Preparing for the Brief

After receiving the problem, each participant should read over the materials several times. In order to have an effective brief, each participant must master the record and the law. Since the brief composes 30% of a participant's score, oral argument is not a substitute for a good brief. As a result, each participant must address the correct issues in a clear and concise manner to ensure success in the competition. Below are tips to utilize when preparing to write your brief:

- Read the problem several times. Ensure that you understand the issues presented.
- Focus on the important issues. Addressing every possible issue often detracts from the most important ones and weakens the brief.
- Manage your time! The problem involves an area of law that has extensive case law. As a result, you must allot enough time for research. We suggest you spend a little under half of your time researching relevant case law and piecing together your argument.
- The problem has been written to be as fair to both parties as possible. As a result, there are unfavorable facts and case law for each side. Do not ignore unfavorable facts or case law. Instead, refer to them in a way that does the least harm to your position or find ways to distinguish unfavorable case law from the current problem.
- Some competitors find it useful to outline their arguments after researching (but before writing the brief). Often, this saves time when writing the brief and can serve as a helpful aid when preparing for oral argument.

Writing the Brief

The most important tip for writing the brief is to refer to the Rules of the Davis Competition (located on the Moot Court website). The Rules provide information regarding the format of the brief as well as how it will be scored. Failure to conform to the Rules will result in point deductions. Below are additional tips to ensure that your brief receives the best possible score:

- Don't make the reader guess what your brief (or the case) is about. As a result, tell the reader what the case is about right up front. The Statement of the Case should do this in the opening sentence.
- Cite only cases you have read.
- Avoid "legalese" (e.g. "pursuant to," "hereinafter," "herein.").
- Keep the brief short, concise and clear. A longer brief is not necessarily a better brief.
- Omit needless words and avoid repetitive arguments.
- Keep in mind that this is an unsettled area of Fourth Amendment law. As a result, avoid using absolutes as a means to write persuasively. (e.g. "The Court never" or "the Court always").
- At the end of your brief, state clearly and concisely what specific action you are seeking from the Court.
• Proofread, proofread, proofread! Do not rely on spell check. Spelling and grammar errors are the easiest ways to lose points and credibility in an otherwise flawless brief. When you've finished proofreading, proofread again.
• Remember: the ultimate goal of the brief is to aid the reader in understanding (and ultimately believing) your argument.

Preparing for Oral Argument

Preparing for your first round of oral argument is often daunting. However, the most effective way to prepare is to know the record. As a result, you should dedicate significant time to ensuring that you know the facts of the case and the procedural history (especially the rationale of the lower court judges). Once you have done this, the following tips can also aid you when preparing for oral argument:

• Once you have mastered the record, make sure that you are familiar with the cases cited in the lower court opinions. The judges are aware of these cases because they have read the record. It would be wise to make sure you know the facts of these cases and how the lower court's opinions help and hurt your argument.
• When referring to cases during your argument—whether included in the lower court opinions or not—questions about the facts of the case or the legal analysis are fair game. As a result, you should be familiar with such aspects of each case you refer to.
• Remember that it is impossible to prepare for every possible question that could be asked during oral argument.
  o What is most useful is to prepare a list of the 5 worst questions you could possibly be asked (whether it's because you don't know the answer or the answer goes against your argument). Then, come up with an answer for these questions. This ensures that you are prepared for the worst and saves the "thinking on your feet" for the easier questions.
• Once you have finished the brief and begun preparing for oral argument, you are well-versed on the problem. As a result, you will likely be able to anticipate some (but not all) of the questions. It is helpful to prepare answers to these questions so that you can quickly and clearly answer the question and move on to your next point.
• Practice, practice, practice. Get used to saying the parties' names out loud. Practice the names of the cases so they flow easily. Getting comfortable with the language of the case is the best way to ensure that you do not get tripped up on your own words.
• RELAX! This is supposed to be a fun experience. Make sure you get a good night's rest the day before your argument and simply do the best you can.

The Oral Argument

Every person has their own style when it comes to the oral argument. As a result, one oral advocate's argument might sound different than another's. Yet, there are certain strategies that can aid an oral advocate when presenting his or her argument:

• Begin with "Mister/Madam Chief Justice, and may it please the Court."
  o Make sure you also introduce yourself and which side you are representing.
• You should have a short roadmap that briefly lays out your argument. This should be no more than 2-3 sentences. Lead with your strongest point.
• While having an outline in front of you is permitted, you should not be relying on it throughout your argument. Making eye contact with the Court and appearing confident is key.
• While you may have prepared your argument in a logical order, be ready for the Court to take you to your third point instead of your first.
• It is very unlikely that you will be able to speak more than three sentences without being interrupted. As a result, the best oral advocates are those who can smoothly transition between questions and arguments.
  ○ Sometimes, transition phrases can be of aid (e.g. "Furthermore" or "In addition"), but be careful that you do not abuse them.
• **When asked a question, ANSWER IT.**
  • If you make a mistake or lose your train of thought, don't freak out. It happens to everyone at some point. Simply take a moment, gather your thoughts and move on (or go back to a point you just made). If you don't draw attention to it, the Court will move on with you.
  • Your demeanor throughout the argument should be professional, respectful and calm. While the best advocates engage in a conversation with the court, they still maintain the appropriate level of deference to the Court.
  • Conclude your argument by asking the Court what you would like it to do ("For the foregoing reasons, Respondent respectfully requests that the Court AFFIRM the decision of the Appellate Court.").

**What NOT to do:**

• Never tell the Court you will "get to it later." If you do not understand the question, politely ask the Court to repeat it or rephrase it. Dodging a question by not answering it will guarantee a follow up question.
• Never respond to a question with "That's a good question, Your Honor." The Judge knows it's a good question (that is why he or she is asking it).
• Do not refer to a case as "Smith v. Jones." The correct terminology is "Smith against Jones"
• Do not rush every answer. It is acceptable (and encouraged) to take a moment after being asked a question. It is better to know what you want to say before answering the question.
• Do not conclude by summarizing every point you made. The Court knows the points you made. Simply tell them what you want them to do and sit down.