

Chapter 6

Oral submissions

While only some moots have a document competition, all moots have oral hearings. The style and rules of the competitions vary greatly. For example, in most moots you stand to make your submissions, but in an arbitration moot you usually make your presentation sitting down. It is very important that you have researched the rules governing how your moot is to be conducted. You need to feel comfortable in the moot environment. The less stressed you feel the better your performance will be. Familiarising yourself with the process, thereby reducing the possibility of surprises, is an important step in reducing stress.

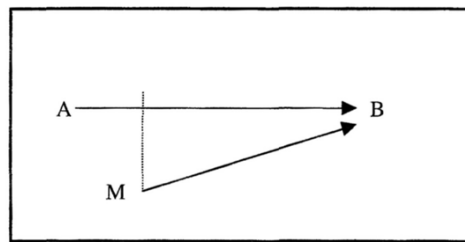
As you read this section on producing oral submissions, consider how many of the techniques discussed can be traced back to one fundamental task – thinking about thinking. How often do you think about how you actually think through a problem and understand concepts and arguments? For example, do you think in pictures or in words? Some people find understanding a concept much easier if they can see the concept represented as a diagram. Others tend to think in words. Everyone is unique, although the differences may only be a matter of degree.

When you present an argument, you need to recognise that your audience may have different ways of understanding the presentation of your argument. No one in your audience will think in exactly the same way as you. As a consequence, your carefully constructed plan that makes perfect sense to you may not make sense to someone else.

Whatever the context in which the communication of ideas is taking place – whether you are presenting a submission in a moot court,

delivering a speech or making a point in a tutorial – you need to make sure that your points will be effectively and efficiently understood by your audience. The responsibility for this is borne both by you and your audience, and will depend on the occasion and the nature of the communication. If you are presenting to a large group, such a class, then the class members have to individually assimilate the information in a manner that is most effective and efficient for them. However, you as the presenter should arm them with the ability to do this by briefly explaining the basis of your thinking on the topic. When you are acting as an advocate in the smaller environment of a moot competition or courtroom, you must bear more of the responsibility and adapt to the needs of the audience.

To demonstrate this point consider the following diagram.T



The box-shaped border represents the boundaries of the moot problem. During your thorough preparation you have examined every single point within the box. After careful consideration you have decided that to win your case you must reach point B. You believe that the most effective and efficient way to do this is to go in a straight line from point A. In your mind this path represents the shortest series of logical steps that can be taken to achieve your objective. However, your moot masters are unlikely to have explored the problem in exactly the same way as you and therefore will have a different level of knowledge. They will not have spent the same amount of time preparing and researching the case. As a consequence they will not necessarily share your view of the best path.

This can be usually and quickly identified by the questions asked by the moot masters. In the diagram, point M represents a question asked by the moot master. This provides a different starting point

for the problem than the one you chose. You still need to find the most effective and efficient path to point B but this time starting from point M, so you will need to adapt your submission. Resist the temptation to return strictly to your earlier path as it will result in a less effective submission than one that has been adapted in response to the moot master's questions.

HOW TO STRUCTURE AN ORAL SUBMISSION

The ideal oral submission is one in which you are always in complete control. You take your moot masters on a step-by-step journey to the conclusion you want them to reach. You control how the issues are framed. You control what and when questions are asked. Sound impossible? It is difficult and a challenge, but it is by no means impossible. The keys to success are preparation and practice. It certainly helps if you have a charismatic presence, but good preparation will always beat charisma alone.

Making a start

If you have gone through the process covered earlier in the section entitled "Building an argument" (pages 18–22), you will already have done substantial preparation. You will have already done the work necessary to ensure you are in command of the subject matter of the moot. This section of the book discusses how to put all that work into a convincing oral submission.

The first step is to be aware of the environment in which you are making your submission. The second step is to identify your aim and purpose, which will help you determine the overall structure of your submission. The principles that apply to preparing an oral submission for a moot competition will also apply to preparation for a real court or arbitration hearing.

Find out how much time has been allocated for you to make your presentation. While fixed-time presentations are most commonly found in moots, they are certainly not uncommon in arbitrations, and are becoming increasingly seen in courts. Be aware of any time limits and ensure that you work within them.

Finally, remember that it is not necessary to win the case to win the moot.

Dealing with the expectations of moot masters

A moot problem is a limited dispute with expectations. It is a limited dispute partly to ensure that participants focus on a particular area of law or issue, and partly to ensure that everyone is ultimately arguing the same point. In those competitions where you do not have any contact with other competitors until the oral hearings, it is particularly important that everyone is dealing with the same issues. Everyone who reads the moot problem should be aware of the boundaries within which competitors are expected to argue, and this includes your moot masters.

The area of law at the centre of the moot problem arouses expectations in the minds of those who will be judging you in the competition. These expectations were referred to earlier as prejudices or bias on the part of the moot masters, because they have preconceived ideas about the arguments that should be run. Moot masters are more likely to think that there is something wrong with your submission if the arguments they expect to hear are not covered. This is particularly true of those competitions that direct you to particular cases and resources in the official documentation. Do not let this prevent you from coming up with innovative arguments. On the contrary, simply be aware of the hurdles you face – any prejudice can be overcome.

You need to know who the moot masters are and bear this in mind when preparing your submission. This too will vary significantly from competition to competition. The moot masters may be eminent judges and jurists, experienced practitioners in the relevant field, legal academics, or coaches of other teams. If you are appearing before a panel, you may encounter masters from a range of legal traditions. Your challenge is to develop a submission that will appeal and impress every type of moot master, although of course you can only predict what these expectations might be. We will return to this topic in the context of practice moots (see pages 87–9).

Creating a persuasive case

Express your case in the simplest possible terms

Although the arguments and points of law upon which you want to rely may be quite complex, it is important that you express them as simply as possible. The simple case will appeal to the majority of people. To begin the simple case, start with a short and concise statement of the crux of your submission. Here is an example.

The Appellant has suffered loss because of the Respondent's wrongful avoidance of the contract.

This is a strong opening that leaves the audience in no doubt about the direction of your submissions.

Use 'Signposting'

You should then break down the assertion into its constituent parts.

On behalf of the Appellant I will be addressing the wrongful avoidance of the contract, and my co-counsel will address the entitlement to damages.

The Appellant's submissions on wrongful avoidance are made in three parts. One, there has not been a fundamental breach by the Appellant that would allow avoidance. Two, even if the breach was fundamental the Appellant had validly exercised its right to cure thereby preventing avoidance. Three, in any event the Respondent has failed to give the obligatory notice. Each of these arguments is made in the alternative. This Honourable Court need only accept one of these submissions to find that the Respondent wrongfully avoided the contract.

This paragraph demonstrates the use of several techniques that should be utilised throughout the entire submission. First, each separate part the advocate intends to address is clearly identified and listed. The numerical references are important. Numbers, particularly small numbers, are understood by everyone. By associating each aspect of the submission with a number, the advocate makes it easier for the Court to follow the submission. It is a technique that

is often referred to as “signposting”. Signposting is very important in an oral presentation. In essence, signposting is simply providing an outline of your arguments.

This technique has a number of advantages. With a written submission, a reader can look back through earlier pages if necessary. However, during an oral submission, your audience will need to rely on their memory (or note-taking ability) to recall what was said in the earlier parts of your submission. As a consequence you want your audience to be thinking forwards not backwards. Describing where you intend to take your audience naturally shifts their attention forwards towards that destination.

Second, by giving your audience the broad structure of your submission at the beginning you will make it much easier for them to follow the progression of your arguments. You enable your audience to immediately satisfy themselves that there is a *prima facie* logic to your argument. Their focus then shifts from your overall argument to the detail of your argument. They will now simply be considering whether each successive point follows.

Finally, and this follows on from the second point, you take the guesswork out of your submission, leaving your audience free to concentrate on what you are saying. You are in control of how the issue will progress. Your audience is not distracted by wondering which way your argument will go. The audience knows exactly what you are going to do and how you intend to do it.

Offer alternative arguments

The example above showed the technique of offering alternatives. This is an example of the “cascading alternatives” we discussed on pages 37–9. They are genuinely alternative (not contradictory) arguments, and each successive argument need only be considered if the earlier ones are rejected. It is not necessary to explain their cascading nature at this stage of the presentation, as it is often a useful segue between alternatives.

In any form of advocacy, your intention is to persuade your audience to reach a particular conclusion. One way of doing this is to make it easy for your audience to reach that conclusion. Presenting a variety of alternative arguments makes both your task and the

audience's task a lot easier. As the saying goes, all roads lead to Rome, and this is what you are telling your audience: it does not matter which path you take, you will end up at my conclusion.

Address alternative submissions

After outlining the three alternative submissions, the advocate then addresses each one.

Beginning with the Applicant's first and primary submission, there has not been a fundamental breach. To establish a fundamental breach the Respondent must prove: one, that there was a breach; two, that the breach caused such detriment to the Respondent as to substantially deprive it of what it was entitled to expect. The Applicant will not be making any submissions on the issue of mere breach, rather it will be focusing on the lack of substantial detriment. It is important to note that the burden of proof lies with the Respondent. It is not up to the Applicant to convince the Court of either of the points; that responsibility lies with the Respondent. If the Respondent fails to satisfactorily prove to this Honourable Court either of these two elements, it naturally follows that there was not a fundamental breach and consequently wrongful avoidance.

Turning to the issue of substantial detriment...

This example demonstrates further techniques that can be very compelling when you are responding to or defending a claim: setting the hurdles for the opposition, outlining where the opposition bears the burden of proof, and selecting your argument.

It stands to reason that if you are trying to make it easy for your audience to agree with you, you also want to make it hard for the audience to agree with your opponent. This can be done by singling out and emphasising each element of your opponent's case. It is very important that you show that these elements are not alternatives. Explain to the audience that for the opposition's case to succeed, they must prove every single element. By doing this you are placing a number of hurdles in front of your opposition. You also have the tactical advantage of establishing the battle ground. Some issues will naturally favour your client and they should be exploited.

Once you have set out as many elements as possible, you should emphasise where the other side bears the burden of proof. This is particularly useful because it defines both your task and that of your opponent. If your opponent has the burden of proof then they must satisfy the moot masters to the requisite standard (for example, on the balance of probabilities, or beyond reasonable doubt). Your submissions are not measured by the same standard. In a strict sense, even if you did not make any submissions your opponent could fail to meet their burden. However, normally you would make submissions but these need only create sufficient doubt. Without overdoing it, you can gain an advantage by reminding your audience of this repeatedly throughout your submission.

Although you would normally make submissions where your opponent bears the burden of proof, it can be a good idea not to make submissions on extremely weak points. In the example above, the advocate elected not to make submissions on whether or not there was a breach, instead choosing to focus on the presence or otherwise of substantial detriment. Choosing not to make submissions on a point is not the same as admitting that point. The other side will still bear the burden of proving it. This approach is often referred to as putting the other side to their proof, and is particularly useful where you have limited time. It allows you to spend more time concentrating on and explaining the arguments that are advantageous to your case, rather than wasting time on weak or futile ones. However, those points will still occupy time in your opponent's submissions. If your opponent has simply been put to their proof they will still need to deal with the point sufficiently to convince the moot masters, whereas if a point is admitted they need not address it at all. Be aware though that there will be occasions where it is appropriate to admit an issue, particularly in professional practice. In each case it will be a matter of judgment.

Address weaknesses in your case

Rarely, if ever, will an advocate have a case completely devoid of weaknesses. It is very unlikely to happen in a moot problem. If you believe your case is impenetrable, you are almost certainly missing

something fundamental and run the risk of being taken by surprise in the actual moot.

Do not be afraid to deal with weaknesses in your case. Indeed doing so is likely to advance your position. Acknowledging a difficulty with your argument can have a number of consequences. First, you can lessen the impact of your opponent's submission. By identifying and quietly discussing the issue, you can downplay the significance of any weakness.

Your Excellencies, this point is contentious. The Applicant acknowledges that first impressions may not be favourable to its case. There are authorities that do not support the interpretation submitted by the Applicant. The Respondent will undoubtedly refer this Honourable Court to many of those authorities and in particular the case of *Southmark v Deacon Hills* 222 VLR 45. But the Applicant strongly urges the Court not to be drawn into an overly simplistic analogy with that case. Every case must be determined on its own merits. The circumstances of the present case are different – so different in fact as to warrant a different conclusion. The differences are...

The physical delivery of a submission of this kind is critical. Do not be strident and forceful; be demure and calm. Identify the authorities that appear to be against you. Acknowledge that there is a certain appeal to the opposing argument, but dismiss it by implication. In the above example, the analogy is described as “overly simplistic”. The demure and calm presentation will suggest a considered approach. The audience will appreciate that you have recognised and investigated the point, and are not overly concerned by it. In contrast, a strident and forceful submission will suggest that you are defensive about the point. Displaying defensiveness will create the impression that you are worried, and if you are worried your moot masters will be too.

Handling questions

Although the prospect of dealing with questions may seem daunting, developing an ability to handle questions properly will distinguish you from other competitors in the moot. Well-answered

questions can win both moots and real cases. Dialogue with your moot masters will allow you to identify the issues that are troubling them, and then to specifically address their concerns.

Preparing to answer questions is an integral part of structuring your oral argument. How can you predict the questions you are going to be asked? With a well-structured oral submission you will go beyond merely predicting questions to being in control of what is asked and when it is asked. Your ability to do this will be a product of your experience in many practice moots.

Preparing for questions

When you first set about preparing your submission, you will probably have little or no idea about the questions you are likely to be asked. During a practice moot you will have an opportunity to test the effectiveness of your oral submission. Keep the time limits in mind, but do not worry if you exceed them during early stages of preparation. It is far better to run arguments and later remove them, than to never try them at all.

Every practice moot you do will tell you a little more about your submission. Take note of every question you are asked during a practice moot and subsequently analyse each question. Why was it asked? What was its purpose? How did you answer it? How should you have answered it?

This analysis will provide you with very important information about your oral submission – information that you should test by presenting your submission to as many different practice moot masters as you possibly can. It is this knowledge that will allow you to control the questions that are asked.

Over time you will find that some questions occur repeatedly at the same point in your submission. This suggests that whatever you are saying at that stage is prompting the question. Think about why it is being asked. Is it because the moot master has lost the flow of your argument? If so, then significant restructuring may be required. Is it because you have just contradicted an earlier submission? If so, then you may need to reorder your arguments. Is it because your argument is something new that intrigues the moot master? If so, then use the question as a springboard to show off your expertise

in the subject matter. Do not underestimate the power of this knowledge.

Incorporating questions into your structure

If you develop an appreciation for why a question is being asked, there are two ways of exploiting this knowledge. First, you can build the answer into your submission so that just as the question forms in the moot master's head you deliver the answer. This can leave a very positive impression because it demonstrates you have carefully thought through the issue. Alternatively, you can wait until the question is asked and use it to develop your submission or to show off your expertise. A word of warning, though – this can be tricky and can easily backfire if the question is not asked, or a different question is asked from the one you were expecting.

A common reason that questions are asked is because the moot master is seeking further explanation or clarification. Occasionally the moot master will rephrase the essence of your case as a question. This is only likely to happen in two situations. Perhaps you are presenting so well that the moot master is already making the conclusions you need. It can be a very satisfactory feeling if the moot master begins stating your case for you and suggests it is well structured. However, you are more likely to receive a question of this kind if the moot master wants to throw you a lifeline. You may have been floundering under a particular line of questions and the moot master wants to give you a way out. If so, you need to pay close attention to the question that is asked. If you did not hear it clearly, ask for it to be repeated.

Another common reason that moot masters ask questions is to test your knowledge. Some competitions give directions to the judges that questions should not be asked solely for this purpose, but it is almost inevitable that this will occur. Do not worry about this possibility, as you will be prepared to answer all of the questions of this kind. One indication that the question may be designed to test your knowledge is if it is a leading question. Leading questions are those where the answer is implicit in the actual question, and as such they generally only require a yes or no answer. If you are asked

a leading question, it is possible that the moot master is trying to set a trap to expose what they see as a logical flaw in your submission. The challenge is to see the trap and avoid it. Again this will not be difficult if you have prepared thoroughly. You will begin to recognise lines of thinking and know how to respond. A particularly skilful answer will demonstrate not only that you can see what the moot master is doing, but that you have an answer to it as well.

Yes, Your Excellency, that is correct. Is Your Excellency concerned that this position may be inconsistent with the Applicant's earlier submission that...

Another way that moot masters may seek to test your arguments is through the use of a hypothetical. Avoid these at all costs. While the moot itself is technically a hypothetical, it contains a lot of information. The hypothetical you are likely to be asked during a moot by a moot master will be very general and will be constructed to conflict with your argument in some way. One way to avoid a hypothetical is to bring the moot master back to the main issues. It is possibly the only type of question you should dodge answering.

The hypothetical Your Excellency suggests would certainly be a difficult one, and it is fortunate that this Honourable Court does not need to resolve it. What this Court must determine is whether on the facts available to it the Respondent wrongfully terminated the contract. The relevant question here is not if a valid notice had been sent, but was a valid notice sent. In the Applicant's submission it was not

Dealing with unpredicted questions

The structure of your submission will play an important role in assisting you to deal with unpredicted questions, particularly difficult ones.

Despite all this planning, there will be occasions when moot masters become fixated on a particular point and will simply not

stop asking questions about it. You need to be conscious of the limited time you have available and the time taken up by these questions. There will be a stage at which it becomes more important to deliver the remainder of your submission rather than continuing to try to satisfy the moot master on the particular point. In other words, sometimes you have to “cut and run” and the structure of your submission will often dictate how effectively this can be done.

Knowing when and how to cut and run is something you will learn with practice. It is a judgment call you will need to make on the spot. By the time you reach the actual moot competition you will be acutely aware of how long your submission runs, and therefore have a good appreciation of how long you can spend discussing a particular point with the moot master. By this stage much of your thinking will occur subconsciously.

One factor that will play a part in your decision includes your assessment of how important the point is to your entire submission. This directly relates to the structure of the submission. Be prepared to abandon nearly every point you make. But if you abandon a point you need to have a backup reason why your client should win. You need an alternative argument.

Another factor that will influence your decision is the recognition that you should try to directly answer all questions put to you by the moot master. Always be prepared to make at least a reasonable attempt to satisfy the moot master. Responding to between two and four questions is a guide to what is reasonable. However, it cannot be stressed enough that you need to make a judgment call in each case. There is no hard and fast rule that applies to all situations. You will make the decision based on the unique situation that you find yourself in. Do not be daunted by this. Believe in your own ability and back it up with good preparation.

Give some thought to prepared phrases you can employ to effectively guillotine discussion on a point and move on. It is usually important to downplay the significance of the point in your overall submission. For instance, if it is one alternative of many, emphasise that fact and ask the moot master’s permission to discuss one of the other alternatives instead.

Your Honour, the point we have been discussing is only one alternative in the Applicant's case and I do not believe the submission can be made any differently. I am conscious of the time I have remaining, and with your permission I will turn to my next submission.

Where the argument does not have an alternative or is indeed the last of your alternatives, it is necessary to tell the moot master that you have nothing more to say. This should be done with some tact.

Your Honour, this is the highest I can state my client's case and with your permission I will move on.

At this point it is pertinent to note the use of the first person in this example. Different forums (and indeed different moot masters) will have different conventions governing personal attribution in submissions, and it can be a matter of controversy. It is your client's case, but they are your submissions on behalf of your client. As a general rule, it is probably best to avoid presenting your submissions in the first person. What you personally think or believe is not relevant. Remember that you are representing a client's case, not your own. However, circumstances in which you need to cut and run may be an exception to that general rule. If you can cut short the moot master's questioning using the third person you should probably do so. But in essence you are making a personal plea to the moot master to let you get on with your submission, and so using the first person is often appropriate.

There may be some unpredicted questions that at first you do not know how to answer. Despite your thorough preparation and anticipation of possible questions, it would be foolhardy to think that there will never be such a question. You may well be asked a question you have never even contemplated before. A question like this can be particularly difficult to answer because you are unlikely to have done any preparatory work on that issue. In a real case you would normally ask permission to take the question on notice (that is, answer it later) and immediately research the issue. You do not have that luxury in a moot competition, and indeed it will not

necessarily be afforded to you in real proceedings either. Rely on the techniques you employed when developing your structure to help you through.

The most important thing is not to panic. The second most important thing is not to look as though you are panicking. Pause, take a breath, and take a sip of water. While you are doing this, analyse the question in your mind in the same way you analysed questions during practice moots. Why was it asked? What did I say that prompted the question? Think about what stage you are at in your submission. This should provide a strong clue to the answer. Sometimes it is as simple as recognising that different people often ask essentially the same question in different ways. The number of questions you have analysed during preparation will probably have a direct correlation with your ability to analyse this difficult question on the spot. If the language of the moot is not your native tongue, this task may be additionally complicated. Do not be afraid to ask for the question to be restated. This has two benefits. First, you may recognise the restated question as one you already know the answer to, and second, it gives you more time. If after the question has been restated a second time you are still no closer to understanding the question, engage with the moot master and try to draw them into providing an explanation of their question.

I apologise, Your Honour. So that I may respond directly to your concern, could you elaborate further?

As always, the method of delivery of questions like this will influence the response you receive. Be conscious not to imply by your manner that you think it is a silly question that does not make sense. Appear genuinely interested and concerned to answer the question properly. Positive body language can assist; gently nodding your head while the further explanation is being provided will give the impression you understand. The use of the first person is not controversial because you are not offering an opinion or belief.

Hopefully, by this stage you will now understand the question or at least be sufficiently confident to respond. In the event you still have absolutely no idea what you are being asked, bluff and fall back

onto your structure. It is very important that you never lie or make up an authority you think will get you out of the situation. To do so would be unethical and is undoubtedly against the spirit of the moot. Furthermore, it is very unlikely to advance your situation in any way. There is a high probability that you will be exposed, either by the moot master or by your opponent. It is far better to move around the question. Politely dismiss the moot master's concern as not necessary in your client's submission, restate the signposts relevant to that stage, and then make it clear that you are moving on.

(After nodding gently) Yes, Your Honour, in the Applicant's submission it is not necessary for this Honourable Court to be concerned with that point. Nothing would turn on it. Irrespective of whether the Court accepted or rejected any submissions the Applicant might make on the point, the Applicant's fundamental case would still stand. To establish liability the Respondent would need to demonstrate that there was a duty of care, and that it was breached. And in the Applicant's submission the Respondent cannot meet that burden.

With your permission I will turn to the Applicant's alternative submission that...

If the moot master tries to keep you on the point you should make use of your "cut and run" phrase (see page 65). When doing so it may be wise to mention a concern about the remaining time.

Getting help from your team-mates

Remember that advocacy is more often than not a team activity. In a moot there is usually at least one other person up there with you and frequently more. The same is true in professional practice. Your co-counsel may well know the answer to the question you are struggling to understand. Provided it is permitted under the rules of the competition, do not be afraid to utilise your collective knowledge. There are professional and amateurish ways of doing this.

If faced with a question you do not know the answer to, it is perfectly acceptable to ask for a moment to confer with your co-counsel. But doing so immediately creates an impression that you do not know the answer, or more detrimentally that you cannot answer. Instead develop signals you can send to your co-counsel that you need help. These signals should be completely invisible to the audience. One way is to assign particular meaning to phrases you would use generally in the course of your answer. For example, it might be agreed that if you say, “I am sorry, Your Honour, could you please repeat the question?” you think you know the answer and are just buying some time to formulate the reply. Whereas if you say, “I am sorry, Your Honour, could you please restate the question?” this could be a signal to your colleague that you have no idea. All that has changed is one word. To the audience it would mean nothing, but to your team members who know the signal it will mean a lot.

How your colleagues come to your assistance will vary. They may not know the answer either, in which case you will have to implement the procedure to overcome unanswerable questions outlined above. If your colleagues do know the answer, they may be able to quickly slide a note to you with the answer on it, or identify a passage you should cite from an authority. Alternatively, they may answer the question. In a number of competitions this will be allowed, but again there is a good and a bad way of doing it. Co-counsel should not simply jump in; rather you should refer the moot master to them.

Your Honour, that is something my co-counsel has considered in detail, and with your indulgence I ask that she be allowed to respond to the question.

Be careful when utilising co-counsel in this way. It should be done sparingly, particularly if each advocate (as opposed to the team as a whole) is being graded by the moot master. Indeed, the rules of some competitions, such as Jessup, may preclude you from having any discussions with co-counsel, or passing notes.

Varying the order in your submission

A good structure to your oral submission will allow you, the advocate, to easily jump to different points in the submission and address them out of order if necessary. Naturally, changing the order of your arguments in the middle of your submission is not likely to be a decision you have voluntarily made. Rather it will have been forced upon you by questions from the moot master.

There are two situations in which you encounter questions that do not coincide with where you are in your submission. In the first situation you are taken backwards, and the second takes you forwards in your submission.

Be ready for a moot master who allows you to complete your entire submission and then asks a question about the first or second point you made.

Alternatively, if a moot master asks you a question that relates to a matter further on in your submission go to it immediately. Never provide answers such as “I’m coming to that” or “I will be addressing that shortly”. While it is not a cardinal sin, it is generally frowned upon both in moots and in real practice. The question will identify an issue that is of particular concern to the moot master. Part of your role as an advocate is to allay any concerns the moot master may have, therefore it is best to address the question immediately.

RESPONDING TO A SUBMISSION

Although a moot is not a debate, it is very important that you respond to the submissions made by your opponent. This is often a variable that you will have little ability to anticipate, so you need to prepare for and make use of those areas that are in within your control.

One such area is the flexibility of your submission. The relative importance of different arguments within your submission will be affected by the submissions made by your opponent. For example, if your opponent concedes a particular issue it is not necessary for you to make significant submissions on it. This may give you an

opportunity to include another argument that you had previously discarded because of time constraints. You cannot know this will happen until it actually occurs in the moot, and so you need to be able to adjust your structure at a moment's notice.

A much more difficult situation occurs when your opponent focuses on a point you had previously thought to be weak. This should not represent a substantive or content-based problem because your preparation will ensure that you are familiar with the point. However, it will impact on the structure of your submission. The emphasis of your submission must change. Be ready to pick up alternative arguments that you had previously discarded, and be prepared to drop other arguments that you wanted to make.

So, particularly in the context of responding, the architecture of your submission must be sound. You then simply add or remove content as appropriate. What content you should add or remove is principally governed by the submissions made by your opponents. It is very important, therefore, that you pay close attention while those submissions are being made.

You must also listen carefully and closely to the questions the moot master is asking your opponents. We have already discussed how questions tended to identify concerns or logical flaws in a submission. Whereas during the preparation stage you analysed these questions to improve your own case, now analyse them to help you critique the submissions made by your opponent. This can be done in two complementary ways. First, the substance of the questions to your opponents will suggest areas worthy of emphasis in your submission. Second, you can take the opportunity to involve the moot masters by referring back to their questions during your submission. When doing this, be careful not to imply that the moot master was actually making a point. Do not use expressions such as, "Your Honour was correct to question..." or "Your Honour made the point...". Moot masters may react negatively to phrases such as this, because they are not allowed to make a point at this stage of the moot. You are in effect implying that the moot masters have prejudged the merits of the case, albeit in your favour. Instead repeat the question, note its importance to your client, and respond.

During opposing counsel's submission, Madame President asked the question . . . We respectfully submit that this question does draw attention to what the Respondent says is a fatal flaw in the Applicant's case. In answering Madame President's question the Counsel for the Applicant suggested . . . The evidence simply cannot sustain such an argument.

Short passages like this are very easy to incorporate into a well-structured argument, because they do not change the underlying architecture of the submission at all. Responding in this way will earn the respect of the moot masters because it demonstrates that you know your case, you were listening to the opposition, and you are keen to engage with the moot masters on matters that are important to them.

PRESENTING AN ORAL SUBMISSION

Not surprisingly there are considerable similarities between the advice offered for presentation of oral submissions and the advice offered for composing written documents. One very important common piece of advice is the value of developing an awareness of your environment. Just as different competitions call for different styles of written document, there will be stylistic differences in the oral presentation. For example, in courts you are expected to stand, whereas in arbitrations you would normally sit. In a court you refer to the judges with phrases such as "Your Honour" and "Your Worship", whereas in an arbitration you might address "Madam Arbitrator".

The peculiarities of each competition should be investigated very early in your preparation. You do not want to get into the habit of referring to your moot master in an incorrect manner. This book cannot list the stylistic requirements of every competition – there are simply too many differences in too many competitions. The task will be easy for you because you can research the requirements of the particular competition you are participating in!

Instead, we will be focusing on presentation issues that will be relevant to any form of oral advocacy. Indeed, much of the advice provided will be relevant to public speaking of any kind.

We have already discussed the importance of meeting audience expectations in the context of argument selection, but it is equally relevant to presentation. From the very moment you arrive at a moot, the moot master will have expectations as to how you should conduct yourself. Those expectations can probably be summed up in one word: “professional”. To ensure that you appear as professional as possible, think about what it means to be professional in all aspects of your moot appearance. Many of the topics discussed below have an impact on how professional you appear.

Preparation

We have discussed the importance of preparation many times. Whether you are competing in a prestigious international moot competition, or a small moot competition run by your law students’ society, you should always be prepared to the best of your ability. Moot masters, whoever they may be, will always be influenced by how important the moot competition is to you. If you turn up unprepared it suggests you are not really concerned with the outcome, and this will reflect unfavourably upon you in any moot master’s eyes.

Physical appearance

How you dress can affect your presentation and the impression you leave upon the audience. Although in some parts of the world we are starting to see a relaxation in dress codes, there is still an almost universal presumption that professionals will wear suits. Furthermore, what might be acceptable in some cultures may not be acceptable in others.

It is always better to err on the side of caution and adopt the more conservative approach. By way of demonstration, consider the following events that occurred in a real moot. It was an unseasonably warm day, and as the moot was being conducted during a university break, the pre-programmed air-conditioning was not working. Because the door was closed, the room became stuffy and quite uncomfortable for everyone inside it, particularly the advocates. There were three moot masters: two from civil law jurisdictions and one from a common law jurisdiction. The common

law moot master invited the advocates to take off their suit jackets. One team did; the other did not. The team that had taken off their jackets became increasingly dishevelled over the course of the moot: ties were loosened slightly, top buttons were undone, shirts revealed dark patches of sweat. They looked as though they were really struggling. In contrast, the team that kept their jackets on maintained a very professional image, notwithstanding the fact that they too were really struggling. At the end of the moot, the contrast in physical appearance between the two teams was so extraordinary that one of the civil law moot masters was moved to comment on it. After explaining that it would not affect his scoring on this occasion, the moot master went on to say that in his view removing suit jackets was tactically wrong and even disrespectful, notwithstanding the invitation from one of the moot masters to do so.

How you dress can also have a more subtle effect on your performance. Do not underestimate the influence of your dress on your psychological approach to the moot. We naturally distinguish the importance of an occasion by the clothes we wear. Just as other people will draw conclusions from your appearance, so will you. If you have gone to the trouble of having a haircut, wearing a nicely ironed shirt, putting on make-up or doing whatever it is you do to look good, you will feel good as well. If you feel good you will be confident, and confidence is a very appealing attribute.

Time keeping

One of the strongest indications that advocates are in control is when they are acutely aware of the time their submission is taking. Time keeping is essential.

If the rules permit, this may be done by your co-counsel. For example, you may have a small piece of paper with various time intervals noted on it. When you only have 10 minutes left your co-counsel very quietly and inconspicuously crosses off the number 10. It is necessary to emphasise that this should be done without attracting any attention; kicking your colleague under the table is not advisable!

In competitions where counsel are not permitted to communicate with each other during a submission, the task is a little harder

because you will need to do it yourself. In these circumstances it is important you have your own timing device; do not assume there will be a clock visible somewhere in the moot court. Be careful though that your timing device is not going to make any noise. For example, a countdown timer sounding at the end of 20 minutes is going to look very unprofessional, and will draw the attention of your moot masters to the fact that you are out of time.

Time keeping is a virtue that can lead to a vice: people often start to speak more quickly when they think they are running short of time. Resist this temptation. Instead, if necessary, make time in your submission by dropping one or two of your weaker alternative arguments. All of this can be pre-planned.

If you have 20 minutes in which to make your submission and you are expecting questions, do not plan to deliver a 20-minute submission. From your practice moots you will have a reasonable idea of how much time questions occupy. It is probably reasonable to assume that uninterrupted your submission would only last between 11 and 13 minutes. This is not very long, and therefore argument selection is very important. It is also another reason why there needs to be flexibility in the structure of your submission. Just as you may need to discard an alternative argument, you may wish to add one if you find that time is available. Well before you even enter the moot court, you should have decided that if you have not reached a particular point in your submission by the 10-minute mark, you will drop alternative C, for example. Preparing for situations like this will ensure that you remain in control. You are less likely to rush or to become overly stressed or worried, all of which would be reflected outwardly in your presentation. Rather, you will know what to do for every eventuality and how to do it.

Opening formalities

The opening formalities begin with the announcement of your appearance, and encompass everything you do (or should do) from the moment the moot officially begins to the point when you actually begin your submission.

The very first formality you should be aware of is whether you should stand when the moot master enters the room. This may

well depend on the type of moot you are participating in, and you should find out in advance what is required for your particular moot. However, as a general rule it is always polite to stand when you are being introduced to someone. It demonstrates respect.

Following the arrival of the moot master, there will usually be a request for appearances. The procedure for this may also differ depending on the forum. Some forums will have appearance slips that advocates will complete prior to the arrival of the moot master. In these competitions the moot master may well refer to each advocate by name and ask them to confirm that they appear for a particular side. On other occasions you will be expected to verbally announce your appearance. There will be particular customs you should adopt, depending on the forum.

May it please the Court, my name is Smith, initial J, and I appear for the Applicant in this matter.

Alternatively it might be appropriate to say:

Thank you, Mr President My name is John Smith and I appear on behalf of the Applicant.

You will need to research what is appropriate for your particular competition.

You need to know who will be announcing appearances. If there are two of you, does the first speaker introduce both, or do you take turns? It may be a personal decision rather than one that needs to comply with any particular custom. Either way, make sure you and your partner know what is going to happen. You will not make a good start if you and another team member inadvertently speak at the same time.

There are several arguments in favour of each speaker introducing themselves. First, there will not be any concern about mispronouncing a name; and second it cannot be seen as being politically incorrect. The latter of these concerns rarely surfaces, but it is better to avoid even the slim possibility. Somewhat surprisingly it is not uncommon to see counsel stumble over the pronunciation of a colleague's name.

All appearances should be announced at the beginning of the moot. This is important in a real dispute because it serves to identify the advocates appearing. In the absence of an announcement, anyone might be sitting at the Bar table. Moot masters need to know who is who, and in what order they will be appearing. In competitions where moot masters allocate scores to individuals, identifying each person is a necessity. To assist in this identification process (and in the absence of appearance slips) some advocates will present the moot master with business cards, or have small name plates at the front of their desk. These can certainly be of great benefit to the moot master, but you need to decide whether they are appropriate for your competition.

Following appearances, the first speaker will normally address the moot master. Irrespective of who the first speaker is, it is usually appropriate to ask the moot masters whether they would like a brief summary of the facts. In the event this offer is accepted, you should have prepared a very concise and non-biased summary. This is not the time to use emotive language or to denigrate your opponent's case. Simply state the important facts leading up to the dispute and identify the issues for determination. Be aware that the statement of facts will be consuming your submission time so make sure you are brief.

The final opening formality you may or may not address before your submission is to ask whether full citations are required. Some advocates prefer to give the first full citation and then ask if they may be subsequently dispensed with. There is no ideal way of doing this, and the approach you choose will vary according to your impressions of the moot masters. It is important though, if you are the opposition counsel, not to assume the same courtesy will be automatically extended. You should clarify at the beginning of your submission whether the citations are required. Citations are often not required when they appear elsewhere, for example, in your written submissions. If this is the first reference ever, you should always offer the full citation. Most moot masters will accede to a request to dispense with citations because they appreciate that it is simply time-consuming in the context of a moot. Asking the question always indicates to the moot master that you are prepared to provide the citation if required. This is probably not a situation in

which you want to call the moot master's bluff as it may reflect very poorly on your preparation.

Using case materials

Your familiarity with the facts and materials of the case, and the degree to which you utilise them, will provide a strong indication of your control of your oral submission.

The facts of the problem play a very significant role in your submission. The first thing most audiences want to know is what happened. There is a certain logic to this. It would seem odd to look at the consequences of an action without first identifying the action itself. This means that you should state any relevant facts first, then the law, then the consequences of applying the law to the facts. It should be a familiar sequence to you as it is a frequently recommended method employed in legal exams.

To be able to do this well you need to develop an instantaneous recollection of the facts of the problem. Some people have what is commonly called a photographic memory. For those lucky few, remembering small details comes quickly and easily. If you are not one of those people, there are techniques you can employ to improve your abilities.

Employing flash cards

One of the simplest ways to become familiar with case materials is to use flash cards. Flash cards are small palm-sized cards that have information on both sides. They can be used as a learning aid for many different tasks, such as learning foreign languages and mathematical tables.

In preparing for a moot, you might put a date on one side of a flash card and then anything significant about that date on the reverse side. Once you have a complete set of dates you can ask anyone to test your knowledge. This will probably be a team member but it could just as easily be a friend or family member. Indeed it is not even necessary to have someone else test you; you can do it yourself. If a friend is willing to help, have your friend randomly pick up a card and say the date. You need to list everything significant about that date as quickly as possible. The exercise can be reversed as

well. Your friend says a significant event and you need to state the date. The more often you work with the flash cards the quicker you will become. Eventually you will reach the stage where the response instantly comes to you.

With a couple of minor additions, you can use these flash cards to improve your familiarity with the case materials as well. Include information such as page references, exhibit numbers or clarifications numbers. The effort you put into familiarising yourself carefully with the material will be justified the moment the moot master asks you, “And where do we find that?” Imagine how impressive it will look and how good you will feel if you can respond without pausing or breaking eye contact, “That is on page 6 of the *Compromis, Your Honour*.” An intimate knowledge of the facts and materials also allows you to spot and politely expose any inaccuracies in your opponent’s case. Learning the case this closely may take some time but it is well worth the effort.

Using a casebook

Case materials encompass not only the official documentation provided by the competition, but any documentation used in the moot. Any written documentation you have supplied, such as an outline of submissions or casebook, is part of the case materials. It is very important that you also familiarise yourself with these documents and practise working with them effectively. The most significant of these is the casebook.

A casebook, as we have already noted, is a collection of all of the cases and authorities you intend to rely upon in your submissions. Frequently it will be necessary and appropriate to refer the moot masters to a particular passage in a judgment, or to particular remarks made by a legal commentator. When you do this, have the exact reference ready to offer the moot master. Make it very easy for the moot master to find what you are looking at. Once you have identified the reference, wait a moment and make sure that the moot master has found the spot before proceeding with your submission. There is no need to wait until you receive an indication from the moot master to proceed, although this will usually be forthcoming as soon as the master has found the appropriate passage. It is

sufficient to pause for a few seconds and then keep going. Keep watching the moot master as you are speaking to ascertain whether the master is in fact listening to your submission or is fidgeting with the materials. If that appears to be the case, it is not inappropriate to ask whether the moot master has found the passage.

If you are competing in a moot competition that does not require a casebook, do not assume that this advice is irrelevant to you. Simply because you are not providing a copy of the actual material in the moot does not mean that you should not give specific references. Whenever you cite any authority, have a page or paragraph reference at the ready. It is less likely that you need to include this as part of your submission, but if asked by the moot master for the reference, you need to have it.

Using materials appropriately

The final issue regarding case materials is how to use them appropriately. It is not necessary to refer to the materials every time you state a fact or make a point. The purpose of authority is to buttress your submission, and to highlight the relevance of what you are saying. When you do quote a passage from a case, a statute or commentary, make sure that you are not quoting it out of context. For example, an article in a convention may have multiple sub-articles, and you might be tempted to only read the sub-article that appears to support your case. That sub-article considered on its own might leave a very different impression than it would if discussed in its wider context. Moot masters are likely to notice this, and if they do not, you can be almost certain your opposition will. Once discovered, this will reflect badly on your submissions, as at one level it suggests an intention to mislead the moot master. It is perfectly acceptable for you to draw the moot master's attention to an important phrase or sub-article, but do this through emphasis. Use your voice to emphasise a passage, but keep the correct context.

Voice and delivery

Your voice is one of the most extraordinary and powerful tools at your disposal. All of our voices are different. Some are naturally melodic and calming, others demand attention, a few have an

undefinable yet distinct quality, and some are a bit thin or scratchy. Irrespective of how your voice might be described, we all have an ability to use our voices. You can be demure or forceful, inquisitive or authoritative, caring or dispassionate. You can convey all this simply by saying the same words in different ways. It would be a terrible shame to waste this tool – but waste it many do.

Often those judging your practice moots will be able to tell you whether or not you are taking full advantage of your voice. However, you can work on this by yourself as well. Get a recording device and record yourself. If you have never heard a recording of yourself before, be prepared for a shock. Your voice will sound very different, possibly even unrecognisable! When you listen to a recording of yourself you are hearing your voice the way everyone else does. The physiological reasons why we hear ourselves differently are not important, but it is worthwhile being aware of the phenomenon.

Moderate your tone, pitch and accent

Once you have recovered from the shock, listen critically to your performance. In particular, focus on your intonation – the tone and pitch of your voice. Speaking in a monotone should be avoided. Even though the subject matter may be extremely interesting, if the presentation is delivered in a monotonous fashion it will almost invariably be labelled by the audience as boring. Make sure you vary your tone appropriately throughout your submission.

It is possible to vary tone inappropriately, and this will simply serve to confuse your audience. Your audience needs to understand the significance of the various tones you adopt. To be able to do this, there needs to be a consistency in your use of tone, and each change must have a particular implication. There are common conventions about what changes of tone mean in every language; they are not arbitrarily decided upon by an individual speaker. For example, in English we naturally tend to finish questions on a higher pitch.

Different languages use pitch and tones in different ways. This is evident simply from the fact that we have different accents. Accents are an important consideration, particularly for native speakers of

the language. The fact that you can speak English perfectly will be of little value if your accent prevents you from being understood. Ideally you should aim to have your accent sound as neutral as possible. This can, in part, be achieved by simply making sure you enunciate every word and round your vowels.

The issue of accents is not something that should alarm or concern non-native speakers. Indeed we should have nothing but support, praise and admiration for participants who can moot in a second language. However, to completely ignore the fact that there will be some language difficulties for non-native speakers would be silly. In most moot competitions, judges will be specifically instructed not to allow their scoring to be influenced by difficulties of this kind. The easiest way to avoid any kind of language difficulty is to keep your sentences short and simple. This is good advice that applies to everyone.

Speak slowly

Concentrate on speaking slowly. It is almost impossible to speak too slowly. This will have two natural consequences. First, you will automatically begin to fully pronounce each word, which will help you speak clearly. Second, it will give your audience an opportunity to hear and comprehend each word. If you speak too quickly, your audience will hear a string of meaningless sounds. Learning to do this is not as easy as it may seem, and will require practice. You have to battle against the normal impulse to rush in circumstances where you have a lot to say and very little time to say it in.

Moderate the volume

You should also be very conscious of whether you are speaking loudly or quietly. Just as people find it difficult to believe they are speaking too quickly, many people seem surprised by the suggestion that they naturally speak too softly. Your voice should fill the room to ensure that everyone, especially the moot masters, can hear you easily. Be careful not to yell, but err on the side of being slightly louder than you think you need to be, and this will ensure that your voice will carry to everyone in the room.

Body language

The way you use your body as you deliver your submission can speak volumes to your audience. Often subconsciously our body language can reveal our true feelings. Sometimes we can control these reactions and on other occasions we cannot. For example, some people blush when they are nervous. Then when they sense that they are blushing they get even more nervous and embarrassed. The cure is to try to be less nervous and certainly not be embarrassed if you start to blush. Admittedly, this is much easier said than done, but it is true that solid preparation and earned self-confidence do wonders to combat nervousness.

Never fidget

Nervousness can cause some people to fidget during their presentations, for example, clicking pens or tapping their fingers or feet. A habit of this kind has several disadvantages. It undermines the confident appearance you are trying to present, and it distracts the attention of your moot masters from what you are saying.

Precisely how you cure fidgeting will depend on your environment. If you are standing at a lectern you may be able to discreetly hold the lectern, to stop yourself tapping your fingers. If possible, this should not be seen by the moot master. Instead all the moot master should see is an advocate standing upright and paying attention to the task. Your hands are firmly holding the lectern so as to not reveal your state of anxiety. Alternatively, if you are sitting at a table, sit at the front of your seat, join your hands together and place them on the edge of the table. Concentrate on feeling the table just below the base of your little fingers. Sitting in this fashion allows you to push against the table as firmly as you like and it will not be noticed by the moot master. Furthermore, exerting pressure on that part of your hand will make it harder to wiggle your fingers.

Make use of gestures and posture

Once you have mastered your body language sufficiently so that it will not detract from your submission, begin experimenting with ways of using it to your advantage. Hand movements can be very

effective when adding emphasis, as can taking off glasses. Give some thought to how you use your body. What hand movements do you use subconsciously at the moment? How can you utilise them to improve your delivery? Get feedback from your coach and team members about your gestures. Your gestures should add emphasis to what you are saying and create a favourable impression. They should never be distracting or overdone.

Hands are only one part of our body though, and how we carry ourselves is also very important. You need to have good posture. Make sure you are standing upright and are not stooped over. If you are sitting down, do not relax back into the chair. Put both feet firmly on the ground and sit up straight. This is most easily achieved by sitting at the front of your chair.

Pay attention

It stands to reason that if body language is a form of communication, then we are in fact communicating all the time. Just because you are not actually saying anything to the moot masters at a particular moment, you will still be conveying a message to them. The lesson here is that you must pay attention during the whole moot. Do not start looking out the window or back over your shoulder to the audience when your co-counsel is speaking. This can have a very negative impact on the impression created by your co-counsel's submission. If you do not think it is worth listening to, why should the moot master?

When the opposition are delivering their submission you must also pay attention. The message you send by not paying attention during your opponent's submission is not that the submission is not important, but rather that you are rude.

Maintaining a proper posture will in fact help you pay attention. This can be very important if a moot master turns around and asks you an unexpected question.

Speaking from notes

The use of notes during a presentation is a hotly debated topic. Should you script your presentation and rote learn it? Should you have a complete copy in front of you when presenting, or should

you just have a list of key points? The best advice is to do what suits you.

Using a complete script

Many people will tell you not to script your presentation and certainly not to have it written word for word in front of you. This advice is misguided to the extent that it will force some people well outside their comfort zone, which will be detrimental to their overall performance. Remember, maintaining a relaxed, measured and confident approach is the most important goal. If having a complete script works for you then do it. The question then becomes how do you know if it is working?

The two most common criticisms of the use of scripts are that people tend to read and that they then lack flexibility. In a moot it is very important not to read. You need to be looking up at the moot masters and talking directly to them. It is virtually impossible to engage with someone if you are not looking at them. Reading also tends to impact on your tone. It is much easier to slip into a monotone if you are reading. It will also affect your volume. Our mouths point in the same direction as our eyes, therefore when reading out aloud we are quite literally speaking down to the paper, and not projecting our voices. In short, reading will detract from your submission and should be avoided as much as possible.

People who read will also tend to stick to their script. This affects their ability to answer questions. The need for flexibility was briefly discussed under the heading “Varying the order in your submission” (see page 69), and it is an equally relevant consideration at this stage. Moot masters will move you around your presentation, possibly at the most inconvenient stages. If you are relying on reading your submission, you will need to be able to sort through your notes instantaneously. This can be difficult for you and distracting for the moot master.

You need to establish what is right for you during your practice moots. Try different approaches and see how they work. Think about the environment you will be in when delivering your submission. If you are sitting or standing at a chest-high lectern, the actual act of turning a page will occur very close to your face and

certainly within the field of vision of the moot master. Any movement like this can be distracting, particularly if it is accompanied by the creaking of an exercise book. Instead, you could try using sheets of paper that are not bound, as they can be slid from one side of the lectern to the other in a very subtle movement. The danger is, of course, that your pages may end up in the wrong order, therefore it is important to use clearly visible page numbers. It would also be sensible to check that all your pages are present and in the right order just before beginning your presentation.

For those of you who feel most comfortable with a complete script in front of you, develop techniques that will minimise the negative impression that can be created by reading. You need to be able to move very easily between your notes and the moot master. As a consequence, you cannot be wasting time trying to find the passage you were up to on the page just before you looked away. Keep your pages clear and uncluttered. Make sure your submission is printed in a large, easy-to-read font with a double space between each line. This document needs to be functional and versatile; it does not need to win design awards!

Using summarised notes

If you decide that you are going to use notes, practise using them and think about how they should be designed for maximum effectiveness. For example, it may be advisable not to bind your notes in any way. This means you should not use an exercise book, or staple your notes together. This will allow you greater flexibility to vary the order of your presentation in response to questions from the moot master, as we have already discussed.

Notes can be a very effective and useful tool when used well. You need to give some thought to how your notes can best be designed to suit your requirements. It was suggested earlier that rather than speed up when you are running out of time it is far better to discard arguments. To be in a position to do this, you need to have prioritised your arguments. Which arguments are essential, which are desirable and which are dispensable, but would still be included in an ideal presentation? How you have designed your notes can greatly assist you in this process.

Divide a single sheet of paper into three columns. In the first column list all of the essential arguments. These are the arguments you believe you must present in your submission. In the second column list all the arguments that you consider would be desirable to include. Finally, in the last column list the less important arguments that you would still like to include in an ideal presentation. During your presentation, work your way through these lists. Be aware though that the priority of some arguments may change based on your opponent's submissions. As your opponents make the corresponding argument, tick it off your list. Now if you face any time pressures during your submission you will know which arguments you must raise, and which ones you can abandon.

When designing your notes, you need to consider whether you intend to write extra notes during the moot. If so, you will need to make sure there is room for you to do this in your notes, whether it is simply in the margin or in a designated place. Because you will be familiar with the arguments for both sides, you may have developed a list of common rebuttal points, and you may want to add to the list as the moot progresses if new arguments occur to you. If you do develop such a list, be sure to use it wisely and not inadvertently misuse the rebuttal procedure. Rebuttal is discussed in detail on pages 90–1.

Using notes well

When using notes, whether it is a full script or dot points, the key is to know how to use those notes. Notes should never contain substantive issues to be researched on the spot. They are really only there as a security blanket, to reassure you. The same is true of open book law exams. You do not have the time to research in the middle of the exam, and neither do you in a moot. Never assume you will find the answer to a question in your notes. The notes may point you in the right direction, but the answer always comes from what you already know.

If the rules of your moot permit, you can also use notes to communicate with your team-mates. Typically these are used for time management or when responding, whether as an advocate for the

party defending the claim or for the party bringing the claim in rebuttal.

Building rapport with the moot master

People who are naturally charismatic and charming seem to effortlessly command attention when they walk into a room. They have vibrant personalities and can socialise easily. They have a presence, and always seem to impress an audience. These people can be extremely intimidating to those who do not see the same characteristics in themselves.

It is often the case that how we see ourselves is very different from the way others see us. Many of us tend to assume the worst. This is particularly true of people in stressful situations. Imagine you walk into a moot court and glance at the moot master. At that precise moment the moot master appears to sneer at you. What do you think? Do you assume you are already off to a bad start and basically give up without having said a word? The real reason for the moot master's apparent sneer might have nothing to do with you whatsoever. It may have been the onset of a sneeze, for instance.

The attractive and endearing people you may feel intimidated by are the ones who have learnt to overcome their negative assumptions about how others perceive them. These people are generally very comfortable with who they are, and their charisma comes from confidence and self-belief. Everyone can develop self-confidence, and you can too. Confidence in your abilities will be invaluable in helping you build a good rapport with the moot master.

To develop rapport with someone, you must engage with them. The tips on presentation that we have discussed so far play an important role in that engagement. Knowing that you are prepared will give you confidence. Your physical appearance, voice and body language will all show respect. Good time keeping demonstrates that you are in control of your presentation. Finally, and arguably most importantly, your use of the case materials and your notes will involve the moot master. You should aim to create a dialogue with the moot master, during which you maintain eye contact. Eye contact is important because it subconsciously suggests you are both honest and earnest.

An oral submission, like a job interview, is best when it is a dialogue. How that dialogue progresses will, to a large extent, depend on your attitude. Be yourself and let your own personality shine through your submission, just as you would in a job interview. Some people try to act their way through as if they were performers on a theatrical stage. Acting invariably involves pretending that you are someone you are not. It can be quite difficult to build rapport if you are acting. There is nothing to endear you to the moot master since by its very nature acting implies something false. When we watch actors on the stage or screen we suspend our disbelief because we already know and understand that it is a contrived scenario. There is no such understanding in a moot competition. It is certainly a contrived set of facts, but your performance should be a genuine one. If you are yourself and sincerely want to engage with the moot master, you will succeed. The shy and timid but very well prepared advocate will ultimately be much more engaging than a loud, brash, character actor.

Multiple moot masters

Convincing one person can be relatively easy. If you have three moot masters, you may think that your task will be three times harder. This is not necessarily the case, although there is no doubt that it is harder to some degree. Fortunately, it is possible to overcome many of these difficulties with practice.

The most difficult aspect of appearing before multiple moot masters is establishing a rapport with all of them simultaneously. It is physically impossible to make eye contact with more than one person at a time, so you will need to divide your attention between each of the moot masters. This can be particularly difficult when one of the moot masters does not appear to be making any attempt to engage with you. For example, where only two of the three moot masters are asking questions, it is very easy to ignore the third. But you would do so at your peril. This moot master needs to receive an equal share of your attention because each moot master has the same capacity to award points and is therefore equally important to you.

If your competition has multiple moot masters, your practice moots should have the same number. Get used to shifting your

attention between each moot master, especially those who do not seem to be paying attention. It is an unfortunate and unfair reality that the moot master who does not pay attention will be the one who complains that you have failed to engage them.

If you find that you are having some difficulty attracting the attention of a moot master simply by looking at them, there are a number of techniques you can use to politely demand their attention. First, as we have already discussed, you need to make the most of your voice and body language. If this is not enough, you can incorporate a direct reference to the moot master into your presentation by referring to them by their title or name.

Referring directly to a moot master must be done with care. The easiest method is to refer to a question that the moot master asked earlier in the moot. A more contentious method is to use information about the moot master that you know from outside the confines of the hearing that you are presently participating in. For example, you may know that the moot master comes from a civil or common law background. Or you may somehow draw upon a journal article or case decision that the particular moot master has written. If you are able to research your moot masters, you should do so. You may never use the information you find, but it is there in your arsenal if necessary.

The other information you should seek is the personal style of each of the moot masters. Are they the kind who will pester you with questions? Are they the kind who will want to hear more about the facts or the law? Are they likely to focus on one particular issue? Having all of this information will help you prepare for your presentation. At the very least it will give you an idea of what to expect, which is particularly important if you are appearing before a moot master with an aggressive style.

Know how the moot is to be run

There are many procedural matters that you need to be familiar with so that there are no unpleasant surprises during the moot. Some of these may change from moot to moot, and even within the same competition, so it is important to practise for all eventualities. We

have already discussed time keeping (see pages 73–4), but there are many other aspects to consider.

Order of submissions

Advocates are frequently taken by surprise when the moot master changes the order of submissions. For example, the Respondent may have challenged the jurisdiction of the court. In this situation it would not be unreasonable if the Respondent was asked to make its submission on that issue first. Suddenly the Respondent is not responding any more but presenting an affirmative case. It is also important to remember that the first speaker should always offer a summary of the facts, and this means it may be the Respondent who has to present this summary.

Rebuttal

The availability of rebuttal will vary from moot to moot. If you are representing the party bringing the case, always request a right of rebuttal. This is not to say you will always exercise that right, but have it up your sleeve if it is granted. If possible confer with your opposition before the moot begins and agree on how you would jointly like the moot to be run. The moot masters may ask whether there has been any agreement on these issues, or they may simply begin the moot. In either case the first advocate, whichever side the advocate represents, should clarify the procedure with the moot master – in particular the time available to each advocate, the order of arguments and the right of rebuttal (and occasionally sur-rebuttal). This can be done very politely by indicating that there were discussions between counsel before proceedings began and that you are jointly proposing a particular procedure to the moot master. The moot master may acquiesce or allow some matters like rebuttal. Ultimately it remains in the moot masters' hands and you can only ask.

Even if you have the right of rebuttal, you may not always wish to exercise it. Knowing when to rebut and when not to will come from an understanding of the purpose of rebuttal. Rebuttal does not exist so that you get the last chance to restate your case. On the contrary, rebuttal should not involve a restatement of the case at all. Rebuttal

should be used sparingly and pointedly only to address new points raised by your opposition in the course of their submission. This is why it is particularly important for parties bringing a case to reserve the right.

Imagine you are the Applicant. Having run short of time you decided not to present one of your alternatives. During the Respondent's submission the alternative was raised with apparent acceptance by the moot master. This is when you use your rebuttal. But do not launch into your entire presentation on the point. Simply single out the fatal flaw without going further. It is the perfect example of when less is more. Sadly misuse and even abuse of the right of rebuttal has become the norm. The positive consequence though is that the proper use of rebuttal is striking and usually rewarded. When asked if you have any rebuttal, do not be afraid to say that you do not.

No, the Applicant believes it has already answered all of the Respondent's submissions.

If you do have rebuttal, state the number of rebuttal points you will be making.

Thank you, the Applicant has four points to make in rebuttal.

Limit yourself to the four, or at the very most five, strongest points. Doing so will suggest you appreciate that a rebuttal must be focused. You are likely to have five minutes at most, and at one issue per minute you may already be speaking too quickly.

There is one final point to make about rebuttal. Advocates who have not paid attention to their opponent's submission will not be able to rebut effectively. If after your submission you were completely preoccupied with what you were going to have for lunch, do not even try a rebuttal. You may have gleaned the general theme of your opponent's submission, but you will have no appreciation of the specificities, and it is the specificities that you should rebut on. So in addition to looking like you are paying attention, make sure that you actually do.

Dealing with mistakes

Good preparation is preparation that prepares you for every contingency. However unlikely you may wish it to be, it is possible that you will make a mistake. In a moot, and often in real life, that fact that you have made a mistake is not as relevant as how you deal with it.

Sadly, ignoring a mistake will not make it go away. If you have made a mistake do not be frightened to correct it. It is far better to acknowledge that you “spoke in error” and to correct any misunderstanding that the moot master may have, than to simply push on. However, do not be too quick to assume that it is you who has indeed made an error, particularly if the moot master has suggested that one of your well-researched arguments is wrong. Remember that you will know much more about the problem than your moot master because of your extensive and detailed research on the topic. Have confidence in yourself and your submissions. Restate your proposition and clarify with the moot master precisely why they believe there is an error. If it is there, acknowledge it, downplay its significance to your overall submission and move on. If the moot master is wrong, take a moment to re-explain your point, specifically identifying why you are not in error and move on. When doing so you should not attribute the confusion to anyone.

Your Worship, perhaps I could rephrase this point...

Irrespective of who is actually in error, the crucial point is to proceed with your submission. Battle on. Do not lose confidence or be too embarrassed to proceed. Standing dumbstruck, not knowing what to do next, will have a much greater impact on the moot master than merely acknowledging a mistake.

CONTINUE THE TEAM WORK

The importance of teamwork has been repeatedly emphasised throughout this book. Although a team may only comprise two people, it is still a team.

Often you will find you most need your team-mates during your moot and immediately afterwards. If the rules permit, your team-mates can assist you when you are actually presenting. They can find references for you, pass you documents, keep time, and perhaps even assist with the answer to a question. All of these things have been canvassed in other sections of the book. However, something we have not yet discussed is how team-mates can assist after a presentation.

Watching a team-mate (or a student if you are the coach) presenting a submission can be extremely difficult. Because you have gone through the same or similar preparation, you will naturally think of answers to the questions being asked. Often you will think these answers are better than the ones your team-mate ultimately gives. You will be sitting in the audience thinking, “You know this... no, no, that’s not right!” The problem is often exacerbated if there has been competition for the advocate’s position. Irrespective of your personal feelings you must remember that you are part of a team, and you should only do what is right for the team. There is no certainty that if you had been speaking you would have answered the question any differently. The answer that pops into your head while sitting in the audience occurs to you in entirely different circumstances. You are not under the same pressure as your team-mate who is presenting and is the focus of everyone’s attention. It is impossible to know how you would respond if you faced the same question under similar pressure and attention.

Accordingly, you should never criticise your team-mate’s performance. Attacking your team-mates or denigrating their effort in any way, whether directly to them or to other team-mates, will only serve to lessen everyone’s performance. Instead work with your team-mates in a positive fashion. Make sure that any feedback you have is constructive, and expressed in such a way that does not suggest tault. Confidence is king, and negative comments from team mates can often be very damaging.