

GEORGE MASON UNIVERSITY SCHOOL OF LAW
2009 UPPER CLASS MOOT COURT COMPETITION
COMPETITOR PACKET

Co-Chairs:

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Competition Schedule and Guidelines

Logistics:

Please report to the GMUSL atrium no later than 8:00 AM on Saturday, November 14th. There will be a registration table where you will sign in and pick up your nametag. There will also be coffee, fruit, and bagels available for breakfast. The first round of the competition will begin promptly at 8:30 AM.

Argument Format:

The argument format remains the same throughout the competition. You and your partner argue together as either appellant, or as appellee. Each person has a maximum of ten minutes to argue. You must argue for at least six minutes. The appellant (as a team) may reserve a maximum of three minutes for rebuttal. When the argument is over, the bailiff will escort you from the room and the judges will take a few minutes to assess your performance and fill out the score sheets. The bailiff will escort you back into the room so that you may receive feedback from the judges.

The order of argument during a round is as follows:

1. First counsel for appellant argues Issue One.
2. Second counsel for appellant argues Issue Two.
3. First counsel for appellee argues Issue One.
4. Second counsel for appellee argues Issue Two.
5. One counsel for appellant argues rebuttal.

The appellant may choose only one counsel to argue rebuttal. Rebuttal should last not more than three minutes. Each counsel may cede time to rebuttal, but counsel arguing Issue One **MUST** ask to reserve the time at the beginning of his/her argument. For example, counsel for Issue One may cede one minute and counsel for Issue Two may cede two minutes, for a total of three minutes to be argued by one counsel only. In this situation, counsel for Issue One should state before proceeding with argument, "I would like to reserve three minutes for rebuttal. One minute taken from my time and two minutes taken from my co-counsel's time."

Preliminary Rounds, November 14th

Your team will argue three times in round one. At 8:30 a.m., your team will argue for either the appellant or appellee. At 9:45 a.m., you and your partner will argue the opposite side against a different team. At 11:15 a.m., your team will argue either the appellant or appellee side, to be determined on a random basis.

Lunch:

Lunch will be served at 12:30. This is a great opportunity to meet the judges – don't be afraid to mingle! After lunch, we will announce the teams that advance. Sixteen teams of two will advance. Teams will advance based on their: (1) win-loss record, (2) power ranking, and (3)

raw score tie breaker. In each of the three preliminary arguments, the team with the highest raw score wins.

Octofinals & Quarterfinals

After lunch, at 1:30pm the octofinals will begin. From this round, eight teams will advance to the quarterfinals. At approximately 3:00pm, the quarterfinals will begin. From this round, four teams will advance to the semifinals. We will announce the semifinalists after the quarterfinal scores have been tabulated. We will also announce them via Email for anyone who does not wish to stay.

Semifinals & Finals, Friday, November 20th

The four winning teams will argue during the semifinals at 3:00p.m and 4:00 p.m. at the Fairfax Circuit Court in Fairfax, VA. Following the semifinal rounds, the Moot Court Board will tabulate scores and announce the finalists. The winning team from each semifinal round will then argue against each other in the final round at approximately 5:00 p.m. Awards for the first and second place teams will be presented after the final round. There will also be a reception with food and beverages at the courthouse.

Competition Code of Conduct

1. Dress.

Participants must wear appropriate courtroom attire. We recommend competitors dress conservatively. For gentlemen, conservative dress includes dark business suits, white shirts and a traditional tie. A clean-shaven face or well-trimmed facial hair is suggested. For ladies, conservative dress includes a dark business suit and closed-toe shoes. If you choose to wear a skirt, make sure it is of appropriate length and wear pantyhose. It is also suggested that you not wear heavy make-up or large/distracting jewelry.

2. Watching Competitions.

Competitors may not watch or listen to others compete during the preliminary rounds. Spouses, relatives and friends are welcome to watch any of the advancing rounds of the competition, provided all competitors agree. Everyone is encouraged to watch the Semifinal and Final Rounds.

3. Communications with Judges.

Ex parte communications with the judges are not allowed. If a competitor knows a judge, it is the judge's professional responsibility to recuse him or herself. The competitor need not take any action.

4. Working with Other Students to Prepare for your Oral Argument.

LRWA Rules apply to communication regarding the problem. Students enrolled in LRWA III (Appellate Writing) may NOT exchange any student-written materials, including briefs. Based on consultation with Professor Sanderson, the following clarification is provided for teams containing one LRWA student and one non-LRWA student: the LRWA student competitor can give his/her partner his/her brief only for informational purposes – the non-LRWA competitor may not comment on specifics of the brief, including organization structure, argument structure, grammar, etc.

5. Items Judges may Penalize.

Judges may, at their discretion, penalize competitors who fail to comply with these provisions or who disregard the courtroom code of conduct outlined in this packet. Judges may deduct points for violations including, but not limited to, the following: *ex parte* communications with the judges; tardiness; obvious inattention to deference; failure to comply with the minimum speaking requirements; interrupting the court; answering out of turn a question posed to another competitor; or disrespect for fellow competitors.

6. Honor Code Violations.

If students become aware of or suspect a possible violation of the Competition Code of Conduct, they should bring the matter to the immediate attention of Krissy Ellison (Kristine.ellison@gmail.com). If such suspected violations occur on a competition day, the accuser must submit a short statement to Krissy Ellison within 5 minutes of the alleged violation. Timing is essential in order to permit the Moot Court Board to evaluate the situation. As necessary, the Moot Court Board will make an immediate investigation of the

event. Frivolous, malicious or obviously harassing protests could result in penalties against the protesters.

7. Waiver of Rules.

The Moot Court Board will grant waivers from these rules only under extraordinary circumstances and when presented with a compelling explanation.

Tips to Prepare for Your Oral Argument

- 1) Know the **black letter law** which applies to the case. Evading the issue will not persuade a judge when there is clear law on point squarely for or against your case.
- 2) Know the **case law**. Focus on the jurisdiction which applies to the case. All cases which are still good law within the applicable jurisdiction may be used. Know the facts of these cases so that you can distinguish them from or analogize them to your case. Also, know cases in other jurisdictions for their persuasive value. Make sure to distinguish between binding precedent and persuasive precedent.
- 3) Know your **facts**. This will help you distinguish cases that are against you and will keep you out of the “hypothetical box,” the most evil place a judge can corner you!

TIP: Often, you have either the law or the facts on your side — take advantage of whichever one you have.

Law: Emphasize the law and its application to the case. Every time the panel tries to box you into a hypothetical, use the law as it applies to your facts to distinguish their hypothetical from your case.

Facts: Try to avoid the specific facts, focus on plausible policy arguments or play to the court’s emotions based on the facts of the case.

4) **Prepare** your oral argument.

Important note: Do not bring your written brief to the podium and attempt to read it to the judges. Remember this is *oral advocacy*. This is your time to persuade the court that your side is correct!

TIP: Write a brief outline of your oral argument and staple it to a manila folder. This way you have one item in front of you. Flipping over to case cites or other references is simple and quiet. If you stand in front of a panel of judges and shuffle papers around, you distract the judges and detract from your argument.

- Prepare about six to eight minutes worth of material. Any longer and it will be too long to memorize or adequately familiarize yourself with. Any shorter and you will be out of material if you have a cold panel (see below).
- You should have gone over your argument enough that you can give your presentation from memory. At a minimum, you should memorize your opening statement so that you do not have to look at your notes at all. The notes you take to the podium should only be a security blanket.

- Use quotes sparingly — the judges want to hear from you, not the law clerks and judges from earlier cases. If you plan to quote from a case, have the citation ready for that [inevitable] judge who will ask. If you use a quote, make sure it is not too lengthy.

TIP: There are several schools of thought on what you should actually take to the podium with you.

- Take only the brief outline of the legal points you want to cover, thus relying heavily on your memory and preparation.
- Take a brief outline, but *also* have handy your entire scripted argument, as well as a binder with all applicable case law (or summaries of the applicable cases).
- Any combination of the above two options.

5) PRACTICE! PRACTICE! PRACTICE! *And then Practice some more!*

Deliver your argument to a mirror a couple of times and then take advantage of the mootings sessions offered by the Moot Court Board.

6) Oral Advocacy Strategies

a. How do you begin?

You should always begin with the following sentence:

“Good morning/afternoon your honors. May it please the court. My name is _____, and I, along with my co-counsel, _____, represent the Appellant, [insert Appellant's name] *or* represent the Appellee, [insert Appellee's name].”

After the introduction, a couple of things may happen. Shots will be fired at your head, or you will get blank stares for approximately 10 minutes – or some combination of the two. Regardless of what happens, you should be prepared to concisely state your roadmap so that the judges can easily follow your argument.

b. Who are the Judges?

During the preliminary rounds, your judges are local attorneys and judges who have volunteered to spend their Saturday helping you with your legal education. Please be respectful at all times.

As the rounds progress to the semis and finals, there will be sitting judges from the local and federal benches.

c. What are the Judges like?

There are three kinds of panels – Hot, Cold, or a combination of the two.

1. Hot Panels.

These are the panels that will constantly question and interrupt you. You may get to introduce yourself, and then the judges will immediately start questioning you. One benefit of a hot panel is that you will quickly know which issues the judges think are important and will have the opportunity to expand on those particular points. In addition, any fear you may have will be quickly forgotten, and before you realize it, your time will expire.

Of course, there are a few cons to hot panels. They require you to be on your toes the entire time you are at the podium. If you are not good at quickly defending your position, you will not receive high scores from the panel. Just try to give the judges reasonable answers to their questions and then get back to your prepared comments, especially your main points. Hot panels will reduce your score if you have trouble transitioning from your responses to their questions back to your argument.

2. Cold Panels.

These panels let you go on for most of your time allotment before asking you anything. This does not mean the panel necessarily agrees with your position — so, be sure to fully elaborate on all of your arguments. In theory, this gives you an opportunity to present your points unadulterated without interruptions from the panel. In reality, without questions, you have no idea what issues are important to the panel or where you should be focusing your attention. Also, 8-10 minutes of standing in front of a panel of blank faces can be very nerve-racking, but you should still maintain eye contact and resist the natural inclination to constantly look down at your notes. The possibility of facing a cold panel is one of the main reasons you should memorize most of your argument.

3. Mixed Panel.

This is what you are most likely to face. The panel will likely give you a chance to hit the highlights of your argument by waiting 1-1:30 minutes before starting the questions.

d. Dealing with your Judges.

1. What to do if you do not know the answer to a question from the Judge.

Option 1: “Your Honor, I do not know the answer to that question, but I would be happy to provide a supplemental brief to the court on that issue.”

Pros:

- You do not waste your precious allotment of time speculating about a subject you have not briefed.
- You get back to your structured arguments.
- You avoid answering the question incorrectly, thus hurting your argument.

Cons:

- You lose on that issue. If the judge asked about it, it must be important. But, this is not a *real* court, and you cannot *actually* submit a supplemental brief.

Option 2: Semantically tap-dance your way out of the question.

Pro: Maybe you can come up with *an* answer that will satisfy the judge.

Con: This usually does not persuade a court – unless you are a really good verbal tap dancer. In competitions, you lose points for this. In court, you may lose respect.

2. What to do if a Judge asks you about a case you are not familiar with:

Option 1: “Your Honor, I am not familiar with that particular case, but I would be happy to provide a supplemental brief to the court on that issue.”

Option 2: “Your Honor, I am not familiar with that particular case, but if Your Honor could briefly summarize the facts of that case, I would be happy to distinguish/analogize that case from/with the case before this Court.”

Pro: If this case is important to the judge, it will give the judge the option to have you respond to his/her concerns.

Con: The judge might expect you to be familiar with the case and may not be willing to summarize the case for you if you are not prepared.

3. How to handle hostile Judges:

Remain poised and calm — there is nothing you can do about it. Keep going back to your arguments — reasoning and research. Your score will be better than if you fight back. If the judge is hostile over interpretation of gray area, and you cannot convince the judge of your interpretation, just provide sound and logical reasoning and move on with your argument.

e. Final thought:

Each panel is as individual as each participant. One panel may tell you to bolster Point A. Another panel may say that Point A is a loser argument and to focus on Point B. If you move on to the advancing rounds of the competition, you will face more than one panel. If every panel tells you the same thing — run with it. On the other hand, if you are getting conflicting feedback [“use your hands more” and “use your hands less”], write that off to the individual idiosyncrasies of the panel. In the real world, you will be able to research your judge, and you will know how to structure your legal arguments and style your presentations.