

# Preparing Students for an Undergraduate Moot Court Tournament

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## **The Value of Undergraduate Moot Court Tournaments**

As the member of the panel with by far the least experience in intercollegiate moot court competitions, I am probably closest to the problem of how one goes about getting started in this rewarding but time devouring enterprise. In this paper I intend to offer some practical advice to faculty members who plan to start an intercollegiate moot court team or who will become an advisor to a moot court team. My advice focuses on the situation of someone who faces the task of preparing a moot court team to compete in an established intercollegiate moot court tournament. At the same time, I hope that some of my suggestions, in conjunction with my description of the intercollegiate moot court competition in which we participate, will be useful to those who are interested in setting up an intercollegiate moot court tournament.

I start with the assumption that participation in an intercollegiate moot court tournament is very valuable both for the student participants and for the participating programs (for a summary of program benefits, see Vile and Van Dervort, 1994, which focuses on intercollegiate mock trial competitions). Although I have not attempted to collect data on student improvement, my experience with moot court competition convinces me that this is an excellent way for an undergraduate program, whether a prelaw program or a political science department, to offer a challenging, rewarding activity to a small number of committed, active students. In particular, it provides an excellent opportunity for the most gifted students who may want or need intellectual challenges beyond those of the classroom and the established academic program. However, I have seen impressive growth in skills and self-confidence in students along a wide range of academic ability as long as they are willing to commit the time and effort into preparation for moot court.

Based upon my own experience with moot court simulations in my civil liberties class, which Knerr labels the "scholastic form" of undergraduate moot courts, I agree with those who find that these exercises improve students' critical reasoning skills and oral communication skills as well as improve their understanding of substantive legal and constitutional issues (for a summary of the literature presenting these claims see Knerr, 2000:3-7). Moreover, I agree with those who claim that intercollegiate moot court competitions, or what Knerr calls the "tournament form," provide incentives, challenges and opportunities that go well beyond those of moot court exercises within a classroom setting. For example, participating students are motivated to achieve higher standards because of the rivalry with other college teams, the "big event" atmosphere of the competition itself, and the "constructive anxiety" of engaging in formal oral argument before a panel of strange judges in a public setting (Collins and Rogoff, 1991: 517).

In addition, the intercollegiate moot court experience does significantly modify the traditional student-teacher relationship (Collins and Rogoff, 517). The collaborative work in preparation for the competition and during the competition breaks down many of the pedagogical barriers between student and teacher which are inherent in the standard classroom, and allows students and teachers the opportunity to participate in small group learning and dynamic problem solving.

I do not think that I have to make a more detailed argument for the value of intercollegiate moot court competition for either the students or the affiliated program. Rather, the central issue is typically a question of cost measured in terms of time: how can a faculty member who is already overburdened by the demands of teaching, advising, committee work and other professional responsibilities find the necessary time to prepare a collegiate moot court team? Since many of my practical suggestions are shaped by the characteristics of the moot court tournament in which we compete, I will start with a brief description of the Seiberling Moot Court Competition (for an overview of the different undergraduate tournaments in the United States, see Knerr, 2000).

### **The Seiberling Intercollegiate Moot Court Competition**

The Seiberling Moot Court is an annual intercollegiate competition that has been in existence since 1995 and is sponsored by the University of Akron School of Law. It is a one-day competition based upon oral argument only (no written briefs) which occurs on a single Saturday in mid February. Several different colleges and universities from eastern Ohio and western Pennsylvania compete in the Seiberling Moot Court, and each school is allowed to send up to two two-person teams to the competition.

In December the organizers of the Seiberling competition send out a copy of the problem which is always based upon a case pending before the United States Supreme Court and which presents two different constitutional issues. For example, the 1999 Seiberling Moot Court presented the case of *Chicago v. Morales* in which the City of Chicago's Gang Congregation Ordinance was challenged. The problem was limited to two issues: 1) is the Gang Congregation Ordinance void for vagueness? And 2) does the Gang Congregation Ordinance violate substantive due process rights? One student on the team presents oral argument on the first question, and the second team member addresses the second issue.

In addition to the problem, participating schools also receive copies of the relevant lower appellate court rulings. In the *Morales* example, we were given the opinions of the Appellate Court of Illinois and the Supreme Court of Illinois. In addition, each participating school receives a video tape in which Professor J. Dean Carro, the organizer of the Seiberling Moot Court, summarizes the process that the students should follow in presenting their oral argument, and Professor Wilson Huhn provides an overview of the law on the two issues of the problem. Finally, the organizers include a short list of relevant Supreme Court cases to give the students a start in their research.

Professor Carro and his colleagues try to select a case currently before the Supreme Court that has significant social and public policy implications. In each of the years that we have participated, our students have found the cases to be very engaging, at least in part because they can clearly perceive the social relevance and political importance of the technical legal and constitutional questions they are addressing. Moreover, in his video tape presentation, Professor Carro emphasizes that students should not ignore the public policy dimensions of the case, and he reminds the

students that this is an undergraduate moot court competition in which they are not expected to be experts in constitutional law.

The Seiberling Moot Court is a three round competition in which the first round is an elimination round, and the two highest scoring surviving teams (including scores from both rounds) compete in the final round. In each round, each team is given thirty minutes (fifteen minutes per advocate) for oral argument. Prior to the competition, each participating school receives a listing of the first round assignments. However, each team is expected to be prepared to argue either the petitioner or respondent position, and late cancellations frequently dictate last minute changes in the first round assignments. After the first round, there is a coin toss to determine sides in each match.

In the first and second rounds, the students are judged by three person panels, and most of these moot court judges are attorneys, law professors or advanced law students. In the final round, there is a five person panel that includes several Ohio Courts of Appeals judges. Judges are asked to grade the students on four categories: 1) demeanor, 2) ability to answer questions, 3) knowledge of the law, and 4) knowledge of the record. Students are scored on a five point scale on each category with a perfect score of twenty points. Students are not given their scores after each round, but most of the panels do a very good job of orally critiquing the students after each round.

### **List of Recommendations**

Whatever the specific format of an intercollegiate moot court competition, the central preparation problem will inevitably be a time problem: how will you and your students find enough time to be successful in getting ready for the competition? In relation to the time problem confronted by the moot court team advisor, the most important solution is to get other people involved and, whenever possible, to delegate different tasks and responsibilities. In terms of the limits on the students' time, the key solution is to focus and structure their research and preparation so that the time which they invest is as productive as possible. I will first present a list of recommendations based upon my own experience and my own approach as an advisor to our moot court team, and then I will provide a brief description of the process through which we attempt to prepare our students.

1) Recruit local attorneys to make presentations on moot court procedures and the legal issues relating to the case, to work with the students in preparing their arguments, and to serve as judges for practice moot courts.

As one might expect, I have found alumni of the college who have gone into the legal profession to be very willing to assist in the preparation of the moot court team. However, many alumni who are willing to assist us live too far away to participate effectively in the activities of the moot court team. Given this limitation, I recommend that you contact your county's bar association. Most county bar associations have a Law Day Committee and/or a community education committee, public relations committee, or young lawyers' committee that specializes in community education and outreach.

With the assistance of the chair of our local Law Day Public Relations Committee, I have established contacts with several judges in the city and county courts and with numerous attorneys working for the city, in the public defender's office, the prosecutor's office and in private practice. I have discovered that many of the local members of the legal profession with no formal ties to our college are very willing to participate in moot courts or to work with students in preparing them for oral argument. Student enthusiasm, commitment and level of preparation and sophistication will increase dramatically as they interact with attorneys and judges. Moreover, student interaction with legal professionals has several positive benefits for the prelaw program (or other sponsoring program) including the forming of connections for possible internships. In my view, obtaining the active involvement of local practicing attorneys and judges is the single most important ingredient to a successful intercollegiate moot court team.

2) Recruit other faculty to work with the students in preparing their arguments.

I have an advantage in that the College of Wooster has a functioning Prewlaw Advising Committee consisting of four tenured faculty members, two local attorneys, and the director of the College's career services program. Since our moot court team is considered an important part of the prelaw program and has its support, I can call on the other members of the committee for assistance. I recommend that other moot court advisors set up a similar network by recruiting faculty who teach law-related courses, use moot court exercises, or have areas of expertise that be utilized in preparing the students for oral argument. As an example, one of our professors in the Department of Communication tapes the students during a formal moot court session, lets each individual student review his/her tape, and then critiques the tape with the student. We have found that our students can make major improvements in their oral presentation by reviewing a tape on their own and by discussing it with someone with expertise in oral communication.

3) As soon as possible, establish two "working groups" which focus on the substantive issues that are set out in the problem.

By focusing student research and preparation on one of the two issues presented in the problem, you immediately cut the student's work load in half. For example, in preparing our team to argue the *Morales* case, we formed two working groups: a "void for vagueness" group and a "substantive due process" group. Each group consisted of all the students who choose to argue or work on that issue, as well as one attorney and one faculty member who jointly directed the group. Each group set its own meeting schedule and established its own approach to research and preparation on the assigned issue until the last two weeks of preparation. This approach also has the benefit of focusing the students' attention on substantive legal and constitutional issues and the practical task of presenting their understanding of these issues effectively in oral argument.

4) From the beginning, students should focus their research and preparation on presenting both the petitioner's and respondent's sides of the case in formal oral argument.

I recommend that you make no division between an early research and study phase in which the students study the facts of the case, the relevant precedents and so on, and a subsequent phase of preparation in which they begin to construct their oral arguments. It is certainly imperative that students pay close attention to the procedural history of the case, the relevant facts of the case, the main lines of argument in both the majority and dissenting opinions of the appellate court decisions, and the cases which are cited as precedent by both sides. However, I think that undergraduate students frequently have great difficulty sorting out what is most important as they move through the unfamiliar, technical language of appellate court decisions. By concentrating, from the very beginning of preparation, on the task of actually making the petitioner's or respondent's arguments, the students are given a clearer focus for their efforts. The expectation is, of course, that their understanding of these two lines of argument will become sharper and more sophisticated as they return to basic questions regarding the facts of the case, the procedural history, and so on. In my working group, students begin making formal oral arguments (we start with five minute periods) at our second meeting.

5) Commit time to recruiting students who are very interested in and/or have experience in or potential for doing moot court.

During the fall semester, our prelaw program designates one week in which faculty and students from the program sit at information tables set up outside the dining facilities during lunch or dinner. Students are given information about the prelaw program in general and moot court in particular, and are able to sign up for the prelaw program and/or moot court. Each year we generate a long list of names of students who express an interest in doing moot court, but most of these students have dropped out by the second meeting of the moot court team. In my view, participation in moot court competition is so demanding in time and effort that it requires a special type of commitment on the part of the students. My best moot court participants are inevitably students whom I have recruited out of my civil liberties class (which includes a formal moot court exercise) or one of my other courses, or whom I have recruited based upon the recommendations of my colleagues teaching political science or law related courses. Your participation as a moot court advisor will be much more rewarding if you work with dedicated, talented students, and it is well worth your efforts to recruit the best students.

6) Do a series of formal moot courts on your campus using local attorneys and judges whom the students do not know.

I believe that the best preparation for intercollegiate moot court competition is participation in formal moot courts that simulate the conditions of the competition. There is simply no substitute for a panel of three legal professionals who will interrupt the students with those questions which they believe get at the central issues of the case. I typically set up four moot court sessions on my campus, on Tuesday and Thursday evenings, before each Seiberling competition. These moot court sessions, which are held during the last two weeks before the competition, are open to every student who has done the preparation and wishes to compete for one of the four places on our moot court team (or simply wants the experience of doing moot court). In each of the years I have advised our team, few students are

competing for the four attorney positions by this point in the process, so scheduling has not been a problem. The final two moot courts held during the last week before competition allows each of our two teams that will go on to the intercollegiate competition to argue once as petitioner and once as respondent.

Of course, it takes a considerable investment of the advisor's time to organize these practice moot court sessions. I send each of the participants a cover letter explaining the rules of the intercollegiate competition, a copy of the problem, a copy of the scoring criteria, and copies of the lower court rulings. Inevitably, the attorneys and judges that we have recruited have been well prepared, have been very good at raising the types of questions that the students will be asked at the competition, and have done an excellent job of critiquing the students performance and making suggestions regarding substantive issues as well as presentation. These formal moot court sessions in which the students present their oral arguments before panels that are similar to those they will face in the competition are extremely important to their preparation.

7) Devote some time to developing publicity and administrative support for intercollegiate moot court.

I think that the formal moot courts on campus provide the best means for accomplishing these goals. I notify the college news services, the college photographer, and the college newspaper of these events, and I invite the entire campus community with specific invitations to the college president, vice president for academic affairs and dean of the faculty. As a result, one year the local newspaper carried a long story regarding the collaboration between the members of the local legal profession and the college moot court team. Administrators now frequently point to moot court as one of the most successful and valuable "extracurricular" programs that are available at the college. The practice moot courts are also an excellent recruiting ground for future moot court participants.

### **A Brief Summary of the Process**

I organize the first meeting of the moot court team as soon as we receive the problem presented by the Seiberling Moot Court in December. At the first meeting, I feature the two attorneys who will work with the moot court team as advisors. We distribute copies of the problem, the lower court opinions, and the other material provided by the organizers of the competition. The attorneys do a brief presentation on moot court competition, provide an overview of the constitutional issues raised by the case in question, and present a quick tutorial on how to read legal opinions and do legal research.

I hold a second organizational meeting without the attorneys to show the tape produced by the organizers of the competition, to distribute briefs and other materials on the case, and to return to the issue of legal research. Since these meetings occur during the closing days of the fall semester and students find themselves preoccupied with finals and research papers for their courses, it is impossible to begin the real work of preparing for competition. What I concentrate on accomplishing is getting the students to divide themselves into teams so that

half of the students will prepare to argue one of the issues and the other half will research the other issue. When students depart for break, I want them to have some background on the constitutional issue they have selected so that they have some reference point as they study the lower court opinions and research precedents.

When classes resume in January, we have only one month to prepare for the competition. We hold one short general meeting to cover basics and address general questions, and quickly divide into our two working groups to prepare oral arguments on each issue. The two working groups proceed independently (although I work with one group and constantly check in with the coordinator of the other group). We maintain sufficient communication to ensure that the groups are aware of possible issues that cut across the formal division of the problem.

I constantly emphasize oral argument in my own group. We start with formal five minute presentations, interrupted by frequent questions, in which the two coordinators and a designated student serve as judges. After each set of oral arguments, we discuss points of procedure, weaknesses in particular lines of argument, areas of preparation that require additional work, and so on. We meet wherever and whenever the group can get together (scheduling a common meeting time between a professor, an attorney and several students is frequently difficult). The most productive working group meetings that I have participated in were held on Saturday mornings in the main conference room of the firm of the attorney advisor for our group. Do not underestimate the effect that an atmosphere like this will have on the commitment and enthusiasm of undergraduate students.

This working group approach places the students back into teams only during the last two weeks of their preparation. Moreover, the two teams that will participate in the intercollegiate competition are not selected until the last week. The weaknesses of this approach are that students do not develop a sophisticated understanding of the other constitutional issue, and partners do not have a chance to develop a bond over the period of preparation. However, I do not think that these weaknesses are critical. If there is sufficient communication among the advisors of the two teams, there are only minor issues of consistency that need to be worked out in the last week of preparation. In addition, if the advisors are astute in their encouragement and assistance in helping students find partners, they do not have to make a lot of changes in the last week.

Since the Seiberling Moot Court Competition presents a case that is pending before the Supreme Court, there is a significant burden placed on both the students and the advisors to research the case. However, the development of the World Wide Web has made this type of research much easier, especially for our computer literate students. Even for campuses which do not have access to for-fee services such as LEXIS or WESTLAW, the FindLaw Constitutional Law Center is available to anyone with a web connection without cost. Students can use FindLaw to locate briefs for cases before the Supreme Court (at [http://supreme.findlaw.com/supreme\\_court/briefs/index.html](http://supreme.findlaw.com/supreme_court/briefs/index.html)), to search for the text of earlier Supreme Court opinions cited as precedent, and to "Shepardize" a case (at <http://www.findlaw.com/casecode/supreme.html>).

In my view, the central weakness with this approach is that the case may not be "balanced." For example, as we prepared to argue the *Morales* case, it was clear that the team with the respondent (*Morales*) side of the case had a tremendous advantage. Despite their familiarity with moot courts, panels of judges frequently have great difficulty separating the performance of the students in their oral arguments from the merits of the case as the judges see it when they score a match.

For those moot court advisors who are looking for a moot court handbook, there are several available. We have used Leal, et al, *Introduction to Advocacy* (1996) successfully, and I would recommend it as a valuable resource for students as well as for advisors. The primary problem for us was that these moot court handbooks are not inexpensive, so that you are asking students to pay in cash as well as in time in order to participate in moot court. In order to be fair to our students, our prelaw program decided to subsidize the provision of *Introduction to Advocacy* to all students participating in moot court so that they could purchase it for \$5.00.

Although we found the handbook to be useful to at least some of our students, we decided to drop the handbook primarily because of the cost to the program of subsidizing it. Also, we found that we could do without the handbook because of the frequent involvement of attorneys who introduce and constantly use the basic terminology of appellate advocacy. Finally, I found that many of the concepts emphasized in these handbooks, such as developing a "core theory" of the case, are not as useful to undergraduate students as they are to law students.

If it is not clear from what I have said in this paper, I want to note that I have found participating in the Seiberling Moot Court Competition as an advisor to our moot court team to be a highly rewarding experience. Moreover, the participating students and our prelaw program have benefited greatly from participation in the tournament. At the same time, I would warn anyone who is thinking about taking on this responsibility that intercollegiate moot court is a very time consuming activity. The primary cost of participation for everyone is the time that could be used for a variety of other valuable endeavors. The successful moot court advisor must find a workable time management strategy that minimizes wasted time for the students as well as for the advisor.

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