionally ask questions in a mean and adversarial manner. However, judges don’t do this to be mean or release frustration, but rather to test the advocate’s ability to stay calm, cool, and collective under the heat of grueling questions. When an advocate loses his/her poise and responds rudely to the judge, demonstrates uncertainty in body language by shrugging his/her shoulders or lowering his/her head, or remaining awkwardly quiet while the judge waits for an answer, it gives judges the impression that the advocate does not want to answer questions and will, consequently, lose substantial points on the ballot. However, when an advocate stays poised during the delivery of
an answer, it demonstrates confidence in the advocate and his/her argument. It also invites the judges to ask more questions and converse with the advocate.

Another way an advocate can maintain a conversational tone with the judges during the round is appearing pleasant and receptive to the judges. This can be done by merely smiling at the judges when they ask questions, not in a sarcastic way, but in a way that gives the judges the impression that the advocate is enjoying the experience. Smiling and a pleasant nature can be contagious and can leave the judge’s with a positive impression of the advocate. It will be very difficult for a judge to vote against an advocate who appears pleasant, happy, and easy to get along with.

Additionally, an advocate can create a conversation atmosphere with the judges by maintaining eye contact throughout the round. When asked a question, an advocate should first maintain eye contact with the judge who asked the question and then proceed to make eye contact with the other judges while answering the question. Eye contact should be made with each judge consistently, but should not be maintained long enough to become a stare. By making eye contact with all the judges the advocate can create rapport with the judges and invite more questions.

iii. Posture

Posture is an important aspect of an advocate’s delivery because it can reflect confidence and allow an advocate to be more persuasive. When standing at the podium, or lectern, the advocate should appear still but not stiff. The advocate should place his/her feet shoulder-width apart and stand at arms length from the podium. The advocate should not grip the podium, lean on the podium, or slouch. Rather, the advocate should place his/her hands to the side or fold the hands folded in front. The reason for this is so that the advocate’s hands do not rest in the
advocate’s pocket, which appears too casual, or find themselves placed awkwardly such as at the advocate’s hip, a sign of anxiety.

When appropriate, the advocate should use his/her hands to make persuasive gestures that helps emphasis a specific point and compliments the words coming out of the advocate’s mouth. However, hand gestures should be used sparingly and should not be threatening. Gestures such as pointing, crossing one’s harms, or having clenched fists can appear hostile and should always be avoided. The advocate should also remember to always keep his/her head up. While it may be necessary to occasionally glance down at notes, it is imperative that an advocate refrain from responding to questions, or attempt to make convincing arguments, with his/her head down. Doing so reflects a lack of confidence, preparation, and perhaps, insincerity.

iv. Voice

Some people are blessed with the ability to speak publicly or converse naturally in formal settings. However, for most of us, speaking publicly or in formal settings takes practice. In Moot Court, delivery speed, pausing, and vocal variety are very critical to persuasion. All three are important skills that most advocates need to practice and develop.

When an advocate gets flustered, confused, or feels uncomfortable he/she tends to speed through their argument as fast as they can because they want to escape the fury of the judge’s questions. Speeding through an argument does not help an advocate earn more points or sound more convincing. Instead, speaking quickly causes a judge to misunderstand, or even not understand, what the advocate is saying. As a result, the advocate can be severely docked points if he/she does not speak at a reasonable rate that allows the judge time to process all the information. The best way to avoid rushing through an argument at a fast pace is to include pauses in the argument. By making sure to pause at appropriate times, the advocate can avoid a
speedy delivery, sound convincing when delivering an important argument, and allow the judges time to reflect for a moment on the great argument just made.

Vocal variety is an important part of an advocate’s delivery because when used effectively, it maintains the judge’s attention. By speaking with a pleasant pitch and with sufficient volume, the judge will enjoy hearing the advocate’s voice and the subsequent arguments that flow from the advocate’s mouth. However, speaking with the same volume, rate and pitch of delivery can soon become monotonous. Therefore the advocate should use some vocal variety to emphasis certain words and arguments and maintain the judge’s attention. Vocal variety helps change the pace of an advocate’s delivery and can be extremely persuasive when effectively done.

c. Conclusion

i. Importance of Final 30 Seconds

Much like the first 90 seconds of the oral argument, the final 30 seconds are critically important. The advocate should make a special point to end the oral argument on a very strong note. This can be easily done by delivering a very convincing prayer for relief, as explained above. However, if the advocate is being asked questions during their final 30 seconds he/she should make a conscious effort to relate the answers back to the most post persuasive and convincing argument and attempt to end on that note. In doing so, the advocate can conclude on a strong and persuasive note.

ii. Answering a Question When Time has Expired

Often times an advocate’s time will expire while a judge is asking the advocate a question. When this happens, it is important that the advocate show respect to the court by acknowledging the fact that time has expired, and asking permission to answer the question. The
advocate can do this by saying, “Your honor, I see that my time has expired, may I briefly answer your question?” Ninety-five percent of the time the judge will grant the advocate permission to answer the question. However, the advocate should make sure not to abuse the time by answering the question in a long-winded fashion and then begin delivering a long prayer for relief. Instead, the advocate should attempt to answer the question as directly and succinctly as possible so as to not offend the other judges or opposing counsel.

In some cases, the advocate will respond to the question and then receive more questions from the bench after time has expired. When this happens, the advocate should not repeatedly inform the bench that time has expired; informing the bench on the first occasion is sufficient. The advocate should instead respond to each question as briefly as possible and then immediately sit down as soon as the last question is answered.

**IV. Conclusion**

I sincerely hope that this guide to competing in Moot Court competitions will assist the advocate as he/she prepares for any future competitions. The best advice that I can leave the advocate with is to practice his/her argument often and never become satisfied with his/her performance. We all have room to improve. The advocate can practice in front of a mirror or on camera to pick up on his/her bad habits or the things he/she does well. Remember to be conversational, confident, and charming.