

Kluwer Arbitration Blog

If I Have An Apple: On Moot Courts, Teamwork And How We All Win

Inna Uchkunova (International Moot Court Competition Association (IMCCA)) · Monday, February 17th, 2014

and Oleg Temnikov

“Put forth your best” by Bill Clennan

The contest lasts for moments
Though the training'd taken years.
It wasn't winning alone that
was worth the work and tears.
The applause will be forgotten
The prize will be misplaced.
But the long hard hours of practice
will never be a waste.
For in trying to win you build a skill.
You learn that winning depends on will.
You never grow by how much you win,
You only grow by how much you put in.
So any new challenge you've just begun,
Put forth your best and you've already won!

The present post is a sequel to last year's [Alice in the world of oral argument](#) and just as the latter it commemorates the approaching finals of the Philip C. Jessup and Willem C. Vis moot courts. We take this opportunity to discuss a number of strategies for winning, but in an unusual way.

1. Prepare yourselves (on the unexpected gains in reading)

The finals of a moot court put an end to a period of intensive preparation which has lasted for months. During all this time you might wonder whether it is worth all the efforts? We are positive that your participation in the moot court and the knowledge you acquire is worth every second of it! And if you do not believe us, consider the following example. Hugo Grotius, one of the fathers of international law, was once imprisoned following the so-called Arminian theological controversy. Grotius was allowed to receive books in his cell every week. Eventually, he escaped from prison hidden in the chest of books. (Arthur Nassbaum, *A Concise History of the Law of*

Nations (Macmillan 1950), pp. 99-100)

What better evidence of the unexpected gains in reading?

2. Those who work as a team win as a team

In his [speech](#) delivered in 2009 on the twenty-fifth anniversary of the Lauterpacht Centre for International Law, Prof. James Crawford mentioned that there have been cases in his career which he has lost. But he also mentioned how he and Sir Elihu Lauterpaht have won every single case in which they have appeared together.

This is a beautiful example of how working as a team wins even the hardest cases.

3. Have discipline

Sir Lassa Oppenheim is probably one of those few scholars who serve as role models for international law students. His textbook *International law: A treatise*, which has had many editions since its first publication, is regarded as one of the most influential books in the field. In fact, his work is the only one cited by the International Court of Justice in a judgment, *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment of September 11, 1992 (para. 394), as a subsidiary means for the determination of rules of law. (Michael Wood, *Teachings of the Most Highly Qualified Publicists* (Art. 38 (1) ICJ Statute) [Encyclopedia of Public. International Law MPEPIL], para. 9) It is said that the success of Sir Oppenheim's career is due to the "*German passion for organization and the English love of detail.*" (Mark Janis, *The New Oppenheim*, 16 Oxf. J. Leg. Stud. (1996), p. 330)

Indeed, these qualities are indispensable to every successful mootie but will also help you to advance in your career, if you develop them to the fullest.

4. Know your opponent

This one is our favorite strategies. Although not strictly moot court-related and of course subject to the caveat that you should always be respectful to your opponent, the example below presents one of the funniest illustrations of how knowing the weaknesses of your opponent helps in winning an argument.

During the 1960 US presidential elections, the two major candidates John Kennedy and Richard Nixon took part in the first presidential debates to be aired on TV. In a slightly exaggerated [narrative](#) of the story, the two men agreed not to wear any makeup for the TV duel, although both of them broke this promise. To his detriment, Nixon had opted for a makeup unsuitable for the hot studio lights. Additionally, knowing that his opponent tends to sweat heavily, Kennedy had the heat turned slightly up. As a consequence, during the interview Nixon looked nervous and fidgeted, in contrast to the relaxed and confident Kennedy. This led to the latter's victory.

5. You and the judges are on the same boat

In one of the best [TED talks](#) on the subject of delivery of speeches, Nancy Duarte depicted the relation between the speaker and the audience as a boat and the wind. In conveying your message you encounter some initial resistance. She explains that if you sail against the wind this will deter you, therefore "[y]ou have to actually capture the resistance coming against you when you are sailing... If you capture the wind... your ship will actually sail faster..."

This provides a good example of the relation between an oralist and the Bench. The questions of the judges are not intended to deter you but to actually help you set sail. So do not be afraid of the

questions and accept them as an opportunity to show your knowledge.

6. Be simple

In the above mentioned TED talk, Nancy Duarte also mentions how sometimes even the greatest idea may be rejected or remain unnoticed, if it is not presented in a manner understandable to the audience. We will use here one example from mathematics. It is **known** that the so-called “*Riemann Hypothesis*” developed in 1859 by the German mathematician Bernhard Riemann was initially rejected by the academia since it was incomprehensible to them. Even to this day, the *Clay Mathematics Institute* offers a prize of USD 1,000,000 to anyone who is able to solve it. It took half of a century before the hypothesis received recognition and is now considered one of the most important conjectures in mathematics. But in a moot court you do not have half of a century to explain your argument to the judges.

As we say in Bulgaria “*A good oralist has to make it simple so that even a judge can understand it.*” Therefore, it is always a good idea to organize your pleading in a neat and clear manner with arguments which are easy to follow.

7. Be creative

Supposedly, every law student has imagined his first pleading as quite an event in which he achieves one of those David-against-Goliath victories. Well, this actually happened to Sir Elihu Lauterpaht in his first appearance before the International Court of Justice as counsel for Malta in the case concerning Continental Shelf (*Libyan Arab Jarnahiriya/Malta*). In this shelf delimitation case, Libya’s legal team came up with a very interesting argument based on a theory of plate tectonics which would have assured Libya a lion’s share of the claimed shelf. According to this theory, the delimitation line should follow the opening up of the tectonic plates below the ocean. Sir Lauterpacht then reversed the case by finding one small detail unnoticed by others. In support of its position, Libya had submitted a journal article representing an authoritative statement of the plate tectonics theory. Sir Lauterpaht noticed that the original of the article is different from the copy provided to the Court in that one footnote was missing in the copy, namely an acknowledgment from the authors to an alleged committee of experts. Sir Lauterpaht **explains**: “I asked the professor who was on the witness stand: ‘... can you explain the difference between the two. Why was the acknowledgement in the article but not in the copy sent to the Court?’ He answered: ‘Well, the committee thought it would be better to omit it’. I asked: ‘Well, of whom did the committee consist?’ He replied ‘... it consisted of the lawyers acting for Libya’. So at that point I said to him: ‘I have no further questions’, because he had completely undone the authenticity or veracity of the submission.”

This is a good illustration of how checking every little detail and using your imagination will win your case.

8. Play with the facts

In a recent case before the International Court of Justice, *Application of the Interim Accord of 13 September 1995 (The former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 December 2011, concerning the name issue between Greece and Macedonia, the Greek legal team had hard times defending its position. The two States had agreed that Greece will not object to Macedonia’s admission into international organizations on condition that, as stipulated in Article 11 of the Interim Accord, the Republic will not “*be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)*”, that is, by the name Former Yugoslav Republic of Macedonia. It turned out, however, that Greece had

voted against Macedonia's admission into NATO during the Bucharest Summit in 2008, thereby breaching the Accord. It was clear that Greece could not justify its actions as a suspension of the Accord in response to a prior material breach attributable to Macedonia and there were no grounds for reliance on countermeasures or any other circumstance precluding wrongfulness. In this situation, counsel for the Respondent decided to transplant the concept of the *exceptio non adimpleti contractus* from municipal law to international law. One author, commenting on the case, compared this move to a cartoon published in the New Yorker showing a lawyer standing before a judge, his arms stretched, making a passionate request: "*Can we, just for a moment, Your Honor, ignore the facts?*" (Filippo Fontanelli, *The Invocation of the Exception of Non-Performance: A Case-Study on the Role and Application of General Principles of International Law of Contractual Origin*, 1 Cambridge J. Int'l & Comp. L. 119 (2012), p. 119)

Although it did not work in the particular case, it always helps if you can play well with the facts.

9. Don't give up

During your pleading you may feel frustrated or intimidated by the judges. The trick is not to lose your ground and to stay confident no matter what. The best example in this regard is Theodore Roosevelt's Milwaukee address, in 1912. Amidst his speech Roosevelt was shot in the chest by a John Schrank who was an opponent of his running for a third term in office. Luckily, the bullet did not seriously wound the president, nor did it prevent Roosevelt from finishing his speech. He simply stated "*I am all right, and you cannot escape listening to my speech either.*" And if you wonder what saved Roosevelt's life, we would add that the bullet was slowed since it penetrated through the fifty-page manuscript of the speech which Roosevelt held.

Literally, being well prepared can help you a lot.

10. We all win

One final remark. Speaking from our own experience, we may say that one of the most important advantages of moot courts is the teamwork. Your team represents, in the long run, a catalyst for valuable ideas, a circle in which you increase your own potential by sharing the experience with others. As George Bernard Shaw has put it: "*If you have an apple and I have an apple and we exchange these apples then you and I will still each have one apple. But if you have an idea and I have an idea and we exchange these ideas, then each of us will have two ideas.*"

Jessup and Vis Moots are not about formal victory alone, it's about the knowledge and the friends you win. This is what is left after the moot court is over.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the
newly-updated
*Profile Navigator and
Relationship Indicator*



This entry was posted on Monday, February 17th, 2014 at 4:57 am and is filed under [Advocacy](#), [Arbitration](#), [ICJ](#), [Moot Courts](#), [Willem C. Vis Moot](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.