



GENERAL GUIDELINES FOR JUDGING ORAL ARGUMENTS

1. **Purpose of a Moot.** The oralists are expected to present arguments, to counter the opponent team's arguments and to respond to questions from the bench. The oralists are the stars. Judges are the umpires and the supporting actors.
2. **Openings:** Oralists should be allowed to introduce themselves, briefly explain the theory of their case, and outline the structure of their arguments in order to present their case in the most logical and persuasive manner. *During openings, questions from the bench should be limited to seeking points of clarification as to structure if it seems to be illogical or repetitive and as to remedies sought.* In some circumstances—especially if an oralist is extremely good—it may be appropriate to ask the oralist to alter the planned structure. This will test adaptability and flexibility.
3. **Main Arguments.** In the main argument, the oralist must clearly articulate a logical structure for the argument while moving swiftly to the legal issues. Oralists should be able to make persuasive arguments about the validity of their side. Judges should test them on their use of facts, law, and any policy arguments that are raised. Judges are expected to raise *relevant questions* about adverse or ambiguous facts and authorities. They are also expected to ask the oralists to address the arguments made by the other side on the issues. Oralists should demonstrate that they appreciate the difficulty of the questions and realize that on some of the issues, the facts and the law may not favor their position. Oralists should also be prepared to address policy questions related to the appropriateness of remedies, interference with the sovereign powers of states, effect of a ruling on future cases, etc.
4. **Summary and Conclusion.** Oralists should ideally be given an uninterrupted 30 seconds at the end of the moot to summarize their arguments and conclude. If a judge continues to ask questions at the end of an oralist's allotted time, the President of the judges' panel may authorize additional time for the oralist to answer, and should at that point remind the bailiff to add equal time onto the opposing team's presentation time. Oralists should always be prepared to cease pleading as soon as their time expires, but may respectfully request additional time from the President to answer an outstanding question or present concluding remarks. It is within the President's discretion to grant or deny such a request, or *proprio motu* authorize additional time. Good oralists will distinguish themselves by summarizing what they actually presented—incorporating key points from their interaction with the bench—rather than presenting a memorized conclusion.
5. **Rebuttals.** Rebuttals have been famously described as a "short, sharp shot." Oralists should not reargue their principal argument. Oralists should directly counter points that respondents have made and point out inconsistencies and important concessions. When

appropriate, rebuttal should also incorporate points raised by judges. Surrebuttals are more difficult, as the oralists must immediately respond and can only address issues raised in the rebuttal; therefore, most oralists will generally take a very safe approach. Brilliant oralists, however, will succinctly attack almost every point and then tie the points together with their case theory and make a very strong last impression. Given the nature of rebuttals, the role of the judge should be to sit back and listen carefully unless an oralist commits a gross blunder or error warranting contradiction from the bench. The best rebuttals and surrebuttals avoid arguments that might tempt judges to interrupt; they are sharp, clear, and palatable.

6. **Knowledge of the Law.** Judges should test the oralist's knowledge of the law, the use of precedent, the law on remedies, and when applicable, the law of the UN including General Assembly Resolutions, the principles of state responsibility, etc. Importantly, judges should also test the oralist's understanding of the sources of international law, including Article 38 of the ICJ Statute. The better teams are likely to have a greater understanding of specific issues in the case than the judges. Therefore, judges should not adopt fixed views about what constitutes a "winning argument." They should listen, ask probing questions, and generally rely on the opposing side to attack legally insufficient arguments.
7. **Role of the judges.** The judges should assess the speakers and decide which team wins the round by taking into account how the oralists used their time, whether they identified the key issues and structured the arguments logically, whether they effectively responded to questions, whether they made an effective conclusion, etc. This requires that the judges allow the oralists to actually present their case. Good judges interrupt and ask tough questions to engage the oralists, but they do so politely and respectfully. Judges should not take over the proceedings and turn the moot into a cross-examination session. Collectively, questions from the bench should not consume more than 25% of an oralist's presentation time. Questions should direct the oralists to address the major issues that would be in contention in the real world as presented by the case and try to persuade the court that their position should prevail. Judges should also give the oralists an opportunity to present their arguments before foreclosing a particular avenue of discussion. Judges should also not reject arguments simply because they did not appear or were given limited treatment in the Bench Memo.
8. **Basis for evaluation.** Oralists should be judged on their ability to make the best argument given the available facts and law. One common mistake of judges is to evaluate the teams based on which side would win on the merits rather than on the advocacy skills of the speakers. Another common mistake is to assess oralists solely on the basis of their speaking skills without giving due consideration to the quality of the arguments. Judges should remember that teams are not responsible for the fact pattern given to them and thus should not be penalized for any imbalance in the problem. Ultimately, it is the responsibility of the bench to judge which oralists were the most persuasive, given the issues, the facts, the law, and the underlying policy questions. Judges should also be careful not to focus only on narrow technical points of law, but instead to probe the issues lying at the heart of the dispute.