How to Craft an Argument

From the Yale Moot Court Tournament Staff

Think of a moot court argument as a conversation between you and the bench of justices. The goal of your argument is to convince the justices that your position is more constitutionally sound than opposing counsel's position. An effective argument is often defined by the most applicable and recent standard available in the case law, and citation of facts from the record that reflect whether or not this standard is met.

What am I allowed to reference in my argument?

Oral arguments are restricted to the record of the lower court, which means that there is no fact finding process in moot court. Unlike a trial court, you do not get to question witnesses or attempt to bring forth evidence—it has already been done for you in the proceedings that led up to this appeal. All of the facts in play have already been discussed and proven. You cannot use any outside evidence that substantially interferes with the facts of the case, nor can you make up facts that are not reflected in the record.

For the purposes of moot court, you also cannot use any outside cases. You are allowed to cite outside cases to the extent that they appear in the cases you have been assigned; however, you are not allowed to research them beyond their appearance in the cases you have been assigned. It is important that you review and abide by Rule 3.5 in the *Rules of Competition For The Yale Moot Court Tournament*.

What is a standard and what does it look like?

Think of a standard as the legal requirement set out by the Supreme Court necessary for a decision to be binding. A standard in a First Amendment case, for example, might be that speech presents a "clear and present danger."

There is not enough room or time for the Supreme Court to write in their decision how they would rule under every possible circumstance. Thus, it is up to advocates to compare and contrast the Court's past decisions in favor of their clients. Further, some cases might leave a grey area, or two cases might target the same issue, and it is up to you to lead the Court in the right direction. You should look for standards of review within the cases given, and think about how each standard applies to the facts of the case you're presenting to the court.

How do I start my argument?

The main goal of the introduction to your argument should be establishing a roadmap of where you plan to take your argument, like a thesis statement. In every moot court argument, you are bound to be interrupted by the justices with questions, which can lead you down tangents and prevent you from discussing all of your points. A concise roadmap can help you explain the broad strokes of your position before justices have a chance to interrupt. Here's a general list of things to include in your introduction:

- Greet the court ("Chief Justice and May it Please the Court").
- Introduce yourself (and your co-counsel, if you're the first speaker from your team).
- Who do you represent before the Court?
- Which issue are you addressing?

- ➢ Provide a roadmap of where your argument will lead. (i.e., "The Court should uphold the lower court's decision for the following three reasons: _____")
    - What do you want the Court to do? (i.e., reverse or uphold the decision of the lower court)
    - What standard should the Court apply? Why?
    - What does that standard require, given the facts of the case at hand?

Later in your argument, use your roadmap to signal when you return to the main points of your argument. In the event that you get a hot bench and are bombarded with questions, returning to the points of your argument can help you stay on task and discuss every part of your argument.

How do I craft the body of my argument?

Logically, following your introduction, the substance of your argument should attempt to prove the clauses of your roadmap. Remember that moot court is not an essay writing competition, and thus, you don't want to simply recite what you had pre-written for the judges. You want each part of your argument to build upon the last one, which means the first portion of your argument will likely be proving to the justices what standard should be applied. Afterwards, you should independently target every subpart of the standard to prove your case. This is often done by combining case law and case facts, showing that if the court applies the standard you want them to apply, they will reach the decision you want them to reach.

How should I conclude my argument?

You should aim to finish a few seconds before the time expires to demonstrate your ability to manage your time. If you must go over time to finish answering a question, make sure to ask permission from the justices for a few extra seconds to conclude.

You might ask something along the lines of: "Chief Justice, I recognize my time has expired, may I have a few moments to finish answering this question and conclude." Likewise, you probably can't afford a lengthy conclusion as you finish your argument. Consider bringing everything full circle and giving a brief overview of all the points you hit, but a lengthy formal conclusion is not crucial. What is crucial, however, is that you conclude with what decision you hope the Court will reach, so make sure you say something like, "for the aforementioned reasons, Petitioner/Respondent asks this Court to uphold/reverse the decision of the lower court."

Do I get a chance to address opposing counsel's argument?

Yes! If you represent the respondent, you speak after the petitioner by default. Justices will expect you to use that as an opportunity to discuss the petitioner's points on your issue. If you represent the petitioner, before you begin speaking, you can ask the Chief Justice to reserve up to three minutes of your team's 20 minutes for one speaker to deliver a rebuttal argument. The rebuttal argument should address both issues and takes place after the respondent is finished.

On both sides, you should take notes while opposing counsel is speaking and pay attention to the questions they get from justices. If you think you can use one of the justices' questions for opposing counsel to help your case, remind the court of the question and bring out your version of the answer. Try to address opposing

counsel's precedent and explain why their cases are distinguishable. Pick up their standard and explain why it isn't met. The point of all of these tactics is to make their argument and interpretation less attractive than yours.

How do I answer questions?

Justices can ask you questions at will. Some justices wait until the end of a train of thought, but others have no qualms about interrupting you mid-sentence. Plan accordingly. Instead of planning to fill your entire speaking time, leave a few minutes for questions and try to use points from your argument to answer questions.

There can be no perfect script for moot court. Instead, think of your argument as an attempt to fire as much of your logical and rhetorical artillery as possible. If you have a quote from a case that fits a question well, incorporate it into your response.

Here are few more tips:

- Unless you need to clarify the intent of the question, always respond to a question with a "Yes, Your Honor" or a "No, Your Honor" before going on to justify your response. Do not attempt to wiggle out of the question, as this will only hurt you. Conceding some points is fine—and even important—so long as you sufficiently prove the standard and your position.
- When speaking to or quoting Justices, refer to them as "Your Honor," or "Justice [their last name]"
- If you hear a question, immediately pause and let the Justice ask it. Do not talk over or interrupt the Justices, no matter what.

What are the types of questions the justices mightask me?

As is true with actual Supreme Court oral arguments, the judges may exercise their discretion in asking you questions that they believe to be relevant. They may want you to more closely walk them through a specific part of your argument or respond to a particular concern that they might have regarding your case. They may ask you to clarify a part of your argument or push back in response to something you are saying, including questions designed to see whether you've thought carefully about the implications and limitations of the position for which you are advocating.

The examples below are meant to give you a feel for the general style of the questions you can likely expect. Of course, keep in mind that individual judges will ask you questions in their own styles and about the features of the case that are of interest to them. The point of moot court is not to have an answer prepared to every possible question you might receive, but to be familiar enough with your own argument and the case materials that you can respond to whatever questions may be directed to you.

With these considerations in mind, here are a few types of questions you will likely encounter in some form during the tournament:

- "What did we decide in *A vs. B*? On what basis did we find in favor of the side that we did?"
- "Do you have any case law to support [principle or standard that you've asked the Court to adopt]?"
- "I found your opponent's argument about X convincing. How would you respond/ Why does X not apply here?"
- "You're saying we should look to our decision in *A vs. B*, which seems to support your side, in deciding this case. But isn't this case more similar to our holding in *C v. D*, which seems to hurt your case?"

- "You argue we should apply the test we used in *A vs. B*, but that test applied to [X factual situation] while in the case at bar we are dealing with [Y factual situation]. Is this factual difference relevant—and, if not, why not?"

What are some types of questions they probably *won't* ask me?

Again, it is up to the judge to decide what questions they wish to ask you regarding the case materials. We realize that, for those unfamiliar with this type of activity, that possibility can seem like quite an intimidating situation. We want to help alleviate those concerns, so, while we can't guarantee that any particular type of question won't be asked, here are a few examples of questions you should not spend much energy worrying about:

- "What did we say on page 243 of *A v. B*?"
- "*X vs. Y* wasn't in the competition materials, but it's been on the news recently. What do you think of that case?"
    - **TIP:** If a judge were to ask you something like this, it would be due to a simple misunderstanding of the competition rules. In such a case, you could feel free to respectfully say something such as, "I'm sorry, Your Honor, but that case is not within the materials that can be cited under this Court's rules"
    - **NOTE**: This is a distinct situation from asking about *hypothetical situations*, which you might expect. For example, if you suggest applying a particular legal principle to the case at bar, a judge could certainly ask you about what result the principle you are asking the Court to adopt might yield in counterfactual situations. They are interested in these questions because they are aware their decision extends beyond just this one case—it will become precedent that will also have to be applied to future cases which may have slightly different fact patterns.
- Questions that address your partner's issue. When a justice does question you on your partner's issue, you can refer the question to your partner—which will require them to answer it during their speaking time—or you can make your best effort to answer the question.