Bloomberg Law

Ten Keys to Getting the Most Out of Your Moot Court

Whether in a trial or appellate court, attorneys need to prep diligently for arguments with effective moot court sessions. Washington, D.C., appellate attorneys Andrew Nichols, shareholder at Charis Lex, and Steffen Johnson, partner at Wilson Sonsini, say keys include staying in role and holding multiple sessions.

Today is "First Monday," when the U.S. Supreme Court returns to the bench to hear its first arguments of the term. This annual milestone serves as a reminder that, in preparing for oral argument, few steps are as critical as a moot court.

Just as no wide receiver takes the field without practicing his routes, and no concert violinist takes the stage without rehearsing her concerto, no advocate should appear in court without a workout.

Moot courts help far more than practicing alone because they employ live "judges." That simulates game-day (or concert-day) conditions far better than rehearsing answers at your desk. Indeed, when he was in private practice, Chief Justice John Roberts—then a top U.S. Supreme Court advocate—at times prepared with between five and 10 moot courts.

But you don't need a Supreme Court case to benefit from moot courts. Any important argument—including on a dispositive motion—will improve in the moot-court crucible. There's simply no substitute for making your case before a group of smart, well-prepared peers who can fire away with questions, assess your answers, and give honest feedback.

In our experience, however, all moot courts are not created equal. Here are 10 keys to making sure your moot courts produce maximum results.

1. Stay in role. A moot court is not a bull session. It is a simulation of the real argument—which means you must feel the pain of offering a weak answer, while judges turn up the heat with harder questions. Just as there are no lifelines in court, there should be none in moot courts. It's fine to say, as you might in court, "let me explain it another way." But you shouldn't pull rank or talk over junior moot-court panelists—be as courteous as you'd be in court—and save discussion for feedback time.

2. Invite a diverse panel. Your panel should include a mix of subject-matter experts and generalists. Subject-matter experts—who specialize in the relevant area of law, industry, or technology—won't let you give superficial answers. Generalists will delve into topics the subject-matter experts might miss or take for granted—like background facts, industry custom, civil procedure, and parallels with other areas of law—that wind up mattering in court.

If possible, invite a former clerk of your real judge (or judges). Avoid inviting loudmouths or dominating personalities, or be prepared to rein them in.

3. Make participating easy. Once you've found willing judges, don't send them an email loaded with attachments. Unless your judges are paid, they can't be expected to wade through a deep record. Instead, send them a single bound volume with the briefs, any decisions being challenged, and *key* cases, statutes, or record materials. You can also attach these materials to your electronic calendar invitation, which will help judges who prefer electronic copies or wish to word-search a document.

4. Explain the ground rules. One reason moot courts degenerate into gab sessions is that no one's told not to gab. To preserve order, we like the suggestion of Dori Bernstein, former director of Georgetown's Supreme Court Institute, to appoint one panelist as the "chief judge" to explain and enforce the rules. Having someone else play traffic cop allows you to stay in role as the respectful advocate.

5. Let the fresh faces lead. Even if your case is in a specialized court (say, the Federal Circuit), your real judges will typically come to the case cold. For that reason, the reaction of invited judges typically better predicts how the real judges will respond than that of the core team. The "chief judge" should thus make sure the invited judges can take the lead. This is a basic courtesy to those helping for free, and it ensures that you receive full value from those who are paid. The insiders can follow—or talk to you later.

6. Allow sustained lines of questions. It is frustrating to come to a moot court prepared with a line of questions that you consider vital, only to find yourself unable to get a word in edgewise. The designated "chief" should thus make sure invited judges get an opportunity, by the end, to raise all their questions. Thankfully, moot courts need not be held to strict time limits—so there's time for everyone to exhaust their ammunition.

7. Be orderly about getting feedback. Once questioning has run its course, it's time to step out of role and receive systematic feedback. Here, too, invited judges should be urged to speak first, allowing each a few uninterrupted minutes to share their reactions. That respects their time and allows them, if necessary, to leave early. It also ensures that you *get* their feedback, which is often invaluable. Alternatively, you can cycle through key issues by topic, allowing each judge to comment.

8. Keep a list of questions asked. Designate a team member to keep a list of questions posed and take notes, especially on topics where you struggled. This allows you to focus on answering questions, rather than pausing to play the scribe. The resulting document is a great place to start in preparing for the next moot, or the argument itself.

9. Practice your introduction. In every court, but especially the U.S. Supreme Court, the first minute or two are critical—setting you up for a discussion on your preferred terrain or sinking you into a mire from which it's hard to escape. But where is that preferred terrain? That is an excellent question for your moot-court judges.

So write out your introduction, try it, and invite comments on it during feedback time. We've seen introductions overhauled—and arguments transformed—thanks to feedback on the introduction.

10. Hold more than one. Moot courts are no time to trim your sails. You should typically do two, and if the stakes are high enough, three or more: the first to identify your biggest weaknesses, the second to address those weaknesses and discover any missed by the first panel, and the third (or more) to refine your answers.

The goal is fluency: enabling you to have a true conversation with the court that presents your client's case as powerfully and economically as possible. The more moot courts you hold, the more conversational you'll be.

A Closing Question

How do you know when your moot courts were successful? We suggest not looking at whether you ultimately won or lost. Even with his extensive preparation, the Chief Justice sometimes lost. After one drubbing, his indignant clients demanded to know, "why did we lose 9-0?" He responded, "because there are only nine Justices."

A better test, we think, is how difficult you found the argument *in comparison to* the moots. If the argument was easier than the moots, the moots did their job. And we think you stand the best chance of achieving that goal if you follow our 10 suggestions.

This column does not necessarily reflect the opinion of The Bureau of National Affairs, Inc. or its owners.

Author Information

Andrew Nichols recently opened the Washington, D.C., office of Charis Lex P.C., a Los Angeles litigation and antitrust boutique. He focuses on U.S. Supreme Court and appellate proceedings, as well as critical motions at the trial level. Before joining Charis Lex, he spent almost 15 years at Winston & Strawn LLP.

Steffen Johnson is a partner in Wilson Sonsini Goodrich & Rosati's Washington, D.C., office, where he chairs the firm's Supreme Court & Appellate Practice. He has decades of experience in all aspects of appellate litigation, from arguing cases in the U.S. Supreme Court, to handling appeals in the federal circuits and state appellate courts, to developing strategy for high-stakes trial court matters headed for appeal. One of his cases, Carney v. Adams, is the first case being heard by the Supreme Court Oct. 5.