

Mooting: A Beginners Guide

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Mooting Introduction

This brief guide attempts to offer advice to both the novice public speaker and the more experienced varsity debater, both of whom are experiencing a moot for the first time. After outlining what a moot is, and how it is organised, this guide goes on to explain both the mental and often underrated physical preparation that someone mooting can do to give themselves the best chance of succeeding. As with all things, this advice is certainly no substitute for practise. In many respects, the best advice that any one experienced in mooting can offer to a beginner is simply to be brave enough to stand up and give it a go. Often, what may on paper seem either manageable or daunting is quite the contrary when attempted, and no amount of advice will ever be a substitute for getting up and learning for ones self. However, this guide may help prevent anyone from feeling out of his or her depth or from making a complete fool of them self (there is always a slight chance that you may make a slight fool of yourself. This is part and parcel of any public speaking I'm afraid!).

Technical Aspects of a Moot

What is a Moot?

A moot is a Legal argument that in style is somewhere between debating and public speaking. The participants are given a set of facts, not unlike a standard academic undergraduate problem type question. However, in a moot the facts have already been before the appropriate court of first instance, and an appeal has been lodged to the appropriate higher tribunal. The person mooting must represent either party in their appeal on a legal issue prompted by a combination of the facts and the Judge's ruling/decision/direction. Although the aim of a moot is to replicate as closely as possible appellate court procedure, the real focus of a moot is on the advocacy skills of the participants. To that end, the experience is a little artificial, and leads to the analogy being drawn between mooting and both debating and public speaking. A moot is similar to a debate in that the participants score points by working well as a team of two, by responding to the Judges questions regarding their submissions and by pre-empting and reacting to their opponent's legal argument. However, the often boisterous and overly rhetorical style of varsity competitive debating, whilst a valuable skill for an advocate in it's own right, is wholly out of place in the more calm and ordered environment of a moot. Public speaking is also analogous to a moot, as the preparation and substantiated argument required for good public speaking is applicable to a moot. However, the interplay between the Judge and the participant in a moot is unlike the more self-contained public speech. Like both types of competition, points are scored under a variety of criteria, such as technique, argument etc.

From experience, the best analogous court proceeding to a moot would be that of Crown Court Sentencing. In these types of proceedings there is often a limited amount of authority for an advocate to rely on (Pre Sentence Reports and Character witness statements, for example). This limit is similar to the limited number of authorities allowed for most moots. The use of this material is often similar as well, with the skilful advocate quickly drawing only the most pertinent parts of the relevant document to the Judge's attention. The style of rhetoric is also comparable, with both types of advocacy demanding persuasion of a Judge, rather than rhetorical barnstorming to a lay jury. As such, any opportunity to watch sentencing proceedings at close hand would greatly assist anyone mooting for the first time.

Where does a moot usually take place?

A moot usually takes place in a classroom/tutorial room. There is an excepted formal layout for the room. The Judge/Judges should sit at the front of the room, in what would be the tutor's desk, with the Clerk alongside. The participants sit on either side of the front row of the room, facing the Judge. If anyone else is in the room as an observer, they should sit behind the participants, and should be ignored during submissions.

What to wear?

If you are taking part in an inter-varsity mooting competition, then the host university should provide all four speakers with gowns. This 'costume' is both correct court attire for any advocate, and useful for your physical preparation (see below). Smart is the absolute minimum dress code that a moot participant should adopt. At the very least this means a smart, clean suit (dark if possible) with a plain shirt and, for the men, a tasteful tie (no comedy or flashing lights ties please...). This will not only mean that the Judge respects your submission, but will also make you feel more confident during your

submission. Look smart, think smart. The question of footwear is slightly different. From experience, the more comfortable the footwear is, the better. There is no point in looking smart and having an excellently prepared submission if you stumble whilst standing up to give it. Comfortable shoes are also important for your physical preparation and your voice, which will be discussed later.

What happens?

The model outlined will be the most traditional or orthodox procedure. Often internal moots or beginner's moots do not observe such strict formalities. It is always important to check this before the moot. As in any court, advocates should start waiting in their seats, with their gowns on and any prepared bundles/skeletons (see below) already exchanged with their opponents. Also, the copies of all of this material that have been prepared for the Judges should already have been given to the court clerk. The Court Clerk may say, "All rise", or the Judges may walk straight in. Either way, everyone in the room must stand up until the Judge's have sat down. In a very formal moot, the Judge might bow before sitting down. If so, as in court, those mooting must bow to the Judge.

After the Judge has sat down, the submissions begin. **THE FIRST SPEAKER MUST BE PREPARED TO BEGIN WITHOUT ANY PROMPTING.** Normally, the Judge may say something by way of introduction, and may invite the first speaker to begin. However, the Judge does not have to. Indeed, the Judge may simply sit and wait for the submission to begin. If the first speaker is ready to begin immediately, they will score well for having a strong courtroom technique and a strong grasp of both procedure and etiquette. Equally, the other speakers must be prepared to stand up to begin their submission once the previous speaker has finished. If you are ready in this fashion, you may score extra marks for good technique.

The order in which the advocates make their submissions runs from Senior Appellant, to Junior Appellant and then from Senior Respondent to Junior Respondent. In the rare instance of a cross appeal, each appeal point may be heard in turn. The Senior Appellant should introduce both counsel for the Appellant and both counsel for the Respondent, by Surname. When this is done, the Senior Appellant should also offer a to give 'brief summary of the facts' to the Judges. If accepted, the Senior Appellant must outline the facts from the scenario in brief (no marks will be scored for just reading out the problem in full, as there is nothing brief about that!). If declined, the Senior Appellant then makes their submission.

Speech Etiquette

It is very important that the advocates adopt the correct courtroom etiquette. The only way to address the Judge is by "My Lord" or "Your Lordship". No other manner of address is acceptable. An advocate must also always use the term "in my submission". An advocate must never use "I think" or "my speech" or other such terms. The thinking must be done before you get to court! In all seriousness, using the correct terminology in this way provides an advocate with an easily remembered way to begin making a point whilst also creating the impression that you had already thought about the point the Judge is seeking to make (even if the Judge has completely blind sided you!). Never use the term "Good Evening" either; it is both too informal and too ingratiating. If attempted, you would leave yourself open to having a difficult comment from the Judge levelled back at you (such as, 'is it? What is so good about it?' etc)

Don't be rude to the Judge and equally don't be too sycophantic. You are supposed to disagree with the Judge and your opponents, and to do so you must be strong and clear but also polite. For example, any question or issue that the Judge raises is a decision or an opinion. One must never say, "I respectfully disagree with your Lordships submission", as Judges never submit, they rule or give opinion. The correct way to disagree firmly but politely would be "I fully appreciate your Lordships opinion on this matter, however, at your Lordships discretion, I would respectfully disagree with your conclusion, for the following reason..." If the Judge still disagrees with your submission after this, the best advocate will cut their losses and move on, in roughly the following manner, "If your Lordship isn't with me on this point, I shall move on to the second limb of my submission".

You must watch the Judge.

Slow down your submission if the Judge is writing notes, they will be grateful of this, and this will make them aware that you are doing more than simply reading out a speech. This also allows you to adjust the style of your submission to reflect the Judge's reaction. If the Judges are nodding, then you can perhaps summarise your position on that point and move on to the next. If the Judge is frowning, then you have warning that you will be questioned on that point. The skilful advocate can adapt their submission whilst watching the Judge's reaction, until the reaction is favourable. This is an advanced skill, however, and should only be attempted by the more experienced advocate. To a beginner, simply having warning that a potentially tricky question may be coming should help you.

There are also rules to be observed when using Citations. Give the full citation the first time that an authority is used in your speech. **BE ACCURATE.** This is the most basic of skills to get right, and failure to do so will simply give points to you opponents. I have corrected opponents who have sited Court of Appeal cases as being High Court cases in Inter Varsity competition, and it was not only embarrassing for them having made such a 'schoolboy error' but was also gifting me points. Whilst grateful at the time, I would recommend that you always get this right. Also, some competitions may demand the use of authorities as reported in a particular set of reports. Again, failure to do so will gift points to your opponent. Equally, if your opponent has not had the unquestioned benefit of reading such a guide as this, and makes this error, do not hesitate in pointing out the error to the court. Also, **DO NOT RELY ON ACADEMIC WRITING.** The number of undergraduate mooted competition submissions that use academic writing, as authority is astonishing. Any academic writings, Law Commission Reports or other information may be used in your submission to develop a particular point, by all means. Indeed, if particular academic writing heavily influences the area of law that is being mooted, you would be foolhardy not to raise such writing in your submission. However, it must never be relied upon as authority. The easiest way to use academic writing whilst avoiding confusion, is simply to preface a discussion of it with "whilst not seeking to rely on..." or "accepting that.... is not binding on your Lordship, several points important to this appeal are raised by Prof. X...".

At the end of the speech there are two crucial points that an advocate must observe to do well. First of all, you must finish correctly with something like "Unless I can be of further assistance?" or "unless I can assist your Lordship further". This is simply correct courtroom etiquette, and should score points. Also, when you have finished you must **WAIT FOR A RESPONSE** from the Judge before you sit down. **NEVER JUST SIT DOWN.** The theory is that you are making your submission at the behest of the Court,

and are therefore released from making your submission when the court says so. Practically, it is simply another area in which to demonstrate good courtroom technique. The Judge should say 'thank you, I have nothing further' or words to that effect, and then your submission is over.

Once you have finished DO NOT SWITCH OFF. It looks bad to over relax, as it would be very unprofessional to do so in court. You also may have rebuttal time, which you can use well, so keep scribbling notes on your opponent's submission.

You don't always need to use your rebuttal time.

Moots often take place late in the evening, they take a while to run, and as such the Judge may not be in a position to appreciate your rebuttal. Then again, in a more formal moot, it may be wiser to use the time to attack a strong submission from your opponent. It is really a question of Judgement on the day.

The Judges then rule on first the question of law, and then the winner of the moot. They may retire to do so, in which case the formalities of standing for them, etc, must be observed until they have finished ruling on the moot.

This is how a moot takes place. Next, we will look at how a beginner is affected by nerves.

NERVES

Nerves affect every public speaker. Correct preparation for a moot will enable you to counter act the effect of nerves. Correct preparation requires both mental and physical preparation, as nerves affect a speaker both mentally and physically. This next section should provide you with an understanding of nerves, and show you how to prepare physically and mentally to control them.

What happens when you get nervous? Physically? Mentally? Below is a list of the most common symptoms of nervousness.

NERVOUS LIST

Hands shake
Legs Shake
Throat gets dry
Light headed?
Short Tempered
Shuffle on your feet
Head drops
Butterflies in your stomach
need to go to the toilet

What are nerves?

Nerves are a physical response to a perceived threat or fear or concern. Nerves are also called 'Butterflies' because the apprehension of some kind of fear affects your diaphragm (the strip of muscles that controls breathing). This sensation occurs across your abdomen, making you feel as if you have butterflies in your stomach. As your body is preparing for fight or flight, it increases the capacity for oxygen intake by increasing the flow of blood to the diaphragm. This pushing down of the diaphragm pushes onto the bladder, which is also why feeling nervous makes one want to go to the toilet. Nerves also make your hands and legs shake as adrenalin is pumped through your blood stream.

Why does your body do this?

NERVES are a fear of the unknown. Simple as that. As you can see from the list below, there are a number of factors that are initially unknown before a moot takes place. These factors make you nervous, which produces all of the above mentioned physical symptoms.

Known

Own speech
Own Cases
Own legislation

Unknown

Judges Questions
Opponents points
Audience – size
Composition
Room layout
Partner's speech
Clerk's time strictness
How strict the Judge is
Number of Judges
M/F Judges

Therefore, the best way to counteract the effect of nerves is to both reduce the amount of factors that are unknown through correct preparation, and to prepare physically to counteract the physiological effects of nerve. This mental and physical preparation is not mutually exclusive. Each will effect and aid the other.

PHYSICAL PREPARATION

There are two parts to full physical preparation, Body and Voice. Having a clear, audible and strong speaking voice is crucial to success in Moot's. However, to improve your speaking voice, you must first be aware of your body.

Body

The first point here is that a speakers posture is crucial. There are clearly very different types of posture and in everyday life the distinction between them is not important. However, being in Court is like being on stage as a performer. As such bad posture has two effects on a speaker:

1. A court, like the Stage magnifies ones postural quirks and may effect how seriously one is taken
2. A bad posture affects the mechanical workings of the voice.

Your voice is like a bellows, which expands from around the waist area. If your posture constricts the muscles around your diaphragm and gut that do this, you loose control over your breathing capacity. If you are nervous, the above-mentioned effects of nerves simply make this process even worse. This will affect your voice, and you will hear it affecting your voice. This will cause you to loose confidence, making the whole process a downward spiral.

Having frightened you half to death with the thought of this, there are simple things that you can do to fix this. Always think about your spine being as straight as you can get it. Don't push your chest out; simply think about standing as tall as you can. Below is a checklist that you can work through, from the ground up, to achieve this. Whilst working through it, if you are uncertain about what your muscles are doing, clench them all for each area, and then release them all, slowly to start with:

Shoes.

Flat shoes will give young a stronger voice (see earlier discussion of footwear), by providing a larger surface area to support your body. Make sure the whole of your foot is taking your bodies weight, and that you are not standing slightly on tiptoes or on your heels.

Knees

Keep them unlocked and loose.

Pelvis

This is the seat of your voice. Again this should be loose and relaxed. You should not be holding any muscles around your pelvis.

Back

Backs have a natural curve; they should not be pushed out or held in. No pigeon chests or soldiers standing to attention.

Shoulders

Fully relaxed shoulders hang down from your neck. Gently lift them up to your ears and let them drop, or even try swinging your arms in circles to release the muscles in your shoulders.

Neck

Try to think of keeping your neck as long as you can. This will keep the back of your throat open, meaning that your voice should sound richer and more rounded, and most crucially more authoritative.

Head

This should be loosely resting on top. Do not lean your head forward, as again you will restrict the back of your throat if you do.

Generally, think of a piece of string coming out of the top of your head, pulling you up off the floor.

Gestures

Any physical gestures that you use must be clear, controlled and concise. A successful advocate does not need to wave their hands around in the air. Equally though, a successful advocate does not leave their hands in their pocket or cling to their papers until their knuckles go white. This is where your gown may assist you. Try holding onto the gown, this both looks good and usefully controls your gestures. An alternative is to keep your hands behind your back. Don't feel restricted. Be self aware

VOICE

Vocal preparation is probably the most crucial part of your physical preparation. Vocal preparation can be divided into three main areas, vocal support, vocal range and articulation.

Support

This occurs when your diaphragm and intercostals muscles are working freely and fully. They should be free and loose. If you are supporting your voice, you should feel slight vibrations through your chest and abdomen when you hum, and this will give your voice more weight, authority and will enable you to speak louder than usual without getting a sore throat.

You can check your breathing support by breathing out on an s or f sound. You should feel your ribs expand when you do this. If not, concentrate on getting your ribs to expand when you breathe in. Try holding your ribs, as this will give them something to

work against. If you have the private space before a moot, try humming and then opening your mouth onto a vowel sound, something like 'ffffzzzzmmmmmaaaa'. If you can practise this, in one breath, and doing so makes your chest and abdomen vibrate, then you are now fully supporting your voice. You should be able to notice the change.

Range = pitch range.

The idea here is the same as for a musician. Increased pitch range and tempo will give both clarity and variety to your voice. There is no worse enemy to someone mooting than them being monotonous, both in argument and in delivery. If you use a predominately high or low range, think differently and experiment with talking or delivering your submission with the opposite voice. An excellent way to practise this is to try and deliver your submission using the most extreme parts of your pitch range. If you try this three or four times, you should be surprised at the residual effect this has when you come to deliver the speech regularly.

Articulation

This is without doubt the single most important physical preparation that any advocate can do. Articulation is the clarity with which you communicate, and poor articulation will leave a very poor impression on the Judges. The most legally well-crafted submission in the world will never win mooting competitions if the advocate mumbles through the delivery of it. The key to improving articulation is to use all of the muscles around your face. If you exaggerate the movements of your lips and tongue when you deliver your submission for three or four times, again the residual effect should be noticeable.

The two best ways to loosen up your articulation muscles is to both pull faces and recite tongue twisters.

When pulling faces, go for extremes such as narrow or wide mouthed shapes with your tongue out and up and pointing down. Also try to circle your tongue around in the air.

Tongue Twisters, such as 'Red Lorry/Yellow Lorry' are also excellent for this. Pick two or three that you can regularly use and easily remember, and you can mumble them to yourself as a last minute check before entering the moot (I often do this myself).

Improving your articulation is NOT ABOUT CHANGING ACCENT. Often an RP/Radio 4 accent can be less clear to follow and understand than any other well-articulated accent. These tools are not designed to change your natural accent.

Vocal Delivery

Use of all of these skills will aid the delivery of your submission. Look up at the Judge as much as you can. Ideally this would be for all of the time, but realistically for as much as is possible. Speak slightly slower than you would normally, as this will aid the clarity of both your delivery and your logic. Use a wide pitch range, as this also aids clarity of point and makes your points easier to remember. Your inflexion should be positive. Have a strong voice at the end of sentences. Sound conclusive rather than sounding like you are asking a question.

Mental Preparation/Speech Preparation

The best manner in which to prepare your speech is to have it in as fluid a style as possible. This will enable you to be flexible enough in your submission to counteract both your opponent and the Judge. First of all, you must read all of the authorities, in full. This way you are prepared for all of the Judges questions on the whole authority. Often, a Judge may ask you about a dissenting opinion, and woe betide the advocate who does not have an intelligent criticism to give of any dissents within their own authority. Indeed, a skilful advocate can use some of the more obscure parts of an authority against the opposition. It is always compulsory to have a firm grip on the facts of the authorities that you are relying upon, as again, a skilful advocate can always attempt to distinguish them from the moot problem simply on the facts. You may not only prepare yourself to defend this, but can also use it against your opponent.

Try to reduce your submission into three parts. The use of three parts is a standard rhetorical tool, which works well because it makes a submission more easily compartmentalised and therefore more easily remembered. However, do not be too mechanical in the use of this tool.

A useful way to think about your mental preparation is to remember the three stages that a beginner mooting will go through until they become experienced. Identifying which stage you are at will show you what you need to think about in order to improve:

- Stage 1 –** Absolute fear/panic – their speech is written out in full.
Panic sets in if a question throws them off of the text

- Stage 2 –** BVC/LPC often. Technically well prepared.
Often uses neat cards (see below).
However, still too careful and mechanical.
Pleads as if they have read a “How to Moot” guide.

- Stage 3 –** Seems like a Barrister.
The advocate proceeds with little examination of actual papers in front of them.
Only refers to their notes to check references and to give citations.
Spends the whole submission talking to the Judge, face to face.
Is able to politely and correctly disagree with the Judge.

Cards (This is the authors opinion only)

Personally, I do not like to use index/postcard type notes. I find them too cumbersome. The use of them is an attempt to organise a submission, but I think that it is a false economy. Any Judge is likely to ask questions about an authority that cannot possibly be contained on a single index card; therefore the whole authority must be used anyway. In which case, one can organise their submission around the full authority. The use of cards is also supposed to make a submission neater. Again, I disagree, as a Judge may ask questions of an advocate wholly out of the order in which they had hoped to progress through their authorities. If this happens, the advocate will have to scabble their way through their cards in the same way as if they had sheets of a speech. I suggest that the

better use of your time when preparing for a moot is to fully understand the authorities, so that you have to refer to as little as possible to find the answer to a question

An alternative method is to use four sheets of A4, one for each of your submission points, and one for your rebuttal. You can scribble all over these sheets, using spider diagrams for example. These sheets can become a collection of all of the possible ideas, arguments and comments on each part of your submission. Once you have this 'brainstorm' on paper, you can simply highlight a preferred order in which to progress through these ideas. It is almost certain that the Judge will steer your submission away from how you had planned to deliver it, in which case you are prepared and equipped for this eventuality. If the Judge does not interrupt you very much, then you can simply work your way through the points in the order that you have them on your sheets. This system is flexible and well structured at the same time. If this is coupled with a strong, clear skeleton argument, then you will have a strong base upon which to build your submission.

Document Bundle.

Always prepare a bundle of your authorities in full. Unless the rules specifically state otherwise, presume that this is compulsory for any moot. As mentioned previously, make sure that you are using the correct Law Reports required for the competition. The bundle that you prepare for the Judge should have highlighted all of the passages that you are referring to. If you are offering academic opinion on the issue, provide a full copy of the article, or section from a text, at the back of the bundle. Again, academic opinion must be highlighted. Label the sections clearly, and make sure that you develop a simple method of reference that you can use during your submission e.g. "...Your Lordship will find the relevant passage at the Red divider, numbered 2 in your Lordships bundle. The passage is highlighted, and begins 'In the opinion....'"

Skeleton Argument

Skeleton arguments are a brief summary of your submission, setting out the points you wish to make and the authorities upon which you seek to rely. It is usually submitted sometime before the actual Moot, the time scale for which will depend on the competition. Use bullet points, only giving half sentences for each point in outline. Underneath each half sentence, provide the authorities on which you will rely, and then any academic opinion.

Your skeleton can also be prepared in more detail for your own use. If you flesh out each point in a little more detail, you can then refer to it during your submission. Doing this will help you if you get lost, having relied simply upon the 'brainstorm' sheets outlined above. In effect, the skeleton can act as an anchor to return back to if you find yourself getting a little lost. The skeleton also helps to give clarity for the Judge.

A good skeleton can be the difference between winning and losing, and it can provide a useful structure for you to follow.

Mental Preparation

There are three key areas to think about for your mental preparation.

1) Counter argue yourself in preparation.

Doing this enables you to predict both your opponent's submission and any of the Judge's questions.

If you can then pre-empt your opponent from using the argument by raising it and then dismissing it within your own submission, then you are narrowing your opponent's scope to attack your submission.

If you have prepared well in this area, then you should be hoping that the Judge would ask certain questions, as it will give you the chance to show off what you have prepared.

2) Time Yourself

This is very important and is often forgotten. If you can get your whole submission into three minutes less than the time limit for the competition, then you are in a strong position to both deal with questions from the Judge and not miss any of the really crucial points that you want to raise. The ill prepared advocate will spend most of their time dealing with perhaps their first or second points, and then run out of time to complete their third. Whatever happens, timing yourself will ensure that you have time to provide the correct end to your submission as well.

3) Remember how much work you have done!

If you have followed this entire guide so far then you will have worked very hard indeed. Therefore you deserve to look forward to showing off! An important part of mooting success is learning to relish the opportunity of submitting the fruits of your work, and having an intelligent and well-structured argument about them. This is crucial to remember, as it should turn the experience from something that is negative and to be dreaded into something positive, that should be looked forward to.

In conclusion, the overriding principle of preparation is that a successful advocate must prepare expecting to give a speech, but hoping for a conversation. A Judge may not ask a lot of questions. These Judges are easier for a beginner, as you are not thrown off guard by judicial questions too much. However, you must still give a submission rather than read out a prepared speech, sentence by sentence. However, if the Judge wants to ask a lot of questions of you, then you should be grateful of the opportunity to have a discourse with them about the relevant law. The most enjoyable and most successful moots invariable take the form of a strictly constrained conversation between advocate and Judge. Of course, an advocate should never be conversational in style, but if an advocate can engage with a Judge in a formal exchange of ideas, then the advocate is doing well.

Conclusion

If you are fully mentally and physically prepared, then you have reduced the number of unknown factors to get nervous about. If we return to the list given above of what is known and unknown before a moot, we find that if the outlined steps have been taken, most of what was unknown has become known. This has come about through thorough mental preparation of your submission, thorough physical preparation to combat nerves, and a thorough grasp of both the formal rules and procedures of a moot and an iron tight understanding of the particular rules regulating your specific moot competition:

Known

Own speech

Own Cases

Own legislation

Room layout

Opponent's points

Partner's speech

Audience – size

Clerk's time strictness

How strict the Judge is

Number of Judges

M/F Judges

Unknown

Judges Questions

As you can see, there is very little left to get nervous about, and you should be looking forward to showing off your preparation by second guessing both the Judges questions and your opponents points.

About the Author

Robert Tiffen originally trained as a professional Actor. Having graduated from Rose Bruford College, he spent 3 years as a professional actor, theatre director and acting coach, during which he worked in a variety of TV and Theatre roles. Robert completed the Post Graduate LLB at City University in 2004, and will be completing the LPC before training with Prettys solicitors in Ipswich. Whilst at City, Robert had success both internally and externally in mooting competitions, representing City University in the Law Reports Inter Varsity Competition, and was Vice President of the City University Debating Society.

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