



**Boston University Law School**

# **Moot Court Manual for Upper-Class Competitions**

**2024-2025**

Boston University School of Law  
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## **Introduction**

An appellate advocate prepares and delivers written and oral arguments to persuade a court to interpret and apply the law in a particular way in a specific case. The Moot Court Program at Boston University Law School provides practical experience in appellate oral advocacy to complement your classroom instruction. As a first-year student, the Esdaile Program introduces you to the role of an appellate advocate in a non-competitive, supportive atmosphere. In your second year, you may choose to compete in the Edward C. Stone Moot Court competition and, if invited, in the Homer Albers Prize competition. Second- and third-year students also compete in various intermural competitions.

This Manual also serves as a reference for BU Law's internal upper-class moot court competitions, and may also serve as a useful reference for intermural moot court competitions. Therefore, we suggest that you keep your Manual after Stone ends so that you may refer to it later.

Please note the following rules which apply to *all moot court programs* at Boston University School of Law:

1. You may not attend an oral argument of your case before you argue.
2. Plagiarism violates the rules and regulations of the Law School and is unprofessional and unethical. All suspected instances of plagiarism, as defined in the law school's Disciplinary Regulations, will be referred to the proper authorities. Plagiarism includes copying the text from distributed materials without proper attribution.
3. The brief your team submits is a joint effort. Team members must cooperate.
4. Deadlines are firm. No exceptions! Do not wait until the last minute to merge your briefs, create your Table of Contents, or email your briefs. Computer or internet connection problems will not excuse lateness.

## **Upper-Class Moot Court Competitions**

### **Descriptions of the Competitions**

The Edward C. Stone Moot Court Competition is open to all second-year students. Held during the fall semester, the Stone Competition is a prerequisite for participation in the Homer Albers Prize Moot Court Competition, as well as nearly all intermural moot court competitions. Participants in the Stone Competition work in teams of two on a two-issue brief, but are scored separately. Attorneys and faculty preside over Stone oral arguments, along with third year student directors and members of the Law School's moot court teams. Interested second year students should watch for announcements about the Stone Competition in early September.

The Homer Albers Prize Moot Court Competition crowns Boston University's intramural moot court program. In the spring of their second year, the top advocates from the Stone Competition vie for the Albers Prize. Participants argue both sides of case during two preliminary rounds. Following those preliminary rounds, the eight teams with the highest scores are seeded for a third elimination round that is judged by law school faculty. After that, participants advance through additional elimination rounds. The Albers Competition culminates in a final argument, presided over by a distinguished panel of judges. The Competition awards prizes for Best Oralist, Best Team, Second Team, and Best Brief.

Interscholastic Competitions: The Law School enters teams in numerous national moot court competitions each year. Any student who participated in the Stone Competition may apply for membership on the Law School's intermural teams, but Albers participants have priority for available slots. The Law School also has participated in the Jessup International Law Moot Court Competition, the Vis International Commercial Arbitration Moot, and various other specialized competitions, typically organized through particular classes or by particular alumni. Participation in the Stone Competition is a pre-requisite for 3L participation on any Law School-sponsored moot

court team, with the exception of Jessup and the Vis. To participate in Jessup, students must enroll in the Problem Solving in International Law seminar. To participate in the Vis, students fill out a separate application in the spring.

**NOTE: Writing a brief for an intermural competition does NOT satisfy the school's upper class writing requirement.**

### **Administration of Intramural Competitions**

Moot Court Directors: Student Directors administer the Stone and Albers Moot Court Competitions. Each program has separate Directors who write the moot court cases and administer the program. All participants in the Stone Competition are eligible to become Moot Court Directors for the Stone Moot Court Competition; only Albers participants may serve as Albers Directors. Directorships provide valuable experience in legal research and writing, as well as administrative training. All Directors receive three academic credits for the fall and, upon successful completion of a moot court problem, may satisfy the school's upper class writing requirement. For more information, contact Jen Taylor McCloskey at [jataylor@bu.edu](mailto:jataylor@bu.edu).

## **Getting Started**

### **The Record**

Stone and Albers take place in fictional jurisdictions. Each team receives a record in a hypothetical case that has already progressed through a lower court proceeding, such as a trial or a summary judgment motion, and is now on appeal. The record consists of a lower court opinion containing the facts and procedural history of the case, as well as a discussion of the legal issues involved in the appeal. The record typically also contains other documents such as deposition transcripts, affidavits, interrogatories, diagrams, or other relevant documents and evidence. Appellate courts do not retry the facts of the case. Instead, appellate courts decide issues of law and are limited to reviewing matters contained in the record.

Read your record carefully and thoroughly before you begin research. First, closely analyze the facts of your case. Cull from the record the key facts giving rise to the controversy. Your understanding of the law will ultimately depend on your familiarity with the facts. Once you have identified the essential facts, consider them in light of the legal issues in your case. Do not begin your research until you have determined the relationship between your facts and your issues.

### **The Research**

Once you have extracted the key facts and law on your issue, begin your legal research. You should be familiar with the research tools available from your Lawyering Skills course. The Library is available to assist you, and may offer refreshers other programming to refresh your skills. In researching, remember that you must prepare both offensive and defensive arguments for your client. Offensively, you present arguments that favor your position. Defensively, you anticipate and rebut arguments your opponent will make for the other side. Although both your written and oral presentations should be primarily offensive, your efficacy as an advocate depends on your ability to anticipate opposing arguments.

When conducting research, remember the following basic principles:

1. **Read** the cases to which courts, treatise writers, and law review articles refer. Often the significance of a case varies in different contexts. Never accept someone else's reading of a case without analyzing it yourself.
2. **Organize** your research. Research each aspect of your issue fully before researching another area. Keep a record of your research so that you do not waste time re-reading materials.
3. **Shepardize or Keycite** every case up to the day of your oral argument. You do not want to rely on a case that has been reversed, overruled, vacated, or weakened by more recent decisions.

### **Writing the Appellate Brief**

Appellate briefs differ from the brief you wrote in your second semester of Lawyering Skills. In that brief, you were likely applying established law of a single jurisdiction to the facts of the case. In contrast, in an upper-class appellate brief, the law is typically not established: you may be confronted with a circuit split, a new trend in the law, or an allegedly outdated approach that the court is considering changing. Your job is to persuade the court to rule in your client's favor, typically first by convincing the court that it should adopt a particular position of law or change a legal standard, and second by applying your preferred (and in the alternative, sometimes, your less-preferred) legal test or approach. Your brief should be forceful and positive, but not unduly argumentative. Although you must anticipate and address your opponent's arguments, do not make your opponent's case. In writing your brief, remember **"show, don't tell,"** and that **every sentence in your brief should advance your case.**

Moot court cases present arguments in a variety of postures. The facts of your case will likely raise an issue that has not been previously litigated in your fictional jurisdiction. If so, your task is to convince the court that the reasoning of analogous cases in other jurisdictions support your position on the issue. In other cases, you may face a series of adverse precedents. Even if cases



appear to hold directly against your position, you can often distinguish adverse precedent on the law and the facts. In the alternative, you may find cases both supporting and opposing your position. In that case, your task is to convince the court to follow the favorable line of cases. You may have to persuade the court to change the law, or to keep existing law, particularly where precedent is old and does not reflect trends. You can argue that the law is no longer appropriate or desirable, or that it remains the best approach.

In addition, your brief introduces your case to the court. Give the judges a favorable first impression. Misspelled case names, typographical errors, incorrect citations, and misleading summaries of fact or case analyses detract from the strength of your argument. Prepare your brief with great care. You want the judges to read your brief, not proofread your brief.

### **Format**

Brief formats vary from jurisdiction to jurisdiction. Your competition rules will dictate most of the formatting specifics. In Stone and Albers, you should cite cases to the regional (West) reporters rather than a state jurisdiction's official reporter.

#### **Page Set-Up and Limits**

*Word Limits:* Stone and Albers Moot Court briefs have a word limit for the argument identified in the competition rules. In real life, courts limit the length of briefs and impose sanctions for exceeding the limit. Remember, the word count is the maximum length, not the minimum. If you can make your argument in fewer words, do so. The other sections of the brief have no word count or page limits, although you should always try to be as concise as possible and to adhere to the suggestions laid out in this Manual.

*Spacing:* The body of the Proceedings Below, Statement of the Case, Summary of Argument, Argument, and Conclusion should all be double-spaced. The Questions Presented, Table

of Contents, and Table of Authorities (and the Constitutional and Statutory Provisions, if applicable) should be single-spaced, with a space between each heading or item (see samples).

### Pagination

Number the pages on which the Questions Presented, Table of Contents, and Table of Authorities appear with consecutive, small Roman numerals (i, ii, iii, etc.). Number the remaining pages with consecutive, Arabic numerals (1, 2, 3, etc.). Number appendices with both letters and numerals (B-1, B-2, etc.). Do not wait until the last minute to figure out how to change the pagination style from page to page.

### Cover and Title Page (see example below)

1. Caption your cover page at the top with the name of the court to which the appeal is taken, such as “Stone Supreme Judicial Court” or “United States Court of Appeals for the Fourteenth Circuit.” Place the docket number (i.e., ST-20-01; do NOT use your team number in the caption) directly below the court name. You will receive the docket number when you receive your moot court Problem (it will be in the caption of the lower court opinion).

2. In the center of the page, place the parties’ names and designations. Name the party who is appealing first. Designations depend upon the procedural posture of the case. Parties to an appeal are “Appellant” and “Appellee.” Parties to a writ are “Petitioner” and “Respondent.” Be sure to use the correct designations. **You should copy the caption from the order granting appeal or writ of cert. at the end of the lower court opinion in your moot court Problem.** Use of the full designation (e.g., “Plaintiff/Appellee”) is optional. The full designation tells the reader the procedural history of the case at a glance. If you use the full designation, do so only on the cover and title page.

3. Beneath the names of the parties, note the procedural status of the case, such as “On Appeal from the Stone Appeals Court.” Note that cases to the Supreme Court are identified as on

writ to the court the case came from, e.g., “On Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit.” Beneath the procedural statement, indicate on whose behalf you are submitting the brief. Use your client’s designation, not name. For example, write “Brief of Petitioner,” not “Brief of Michelle Wong.”

4. Place your team number in the lower right-hand corner of the cover and title page. DO not include your names.

5. Students will be instructed to exchange the final draft of their brief with the team they are scheduled to argue against.

**Sample Cover Page**

COMMONWEALTH OF STONE  
SUPREME JUDICIAL COURT  
NO. ST-16-01

This is where the name of the court you are before and your Docket Number go.

TED MOSBY,  
APPELLANT  
v.  
COMMONWEALTH OF STONE,  
APPELLEE

This is where you write the parties names and CURRENT designations (Petitioner/Respondent or Appellant/Appellee).  
  
Look at the caption at the end of your Problem if you aren't sure which to use.

On Appeal From The Stone Appeals Court

BRIEF FOR APPELLEE

This is where you tell us how the case got here if on appeal (on writ of cert, you tell us it is on a writ "to the [court that heard the appeal]").

This is your team number – NOT your docket number. This must appear on all copies of your brief.

ST-16-01-R6

### Questions Presented

The Questions Presented follow the title page and set forth the **question of law and material facts** presented by your case. The Questions Presented should present your case in a favorable light. Do not simply copy the questions from the order granting the appeal. Instead, use your Questions Presented to set the tone of your brief. By carefully drafting your questions to emphasize certain facts, you can control the logical development of your argument.

Phrase all Questions Presented so that they may be answered with a simple “yes” or “no” (preferably “yes”), and so that they are all answered the same way. Above all, keep the questions **brief and simple**. No one should have to read the questions twice to understand them. For example, if your client seeks to exclude evidence because of a Fourth Amendment violation, the question presented might read: “Did the lower court err in failing to exclude evidence seized by the police because the police failed to obtain consent for the search from the residence’s occupant?” Conversely, if you represent the prosecution, your question presented might read: “Did the lower court properly admit the evidence seized by police pursuant to the plain view exception to the Fourth Amendment’s warrant requirements?”

### Table of Contents (see example on next page)

Prepare your Table of Contents last, because it lists the various parts of your brief and corresponding page numbers. The Table of Contents includes the argument headings and sub-headings that appear throughout the argument section of your brief. Single space *within* the headings; double space *between* the headings.

**Sample Table of Contents**

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I. THE TRIAL COURT CORRECTLY DENIED THE DEFENDANT’S MOTION TO SUPPRESS THE EVIDENCE USED AGAINST HIM BECAUSE THE INVESTIGATIVE STOP AT WHICH THE EVIDENCE WAS OBTAINED SATISFIED THE FOURTH AMENDMENT’S REASONABLE SUSPICION REQUIREMENTS. . . . . 13

    A. Deceptive drug interdiction checkpoints are constitutional when they generate a reasonable suspicion that motorists at the checkpoint are engaged in criminal activity. . . . . . 14

        1. To further a general crime control purpose of interdicting illegal drug trafficking, law enforcement officers may conduct Terry stops of motorists based on an individualized suspicion of criminal activity. . . . . 15

        2. Once a deceptive drug interdiction checkpoint generates a reasonable suspicion that a motorist is engaging in illegal drug trafficking, law enforcement officers may conduct a Terry stop of that motorist at the deceptive checkpoint. . . 16

B.	<u>The Albers deceptive drug interdiction checkpoint satisfied Fourth Amendment requirements because the parameters of the checkpoint generated the necessary reasonable suspicion to justify a Terry stop.</u>	18
1.	Motorists who entered the Albers deceptive checkpoint were behaving consistently with criminals attempting to avoid law enforcement in a high crime area.	18
2.	The time and location of the Albers deceptive checkpoint's operation substantially increased the likelihood that motorists at the checkpoint were engaged in criminal activity.	22
C.	<u>Officer Hurley reasonably suspected the Defendant to be engaged in criminal activity when the Defendant entered the Albers deceptive drug checkpoint.</u>	25
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C.	<u>The Defendant's Sixth Amendment right to counsel had not yet attached, since he was not charged with a crime prior to his checkpoint detention.</u>	38
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Your Table of Contents provides more than the location of the sections of your brief, however; it also maps the structure of your argument. The argument headings in your Table of Contents are the reader's first introduction to your substantive points. Many judges carefully examine the Table of Contents to understand the focus of your argument. Through the headings, the reader should be able to absorb quickly your argument. Keep your headings short, to the point, and connected in logical progression.

Table of Authorities (see example on next page)

The Table of Authorities lists the authorities you cite in the brief and the pages on which you cite them. Do not include pincites as part of the citation. For authorities cited five times or more, use "passim," meaning "here and there," rather than listing all of the page numbers on which the authorities appear. All citations in your brief and in your Table of Authorities must conform to the latest edition of the Bluebook.

Subdivide the Table of Authorities as follows, in this order:

1. Cases: List cases alphabetically by first party in the case name. You may combine federal and state cases or list them separately. You may also list United States Supreme Court cases separately if your brief is to that court.
2. Constitutional Provisions: List federal constitutional provisions first, in numerical order, then state constitutional provisions in numerical order.
3. Statutes: List federal statutes first, in numerical order, then state statutes alphabetically by state and in numerical order within each state.
4. Legislative Materials: Includes legislative history such as committee reports.
5. Books and Periodicals: Include all secondary sources cited, such as restatements, law review articles, treatises, and other books, in alphabetical order by author.



## **Sample Table of Authorities**

### **TABLE OF AUTHORITIES**

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### Jurisdictional Statement

You need not include a Jurisdictional Statement in your Stone or Albers competition briefs, but you must include a Jurisdictional Statement in Interscholastic upper class competitions when applicable. All federal courts and some state courts require that the party invoking jurisdiction cite the statute or constitutional provision allowing the appeal. In federal courts, the Jurisdictional Statement also informs the court whether the appeal is timely.

### Proceedings Below (see example on next page)

The Proceedings Below section explains in clear, short sentences the nature, history, and procession of the case up to this point. You can adequately describe the Proceedings Below in 250 – 350 words, unless the proceedings were exceedingly complicated. If there are published lower court opinions in your case, which may be the case in an interscholastic competition, cite them. If the lower court opinions are unpublished, as is the case in Esdaile, Stone, and Albers, include the following information about the case:

1. Type of action, such as tort
2. Original party designations (e.g., David Garcia, the Plaintiff below)
3. Name(s) of the court(s) below in which the case was heard
4. Trier of fact in the trial court (judge or jury)
5. Name(s) of the presiding judge(s) in the court(s) below
6. Relevant dates
7. Disposition in the court(s) below
8. Jurisdiction of the court(s) below, if not in your jurisdictional statement.

In addition, if the court to which you are appealing has procedural rules for perfecting appeals, comply with those rules. Finally, you should cite to the record below, but may use the shorthand format [R. #] to do so (see example).

## **Sample Proceedings Below**

### **PROCEEDINGS BELOW**

On March 14, 2004, Albers State Police Officer Hugo Hurley ("Hurley") arrested Jack Sheppard ("Defendant") for knowingly possessing with intent to distribute more than 100 kilograms of marijuana in violation of 21 U.S.C § 841(a)(1) (2000). [R. 1].

At a pre-trial motions hearing in the United States District Court for the Eastern District of Albers, the Defendant moved to suppress the evidence obtained from the seizure, arguing that the deceptive drug interdiction checkpoint and subsequent search of his vehicle violated his Fourth Amendment rights. [R. 4]. The Defendant also claimed that the police officers at the checkpoint violated his Fifth Amendment privilege against self-incrimination by eliciting statements from him without first issuing Miranda warnings. [R. 4].

The trial court denied the Defendant's motion to suppress the evidence obtained while he was seized at the checkpoint, finding that the State had not violated the Defendant's Fourth or Fifth Amendment rights. [R. 4]. At the conclusion of the Defendant's trial, the jury found him guilty and sentenced him to eight years imprisonment. [R. 2]; see 21 U.S.C. 841(b)(1)(B)(vii) (2000).

The United States Court of Appeals for the Fourteenth Circuit upheld the trial court's decision, denying the Defendant's motion to suppress the evidence from the search. [R. 14]. The Appeals Court held that the seizure did not violate the Defendant's Fourth Amendment rights because deceptive drug interdiction checkpoints are suspicion-based. [R. 14]. The Appeals Court also affirmed the trial court's ruling that the Defendant was not in custody and, thus, both the marijuana and Defendant's statements were properly admitted into evidence. [R. 13].

The Defendant appealed his conviction to this Court on the grounds that both lower courts erred in denying his motions to suppress. [R. 2]. On January 20, 2006, this Court granted the Defendant's request for appellate review to consider the Fourth, Fifth, and Sixth Amendment claims raised below. [R. 19].

### Constitutional Provisions

Include this section in your brief if your case involves a constitutional question. If the relevant portion of the constitutional provision is short, include the entire text in this section. If the constitutional provision is lengthy, provide the text in an Appendix at the end of your brief; in the Constitutional Provisions section. Mention the provision and refer the reader to the Appendix.

### Statutory Provisions

If your case involves a statute, regulation, or order, include this section in your brief. Reproduce short statutes within the body of the brief. As with Constitutional Provisions, provide the text of longer statutes in an Appendix.

### Statement of the Case

Unless your case turns on a purely legal issue, the Statement of the Case is a critical section of your brief. The judges will react intellectually and emotionally to your case upon reading the Statement of the Case. A judge who is favorably disposed to your position after reading the facts may accept your legal arguments more readily. Keep in mind a few rules when preparing your Statement of the Case:

1. **Be accurate and complete.** You have a duty to your client to present the facts in a favorable light, but you have an ethical duty to state the facts accurately and truthfully. If there is conflicting evidence, give both sides' versions, while trying to minimize the adverse testimony. Both parties will submit Statements of the Facts, so the judges will notice discrepancies. A judge who notices that you omitted facts -- especially damaging facts -- will not trust your argument. When stating facts, always cite to the record (e.g., [R. 5]).

2. **Be organized.** Start with any necessary background information and then present your facts **chronologically** unless you have a specific reason for not doing so.

3. **Be persuasive.** Emphasize those facts that help your case. Use clear, active, forceful language, but not argumentative or judgmental language; remember that you are not arguing before a jury. Let your facts speak for themselves. Do not add artificial emphasis or value-laden words, such as a “tragic” situation or a “horrible” accident. Show using persuasive details, concrete nouns, and evocative verbs rather than excessive adjectives and adverbs.

4. **Be brief.** Although there is no strict page limit for the Statement of the Case, you should be able to present all essential facts on both issues in 500-700 words, although if your case is very fact-intensive, your Statement of the Case may be longer. If your case has particularly complex facts and your Statement of the Case is lengthy, you may use headings to separate the facts into their respective issues.

#### Summary of Argument

The Summary of Argument sets out your major legal points. The summary also provides the court with a handy synopsis of your arguments. Many judges rely on the Summary of Argument to refresh their memories right before oral argument.

Your Summary of Argument should not exceed approximately 200-300 words for each issue in the two-issue brief. As with other sections, shorter is usually better! State your major points succinctly and do not cite authority unless your argument turns on a key case, statute, or constitutional provision. Keep your paragraphs short, your sentences flowing, and your language punchy. Use your headings as a guide. Above all, be persuasive and positive.

#### Conclusion and Signature

In a one paragraph conclusion, tell the court the disposition you are seeking: affirmance, reversal, or remand. You may ask for relief simply “on the basis of the argument presented above” or “for all the foregoing reasons.”

Many counsel request “all other relief that is just and equitable,” because hidden issues could influence the result. You may include such a request. Finally, submit your brief respectfully to the court on behalf of your client. Our programs require anonymity. As such, you may simply write “Attorney 1” and “Attorney 2,” or “Attorney for Issue 1” and “Attorney for Issue 2.”

### **The Argument**

The Argument section is the heart of your brief. To structure your argument, begin with a **contention**, support your contention with the applicable **rule**, **explain** the law (case law, statutes, and other legal authority), **apply** the law to your facts, and draw a **conclusion**. Each issue and sub-issue should start with a contention about your case, stated in terms of the facts of your case. For example, if your client seeks to exclude evidence because of a Fourth Amendment violation, your contention might read: “This Court should exclude the evidence seized because the police failed to obtain consent for the search from the residence’s occupant.” A sub-issue contention in that brief might read: “Petitioner’s roommate did not have authority to consent to the search of Petitioner’s bedroom.” After stating a contention, provide the court with a discussion of supporting cases and other authority. Do not present the court with a list of cases or an objective discussion of applicable case law. Instead, synthesize the cases and explain to the court why these cases support your contention. After discussing the rule and explaining the law, apply the law to your case. For example, you might write: “As in State v. Johnson, Petitioner kept his bedroom locked and did not allow his roommate to enter his bedroom.” Finally, conclude with a restatement of your beginning contention. Always remember, your goal is to persuade, not to explain. **Every sentence of your argument should advance your case.**



## General Principles

1. **Be organized.** After you finish researching and before you begin writing, prepare a thorough outline. Use your argument headings and sub-headings as the framework of your outline. Organizing will help you to identify your strongest arguments and place them prominently.

2. **Be logical.** Your arguments must proceed logically, with each point building on the foundation established by the previous points. Good reasoning makes your case.

3. **Be specific.** You are not writing a law review article; you are writing an appellate brief. Do not provide the court with a general discussion of “the law.” When you cite propositions from other cases, be sure to relate them to the facts of your case. Point to specific facts in the record that support your contentions. Show the court that based on the facts of *your* case, the court should rule in your favor.

4. **Be clear.** Keep it simple. In general, avoid long string cites, block quotes, and complex sentences. Clearly state the appropriate *standard of review* at the beginning of each issue and discuss the issue in terms of that standard. The standard of review is the standard that an appellate court uses to review the decision of the court below. For example, the court may review the lower court *de novo*, or reverse only if the lower court clearly erred or abused its discretion.

5. **Be assertive.** Your job is to advocate zealously on behalf of your client. Your brief should reflect your zeal. Write forcefully, use crisp sentences, **avoid the passive voice**, and emphasize the result you want the court to reach.

6. **Be prospective.** The court’s decision will affect more than just your client’s interests. Show the court why a ruling in your favor makes sense not only for your client, but also for future litigants and society in general.

7. **Be critical and edit.** No brief is ever perfect. There is always an argument you could have made, a case you could have cited, or a counter-argument you could have addressed. If you

*write and rewrite* your brief, however, you will construct a better product than if you slap your brief together at the last moment. Have your partner read the brief with a critical eye. Watch out for writing flaws such as passive voice, overuse of pronouns, and overly complex sentences.

8. **Be persuasive.** Your goal is to persuade the court to rule in your client's favor. Every section and every sentence of your brief must advance your case. Look at each sentence critically to determine whether the sentence is helpful, hurtful, or neutral. Only keep those sentences that help your case. The court should know immediately from reading any paragraph in your brief which side you represent. Do not make your opponent's arguments.

### Headings

Use headings to divide the points in your argument. Headings contain both facts and conclusions.

1. **Major Headings:** Major headings state conclusions that you want the court to reach. Generally, major headings represent short answers to the Questions Presented. Thus, most Esdaile Moot Court briefs should contain two major headings, one for each issue. If your issue logically divides into two or three major headings, however, you may include more than two major headings in your brief. Label your major headings with Roman numerals. Write the headings as complete sentences, using capital letters throughout. Do not indent major headings.

I. THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONER SUFFERED NO PREJUDICE BECAUSE THE PRESENCE OF COUNSEL WOULD NOT HAVE AFFECTED THE OUTCOME OF THE PROCEEDINGS AND THE INS PROVIDED A FULL AND FAIR HEARING.

2. **Sub-headings:** Sub-headings provide the court with the reasoning underlying the conclusions stated in your major headings. Sub-headings should progress logically. Indent your sub-headings and label them with capital letters. Underline the text of sub-headings and use upper- and lower-case letters as usual.

- A. Petitioner's Fifth Amendment due process rights were not violated because the INS held a fair and unprejudiced hearing.

3. **Sub-sub-headings:** Sub-sub-headings provide even finer discussion of the points made in the sub-headings. Indent sub-sub-headings and label them with Arabic numerals (1, 2, 3 etc.).

Do not underline the text of sub-sub-headings, and use upper and lower case letters as usual.

1. Petitioner had an adequate opportunity to be heard at the INS hearing.

### Use of Authority

Provide authority to support all of the points in your arguments. Be aware of the nature of the type of authority you cite.

1. **Stare decisis:** *Stare decisis*, or precedent, guides every court. Nevertheless, courts do reconsider their precedents, especially when society's needs demand that the court re-evaluate the propriety of an established doctrine. If the precedent in your jurisdiction hurts you, show the court how a change will benefit not only your client, but society at large. Conversely, many precedents remain intact because they make good sense. If the law supports your position, argue that the law should remain unchanged and show why. Pay close attention to the identity of your court. Courts cannot overturn decisions of higher courts within their jurisdictions.

2. **Binding and Persuasive Authority:** Not all authority is equally persuasive. Be sure you understand the difference between binding and persuasive authority.

### a. Federal Law in Federal Courts

United States Supreme Court decisions bind all United States Courts of Appeals and federal district courts. The Supreme Court is not bound by its own decisions, but the Court gives considerable weight to its previous decisions under the doctrine of *stare decisis*; the Court is reluctant to overturn its own precedent. The decision of a United States Court of Appeals binds all federal district courts within that circuit. A federal Court of Appeals decision does not bind other federal Courts of Appeals and their respective district courts, but is persuasive authority. Federal district courts decisions have some persuasive value in other federal district courts, particularly if the court or judge rendering the decision is highly regarded.

### b. Federal Law in State Courts

United States Supreme Court decisions bind all state courts on questions of federal law. Federal appeals court and district court decisions on federal law are persuasive in state courts. Except for habeas corpus proceedings, the only federal court that can review state court decisions is the United States Supreme Court.

### c. State Law

A state's highest court binds both state and federal courts on state law issues. When federal courts rule on matters of state law, they look to the decisions of the state's appellate courts for guidance. Federal court decisions on matters of state law are persuasive to state courts, but not binding.

3. **Dicta:** Dicta are statements a court makes in rendering a decision which are not essential to the resolution of the case. Dictum is not binding, but it often shows the direction the court is likely to take. Be selective in using dicta. Do not misrepresent dictum as a holding.

4. **Quality of Authority:** Always consider the quality of the authority you cite. Some courts have reputations as specialists in certain fields. For example, the Second Circuit is highly respected

in securities matters, while New Jersey courts are leaders in products liability cases. Likewise, some treatises and articles are written by more prominent scholars.

Some states resent citations to outside authority, but in Stone and Albers, as you are in a fake jurisdiction, you must use outside authority. You will learn in your practice what your local courts prefer. For your moot court briefs, you may cite all authorities available in any Boston University library, as well as authorities available on the Internet and on services like Lexis and Westlaw.

### **Brief-Writing Tips**

1. **Allocate your time.** Do not sacrifice writing for research. Complete all your research within a few days. Spend the bulk of your time writing and rewriting.

2. **Coordinate with your partner.** Do not advance arguments that undermine or conflict with your partner's position, unless you make clear that your argument is an alternative approach.

3. **Create a neat, consistent brief.** Briefs that look good impress judges. Make sure your brief looks like one continuous document, not two separate halves thrown together right before the deadline. Your Questions Presented, argument headings, etc., should be in the same format for both issues. For example, if one Question Presented begins with the word "Whether," the other question should begin with "Whether," not "Did." Also, **proofread carefully**; a computer spell-check program will not catch all errors. Do not hand in a brief with typographical, grammatical, or spelling errors. A sloppy brief predisposes judges against you even before they get to the substance of your arguments.

4. **Plan in advance.** Avoid a last-minute scramble to submit your brief. Do not expect to zip into the law school, combine your argument with your partner's argument, and whip up a Table of Contents and Table of Authorities. Combining the briefs takes time, and should not be done at the last minute. Courts do not accept late briefs and neither does the Law School.

### **Special Note on Computers**

*Computer malfunction is not an excuse for lateness!* Early in the process, find out what word processing system your partner uses. If your partner's system differs from yours, arrange even further in advance to convert one part of the brief into the other format with adequate time to correct any resulting formatting problems. Do not wait until the night before your brief is due to combine your portion of the brief with your partner's portion. Back-up your document frequently to avoid losing your brief in the event of a computer problem. Internet connection and email problems may also arise. Therefore, do not wait until the deadline to email your brief. We understand that computers may malfunction through no fault of yours, but we will not accept computer problems as an excuse for a late brief. Allow time to remedy computer errors.

## **Oral Argument**

### **General Principles**

1. **Be familiar with your case.** While appellate judges often know the legal principles involved, they may not have had time to familiarize themselves with the facts of your case. Judges, therefore, may ask you to point to specific facts that support the result you advocate. Your knowledge of the facts and the reasonable inferences they support is essential.

Although your case is built on the facts, you must also cite authority for your position. In oral argument, judges may ask you to explain why a particular case supports your position or why seemingly opposing authority does not undermine your position. Read and re-read every major case cited in your brief and your opponents' brief so that you are prepared for questions about specific cases. If you mention a case in your oral argument, you should be familiar with its facts.

Generally, in oral argument, you may cite only authorities cited in your brief or your opponents' brief. If you discover a case that was decided after you submitted your brief, however, you may use the case. You must inform both opposing counsel and the court before using such authority. Be sure to bring copies of the new case for opposing counsel and the judges.

2. **Be selective.** You typically have only fifteen minutes to present your case. Address only the major points in your brief. Confine your prepared argument to a few key issues, but be prepared to discuss all of your arguments. You cannot anticipate all of the judges' questions.

3. **Be organized.** Prepare an outline for your argument and notes to supplement the outline. Once the questioning begins, you may lose track of the focus of your argument. An outline will bring you back on track.

If you feel the need, you may bring an outline of your arguments to the podium. If you bring more than one sheet of paper to the podium, however, the papers may distract you or the court. A good method is to staple your outline on the inside of a folder. You may also want to write out your

opening and closing sentences. Do not, however, write out your entire argument and ***do not read your argument to the bench***. Reading will bore and distract the judges, rendering your argument ineffective. Oral argument is a dialogue with the court. Your outline should allow you to start your argument, to get back on track if the judges detour you, and to close with a flourish.

4. **Be Respectful.** Allow the judges to interrupt you, but **do not interrupt the judges**. Answer all questions respectfully. Do not get defensive or argue with the bench. Remember, the judges who hear your argument are the judges who will rule on your case. You want them to rule in your favor.

### **The Argument**

Your moot court argument will take place in one of the courtrooms on the fifth or sixth floor, or in a law school classroom. Visit your assigned room before your argument so you feel comfortable in it. Remember, however, that you may not attend earlier arguments of your case.

#### **Courtroom Etiquette**

Judges expect attorneys appearing in court to dress in professional attire. All students should wear suits to the oral argument. Arrive at the courtroom in time to get organized. When you enter the courtroom, sit at the proper table. As counsel face the bench, Appellants or Petitioners sit on the left, Appellees or Respondents on the right. The clerk will convene the court and announce that the judges will enter. Rise when the judges appear and remain standing until given permission to sit.

Always stand to address the court, even to give your name. At the beginning of the argument when the clerk asks if you are ready, you must stand to give your response. In the courtroom, if your mouth is open, you should be standing.

Stand at the podium to deliver your argument. Maintain eye contact with the judges throughout your argument. In addition, maintain the formality and decorum appropriate in a



courtroom. Do not use slang and avoid excessive hand gestures. Never use the first person, even in your response to questions. Do not say “I believe” or “we contend”; just state your position.

**Do not interrupt the bench.** You must be extremely deferential to the judges. Always address the judge to whom you are speaking as “Your Honor.” The judge’s associates may be referred to by name -- “Judge Lopes” or “Justice Goldberg” -- or by designation, such as “The Chief Judge.” Refer to your partner by name, or as “my colleague” or “my co-counsel.” When mentioning your adversaries, use their names or their designation, such as “Counsel for the Appellee.”

Sit quietly and attentively while the other participants present their arguments. If you must communicate with your partner, write notes (and pass them quietly) rather than whispering.

#### Mechanics of the Argument

Each advocate will receive about fifteen minutes to argue (competition rules address exactly how you may divide time). Appellants (or Petitioners) argue first. One counsel for the Appellant remains seated while the other stands at the podium to argue. When the first counsel for Appellant finishes, he or she sits down and the second counsel for Appellant approaches the podium to argue. After both counsel for Appellant have argued, counsel for the Appellee (or Respondent) present their arguments in succession.

Advocates should proceed as follows:

1. Approach the lectern and await a sign from the Chief Judge that the bench is ready to proceed. Each advocate must await a sign from the bench to begin.

2. If you are the first counsel on your side, introduce yourself and your partner. (“Good afternoon (or evening). May it please the court, my name is Tiffany Washington, Counsel for Leatrice Joyce, the Appellant (or Appellee). My co-counsel is Seth Gordon.”) Tell the court briefly what you will argue (“I will show this court why this case is barred by the statute of limitations.”) and what your partner will argue (“My co-counsel will demonstrate that the lower court erred in

awarding damages to the appellant.”). If you are the second counsel on your side to argue, start with the formal greeting, introduce yourself, but not your partner, and tell the court briefly what you, but not your partner, will demonstrate.

3. Assume that the judges are familiar with the facts of your case. Therefore, you need not give a statement of the facts. The first advocate on each side may strategically wish to state certain facts, however, where the facts help their case. If Appellant states the facts and omits *crucial* facts, the lead Appellee should set the record straight at the beginning of Appellee’s argument.

4. Begin arguing. At the outset of your argument, give the judges a roadmap of the major points you will address. For example, you might state “There are three reasons why the court should suppress the evidence seized by the police.” After your overview, delve into the particulars of each argument.

5. The clerk holds up time cards during each argument, showing how much of the allotted time remains (in Albers, you will have a countdown timer). If you finish early, ask the judges if they have further questions. If they do not, conclude and sit down. If your time runs out before you finish your argument, complete your sentence, acknowledge that your time has expired, thank the court, and sit down. If you are the second advocate on your side, urge the court to take a particular action (affirm, reverse, remand) “for all of the reasons advanced here, and those mentioned in our brief.” That way, the court will not disregard major points made in your brief which you did not reach in oral argument.

6. In your Lawyering Skills moot court argument, Appellants were not entitled to rebuttal. In upper-class competitions, however, Appellants (or Petitioners) may rebut. In those competitions, counsel for the Appellant should reserve with the clerk, prior to the start of arguments, up to two minutes for rebuttal. After Appellees complete their argument, Appellants may use their reserved time to respond to specific points raised by Appellees, i.e., “Contrary to Appellees’ contention,

Appellant did not explicitly consent to the search.” Appellants may not use rebuttal to make arguments they forgot or did not have time to make in their main presentation. Following Appellees’ argument, if Appellants do not have specific points to rebut, Appellants should waive rebuttal.

7. After all advocates have argued, the clerk adjourns court and the judges leave the room. When the judges return, they may announce a best oralist. They will not decide the merits of the case. They will provide the competitors with feedback from the bench.

### Summation

You may finish your argument before time expires. If you do so, do not fill the silent void with needless or repetitive arguments. Simply sum up your major points, respectfully ask the court for relief, thank the court, and sit down. If time allows, you may wish to add a one sentence policy argument to make a forceful conclusion.

If time runs out before you finish your argument, finish your sentence, acknowledge that time has expired, thank the court, and sit down. If you are answering a judge’s question when time expires, acknowledge that time has expired and request the court’s permission to finish answering the question. If the court grants permission, quickly finish your answer, thank the court and sit down. If your time has expired, you should not make a conclusion.

## **Oral Argument Tips**

1. **Be flexible.** Every appellate bench differs. You may have a “hot bench” with judges who begin asking questions as soon as you have introduced yourself and continue to do so throughout the argument, even after time has expired. Active benches are an advocate’s dream. Your time will seem to fly by. Do not, however, let an active bench argue your case for you. You should control the presentation.

Conversely, you may have a “cold bench” that sits silently while you present your arguments. In that case, try to involve the court with your persuasive style. Few judges sit completely mute through an entire argument. Although we try to avoid it when recruiting judges, some benches may be absolutely silent or nearly so. Prepare for that possibility by practicing a full presentation that you can present to a silent bench.

2. **Be specific.** Your case involves (hypothetical) real people’s lives and fortunes, and your presentation should reflect that. Cite specific facts that compel the court to rule in your favor. Thoroughly familiarize yourself with the record and the facts of key cases.

3. **Be direct.** If the court asks a question, answer it directly. Do not tell the court that you will reach that point later in your argument, or that you treated the issue in your brief. If the court asks a question which you can answer with a “yes” or “no,” you must do so. Say “Yes, Your Honor” or “No, Your Honor,” even if the response seems to hurt your case, then explain your reply. If the question takes you off your argument outline, answer it and try to resume your argument. If the question concerns an issue that you plan to address later, change your order of presentation and address the issue now. **Never** say “I will get to that point later.”

If the court asks you a complicated question about your partner’s argument, simply tell the court that your partner will address that issue. Know enough about your partner’s argument,

however, to answer rudimentary questions. On basic questions, give a brief, general answer and tell the court that co-counsel will address the matter more thoroughly.

4. **Be prepared.** How do you get to be a successful appellate advocate? The same way you get to Carnegie Hall: practice, practice, practice. Specifically, practice out loud. Practice your argument in front of a mirror. Practice into a tape recorder. Practice with your partner. Practice with someone unfamiliar with the case to ensure that you explain your points effectively. Prepare a full presentation, because knowing that you have enough to say will alleviate nervousness. You will have an opportunity to practice your argument before a bench composed of your Lawyering Skills Professor and your Lawyering Fellows. Be prepared for your practice argument so that you can get the most out of it.

To prepare for your oral argument, re-read your brief and outline your three or four strongest points. Prepare an oral presentation of these points, including cases to support them. Read your opponent's brief carefully, as well as any that cases your opponent cites with which you are not familiar. The bench will challenge you with your opponents' strongest arguments. Prepare answers in advance to explain why your arguments prevail over your opponent's best points. Write out and memorize your introductory sentence, so that when you first approach the podium, you will have something to say regardless of how nervous and tongue-tied you feel.

5. **Be careful.** Listen to the questions posed by the bench. Do not concede your entire case when answering hypothetical questions. You must, however, know when to concede. Decide in advance how far you are willing to go if pressed by the bench. If you have stated your entire argument on a point and the bench still expresses disagreement, concede and move on to your alternative arguments. Also, listen to your partner's and opponents' arguments. Structure your argument to dovetail with your partner's arguments and to rebut your opponents' arguments.

6. **Be respectful. Do not argue with or interrupt the judges.** The judges ultimately decide your case. You do not want to alienate them. Always be respectful. Listen attentively and respectfully to the judges' comments and questions. Do not evaluate the quality of the questions; simply answer them. If a judge makes a statement with which you disagree, do not be afraid to say politely, "No, Your Honor," and then explain. When a judge interrupts you, stop speaking immediately and listen to the question. If the court asks the same question over and over, try to clarify your position. Do not tell the judges, "As I already said . . . ."

7. **Relax!** These are competitions, but they are also FUN!

8. **ENJOY YOURSELF!**

**Good luck!**