



# HOW TO MOOT: PREPARATION AND PERFORMANCE

JAMES BALLANCE

This is a personal reflection on how to prepare for a moot and how to moot. I hope it may be useful to anyone mooting for the first time, or others reflecting on their mooting strengths and weaknesses. It is in no way meant to be prescriptive.

## Preparation

It may sound (and, indeed, is) obvious, but preparation starts with the moot problem. You must read the problem carefully and thoroughly, preferably several times. A moot is an appeal on a point of law: you therefore need to establish the facts in your mind, clarify what law was applied, and determine the question of law being argued. Ask yourself the following questions:

- which side am I for?
- what facts were decided by the judge?
- are any facts vague/uncertain/unstated?
- what law was applied by the judge?
- what rule or principle was applied?
- what authorities were relied on by the judge?

If authorities are referred to, reading them is as crucial as reading the problem itself. Authorities will have been carefully chosen to give you, the mooter, legal ammunition. You'll need to use that ammunition to make your argument. Remember, too, that a moot is legal argument, so avoid making an inevitably speculative factual argument. Legal argument is about what legal principle or rule should have been applied by the judge to the facts he found. These may be arguments based on precedent—that the court is bound to follow an earlier case; of construction—that a leading passage means X rather than Y; or of analogy—that the case follows or differs from an earlier precedent. It may sometimes be appropriate to make an argument of general principle, but successful mooting requires use of your authorities.

Don't, however, neglect to think about the justice of your case. You should have read the moot problem knowing which side you were arguing for. Why should they win the case? What is it about the facts that make you think it would be just for them to win? Or unjust if they lost? Try to encapsulate this in a single phrase.

The final point on preparation concerns notes. I recommend leaving this until the night before or the day of the moot, so they are fresh. You will need a running order, which must be logical.

## Performance

Nerves are normal, and in fact beneficial! Most mooters find nervousness gives energy, and that can be used to make your performance more engaging. Don't let nervousness translate into talking too quickly. Your pace of speaking should be steady, so the judges can take notes, but not too laboured.

You may need to think about how you use your voice. Good delivery means (at least) three things. First, your tone must be varied. The pitch at which you speak need not always be the same, or follow the same pattern: varying these keeps your audience interested. Secondly, you will need to use emphasis. Emphasis can you help you point out your structure ("I have *three* points to make") or to highlight that you are making a particularly important argument. Finally, you need to be resonant enough to fill the room, so that you're audible. All these can only really be learnt by practice.

Mooting, like any advocacy, is a balancing act. You need to balance preparation of what you say against fluency and persuasiveness of delivery. Reading a script is neither fluent nor persuasive. But you need to have some key words, and key phrases, lodged in your mind, in order to be succinct and to the point when speaking freely from notes. You also need to practise—perhaps this will be talking to yourself at home, or running ideas past a friend. You will want to have already spoken about the case, aloud, before getting on your feet. Balancing fluency and preparation takes practice.

The final point to make concerns judicial interventions—ie questions from the bench. Judges will interrupt you because something bothers them about your argument. That suggests they may be at least partly persuaded by your position. A question is a golden opportunity to respond to a challenge to your argument, and to persuade the questioner that your position is defensible on that point. This means you need to do two things: (1) try to anticipate what questions may be asked, and (2) answer the question! Answering the question directly shows good preparation, an understanding of the subject matter, and the ability to think and speak on your feet. Getting it right is a crucial step towards successful mooting, and successful advocacy. ■

James was the winner of the 2009 Gray's Inn Moot competition.