

### I. WHO'S WHO IN A JESSUP ROUND

An oral round simulates on oral pleading before the court with two teams against one another, one representing the Applicant State and the other representing the Respondent State. Each team consists of two oralists, and in some cases, a third "of counsel" team member who sits at the table and does not speak during the round.

You will be serving as a member of a panel of judges. Most panels have three judges. The chief judge, who sits in the middle of the bench, is known as the "President." The duties of the President are the following: (1) to signal when the oralists may begin or end their arguments, (2) to answer procedural questions by the oralists ("May I have one minute extra time to finish my answer?"), and (3) to generally maintain order in the proceedings.

There are many titles customarily used in the Jessup Competition. Each oralist is referred to as "Agent" (as opposed to "Counsel"). Therefore, you may hear oralists refer to "my Co-Agent" or "Agents for the Respondent." Judges are typically addressed as "Your Excellency" (as opposed to "Your Honor"). The President, in particular, is typically referred to as "Mister President" or "Madam President."

You will be aided in the courtroom by the Bailiff, who will sit to the side of the bench, facing the Competitors. Prior to the round, the Bailiff obtains the correct spellings of the oralists' names and each team's time allocation (i.e., how long each oralist will speak and how much time has been reserved for rebuttal/surrebuttal). The Bailiff records this information and transmits scoresheets to the judges. At the beginning of the round, the Bailiff will usher the judges into the courtroom, announcing the case and introducing each judge. During the round, the Bailiff is responsible for tracking how much time remains for each oralist's argument, which the Bailiff will indicate by holding up cards for the teams and the bench to see. Cards are typically held up when each of 20 minutes, 15 minutes, 10 minutes, 5 minutes, 3 minutes, and 1 minute remain. In addition, there is a "STOP" card, which indicates the oralist's allotted time has expired.

### II. THE ORDER OF ARGUMENT

Each team has 45 minutes to present its case. The team allocates its time among its first oralist, its second oralist, and its rebuttal (or surrebuttal). Before you enter the courtroom, each team will have indicated to the Bailiff how it wishes to divide the 45 minutes among these three parts.

- The team should (but does not have to) announce its time allocation to the Court at the outset of its argument.

- The team need not determine ahead of time which of the two oralists will deliver rebuttal or surrebuttal. This is often a strategic choice, made during the course of opposing counsels' arguments.
- The Bailiff may inform you that one or both teams wish to videotape the round. We encourage this as a pedagogical tool. Under our Rules, a team may videotape the round only if it obtains the consent of the opposing team and each of the judges. If you decide to give consent, please request that the videographers to respect the decorum of the Court, and not to engage in any behavior (changing tapes, moving around) which might distract any of the oralists or the judges.

The round begins with the President inviting Agents and the audience to be seated, and inviting First Applicant to begin the oral pleadings. The order of presentation in an oral round is as follows:

- (1) First Applicant
- (2) Second Applicant
- (3) First Respondent
- (4) Second Respondent
- (5) Applicant's Rebuttal (unless waived)
- (6) Respondent's Surrebuttal (unless waived)

If Applicant waives Rebuttal (which it may do by informing the Court from the podium when the time for rebuttal arises), then Respondent does not have an opportunity to exercise Surrebuttal. Respondent may in a similar manner waive Surrebuttal after the Applicant presents Rebuttal.

At the conclusion of the final argument, the Bailiff will ask the Agents and audience to rise and leave the room. The judges will then begin deliberations.

When you have finished deliberating and have scored the round, deliver the scores to the Bailiff and instruct the Bailiff to bring the competitors and audience back into the courtroom. At this point, the Court is no longer formally in session; judges may now give the oralists feedback on their performance. During the feedback session, judges may not give the teams any substantive advice (e.g., "You should look up the *Fisheries Jurisdiction* cases," "It would have been more persuasive if you had relied on Article 5 of the Draft Articles on State Responsibility," etc.). Also, Judges may not in any way divulge the contents of the Bench Memorandum. In preliminary rounds, judges may also not indicate which team won or lost the round.

If anything inappropriate happens during the Round, the President should attempt to eliminate the disturbance without unduly influencing the flow of the Round. If an incident occurs, Judges should wait until the Round has concluded if possible, and then instruct the Bailiff to notify the Competition Administrator. The Competition Administrator will evaluate the situation and determine what should happen. Oral-round misconduct is uncommon, but includes:

- Team members at counsel table talking to (or receiving notes from) spectators. This is strictly forbidden. Without interrupting the oralist at the podium, the President should instruct the team to stop the communication.
- Spectators loudly entering or leaving during the round. If repeated movement disturbs the Round, admonish the audience to remain seated for the duration of the round, and show respect for the oralists by quietly observing their arguments.
- Team members at counsel table communicating with the oralist at the podium. This is not permitted unless a special national rule has created an exception. Instruct the team to stop.
- Generally disruptive conduct at counsel table. All team members seated at the counsel table may pass notes and research materials to one another, however they are not allowed to speak or engage in disruptive behavior. Instruct the team to cease its disruptive activity and show respect for the Agent at the podium.

### III. THE ROLE OF THE JUDGE

There are different opinions regarding the role of a judge in a moot court competition. One view is that a judge should ensure that participants complete their entire presentation. Another is that participants are tested only when they are faced with a lively bench that engages in a dialogue with the oralists.

Both views have their merits, and the best benches are able to find a balance between the two. Most observers agree that judges should at least ask questions of a sufficient difficulty and in a sufficient quantity to prevent the competitors from merely reading a rehearsed speech. Participants have worked on the Jessup Problem for several months, and generally appreciate being tested on the material.

Judges must not decide this case on the merits. A judge's purpose is to evaluate the strength of each oralist's overall presentation. You must assess the validity of the participants' arguments, the persuasiveness of their presentation, their poise and advocacy skills, and the thoroughness of their preparation. You will be given a scoresheet which outlines the criteria for the oral presentation.

Please note that oralists are not bound by their written arguments. Written Memorials were submitted in mid-January. As a result of subsequent research (and subsequent oral rounds), oralists revise the substance, style and structure of their arguments. You may occasionally refer to the oralist's Memorial, but be aware that the oralist may no longer rely upon arguments advanced therein.

#### IV. HELPFUL HINTS

##### A. DURING THE ROUND:

- Include a few concise questions that call for a “yes” or “no” answer. Such questions test an oralist's ability to answer directly and clarify the competitor's position on an issue. After committing to a direct answer, oralists should be allowed to expound.
- Feel free to ask “basic” questions, including the nature and sources of international law. Such questions ensure that the oralist understands international law and is not merely reciting memorized details.
- Avoid asking rhetorical questions or making statements.
- Avoid lengthy debates with the oralist. Feel free to press for a direct answer, but try to avoid monopolizing the oralist's time.
- Question each oralist equally. Evaluating the round is easier when all oralists have been equally tested by the bench.
- Avoid extensive questioning about the arguments of an oralist's co-Agent. Each oralist should be generally familiar with the team's entire argument, but is not expected to have a detailed grasp of his/her co-Agent's argument. You may, however, explore inconsistencies between the two teammates' arguments.
- Respect the time limits on oral argument. The President may generally grant an oralist extra time solely for the purpose of answering a specific question or briefly concluding the presentation.
- Remember that many competitors are not native English speakers. If you determine that an oralist is not a native speaker, it may be useful to avoid idiomatic language or asking long, complicated questions.
- Remember that teams come from different countries with a wide variety of legal resources. Some teams are at a disadvantage in this respect. The issues raised in the Jessup problem are intended to be answerable by reference to generally available materials and a careful reading of the facts.

##### B. DELIBERATIONS

At the conclusion of the round and after the competitors and audience have left the room, judges may begin deliberating. Some judges prefer to discuss the round with the other judges, while others do not wish to have their scores "influenced" by the other judges. Either approach is acceptable. Please remember the following:

- Reasonable judges disagree. Don't worry if you score considerably differently than the other judges. "Split benches" are a common outcome in the Jessup.
- You are the only person responsible for your score. While discussions among judges may be useful, do not feel pressured to adjust your scores to match those of the other judges.

- Do not speak about the results of the round once the competitors have returned to the room. As soon as they re-enter, please keep in mind that oralists will immediately try to interpret comments made by the judges.

### **C. AFTER THE ORAL ROUND - JUDGES' COMMENTS TO THE TEAMS:**

After the scoresheets have been given to the bailiff and the spectators have returned to the room, judges may give feedback to the oralists. Please preface comments with a brief introduction by each judge as to his or her background (i.e., any Jessup background, international law background, and current job). Please observe the following rules:

- Do not announce the winner of a Preliminary Round. Teams should not be informed who won the match until all results are announced at the end of the Competition. The oral scores only count for a portion of the total score of the teams, so the better team in the oral round may not be the winner of the match.
- Do not provide substantive feedback or reveal the contents of the Bench Memorandum.
- Do not ask the oralists which school or which country they represent. Oral arguments are anonymous. At the end of the entire competition, you may ask the Administrator to identify the identities of the teams you judged.
- Please keep your comments brief. The Competition is run on a tight schedule. Students may need to argue shortly after the Round, or the Administrator may need the room for another round.

**Do not confess ignorance of the subject matter of the Problem.** Instead, compliment the oralists on their preparation.