

Moot Court: Commitment and Rewards

DO YOU WANT TO BE A “MOOTER”?

Here is the thing: there is a decision to be made and it is yours to make. You are a student justice considering the facts of a court case in an appellate simulation known as moot court. A moot court is an academic exercise in which students “try” a legal case before an appellate court. This is not to be confused with a mock trial. In a mock trial, students try facts before a trial court. To try facts is to judge innocence or guilt or, in a civil matter, to decide if a party, such as a corporation, is liable for an action or if a party, such as a government, exceeded its powers or violated some civil law. There is a prosecution and a defense team, comprised of students, who deliver opening statements, examine and cross-examine witnesses, and deliver closing statements. In a moot court, there is no trial. The trial has already occurred; someone or something has already been found innocent or guilty, someone or something has already had a civil issue settled, or someone or something has already been told that their or its actions violate some section of a constitution. In a moot court, someone or something is protesting the validity of a trial court decision. The issue is not did the trial court misconstrue the facts? Appellate courts do not try facts. The question is did a trial court make any errors in how it interpreted or applied the law? Lawyers argue for some set time period before a panel

of judges, which may ask questions before retiring to talk among themselves and render a verdict. This decision may be accompanied by a written opinion that explains the rationale or justification for the decision and provides some direction for future courts deliberating similar issues.

You have participated in a question-and-answer session with other students known as oral argument. In this session, two legal teams, comprised of students, presented their argument and answered whatever questions you and your peers asked. Now, you are in a secret conference with your fellow students and your instructor for the purpose of deciding the case and arriving at some common rationale for your decision. The court is deadlocked. You hold the decisive vote. If this were a real decision it would affect the nation; perhaps the world. The issue might be whether to free a man from jail or whether the death penalty is constitutional. The case might require you to judge whether certain words or ideas can be censored. The decision might compel you to define the president's war powers in the case of a terrorist attack or whether some act of Congress intended to promote racial or gender equality compromises states' rights or individual property rights. Want to experience what making such a decision might be like? This is your chance.

Fancy yourself a player? Does being a judge sound too much like being a referee? Perhaps you would prefer to be a moot court litigator, developing an argument and supporting it, answering questions, and rebutting your opponents. Sound good? This is your chance.

Perhaps you like writing and research and thinking up arguments but you do not want to appear before the court to make an argument or answer questions. Do not worry. Few real lawyers are litigators. Moot court needs lawyers to perform research that assists their team to develop their case and anticipate the other side's arguments. Writing an appellate brief can also be a rewarding experience. Depending on your instructor, you may be able to participate in your group without speaking in oral argument. Sound good? This is your chance.

SO YOU THINK YOU WANT TO BE A “MOOTER”?

If you answered “yes” to any of the questions in Section I of this chapter then chances are you want to be a “mooter.” What is a “mooter”? “Mooter” is the non-technical term for devotees of moot court. There is no single form of moot court. Some are in-class simulations that find student lawyers arguing before a student-run court. Some moot courts involve a tournament. Courts in such tournaments often consist of non-student justices such as lawyers, professors, or members of the state or federal bench. In a tournament, courts will select the *best* team rather than deciding the merits of the case itself. The most persuasive argument will prevail. The cases used in moot courts can be fictional or real. The court is usually one of last resort like a state supreme court or the United States Supreme Court. They are called courts of last resort because they are the final arbiter when it comes to issues within their jurisdiction such as questions of state or federal law.¹ Because they have the final word over matters exclusive to their domain, the justices in your moot court cannot pass the buck to a higher court to resolve the issue at a later date.² This fact should add a degree of gravity for the lawyers and judges. Sounds good does it not?

¹ State courts sometimes decide federal issues. State courts share this jurisdiction with federal courts. If a state court’s resolution of a federal question is at odds with federal court’s, it is the federal judiciary’s interpretation that is to be supreme. Federal courts lack any proper jurisdiction to decide questions of state law insofar as interpreting state constitutions or other laws. If a conflict raises both state and federal questions, federal courts can, if they choose, resolve the case on federal grounds. Such a resolution tends to be rare. Under a pair of long-standing doctrines, the doctrine of equitable abstention and the doctrine of independent and adequate state grounds, federal courts, in cases that raise both state and federal questions, will generally allow state courts an opportunity to remedy the situation under state law. In certain exceptional cases, such as *Bush v. Gore*, 531 U.S. 98 (2000), federal courts will resolve federal questions despite the fact that state questions still exist.

² If your instructor has chosen to have your class simulate the United States Supreme Court, the only way your court could be reversed would be if it changed its mind, or through a constitutional amendment. See, for example, the history of the Eleventh Amendment to the United States Constitution.

WHAT IS MOOT COURT?

Simulations of appellate court proceedings, also known as “moot court” or “mock Supreme Court,” have been a feature of the legal education landscape for hundreds of years, with origins in pre-medieval England. Moot court is well established around the world as an educational tool. Intercollegiate moot court tournaments are currently conducted in a number of European countries including Austria, France, and Germany. Undergraduate tournaments are also regularly organized in Australia, Canada, and New Zealand, and in other areas of the world. Moot court is a common requirement in the curriculum of all American law schools. Inter-collegiate tournaments are regularly organized concerning a variety of legal issues: communication law, environmental law, the First Amendment, mass media law, and so forth.

Two fundamental forms of American undergraduate moot court coexist: in scholastic moot court students of a single undergraduate class, such as constitutional, international, or business law, or a communications/speech class (among other academic subjects), are required to participate as a condition of successfully completing that class. This may take various forms ranging from simulating the arguments in an actual case to dealing with a hypothetical set of circumstances. Some classroom models will be more sophisticated than others and more true to form of a legal dispute.

The second form of undergraduate moot court is the tournament, involving undergraduate students voluntarily competing for trophies or other personal rewards. In these tournaments, students play the role of attorneys and argue before actual attorneys and judges as if they were in a court of law. All of the rules and protocols of a regular appellate courtroom are followed in tournament competition. Students must respond to questioning from judges and forcefully advocate for their client. Additionally, in tournament competition, students will argue both sides of a case in order to test their skills and ensure fairness in the process.

In the United States, undergraduate moot court competitions are overseen by the American Moot Court Association (AMCA). The AMCA annually hosts a series of regional qualifying tournaments leading to a national championship event. Several hundred teams representing more than a hundred colleges and universities compete in these events, looking for championship glory.

WHAT DOES A “MOOTER” DO?

Because there is no one type or form of moot court, there is no single or simple answer to the question “what does a ‘mooter’ do?”. The answer will likely depend on your instructor or facilitator, the type of moot court in which you are engaged (e.g., tournament versus classroom), and/or your assigned role (lawyer or jurist). Having issued that disclaimer, there are certain aspects or attributes that most moot courts will have in common. Much of the work that “mooters” will do will involve legal research. This work may involve reading judicial opinions, legal periodicals, newspapers, statutes, legislative histories, or state constitutions. A good amount of this research can be done online, using a variety of legal search engines or other resources, or in a library where students will find an assortment of books and articles as well as court cases.

The remainder of this section attempts, in general terms, to give students a greater understanding of what will be expected of them. Again, please note that these expectations will depend in great part on decisions or assignments that your instructor or facilitator makes. For purposes of organization, we have provided separate discussions with respect to expectations for lawyers and judges. Please note that there are certain basic tasks or expectations that lawyers and judges will share.

Lawyers

One thing that moot courts will have in common is that there will be student lawyers divided into legal teams. The size, organizational makeup, and hierarchy (if any) of these teams will vary. Some legal

teams may number as few as two or in excess of ten. In some simulations, there will be lead attorneys charged with the task of allocating team resources, deciding on roles, and ensuring that the team does its work. In other instances, there are no official leaders, and matters are decided more informally (perhaps even democratically). In some simulations, the legal teams will be assigned specific sides to represent far in advance of moot court. Under a different scenario, the legal teams are not told who they will represent until a short time before oral argument.³ Whatever the size or nature, “mooters” who are lawyers can expect to work with others to research, develop, present, and defend a legal argument for the purpose of representing their side as best they can. This teamwork may include producing a legal brief on behalf of the team that lays out and provides for your side’s argument.⁴ The purpose of this team brief is ultimately to get your point of view expressed to the court in a forum in which you cannot be interrupted or thrown off track by questions from the justices (those will come in oral argument). A related purpose is to get your team familiar with the legal issues and to spot any potential problems in your argument prior to court. This teamwork may also include working as a group to put on a practice moot court. Using such an exercise, your team can address certain issues or provide tips for the speaker(s) such as eye contact or delivery style or how to answer expected questions. Your team might use this as an occasion to practice rebutting the other side.⁵

Lawyers would do well to expect to be responsible for producing some written work for moot court. The exact work will depend on your instructor or facilitator. Common assignments include writing your own legal brief, producing a majority opinion that you would suggest the court adopt, or researching a specific issue or precedent relevant to

³ Such a scenario is most common in tournaments in which the teams are assigned to the appellee or appellant by some random drawing. In such instances, the legal teams will need to be prepared to represent either side at a moment’s notice.

⁴ A legal brief is a document that communicates a legal party’s argument to the court. Legal briefs can vary in length and format.

⁵ This can be done by having some team members pretend to represent your opponents.

the moot court case. These assignments are excellent opportunities for you to hone your writing, legal research, and critical thinking skills.

Judges

In some ways being a moot court justice is similar to being a moot court lawyer. For one, you will be expected to engage in legal research and will likely submit a writing assignment. For another, you will work with a group to prepare for moot court. Lawyers, of course, strive to win on the behalf of their clients. Your client is the nation and its constitution. If your court votes on the cases and produces a written court opinion, your goal might be to compete with opposing blocs within the court (if one exists) in the scramble to form a majority that supports your view and is willing to make it the law of the land. Another similarity is that the court, like the legal teams, may—or may not—have some hierarchy. You may have a chief justice and in some simulations the justices may be ordered by seniority. While a degree of independence will no doubt hold sway, justices may be assigned by the court certain tasks to perform on the group's behalf. This might include providing a balanced brief for the court that summarizes certain key cases, or it may include outlining for your fellow judges the key arguments made by the legal teams.

Justices should expect to be responsible for producing some written work. The exact work will depend on your instructor or facilitator. Popular assignments include writing a majority opinion based on your views, researching a specific issue or case relevant to the moot court case, or learning about a specific Supreme Court justice and emulating his or her views, manners, or tendencies in oral argument and in an opinion that he or she might be expected to produce. These assignments are excellent opportunities for you to hone your writing, legal research, and critical thinking skills.

MOOT COURT: KNOWING WHAT IS IN IT FOR YOU AND WHAT IT TAKES

Like most academic assignments you will get out of moot court what you put into it. Put another way, those who work hard and take it seriously, tend to enjoy the experience (and earn a better grade) than those who do not. A chief reason for the correlation between high levels of involvement in moot court and student satisfaction is that moot court will require considerable time working with fellow students outside of class. Moot court is a hands-on experience and gives you more room for you to be involved than other classroom assignments or projects. Students may organize their teams (e.g., divide labor, assign roles, review, and evaluate each other's work); students develop their arguments or their questions; students defend their views or ask questions of one another, and students may determine how the case is ultimately adjudicated. Even those simulations, such as tournaments, which may involve non-students in significant roles rely heavily on student contributions. This level of student involvement means that you may glimpse the fruits of your labor in an uncommon fashion not readily available or possible in other academic assignments.

Based on our own observations of “mooters” and the feedback forms that we have our students complete, we know that for most students moot court is a great experience that many will rank as the best of their academic careers.

Moot court can be a good deal of work and at times even a little frustrating. How much work and how frustrating this experience is may be dependent on other variables. For instance, the case your instructor chooses and the work that he or she assigns will affect your experience. So might your role in the simulation (lawyer or justice), or the court's willingness to consider the arguments your team wishes to make. Your experience may depend upon the dynamics and makeup of your group. Some groups work quite well; others do not. It is not always apparent why some groups function better or smoother than others. This text, and your instructor, can offer advice for how to have a good group

dynamic, but there is no magic solution to the issues groups face. As we said, you will likely get out of moot court what you put into it. So, even if your group does not always function to your liking, do your best to benefit from this unique experience.

At this stage you might ask, what are the benefits to which you have alluded? There are several. Of course, no one can guarantee exactly what course your moot court experience will take. That said, there are considerable benefits associated with moot court that we believe far exceed any costs or frustrations that some might experience.

Based on moot court feedback forms, discussions with past students, and our own experiences either as student “mooters” or as coordinators of numerous moot courts, we would summarize the main benefits students experience into the following categories:

- Obtain good preparation for graduate study
- Learn about yourself and your interests or your abilities
- Experience leadership
- Learn about the law and the judicial process
- Experience being a judge or a lawyer
- Experience the thrill or rush of competition
- Improve your self-confidence or self-esteem
- Improve your critical or analytical thinking
- Overcome shyness/improve your public speaking
- Work with a team for a common goal
- Get to know your fellow students