UNIVERSITY OF SAN FRANCISCO
SCHOOL OF LAW

MOOT COURT HANDBOOK

2009

2008-2009 Moot Court Board

Executive Director  Managing Director
Phillip Babich     Stephen Hew

Topics Director  Topics Director
Stewart Kellar    Jennifer Stanger

Advocacy Director
Lailah Morris

Faculty Advisor: Professor Suzanne Mounts
Program Coordinator: Assistant Professor of Legal Writing Edith Ho

Moot Court Board Office: Zief 02  Phone: 422-5118
# TABLE OF CONTENTS

## 2009 SCHEDULE

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>1</td>
</tr>
<tr>
<td>II.</td>
<td>1</td>
</tr>
<tr>
<td>III.</td>
<td>2</td>
</tr>
<tr>
<td>IV.</td>
<td>7</td>
</tr>
</tbody>
</table>

## I. NATURE AND PURPOSE OF THE MOOT COURT PROGRAM

## II. THE PROBLEM: Statement of the Case and Statement of Facts

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Statement of the Case</td>
<td>1</td>
</tr>
<tr>
<td>B. Statement of Facts</td>
<td>1</td>
</tr>
<tr>
<td>C. Court and Jurisdiction</td>
<td>1</td>
</tr>
<tr>
<td>1. Real Courts and Jurisdictions</td>
<td>1</td>
</tr>
<tr>
<td>2. Fictitious Courts and Jurisdictions</td>
<td>2</td>
</tr>
</tbody>
</table>

## III. THE MOOT COURT BRIEF

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Overview of the Moot Court Brief</td>
<td>2</td>
</tr>
<tr>
<td>B. Coordination with Case Counsel</td>
<td>3</td>
</tr>
<tr>
<td>C. Research</td>
<td>3</td>
</tr>
<tr>
<td>D. Use of Authority</td>
<td>3</td>
</tr>
<tr>
<td>E. Formal Brief Requirements</td>
<td>3</td>
</tr>
<tr>
<td>1. Cover and Title Page</td>
<td>3</td>
</tr>
<tr>
<td>2. Table of Contents</td>
<td>4</td>
</tr>
<tr>
<td>3. Table of Authorities</td>
<td>4</td>
</tr>
<tr>
<td>4. Introduction</td>
<td>4</td>
</tr>
<tr>
<td>5. Statement of the Case</td>
<td>4</td>
</tr>
<tr>
<td>6. Statement of Facts</td>
<td>4</td>
</tr>
<tr>
<td>7. Summary of Argument</td>
<td>5</td>
</tr>
<tr>
<td>8. Standard of Review</td>
<td>5</td>
</tr>
<tr>
<td>9. Body of Brief</td>
<td>6</td>
</tr>
<tr>
<td>a. Point Headings</td>
<td>6</td>
</tr>
<tr>
<td>b. Substantive Argument</td>
<td>6</td>
</tr>
<tr>
<td>10. Conclusion</td>
<td>6</td>
</tr>
<tr>
<td>11. Signature Block</td>
<td>7</td>
</tr>
<tr>
<td>F. Format Rules</td>
<td>7</td>
</tr>
</tbody>
</table>

## IV. THE ORAL ARGUMENT

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Introduction</td>
<td>7</td>
</tr>
<tr>
<td>B. The Presentation</td>
<td>7</td>
</tr>
<tr>
<td>1. Mechanics of the Presentation</td>
<td>7</td>
</tr>
<tr>
<td>2. Recitation of the Facts</td>
<td>8</td>
</tr>
<tr>
<td>3. Body of the Presentation</td>
<td>8</td>
</tr>
<tr>
<td>4. Concluding Your Presentation</td>
<td>9</td>
</tr>
<tr>
<td>5. Handling Judges’ Questions</td>
<td>9</td>
</tr>
<tr>
<td>6. Style</td>
<td>10</td>
</tr>
<tr>
<td>7. Deliberation by the Court</td>
<td>10</td>
</tr>
<tr>
<td>C. Preparations</td>
<td>10</td>
</tr>
</tbody>
</table>
V. CREDIT AND AWARDS 11
   A. Academic Credit 11
   B. Evaluation of Briefs and Oral Arguments 11
   C. Awards 11

VI. MEMBERS OF MOOT COURT 12
   A. The Executive Moot Court Board 12
   B. Case Counsel 12

Appendix A A-1
2009 SCHEDULE

March 16
Topic Assignments Posted

March 17-30
Sections 1, 2 & 3 - Moot Court Brief Writing

April 1 or April 2
Oral Advocacy Workshop (Students attend one one-hour session, assigned by Section #)

April 2 - April 17
Oral Arguments Preparation/Videotaping

April 18 & 19
(Saturday & Sunday)
Oral Arguments

Sections 1 & 2: Petitioners & Respondents:

Topics Handed Out
- Section 1: Tuesday, March 17, 4:30 p.m. - 5:20 p.m.
- Section 2: Tuesday, March 17, 4:30 p.m. - 5:20 p.m.

Turn in Briefs
- Section 1: Monday, March 30, 11:00 a.m. - 1:00 p.m.
- Section 2: Monday, March 30, 8:50 a.m. - 10:50 a.m.

Section 3: Petitioners & Respondents:

Topics Handed Out: Section 3: Tuesday, March 17, 5:30 p.m.-6:20 p.m.

Turn in Briefs: Section 3: Monday, March 30, 4:20 p.m.-6:20 p.m.

Format of Briefs
Each participant must turn in eight (8) copies of his or her brief.
Include a cover and title page.
Covers for Petitioners’ briefs are Blue cardstock front and back.
Covers for Respondents’ briefs are Red cardstock front and back.
Briefs must be bound at the left margin by three staples.
Briefs must be turned in to the Moot Court Office, Zief 02 by the deadline specified.
I. NATURE AND PURPOSE OF THE MOOT COURT PROGRAM

The University of San Francisco School of Law Moot Court Program provides each student with a supervised exercise in appellate advocacy. Students research and write an appellate brief about a fictitious case on appeal. Students then receive training in oral advocacy and will deliver an oral argument before a panel of judges.

The Moot Court experience is demanding. Students must not underestimate the amount of work involved in Moot Court. All students are expected to devote sufficient time and effort to writing the brief and preparing oral arguments so that both will be of high quality. The skills developed during Moot Court are critical and will be invaluable throughout the students’ law school and legal careers.

II. THE PROBLEM: Statement of The Case and Statement of Facts

Each participant receives a Problem. The Problem consists of a “Statement of the Case” and “Statement of Facts” which present the procedural history of the case and relevant facts, respectively. In practice, parties have access to a Clerk's Transcript and Reporter's Transcript that combine to constitute the record on appeal. The Problem provides all factual information on which arguments are to be based.

A. Statement of the Case

The Statement of the Case provides the procedural history of the case being argued. This history will include the following: (1) identification of the trial court which heard the case; (2) the decision rendered in the trial court; (3) a description of any proceedings in an intermediate level appellate court; and (4) a description of how the case got to the appellate court before which it is pending (e.g., by direct appeal, on a writ of certiorari, etc.). The Statement of the Case will also indicate key legal authorities relied upon and/or rejected by the trial court.

The procedural posture of the case is crucial. Students should be thoroughly familiar with its history and the standard of review that the appellate court will apply. See below Section III.E.8.

B. Statement of Facts

The Statement of Facts presents the facts relevant to the case being argued. The facts appearing in the Statement of Facts and in the exhibits must be accepted as given. Participants must not stretch the facts or speculate about facts which are not included. Remember that the arguments are being made before an appellate court; participants must urge the court to apply relevant law to the facts given, not to determine the existence, truth or falsity of those facts.

C. Court and Jurisdiction

1. Real Courts and Jurisdictions

Moot Court Problems are set in a real court and jurisdiction, such as the State of California or the courts of the United States. The appellate structure of each jurisdiction differs, and participants must be familiar with the appropriate jurisdiction’s structure.

Participants should be aware that a case’s persuasiveness is dependent upon the case’s
jurisdiction and court. While prior decisions of your court are binding, decisions of other courts (lower courts from your jurisdiction or courts from other jurisdictions) will only be persuasive. In either instance, of course, you should address any persuasive case law which helps your client’s position, so long as you do so in addition to addressing binding authority.

2. **Fictitious Courts and Jurisdictions**

Some Moot Court Problems are set in a fictitious jurisdiction, such as a make-believe state or a non-existent United States "Fourteenth" Circuit Court of Appeals. If you get such a Problem, your client’s case is one of first impression in that jurisdiction. Thus, all relevant case law is equally persuasive.

III. **THE MOOT COURT BRIEF**

An appellate brief is a critical component of winning an appeal. Typically, the briefing stage of an appeal takes place over several months. More importantly, a significant percentage of appeals are decided on the briefs, either without oral argument or where oral argument has little or no effect upon the court’s opinion. Also, parties are generally prohibited from raising arguments orally which were not fully addressed in their brief.

The briefing stage of the Moot Court Program reflects the importance of real life appellate briefs. There are, however, several important differences between Moot Court briefs and appellate briefs in practice. First, although judges will receive each participant’s brief for use during oral arguments, participants will not be “judged” by their briefs and cases will not be decided on the briefs. Second, participants will not be precluded from making arguments orally which were not addressed in their briefs. Keep in mind, however, that the quality of a participant’s brief may give a judge an idea of the quality of his or her oral argument, even before the argument is made. Moreover, the judges are prominent members of the legal community who will likely recall the quality of your brief should you ever find yourself meeting him or her in a job interview.

A. **Overview of the Moot Court Brief**

A petitioner seeks to persuade the appellate court that the lower court’s ruling or holding is erroneous and should be reversed. Conversely, a respondent seeks to convince the appellate court that the lower court’s ruling or holding was correct and should be affirmed.

A good brief is clear, accurate, concise and persuasive. The brief should begin by telling the court the client’s precise goals or objectives. Then, the brief should persuade the court that your client’s legal position is correct as demonstrated by existing law. Generally, appellate courts will decide cases consistent with established law. However, where necessary, participants may advocate an extension or retraction of existing legal precedent. In those situations, give the court some justification for any departure from existing law, such as public policy, current trends or strong dissents by prominent jurists. Authority must be carefully selected to support specific propositions set forth in the brief. Improper use of authority will destroy an advocate’s credibility with the court.
B. Coordination with Case Counsel

It is important that each participant advise his or her Case Counsel of the progress of his or her research and the arguments his or her brief will set forth. Each Case Counsel has spent months researching the Problem, knows it thoroughly, and will be able to assist participants at both the research and writing phases. In addition, individual and group meetings will be scheduled with Case Counsel to review progress and answer any questions. Failure to attend mandatory meetings may result in a failure to receive credit.

C. Research

Thorough research is the cornerstone of a successful Moot Court brief. Appropriate research methods will help to define the issues involved in the appeal and to locate relevant cases. Sloppy research may overlook information which may prove valuable or dispositive. Moreover, many of the issues presented in this year’s competition are very timely. As such, participants who do not Shepardize or Key Cite thoroughly may miss the latest cases.

D. Use of Authority

The purpose of authority is to persuade the court of the correctness of your position. Courts hesitate to give credence to any proposition which is not sufficiently supported. However, participants should resist the temptation to cite every case. When selecting authority, consider, among other general factors, the following:

- Jurisdiction of the case
- Similarity of facts
- Similarity of issues
- Procedural posture
- The year the case was decided
- Whether the case represents the current trend in the law
- The reasoning underlying the decision

E. Formal Brief Requirements

An appellate brief consists of several required components. They are discussed below in the order in which they should appear. For additional guidance, see the sample brief excerpts in Appendix A.

1. Cover and Title Page

Each brief must have both a cover page and a title page. The contents of the cover and title pages are to be identical in form, except that the cover page should be printed on colored cardstock—a heavy paper like that used to bind this Handbook. The briefs must have this cardstock cover for both the front and back of the brief. Petitioners’ briefs must have a BLUE cover. Respondents’ briefs must have a RED cover. Colored paper for the covers can be obtained at any professional copy store. Each participant must turn in eight (8) copies of his or her brief.

The format of the cover page and title page differs depending on the particular court
before which the Problem is set. If your “Problem” is set in State Court use the sample on page A-1 of Appendix A. If your “Problem” is set in Federal or the U.S. Supreme Court, use the sample on page A-2 of Appendix A.

2. **Table of Contents**

All briefs must include a Table of Contents. This Table should include a reference to all required components of the brief, as well as all point headings. Page numbers must be accurate. See page A-3 of Appendix A.

3. **Table of Authorities**

All briefs must contain a Table of Authorities. This Table should include all authority, including statutes and secondary sources, if appropriate. Citations must be in accordance with the ALWD Citation Manual.

Cases should be organized first according to the level of court and then alphabetically — decisions of the highest relevant court should be listed first, intermediate appellate courts, if applicable, are listed next, etc. Statutory and secondary authority follows case law. See page A-4 of Appendix A.

As with the Table of Contents, page numbers for the Table of Authorities must be accurate. Page references must be listed for every citation to a particular case, not solely the first instance of the case. This includes any short-form citation. Page numbering should be the last step of finalizing your brief; minor changes to the body of your brief may move case citations to a completely different page.

4. **Introduction**

An introduction should contain the following important components: (1) one or two sentences describing the overall factual context of the case in a persuasive manner to make your client appear sympathetic; (2) one or two sentences describing the procedural posture resulting in the instant appeal; and (3) a brief summary of your client’s goal(s) (i.e., what you are asking the court to do). See page A-5 of Appendix A.

5. **Statement of the Case**

This section gives the procedural background of the case. It should include all important information about the proceedings before the lower court and the ruling of the lower court. Case Counsel will assist participants in writing the Statement of the Case. See page A-5 of Appendix A.

6. **Statement of Facts**

The order and emphasis of facts can greatly influence a court’s decision. Thus, participants should discuss the facts in a manner the court should adopt when deciding the appeal. Emphasize favorable facts and minimize those which favor the opponent; however, do not omit unfavorable facts. Also, do not create facts or draw your own inferences from the facts stated in the Problem. See page A-6 of Appendix A.
7. **Summary of Argument**

The Summary of Argument briefly summarizes the main points in the Argument section of the brief. This should be a very concise section, devoting no more than one paragraph to each main issue. This summary should not be a full development of the points and should not generally contain case citations. Save detailed legal analysis for the body of the brief. See page A-7 of Appendix A.

8. **Standard of Review**

The scope of an appellate court’s review often determines a Petitioner’s success. Thus, the court will need to know what level of appellate review it is to apply. Participants should describe the standard of appellate review for the issues involved in the appeal.

Generally speaking, there are three different standards of review: (1) *de novo* review; (2) review for abuse of discretion; and (3) review for substantial evidence. *De novo* review provides the highest level of appellate scrutiny, and affords the Petitioner the greatest chance for obtaining a reversal. All Moot Court Problems entail alleged errors of law, and, thus, *de novo* review.

*De novo* review — sometimes referred to as “independent” or “plenary” review — applies when the trial court has made a pure legal determination that the Petitioner claims was an “error of law.” Among other situations, *de novo* review applies to: (1) a split in authority; (2) cases where the facts are not in dispute; (3) interpretation of a statute or contract; and (4) constitutional questions.

Each Moot Court Problem will involve one or more of the following situations:

1) **Split of Authority** — An alleged error of law which has arisen by virtue of a split in relevant authority. Typically, two or more cases have decided the same legal question in a conflicting manner. The trial court, faced with this split of authority, applied one rule rather than another. The alleged error is that the trial court should have applied the opposite rule. The appellate court will decide *de novo* which rule is correct and, consequently, whether the trial judge applied the correct rule of law.

2) **Undisputed Facts** — An alleged error of law that has not necessarily arisen by virtue of a split in the relevant decisional law. In this situation, the trial judge applied law to an undisputed set of facts. The facts were undisputed because, at the trial court level, the parties stipulated to an agreed-upon set of facts and made cross-motions for summary judgment. When the facts are not in dispute in the trial court, every ruling by the trial judge is converted to a pure legal question. Thus, the appellate court can exercise independent review.

3) **Statutory or Contractual Interpretation** — An alleged error of law based upon an incorrect interpretation of a statute or written contract. An appellate court can examine a statute or written contract in the same manner as a trial court. The appellate court need not refer to facts developed in the trial court. Thus, *de novo* review applies.

If you are confused about standards of review or about any appellate procedural issue, you may want to consult: Moskovitz, “Winning an Appeal”; the “Appeals” volume of Witkin, “Summary of California Procedure”; the Rutter Group’s “Civil Writs and Appeals”; and/or the Rutter Group’s “Criminal Writs and Appeals.” See page A-8 of
Appendix A. Case Counsel will also provide assistance.

9. **Body of Brief**

   a. **Point Headings**

      Well written point headings are invaluable to both the advocate and the judge. For the advocate, point headings organize the argument in a logical and persuasive manner. For the judge, point headings are a summary of the argument contained in the brief.

   b. **Substantive Argument**

      Appellate arguments are similar to all persuasive legal writing — use the “IRAC” structure you learned in Legal Research, Writing and Analysis and write persuasively.

      Petitioner should present his or her arguments in a logical manner which encourages the court to rule in his or her client’s favor.

      Respondent should not merely engage in a point-by-point refutation of his or her opponent’s argument. Rather, Respondent should concentrate on convincing the court to adopt her client’s position.

      When urging a court to apply one rule of law over another — i.e. where there is a split of authority — participants should thoroughly discuss policy considerations and other relevant reasoning.

      Distinguish between holdings and dicta. Dictum is a statement of opinion by the court which is not necessary to the decision and is not entitled to the same weight as a holding. Exercise restraint when trying to make dictum function like a holding.

      Avoid long quotations from cited material. Unnecessary quotation interferes with the effectiveness of an argument. Quote from cited material only when the exact language is vital, unique or helps solidify an argument.

      Do not ignore authority simply because it is unfavorable. Instead, you must carefully address the authority, bearing in mind its level of persuasiveness, facts and holding. If a case is binding, an attorney has an ethical obligation to address the case, even if it heavily favors the opposition. In this situation, participants should distinguish the authority if possible.

      For additional information regarding format and content of the Argument, see generally, pages A-8 – A-9 of Appendix A.

10. **Conclusion**

   A conclusion need only contain a one sentence wrap-up such as: “For all of the foregoing reasons, this Court should [affirm]/[reverse] the trial court’s decision.” However, it is also appropriate, but optional, to include a more specific one sentence summary of each point of the argument. See page A-9 – A-10 of Appendix A.

11. **Signature Block**
In the lower right hand corner of the page, the phrase “Respectfully Submitted” should appear with your name and signature. The Brief should be dated in the left hand corner following the Conclusion. See page A-10 of Appendix A.

F. Format Rules

Appellate briefs are highly stylized, formal documents. In practice, attorneys must consult the “local rules” of the particular court before which they are appearing to find specific information about, and requirements for, the form of the brief. The following rules have been adopted for the Moot Court Program and constitute the Moot Court “local rules”:

1. All citation must be in ALWD format.
2. All formatting rules with respect to pleading paper, font size, margins, etc. must conform to the rules listed in the Legal Research, Writing & Analysis Spring Syllabus.
3. Briefs must be at least sixteen (16) pages but no longer than twenty (20) pages, excluding cover page, table of contents and table of authorities. Any content beyond twenty pages will not be read.
4. The cover page must be BLUE card stock for Petitioners and RED cardstock for Respondents. Card stock must cover both front and back.
5. Briefs must be bound at the left margin by three staples.
6. Each participant must turn in eight (8) copies of his or her brief.

IV. THE ORAL ARGUMENT

A. Introduction

The primary function of the oral argument is persuasion. There are two essential elements in presenting an effective oral argument: (1) an accurate and complete understanding of the facts and law; and (2) a confident, passionate, and flexible delivery.

B. The Presentation

1. Mechanics of the Presentation

Facing the bench, Petitioner’s counsel (“Petitioner”) sits to the left of the podium, Respondent’s counsel (“Respondent”) to the right. The bailiff will call the court to order. As the judges enter, all present should rise. The bailiff will then state the name of the case and ask Petitioner if he or she wishes to reserve rebuttal time. The bailiff will instruct the courtroom to be seated and the argument will commence.

The argument proceeds in the following order: (1) Petitioner’s Opening Argument; (2) Respondent’s Argument; (3) Petitioner’s Rebuttal. Petitioner argues first, presenting his or her Opening Argument. Petitioner has fifteen (15) minutes minus any time reserved for rebuttal as designated at the beginning of his or her argument when asked by the bailiff. Petitioner may reserve no less than one (1) minute and no more than three (3) minutes for rebuttal. Respondent then argues for fifteen (15) minutes. Respondent may not “reserve” any time for rebuttal. Finally, Petitioner uses his or her
“reserved” rebuttal time to address any arguments made by Respondent.

The bailiff will keep time and show the time remaining through use of a series of cards — “5” minute, “2” minute and “0” minute cards. Each card designates the time remaining in the argument.

Participants should begin his or her presentation with the following customary introduction: “Good [morning/afternoon] your honors and may it please the Court, my name is [your name], counsel for [Petitioner / Respondent], [name of client].”

2. Recitation of the Facts

Petitioner should offer the court a brief statement of the facts. The court will either ask you to recite the facts or instruct you to proceed with your argument. If the court asks for a recitation of the facts, the facts should be presented in a way most favorable to your client. However, as with the Statement of Facts in the brief, the facts should be stated concisely and accurately; do not stretch the facts and do not speculate as to the existence of, truth or falsity of the facts. If the court instructs you to proceed with your argument, you should still discuss the facts that are critical to the case in the body of your presentation.

Respondent should not repeat a statement of the facts. Instead, he or she should listen to Petitioner’s characterization of the facts and point any out omissions or mischaracterizations. Like Petitioner, Respondent should discuss facts to bolster the arguments he or she will make.

3. Body of the Presentation

The argument should begin with a clear statement of the key points and contentions. Emphasize the strongest points first. Be aware of time constraints. Do not save the best point(s) for the end. In presenting the argument, do not discuss every case and argument used in your brief. Also, weave the facts of the case into the argument, and compare and contrast the facts of cited cases with facts from your case.

Leave approximately one minute of your allotted time to summarize your argument. The summary should be a strong reiteration of the major points and should remind the court of what action the court should take (i.e., affirm or reverse). If time runs out before you have summarized your argument, respectfully ask the court for a minute to summarize. Although some courts may allow a short summary beyond the time allotment, others may not. If the court allows you to summarize, do so very quickly, being mindful that your allotted time has expired and the court has graciously allowed extra time for a conclusion. If the court does not grant extra time, thank the court and sit down.

Participants should listen carefully to what his or her opponent says. More importantly, listen to the questions the judges ask. Those questions will give you clues about the court’s concerns. Be flexible enough in your outline of arguments to incorporate anything learned through listening to your opponent’s arguments and the judges’ questions. This will assist you in attacking any weaknesses in your opponent’s arguments and address the court’s concerns before they ask you difficult questions.

A Petitioner in rebuttal cannot raise new legal arguments. Instead, he or she should systematically respond to all strong points made by Respondent.

4. Concluding Your Presentation
When the bailiff holds up a card with a zero on it, that means you have run out of time. If you are still speaking when you see the zero card, **finish your sentence.** Here are some common situations and suggested responses:

A. If you are the Petitioner and you see the zero card during your **opening argument**, **finish your sentence** and then say, “Your honors I see that I am out of time, I would like to save the rest of my comments for rebuttal” and sit down.

B. If you are the Petitioner and the bailiff raises the zero card during your **opening argument** while a judge is asking you a question, say, “Your honor, I see that I am out of time would you like me to answer your question.” Generally, the judge will give you an opportunity to answer the question. After you finish answering the judge’s question, say “I would like to save the rest of my comments for rebuttal” and sit down.

C. If you are the Respondent and you see the zero card during your argument, **finish your sentence** and then say, “Your honors I see that I am out of time, may I have a brief moment to conclude.” If the judges allow you to conclude, make sure it is brief.

D. If you are the Respondent and the bailiff raises the zero card while a judge is asking you a question, say “Your honor, I see that I am out of time would you like me to answer your question.” Generally, the judge will give you an opportunity to answer the question. After you finish answering the judge’s question, say “Although I am out of time, may I have a brief moment to conclude.” If the judges allow you to conclude, **make sure it is brief.**

E. If you are the Petitioner and the bailiff raises the zero card during your **rebuttal**, say, “Your honors I see that I am out of time, may I have a brief moment to conclude.” If the judges allow you to conclude, make sure it is brief. Similarly, if the bailiff raises the zero card while a judge is asking you a question, say, “Your honor I see that I am out of time, would you like me to answer your question.” After you answer their question, say “Although I am out of time, may I have a brief moment to conclude.” If the judges allow you to conclude, make it brief and then sit down.

If you finish your argument before you see the zero card, present your concluding remarks, say “thank you” and then sit down.

5. **Handling Judges’ Questions**

An important requirement in oral argument is to listen to what the judge is asking and answer directly. If a question can be answered “yes” or “no,” do so first and **then** explain. Keep your answers short and to the point. If possible, use the answer to lead into your next point to be covered. If unsure about a judge’s question, respectfully request that it be repeated or rephrased. Do not try to bluff when you are unfamiliar with a case or you do not know the answer to a question a judge asks.

Do not assume that all questions are hostile. Sometimes a judge will ask a friendly question, colloquially referred to as a “softball.” Recognize it, and use it to your advantage. Be prepared for policy questions, hypothetical situations and questions about the cases cited in the briefs. When a hypothetical can only be answered truthfully in a way that appears to be adverse to your position, distinguish the hypothetical situation from your client’s case.

Above all, never interrupt a judge, never argue with a judge, and never respond to a question with “I’ll get back to that.” Always answer the question when asked and move on to your next
6. **Style**

There is no “correct” style in appellate advocacy. However, there are some general guidelines which may help.

Avoid saying “I” or “we.” Instead, say “Petitioner” or “Respondent” or “my client.” For example, say, “It is my client’s position that . . .” rather than “I feel that . . . .”

Judges may have trouble concentrating on the argument when other irritating distractions are present. Some common distractions to avoid include the following: visible or distracting jewelry; noisy items in pockets (coins, keys, etc.) that might be handled when nervous; a pen or pencil at the podium which can be used as a pointer; and constant removing and replacing eyeglasses during argument. A more common problem is nervous dancing around the podium. You should practice planting your feet and keeping your hands out of your pockets. Slight, natural movements, such as turning to face the judge who is questioning you, are expected and perfectly acceptable. Avoid leaning from side to side, leaning on the podium, and making excessive gestures.

The most important aspect of oral arguments is that you be heard and understood. Speak slowly, clearly, and loudly so that judges can easily hear you. It is very important to pause and collect your thoughts when answering questions. It is far better to ask the court for a moment to think than to leap into a disconnected, rambling answer. Eliminate all “uhs” and “ums.” If you anticipated a particular question in preparation, do not read a prepared response to the question. Instead, look directly at a judge when a question is being asked and answer from memory. Throughout the argument, maintain eye contact with the judges, looking down only when necessary.

7. **Deliberation by the Court**

At the conclusion of the arguments, the bailiff will announce a recess and the judges will retire (in the courtroom) to deliberate. All present must leave the courtroom. Once the court reaches a decision, the court will announce its decision. The court’s decision is based on the quality of the oral presentations, not on the merits of the case. The judges will then critique the oral presentations and briefs. After the judges have provided their feedback, they will generally be available for informal discussion regarding the brief, the oral argument, and any questions you may have about the practice of law.

C. **Preparations**

There is only one “secret” to effective oral presentation of legal matters: know what you are talking about! Lack of preparation is painfully obvious. Lawyers make oral presentations on a daily basis — to a court, to a client, or to an opponent. Prepare, relax, and see how rewarding an experience it can be. Practice makes perfect!

During the weeks prior to oral arguments, students will participate in an oral advocacy workshop and a videotaping session. In addition to these workshops, your Case Counsel will also provide you with an oral advocacy training session. These sessions will teach students the mechanics of appellate oral advocacy and hone students’ skills. More importantly, the videotaping session will serve as a “dress rehearsal” for the oral arguments. Students are encouraged to create their own mock
arguments, taking turns judging each other.

V. CREDIT AND AWARDS

A. Academic Credit

The Moot Court Program evaluates student performance on a credit/no credit basis. Each student must successfully complete both the written and oral portions of the program to receive credit. Students must attend all mandatory meetings, as directed by the Moot Court Board and the student’s Case Counsel. Students must write a brief that reflects a good faith effort. Finally, students must appear for and conduct an oral argument at his or her scheduled time.

Stated DEADLINES for submission of briefs apply to all participating students and WILL NOT BE EXTENDED for any reason. Briefs submitted late may or may not receive credit—the credit/no credit decision lies within the discretion of the Program Coordinator and the Faculty Advisor. If, in the judgment of the Program Coordinator and the Faculty Advisor, a brief is deficient and does not merit a passing grade, credit will not be awarded until the brief is rewritten so that it meets a passing standard. If credit is not received, the student must repeat Moot Court in a subsequent year.

Because the Program takes place on one weekend each year, ORAL ARGUMENTS CANNOT BE RESCHEDULED IF MISSED. Each student is responsible for finding out when they are scheduled for their oral argument. A student who misses his or her scheduled oral argument will not be awarded credit for the Moot Court Program. If credit is not received, the student must repeat Moot Court in a subsequent year.

B. Evaluation of Briefs and Oral Arguments

Each brief is evaluated by the student’s Case Counsel and by each of the judges sitting for oral argument. The following aspects are evaluated: issue-spotting; structure; legal analysis; persuasive tone; use of authority; citation; and overall presentation. No letter grade is given.

Oral arguments are evaluated in much the same manner as the brief. Case Counsel and judges evaluate the following aspects of the oral argument: structure; clarity and brevity; responsiveness to questions; refutation of opponent’s argument; familiarity with case law and facts; persuasiveness; and summarization. No letter grade is given.

C. Awards

Each Case Counsel will recommend from his or her group of participants the “Best Brief” and “Best Oral Argument” for honors. The selection is based upon observations and comments of the judges and the Case Counsel. Any brief submitted late will not be eligible for brief honors.

VI. MEMBERS OF MOOT COURT
A. The Executive Moot Court Board

The Moot Court Board is composed of third and fourth year students who are chosen by the previous Board from among the ranks of the students who served either as Case Counsel and/or who have otherwise distinguished themselves in activities involving written and oral advocacy. Interviews for the Board will be conducted in April. Selection is based on a number of factors, among them: performance as a Case Counsel (including research and writing); leadership capabilities; managerial ability; and dedication to the Moot Court Program.

B. Case Counsel

Any student who has completed the Moot Court Program and is interested in being a Case Counsel may apply. Selection is very competitive and is based largely upon the excellence of the applicant’s brief and oral argument, recommendation of the applicant’s Case Counsel, grades and an interview. Other factors which weigh heavily in the selection process include: willingness and ability to make the necessary time commitment; teaching experience; research and writing skills; the ability to manage multiple tasks simultaneously; and the ability to work well with other people. In many cases, being a Case Counsel affords the student a good opportunity to become a Director on the Moot Court Board in the ensuing school year.

Serving as a Case Counsel is a demanding and rewarding experience. Responsibilities include:

- Developing a topic suitable for Moot Court use
- Writing a Problem and Bench Memorandum
- Helping and advising students in brief writing and oral argument
- Recommending students who merit consideration as Case Counsel

Being a Case Counsel provides the student an opportunity to receive a partial tuition reduction in recognition of past scholarship and receive one unit of credit per semester.

Case Counsel will be selected during the week following the Moot Court Program. Applications will be available in April.