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Indiana Court History

Our State Supreme Court was established in 1816, which was when Indiana became a state. Three judges were appointed by the governor to serve seven year terms. Two of their early decisions were to enforce the Constitution's prohibition against slavery and involuntary servitude. Later the General Assembly decided that four Judges would serve, representing four geographic districts. That grew to five in 1872. Today, a Chief Justice and four Associate Justices serve the Court. There is also a separate Appellate Court of Indiana. Many cases are initially appealed to the lower Appellate Court before they reach the State Supreme Court.

INTRODUCTION TO THE MOCK APPEAL

THE DISPOSITION OF MOCK APPEAL

Think for a minute of the experiences you have had with a court. We have all see a courtroom in television shows such as the Practice or Law and Order, the movies (Legally Blonde), or even the latest reality trials. When you picture a courtroom you probably picture a judge sitting up at the "bench", overseeing the questioning of witnesses and handing down verdicts. That vision of our courts is an accurate one, and in fact about 90% of disputes are resolved this way. But Youth in Government involves another level of court hearings. In some circumstances, the "issue" as it is called in legalese, is so important that another court will review the first courts decision to ensure that the first court did not make any errors. These are called appeals. In rare instances, the case is appealed to the Indiana Supreme Court. These disputes usually involve new areas of law, or disputes that the courts have never had to decide before.

Attorneys begin by identifying and defining the issues on which the appeal is being based. They next identify which federal and state constitutional provisions apply. They also consider how Indiana statutes should be applied to the case. Even with so much available law to apply there is still much room for interpreting constitutions and statutes. The "gray area" of interpretation is filled in by considering how past cases that involve the same legal issues have been decided. The decisions in earlier cases are known as "precedent", and courts generally follow precedents in order to be consistent in their decisions. Attorneys work to convince the court to resolve an issue in their favor by citing cases that demonstrate to the court that other cases involving similar issues have already been decided, and the decision supports their viewpoint. In other words, the precedents establish a rule of law that agrees with their view of the case.

Attorneys

The role of an attorney is to take one side of a case, prepare a written statement supporting your client (called a brief) and then argue your case before judges. Because this is an appellate court, attorneys argue whether the lower court ruled correctly or not. The side that lost in the lower court, and who is now seeking to have the lower court over-ruled is called the petitioner or appellant. The other side, which won the case in the lower court is called the respondent or appellee, and seeks to assert the lower court ruled properly.

Attorneys work with another attorney on each case. Both attorneys work on the same case, but will focus their attention on different issues within the case. Two other attorneys will represent the other side. All participants except the Chief Justice and the Junior Justices will serve as attorneys. Training will utilize the case summaries the students have prepared to help develop arguments and writing briefs in support of the arguments. After Pre-Legislative Conference training, attorneys will prepare briefs and oral arguments for each issue they will argue. Prior to arrival at the Model Legislature attorneys should have prepared type written briefs for themselves, Jared and Lindsay, and the Chief Justice when they arrive at the Conference. Attorneys that fail to hand in briefs will still be able to participate as attorneys, but will be ineligible to participate in showcase. At the closing of the conference attorneys will be recognized for the Best Brief and Outstanding Oralist Team.

Justices

The justices will be voted upon at pre-legislature. If you want to be elected please bring a short speech with you to pre-leg. The role of a Justice is to decide the case before the bench by using their oral arguments.

Justices work with other Justices and the Chief Justice to resolve the legal principles of the case, and to establish a new rule of law governing future conflicts that may be similar. Training will be held at pre-leg and will be concentrating on appropriate interaction of the bench and attorneys, and how to write opinions. Opinions are the mechanism the Supreme Court uses to make their judgment about the case known.

Introductions to the Sections

The handout will help you with the argument process of the appellant court. Hopefully, you will use this handout as a tool. It should serve as aid when developing your case and preparing portions of the case for team meetings. There are hundreds of styles and techniques utilized by attorneys and professors in preparing a case for trial and this is not meant to be the only way to prepare your case.

Before you begin, let me explain the three sections of this handbook. Part one is meant to help get you started with your cases and to serve a general overview to getting started. Once you understand your case, you can move to written the brief (explained in part II). Just to let you know, case preparation can be synonymous with brief writing. Many sections are reiterated. One good way to distinguish between the two is that the brief is basically an out of your arguments

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and case flow. With this knowledge, you can make a brief quite easily and efficiently to your benefit!

Part III is designed to provide an overview on your Oral Argument.

Part IV will help you familiarize yourself with the appellant court time schedule. There is also more information on voting and responsibilities.

Part V is a glossary that may be useful if you stumble upon a term or word that you are unfamiliar with.

Remember, this is a learning experience; it will all come with determination and diligence. I hope you can stay on track to make this program fun for yourself and to others!
GOOD LUCK!

Part I: Getting Started

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Getting Started

Introduction

Contrary to what you may believe, mooting involves more than a silver tongue. In fact, many smooth and polished debaters lack the skills necessary to moot successfully. Thus, just because you may not have been born with a degree in after dinner speaking does not mean that you can not be a competent mooter. These skills require practice, a sound knowledge and understanding of the law, good research techniques and lots of hard work. Nevertheless, there are some basic rules with which you should become familiar. These are outlined before.

Mooting vs. Debating

While there are some skills common to both debating and mooting, such as clarity of expression and persuasiveness; there are many differences. The prime difference lies with the mode of delivery. In a debate you have the stage and nobody can interrupt you. You can begin your clever witty spiel without fear of deep or intrusive questions. By contrast, mooters risk continual interruptions from the bench. For this reason mooters must be able to quickly think on their feet and deal with such questions.

Preparation

The keystone to the flexibility needed to answer such questions is preparation. Only preparation will allow you to be comfortable with your submission and thus be able to answer even the most tricky or penetrating questions. Thus every case is well on the way to being won or lost long before the parties enter the courtroom. In a moot, the well-prepared boring advocate will always be more successful than an unprepared silver tongue. The hardest part of preparing any case for trial is determining where to begin. The following steps are an outline for preparing your case. The outline is merely a guideline. You may have different techniques organization skills you may wish to use separately or in conjunction with the following steps.

Step One Read the case and instructions one time through.

Step Two Separate the instructions and court instructions

Step Three On a piece of paper draw three columns.

Step Four In the first column write the cause of action (i.e. assault) and the elements of assault on the lines beneath the cause of action. Ask why the person is there What happened?

Step Five In the second column list all of the facts that establish the elements of the cause of action. What are the facts pertinent to the case?

Step Six In the third column list all of the facts that negate the elements of the cause of action. What are the facts that support the opposing side?

Step Seven Put it all together!

Master the Facts

The first step in preparing is to master the facts. Once you have grasped the facts take time to think about your case. Identify what remedy you seek and the propositions the court must accept in order to grant you that remedy. By focusing on these key issues, you will not be inclined to stray to irrelevancies (things not needed).

Research

Once you have decided what you want the courts to accept you have to find the legal arguments to support your argument. Do not begin by driving into the various legal digests. Start by seeking to justify your position through well accepted, indisputable propositions of law with which your opponent cannot disagree. If you succeed in doing this, there is no need to dabble in esoteric points of law. You must always bear in mind that your goal is not to engage in clever intellectual debate, but to persuade the court that your client's case is the stronger in law.

Where you cannot establish your case purely on basic indisputable propositions of law, further research will be required. Determine the relevant principles of law and find judicial decisions where the facts were similar to your own case. Be disciplined in your research, testing your efforts continually with the question, "what crucial part of my case does this go towards establishing." Do not get sidetracked!

Writing the Submission

Once you have identified and read the relevant authorities, began writing. While the dynamics of mootings do not allow you to follow a script it is not until you write a submission that it will become YOUR submission.

Particularly where the facts are complicated, begin by setting out a chronology of facts. Then focus again on what you want the court to accept. List what you must establish for the court to find in your favor. By adopting this list as our basic plan you should ensure that your submission is orderly and logical.

There are no hard and fast rules as to how to tackle writing the bulk of your submission. The most commonly used technique is the IRAC method, Issue, Rule, Application, Conclusion model. There are two methods listed in Section II-the Brief. Just make sure you use the method you are most comfortable with. The first example may be the easiest.

Predicting Questions

As noted above, mooters must be prepared to deal with any question the bench may raise. Dealing with questions competently requires mooters to develop the following two skills

1. the ability to predict the questions; and
2. the flexibility needed to deal with such questions.

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Predicting questions involves identifying any difficulties the court may have in understanding or accepting your submissions. By predicting such questions before coming to court you will be able to incorporate into your written submission a persuasive reply to any potential questions.

Flexibility is also essential to advocacy. You must be able to reform your submissions in light of suggestions or questions from the bench; perhaps even totally abandoning your original submission in favor of that suggested by the court. Thus, your submissions must be thorough, but flexible.

Test Your Submission

Having written your submissions, test them. Ask why? Get a friend to act as devil's advocate and test the strength of your submission. In the course of such testing you should also ensure that you have authorities for all the propositions upon which your case is based.

When you have finished your submission, read it! This does not mean that you learn the submission off by heart. This can be very dangerous. A submission recited in parrot fashion will fail to incorporate the flexibility needed to deal with any point the court may wish to consider out of sequence. However, you must become familiar with the content of your submission and the authorities relied upon.

Once you are familiar with your submission you may want to reduce it to point form. This exercise is useful because it will prevent you from reading your submission to the court. Try using a single sheet with only the headings printed on it. As a back up in case there is a matter you wish to refer to in detail have a copy of the full submission.

Some advocates like to cut down their submission by deleting all verbs, conjunctions and adjectives from the sentences, leaving only a list of key words. This method provides the security of having in front of you prompting key words while taking away the temptation of reading to the court.

Part II The Brief

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Introduction to I R A C

IRAC is the acronym for Issue, Rule, Application, and Conclusion. One can use IRAC to organize a legal argument based on one or more cases.

ISSUE I stands for issue which is the general area or topic of law you plan to discuss. What is the basic issue of the case, or why is the case in court?

RULE What are the rulings of previous cases or laws? R stands for the rule or rules that you draw from a case or cases concerning a specific area or topic of law. The order in which one presents rules is essential to a full understanding of a given area of law. Thus, keep in mind the following conventions when drafting the rule section of any analysis. Generally, one should describe

The general or “standard situation” rule first, Then the remaining rules in logical order from general to specific; or the elements first, followed by the defenses; or the claims, followed by the defenses; or the major requirements, then the minor or occasional requirements; or the general rule, the exceptions to the rule.

Keep these common orders in mind whenever you discuss rules. They are useful told when presenting essay examinations.

Application Apply the rules to the facts of the case. A stands for application of precedent. In most analyses, you will need to illustrate a case first, using its facts, holding, and reasoning. Then, you will compare that case to the fact patten of your case.

Conclusion Put it all together. C requires you to describe the conclusion or result of your analysis.

Model Two

This model is similar to the IRAC model, but it may be simpler for some.

PROCEDURAL HISTORY

Here you will look at the decisions of the lower courts (what has happened in all the previous courts to get them here). Write them down simply.

ASSUMED FACTS

What are the simple facts of the case regarding why you are here today. Do not bog yourself down with the extras; focus on what the issue of the case is.

ASSUMED CONSTITUTIONAL LAW

What are the state laws, or the United States laws dealing with the issues at hand?

ASSUMED STATUTORY LAW

What are the codes that deal with the issues at hand?

QUESTION/ISSUE AND THE DECISION

What is/are the issues of the case, what brought you to court? What have been the decisions in the previous rulings?

Here is an example from a hallmark case

Introduction to Synthesis

Synthesis Defined

Synthesis is the process of drawing out “rules” of law from individual cases and combining several rules from several individual cases to develop a single statement or description of an area, topic, or aspect of law.

Synthesis Applications

Synthesis is useful to both the drafter and the reader. It provides the drafter with a tool to give organizational and logical meaning to a series of cases. It also provides the reader with a general overview of a particular area, topic, or aspect of law.

Modifying Rule Descriptions to Incorporate a Range of Rules

Looking at a rule in the context of a single case provides only one level of understanding about how the rule will be applied. Synthesis requires that we look at several rules from several cases and formulate a way of describing the entire series of rules. When we view the rules from one case in light of rules (and facts and reasoning) from other cases, we often need to reassess and reformulate our view of the rule from the original case. Synthesis allows the drafter to blend the rules from all cases to accommodate the rules (and facts and reasoning) from many cases.

More on Style

Transitions

Use transitions for every break in the analysis (examples between the general issues and sub-issues; between the issue or sub-issues and the rules; between the rules and the illustrated cases; between the analogous and distinguishable; between illustrations; between the analogies drawn to client facts; between the distinctions drawn from the client facts; and between the distinctions and the conclusion).

A transition may be

A word (“first”)

A phrase (“by contrast”)

A sentence (“in addition to ‘requirement x’, plaintiffs must also show ‘requirement y.’”)

Active Voice

Use active voice; simple subject-verb-object sentences are best suited to legal writing.

For example

Not this it was decided by the court

But this the court decided...

Use simple past tense to illustrate facts, holdings, and reasoning from precedent cases.

For example

Not this in case x, the plaintiff walks...

Not this in case x, the plaintiff did walk...

But this in case x, the plaintiff walked...

Topic Sentences

Provide a topic sentence for every paragraph; topic sentences describe the single idea expressed in every paragraph.

The Brief

Introduction

A brief is a formal document an attorney uses both to convince a court that the client’s argument is sound and to persuade a court to adopt that position. A brief must honestly state law, the facts of the case, and the reasons for the conclusions in a clear and concise manner.

In a brief, the attorney argues for his or her position or client. The brief writer is submitting a legal argument to opposing counsel and a panel of judges, all of who will subject it to close scrutiny. The brief writer must attempt to make the client’s position seem as strong as possible, emphasizing favorable arguments and minimizing the force of opposing arguments. It is not enough that the client’s position appears logical or even desirable; it must seem compelling.

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The brief writer knows his or her basic conclusion in advance. His or her work involves a search for arguments and materials to support those conclusions and that show his or her client's position is stronger and should prevail.

Table of Authorities

In a brief, the Table of Authorities list all of the legal and other materials used to support the argument in a brief and shows every page on which those materials are cited. This is important but not as important as the rest of the sections of the brief. This list of authorities is useful because it permits a judge or opposing counsel to determine quickly what specific cases, statutes, or other materials are being examined.

The table of authorities is usually divided into several categories including cases, statutes, constitutional provisions and miscellaneous materials. It also provides a quick reference for complete citations to any materials used in the brief.

Statement of Legal Issues

This section states the legal issue involved in a brief and alerts the court to those matters you intend to address. These questions should be slanted towards your client's position and should reflect your interpretation of the law. Your brief should project a positive tone; it should argue for a particular conclusion other than simply against the contrary conclusion. If you are appealing from an unfavorable trial court decision, for example, your question might begin; "Whether the trial court erred..." However, if your opponent is appealing the same decision, he or she might begin "Whether or not the trial court properly held..." Both questions suggest an affirmative answer.

Statement of the Facts

The statement of the facts in a brief is a descriptive account of the facts from your client's point of view. Although the statement cannot omit any damaging facts, it should be written to gain the court's sympathy for an understanding of your client's situation. Many lawyers and judges believe that the statement of facts is the most important section of any brief.

Argument (very important!!!)

The argument is the foundation on which the rest of a brief is constructed and is the heart of the brief. Although the statement of facts is important, sometimes decisive, your client generally wins or loses on the quality and substance of what you say in the argument. The argument should be well organized and clearly written. It should be short and to the point.

The statement of facts and the argument, together, are the most important parts of the brief. Thus, you should write this section of the brief in forceful and affirmative language. You should state your strongest arguments and issues first and then present your client's positions on the issues. You should have a separate heading for each issue you address.

Conclusion

This section describes what you want the court to do. State precisely what relief you are requesting from the court. The conclusion is usually one sentence in length.

Citations

“Citing” a case or other material means simply to refer. Attorneys cite legal authority to help support their legal arguments, primarily by showing the court that the cited case is an example as to how the court or other courts have decided similar questions or issues in the past. Similarly, judges cite earlier cases in their opinions to support the rules of law they state in the opinion. A citation is like a title of a book or magazine and provides several pieces of information. For example, “One of the most controversial court decisions ever issued is *Roe v Wade*, 410 US 113 (1973).”

As noted above, when deciding appeals, courts often consider how past cases that involve the same or similar issues have been decided and apply that information to the present case and issues. The earlier cases are known as “precedent”. The precedents that past decisions or opinions establish are commonly known as “case law” or “common law.” Although different in form from statutory law, case law is just as binding as a statute. Courts typically follow precedent in order to be consistent in their decisions. Attorneys who want to convince the court that other cases have already been decided that way and that precedent has established a rule of law that agrees with their views of the case.

Example Brief

Table of Authorities

Statutes

Legal Issues

Statement of Facts

Argument

Part II Oral Arguments

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Behavior and Etiquette

The Courtroom

The Indiana Supreme Court Courtroom is the single most original room in the Statehouse. For instance, most of the seats in the room are original from 1888. Additionally, there is professional audio and video equipment throughout the areas we use. All these are OFF LIMITS to Youth and Government. Youth Justices should not touch any of the Indiana Supreme Court Justices' objects on or under the bench or in any of the other rooms we use.

Customs and Conventions

Versed in both the relevant law and facts, it is time to go to court. Over the centuries, the courts have developed many customs and conventions for the conduct of cases. While the bystander may consider these to be archaic, they do serve two purposes. First, legal disputes, and thus the courtroom, can become heated. Courtesies and conventions can help maintain order in the courtroom. Second, they also serve as a means of displaying the advocate's respect for both the court and the law administered therein. Before we examine how a case begins let us consider a few of the more important of these customs and courtesies.

Courtesies with Respect to Other Counsel

Whenever you speak you should be standing. Only one person, however, should be standing at the same time. Thus when opposing counsel speaks you should immediately sit down. When referring to opposing counsel, great courtesy must be shown. Do not point or glare at counsel. Refer to counsel as "my friend" or "my learned friend." Your reference to counsel must never be condescending or suggest any negative emotion. Remember, it is the parties to the dispute, not counsel, who are in disagreement.

Counsel should not speak directly to each other during the hearing.

These are some of the courtesies and responsibilities of the roles of the Judicial Program.

As Attorneys

Always address the court with "May it please the court."

Always say who you are, and who you are representing. Ex "My name is _____ and I am representing _____."

It is good to give a road map, a brief word about what you are going to talk about.

Show proper manners.

Address the Judge by "Judge (last name)"

As Associate Justices

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Ask Questions whenever something is unclear

Take notes on opposing issues.

Vote for one side.

As a clerk

Manages official papers regarding cases and rulings of the Justices

Takes official minutes of agenda setting and ruling meetings.

The clerk will be a page and will also have the responsibility of presenting the Judges to court as well as asking playing the bailiff.

References to Members of the Court

Similar courtesies are accorded when referring to particular members of the judiciary. Members of the Federal Court or state Supreme Courts should be referred to as “Justice.” If the Justice is in fact the Chief Justice, he or she should be referred to by that title. Members of the intermediate courts are referred to as “Judge.” You should not use personal titles, such as, “Sir,” “Professor,” or “Doctor.”

When addressing the court itself members are referred to as “Your Honor.”

Citation during Your Argument

When referring to a case, it is not necessary to give the court the full citation. For example, 128 N.E.2d 1146 (1997) should be stated at “in 1997, the 5th Circuit . . .” If the Court asks for a full citation you should be prepared to provide all the necessary information. Full citation allows the court’s clerk or associate to extract the case from the library for closer reference.

When referring to a case you should state in civil cases, the “v” as “and.” Thus *COX v. BROWN* is referred to as Cox and Brown. In criminal cases you should state the “v” as “against”; for example, Queen against Brown.

Appropriate Dress

As a sign of respect, you should dress appropriately for your moot. This will normally require a degree of formality, rather than casual dress.

Before the Court

Before considering some of the things to do or not do when mooting, let us examine how a case commences. At the beginning of the case the bench will indicate that it is ready for appearances. The court may indicate this by formally asking for appearances or through a simple nod of the head. You then announce your appearance. For example, “If it pleases the court, my

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name is John Doe, and I appear for the plaintiff in this matter.” After you have announced your appearance, sit down and allow opposing counsel to announce their appearance.

Note the phrase “If it pleases the court.” This is a recognition of the fact that the case is in the court’s hands and relief will only be granted if the court exercises its discretion in support of your submissions.

Once the parties have announced their appearances begin your submission. Always begin by again acknowledging the court’s discretion, by stating “If it pleases the court...” or similar words, and then state the nature of the action. For example, “If it pleases the court, this is an appeal from the decision of the Honorable Hunter of the Indiana Court of Appeals.”

Next ask the court whether it would like a summary of the facts. Do not just launch into a lengthy dissertation of such. The court may be conversant with the facts and become irritated by what it perceives to be a waste of time.

The good advocate will make use of a structured introduction. This will tell the court

1. the remedy you seek;
2. the main issues underlying your submission; and
3. what you will seek to establish in relation to those issues.

An introduction serves many purposes

1. it gives the court an idea of the direction you are going to adopt;
2. it provides a structure, ensuring an orderly and logical presentation; and
3. it also serves to reinforce your arguments.

In the presentation of your submission there are certain matters that should be borne in mind.

Judges are Human

As an advocate, your task is to persuade the court that your client’s position is preferable. Many advocates make the fatal mistake of forgetting that judges are human. You should take advantage of any attributes, such as gestures, demeanor, clarity and expression, which may help persuade an individual towards a particular viewpoint.

Demeanor

Displaying the appropriate form of demeanor is an important part of persuading the court. Posture is important. In particular, do not lean on the lectern. Leaning appears very sloppy suggesting that you are not interested in the proceedings. It is preferable to stand with hands in front, to the side, behind or lightly resting on the lectern.

Many advocates have a nervous habit of rocking. This can be very distracting and in fact leaves the bench feeling quite seasick!

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Courts do not like counsel to adopt “The Practice” or “Ally McBeal” style theatrics. Stand at the lectern and upright.

You should not read your submission. Reading will cause you to project your voice into the lectern, rather than towards the bench. It will also inhibit eye contact with the bench.

Nerves may also spur another bad habit, fidgeting. Many barristers play with pens, rubber bands or paper clips while presenting their submissions. Fiddling with such objects is very distracting, drawing the court’s eye to the object, rather than concentrating on your face and thus what you are saying. Try to place all such tempting objects out of reach.

Excessive use of hands can also detract from your submission. While gestures can assist in persuading the court keep them to a minimum. Try to control hand waving by lightly resting your hands on the lectern. If you cannot talk without your hands, keep hand movements to the width of your body. This will maintain concentration on you, and thus your submission.

Volume

You must speak up. If the justices cannot hear you, you will never get your point across.

Clarity of Expression

As noted earlier, there are some skills common to both debating and mooting. One such attribute is clarity of expression. Many nervous beginners have the bad habit of speaking while covering their mouth. This not only inhibits voice projection but distracts the court from the substance of your submission.

Pace

Americans often speak very quickly. Combine this attribute with nerves and we have the biggest problem in mooting—pace of delivery. A submission delivered at break neck pace will always leave the judge exhausted and confused. Make a conscious effort to slow down. You may even like to use a prompt such as a sheet of paper on which the simple words “slow down” are boldly printed. This may provide the necessary impetus to control your pace of delivery.

Depersonalize Your Arguments

Avoid the use of personalized language, such as “I believe” or “It is my opinion.” Bluntly, the court does not care what you believe. Your opinions and beliefs have no weight. Only legal arguments can persuade the court. Thus it is preferable to depersonalize your submissions by using phrases such as “It is submitted” or “It is contended.”

Humanize Your Submission

Direct your submission to the court. By premising a point with words such as, “Your Honor(s),” and thereby directing your submission to the particular member(s) of the court, you will grab the court’s attention and strengthen the force of your submission.

Eye Contact

An important way you may humanize your submissions, is through the use of eye contact. Eye contact is probably the most important aspect of the body language to be used in persuading the court. Eye contact can cultivate a rapport with the bench, giving the court greater confidence in you, and thus your submission. Strenuous attempts at eye contact can also help to project your voice. As noted earlier, by looking down and reading your voice is projected into the lectern. By contrast, if you maintain eye contact with the bench your voice will be directed to the body most concerned with your submissions—the court!

Answering Questions

As noted earlier, the ability to deal with questions and think quickly on your feet, sets a mooter apart from debaters. Thus the ability to answer questions confidently is a crucial skill that you must cultivate. Importantly, do not view questions from the bench as a personal attack. You should welcome questions as they show

1. the court is awake; and
2. interested in your arguments.

Look forward to questions as a chance to persuade the bench. The court may agree with your submissions and only wish to have a few minor matters clarified. Annoyance and anger will only turn the court against you.

If you disagree with a proposition the court has suggested, premise your reply with a phrase such as “With respect your Honor...” as a sign of deference.

Do not interrupt the bench. While your eagerness may make this difficult, unless you let the court complete its question you will not be totally sure what it is you are answering!

Listen to the court. So often mooters appear to be answering a question very different from that which they were asked.

Most importantly, do not try to evade the question. Answer questions honestly and fully no matter how damaging!

Finally, remember that you must be flexible with your submission. Just because a question relates to a matter that is not next in your sequence do not tell the court that you will deal with the issue later. You must be sufficiently familiar with your submission to be able to answer with the question when it is asked. You can deal with an ‘out of sequence question’ in two ways

1. answer the question briefly, then ask the court whether it would like the matter explained at that point in more detail; or
2. the better approach is to deal with the matter fully, then and there.

Conclusions of Proceedings

Conclude your arguments by summarizing your submissions, detailing the remedy you seek and again acknowledging the court's discretion with words such as "If it pleases the court."

Judgment will be given at the close of proceedings, unless the court believes it appropriate to reserve its finding. If judgment is given, counsel should acknowledge the exercise of the court's discretion by replying, "If it pleases the court."

Advocates' Duties

First and foremost you have a duty to the court to assist that body in resolving the dispute. This duty requires advocates to maintain the greatest degree of honesty and integrity in the conduct of their cases. You must never knowingly misstate or fail to disclose the law or facts pertinent to their case. Every relevant decision, even those damning your case, must be brought to the court's attention. While you may attempt to distinguish such adverse law or suggest the court not follow the determination, the case must not be concealed. Fulfilling this duty will in fact usually strengthen your case. By initiating the discussion of a difficulty and addressing that weakness you will lessen any impact that "problem" may have had on your case were it raised by opposing counsel.

Second, you owe a duty to your client. This duty requires you to place before the court everything that may fairly support your client's case with the object of persuading the court to decide in its favor.

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Traditions and Tips for Oral Argument before the Indiana Supreme Court

By Josh S. Tatum¹

Open your argument with “May it please the court.” This makes you look like you’ve done this before. It also gets the Court’s attention without saying something that they need to think about.

Talking Points. Develop “talking points” – phrases that sum up your main arguments that you can lean on when you’re feeling anxious in front of robed judges. Millionaire celebrities didn’t hire Johnny Cochran because “If it doesn’t fit, you must acquit” rhymes in a cute way. They hired him because his methods produced results. On the other hand, don’t be so “cute” the judges don’t take you seriously.

Statement of the Core Issue(s). Begin speaking with a concise, one-sentence statement of the core issue(s) of the case. This should focus on what you think the court is most interested in resolving, not necessarily what your strongest argument is. Nevertheless, phrase this opening sentence in such a way favorable to your side. You might also specifically ask for what you’d like to do here, although that is sometimes obvious by the position you take.

Roadmap. Explain to the court how you are going to proceed. As you may have learned, “Tell them what you’re going to tell them, tell them, and then tell them what you told them.” This consists of 2-4 brief (one-sentence) statements that summarize each of your arguments. This is the best, and sometimes only, way to get all your arguments out before the justices spend the rest of your time asking questions on one of your points or something you didn’t expect at all. This also sometimes can serve as an opportunity to refresh the justice’s minds of what the case is about. Don’t feel like you have to raise all issues in your argument. The most important ones are usually enough. Still, your roadmap gets your foot in the door.

Finish. End with a short statement of what you’d like the court to do. For instance, “We respectfully ask the court to affirm the trial court’s decision granting dismissal.” Remember, there is no penalty for finishing early.

Time. You will have 20 minutes for argument. Appellants (Petitioners in cases where transfer has not yet been granted) argue first and have the may have rebuttal. You must state to the court how much time they will take for rebuttal, and rebuttal does not add to the 20 minutes.

The timer begins when you start speaking and ends when you clearly finish (this ensures the timer can accurately allot your rebuttal time). There are three lights: Green, Yellow, and Red. Green lights when the timer starts, Yellow lights when you have 2 minutes left, and Red starts flashing when your time ends.

This applies to both opening argument and rebuttal. On your opening argument, these are set to the time you tell the timer and the Court, so it is in your discretion to continue the opening argument over the requested time. This will leave you with less time for rebuttal. If the yellow light is the first light you see, make sure to look for how much time you have left, as it is possible less than 2 minutes left.

¹ Law clerk to Chief Justice Randall T. Shepard.

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Etiquette. Judges can interrupt attorneys. Attorneys should never interrupt judges. If you see a justice who seems to want to ask a question, make sure to wait a second to make sure you don't stand in the way of the question.

If the red light starts flashing in anything other than an Opening Argument before a rebuttal (meaning there is more of your 20 minutes left), make sure to either wrap up your argument in 30 seconds or less or stop as soon as you see it and ask permission of the Court to conclude your argument. Say something like, "May I conclude?" or "May I finish answering your question?" Some attorneys say "I see my time is up, . . ." but I find this a waste – the judges can see the red light, too.

Strategy. The most important thing to remember when arguing before the Court is to ANSWER THE QUESTIONS. The best way to do this is to answer with a yes or a no and then explain, or very briefly answer the question and then explain. As a matter of deference, try your best not to directly disagree with a justice, but try to understand where the questioner is coming from, acknowledge that as a valid position, and explain why yours is the better perspective.

The side with the first argument has the advantage of framing the issues and the last word. On the other hand, the second side has the advantage of time to listen for the issues the justices find most important and most interesting and can tailor the bulk of argument to address these. Make sure to maximize these advantages for your client.

The Court chose to hear this case. It will help you a great deal to think about *why*. There are two reasons the court takes a case it doesn't have to. First, there is an important issue in the law that needs revisiting or clarifying. Second, the Court of Appeals did something so wrong it has to be corrected. Most cases fall into the former category, especially when the Court has a heavy caseload. For those cases, the Court will be thinking about not only this case but the next case and the hundredth case that has similar issues. Spend time thinking about the ramifications – good and bad – of similar but different cases if your side wins or loses.

Admit your weaknesses. If a justice raises a weakness in your case, acknowledge it and explain why you win despite that fact. Usually, it is better to raise these weaknesses before the other party or a judge can raise it for you.

Style. The most important style tip is to BE AUDIBLE. The Supreme Court room doesn't have the greatest acoustics, and your quiet voice is not enough to travel to the bench, let alone the rest of the room, even with the aid of a microphone.

"Uh" and "Um" are not arguments. Practice thinking without verbalizing. Silence is a sign of a thoughtful counsel. Verbal stalling is the sign of something else. If a justice asks a hard question you haven't thought about, it is completely acceptable to tell the Court that this is the case, take a few seconds to come up with the best answer, and take your best shot.

Plant your feet into the soil of the Supreme Court room carpet. In other words, stand still! "Dancing" is distracting. Flailing the arms is similarly distracting. On the other hand, subtle body language *can* help your argument. "I once caught a really big fish," has a slightly less powerful impact than "I once caught a fish THIS BIG" while stretching your arms to show the audience how big the fish was.

Oral Arguments

“The lawyer’s greatest weapon is clarity and its whetstone is succinctness.”

—Judge Prettyman, District of Columbia

Opening Statements

The opening statement should be confined to a brief discussion of the issues in the case and the evidence that will be offered that the attorney believes in good faith will be available and admissible. An opening statement that is weighed down with burdensome details and intricate complexities of the law prior to a presentation of the issues will confuse the trier of fact and cloud the issues.

Purposes of Opening Statements

An opening statement is the first chance the attorney has to tell the court and/or the court about the case and, more importantly, why they should find in the client’s favor.

Structure of Opening Statement

The structure of the opening statement can vary based on the facts of each case. The opening statement is a story. The first rule in structuring the opening statement is Don’t tell the court who they are until you tell the court what they’ve done or what has been done to them. The opening time is the time when you introduce your theme, you introduce the characters (the appellant and the respondent), and you give a short summary of the evidence and the applicable law if the court desires. Tell the court why you are here. At the end of your opening statement you need to tell the court what you want them to do (i.e., we ask you reverse the previous court decision).

Openings can be used to state facts. Consider the following illustration of fact versus argument by Rikki Klieman

“Tom Jones was brought to the police station by five officers. He was locked in a room without windows. There was little ventilation and the temperature soared over 90 degrees. He was handcuffed to a chair for nine hours. He begged for water and none was brought. He fainted. He was awakened as and the police continued their interrogation. Finally, he said whatever they wanted.”

OR

“Tom Jones was arrested and brought to the police station. He only confessed after his constitutional rights were violated.”

Which is more persuasive? Which provides more relevant facts and information?

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It is important to remember that this is an appellate court case, and a trial. The facts of the case have already been determined by the Trial Court and are set forth in the Statement of Record. Providing facts in your opening statement is not the place to editorialize, make judgments, or try to bring in new or contested facts.

Argument

Purpose of Argument

To show that your position is valid and that there are flaws in the opposing side's position.

Structure of the Argument

The structure of the argument depends on your personal preference. But the goals are all the same. You need to show what the issues are and win those issues. This can be done by using the law in your favor and comparing this case with other similar cases. How you present this is all up to you. For example, you can use analogies as well as comparison of cases. Then explain how they related to the caselaw, and why then this case should be ruled in your favor.

Length of the Opening Statement

This portion should take up pretty much the rest of your time. You will need some time for the closing, but in all, most of the battle will be won here.

Closing Statement

Purpose of the Closing Statement

The closing argument wraps up everything. An argument takes your comparisons, case facts, and the law and molds them into a persuasive whole. It is when logic and rational thinking are brought together to stir the judges votes.

Structure of Argument

The first minute or two of your closing argument should incorporate a basic theme and reason why the court should find in your favor based on the law.

- Theme
- Facts
- Analogy
- Law
- What do you want the court to do.

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While you develop your closing you should focus on the facts and avoid personal opinions or putting the court in the plaintiff or defendants shoes. What is means is that you should not argue “I believe...”; “How would you feel...” etc. When you begin to draft your closing argument, you must be mindful of all the points you need to make.

Theme/Theory

Use your theme and theory as roadmaps. This is the time to demonstrate your theory through a logical incorporation of the evidence.

Analogy

Analogies or stories that are short and pertinent are an effective tool in summarizing the issues and your position. The story or analogy you use will depend on the facts of the given case.

You should first try to restate your specific situation as an example of a general situation. Then identify a more familiar example of the general situation. The more familiar example will be a story, phrase, or analogy that the court can relate to.

Law

At the conclusion of your argument the court has to make a decision. In order to do that they need to know what the law is. An effective way to accomplish the court’s understanding is to explain the law that the court must apply and then point to facts to show how the law is in your client’s favor. An effective aid for this process is exhibits or blow-ups.

What do you want the Court to do?

At the conclusion of your argument you must tell the court what to do. This means you ask them to find your client’s favor. This is the most common element from any trial. Don’t forget it.

Timing

Rebuttal

Part IV The Court

Procedures of an Appellant Court Case

This will be the general procedure. Any time not used will be re-allocated to other sections.

*Note Questions asked by the Judges occur anytime.

1. Clerk will proceed with the call to order
2. “All rise to greet the honorable Judge (last name)”
3. Once seated, the Judge will proceed to ask the counsel (attorneys) to identify themselves. Attorneys will say, “May it please the court, my name is _____ and my partner’s name is _____. We represent _____.”
4. Appellants have 7 minutes for their opening.
5. Respondents have 5 minutes for their opening and rebuttal.
6. Appellant then have 10 minutes to present legal case.
7. Respondents then have 15 minutes to present legal case and conclusion.
8. Appellants then have 5 minutes for conclusion.
9. There will be a short recess.
10. Clerk will proceed with the call to order.
11. Ruling is presented.

In all each side will have approx. 20 minutes to present their case.

Part V The Extras

Glossary of Legal Terms

Acquittal Judgment, as by a jury or judge, that a defendant is not guilty of a crime as charged.

Adversary system The trial methods used in the U.S. and some other countries, based on the belief that the truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test by cross-examination the evidence presented by their adversaries, under established rules of procedure before an impartial judge and/or jury.

Alternative dispute resolution processes that people can use to help resolve conflicts rather than going to court. Common ADR methods include mediation, arbitration, and negotiation.

Amicus curiae A friend of the court; one not a party to a case who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

Appeal A request by the losing party in a lawsuit that the judgment be reviewed by a higher court.

Appellant The party who initiates an appeal. Sometimes called a petitioner.

Appellate court A court having jurisdiction to hear appeals and review a trial court's decision.

Appellee The party against whom an appeal is taken, sometimes called a respondent.

Bar The whole body of lawyers.

Brief A written argument prepared by counsel to file in court setting forth both facts and law in support of a case.

Burden of proof In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point—the burden of proof—is not the same as the standard of proof.

Caselaw Law based on previous decisions of appellate courts, particularly the Supreme Court.

Certiorari “To make sure.” A request for certiorari is an appeal that the higher court is not required to grant. If it does, then it agrees to hear the case, and a writ of certiorari is issued commanding officials of inferior courts to convey the record of the case to the higher court.

Civil case A case involving disputes between two or more people, between people and companies, or between people and governmental agencies.

Common law The term generally refers to the “judge-made law” (caselaw or decision law). Common law is distinguished from statutes (laws enacted by legislatures).

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Complaint The first legal document filed in a civil lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for a specific remedy from the court. A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute a crime.

Criminal case A case brought by the government, through a prosecutor, against a person thought to have broken the law.

Decree An order of the court. A final decree is one that fully and finally disposes of the litigation; an interlocutory decree is one that often disposes of only part of a lawsuit.

Dispute A conflict of claims or rights for which a legal suit may be brought.

Dissent The disagreement of one or more judges with the decision of the majority.

Enjoin To issue an injunction, i.e., to issue a court order prohibiting an act.

Equal protection of the law The guarantee in the Fourteenth Amendment to the U.S. Constitution that the law treats all persons equally. Court decisions have established that this guarantee requires that courts be open to all persons on the same conditions, with like rules of evidence and modes of procedure; that persons be subject to no restriction in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; that persons are liable to no other or greater burdens than such laid upon others, and that no different or greater punishment is enforced against them for a violation of the laws.

Finding Formal conclusion by a judge or regulatory agency on issues of fact; also a conclusion by a jury regarding a fact.

Grievance A legal dispute.

Grounds The basis or foundation for some action; legal reasons for filing a lawsuit.

Impartial objective; provision of the Sixth Amendment to the U.S. Constitution requiring the judge or a jury not to favor one party over another or to prejudge the merits of the case.

Indictment A formal charge or accusation of criminal action

Injunction A court order prohibiting a threatened or continuing act.

Judicial review The power of the Supreme Court to declare an act of Congress unconstitutional.

Legislative history Background of action by a legislature, including testimony before committees, written reports and debates on legislation.

Litigation the process of resolving a dispute over legal rights in court.

Misdemeanor less serious crime.

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Moot A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a pretended controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.

Motion An application for a rule or order, made to a court or judge.

Opinion A written statement of a judge setting forth the reasons for a decision and explaining his or her interpretation of the law applicable to the case. A majority opinion represents the views of more than half of the judges who participated in the case. A plurality opinion represents the view of the greatest number of judges, but less than half of those don't agree with the reasoning. A dissenting opinion is one that disagrees with the decision of the majority. A concurring opinion agrees with the decision of the majority, but differs from the reasoning of the majority opinion.

Perjury lying under oath.

Plaintiff The complaining party to litigation; one who initiates the court action.

Precedent A prior judicial decision that serves as an example or rule to authorize or justify another.

Prosecutor A public officer who conducts criminal proceedings on behalf of the people (i.e., the government's attorney in a criminal case).

Relief Deliverance from oppression, wrong, or injustice; a general designation of the assistance, redress, or benefit that a plaintiff seeks at the hands of the court.

Remand To send back to a lower court, a higher court can remand a case to a lower court with instructions to carry out certain orders.

Remedy legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.

Reverse To overturn the ruling of a lower court.

Standard of Proof The level of evidence necessary to prevail in a legal case. It varies depending on the nature of the case. The standard is "beyond a reasonable doubt."

Statute A Statute is an act of the legislature declaring, commanding, or prohibiting something.

Statutory law Law enacted by the legislative branch of government, as distinguished from caselaw or common law.

Stay to stop or hold off.

Subpoena A process which requires a person to appear as a witness and give testimony in court.

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Supreme court The highest court of most states; the highest court of the United States.