MOOT COURTS
FROM THE PERSPECTIVE OF THE BENCH

Frederik Harhoff*

1. INTRODUCTION

Judging in a moot court competition is an intriguing experience. What the judges see from the bench, of course, is entirely different from what is perceived by the student players. Unlike the student players, the judges enjoy the luxury of not having to worry about how to present their submissions against the opposing party, and the judges are familiar with the internal guidelines and solutions provided by the organizers of the competition. This article will seek to explain how many judges – from their exclusive position – evaluate the students’ presentations and what they normally look for in their assessment of the players’ performances.

2. THE PURPOSE OF MOOT COURT COMPETITIONS

Moot courts are made to train the participants in organizing and presenting written and oral legal submissions in a clear and well-structured manner within a short span of time, and to act rationally under stress. The capacity to do so is an extremely important skill that is crucial not only to the competition at hand but also to almost every aspect of a lawyer’s professional life. In fact, the ability to stay “cool” under pressure and to prudently assess the available options in times of trouble or crisis is something that is critical in most other aspects of human life as well. Training this capacity is really about developing our intelligence.

Intelligence, in Minsky’s submission, is the ability to solve problems.¹ Moot court competitions offer an intense exercise in combining knowledge, sense and reason under stress; they are training in stress management on a personal level, which requires, above all, good legal skills, courage and a strong sense of intuition and realism. All of this can be taught and learned to some degree, but real learning requires more than just accumulating and organizing knowledge. It is, above all, a

* LL.D. Judge at the UN International Criminal Tribunal for the Former Yugoslavia; currently on leave from a position as Professor of International Law at the Department of Law, University of Southern Denmark. The author has served as judge in a number of moot court competitions, including the Telders Competition in The Hague, the Jessup National Rounds in Great Britain and as coach in the Nordic Human Rights Competition in Stockholm (Sporrong-Lönnroth).

mental and emotional struggle that involves devotion and playing. Moot courts provide for both.

Moot court training involves students in a process of real learning. Moot courts may challenge the students' patterns of conventional thinking and their ready-made assumptions, and thereby offer them a chance to expand their traditional modes of reasoning and force them to try other avenues, leading to a broadening of their mindset. It is only by debating a matter thoroughly and in depth that we become aware of angles or perspectives we had not seen before, and which may ultimately alter our final assessment of the matter. Openness to the unexpected is a crucial factor in any process of increasing human intelligence and creativity; in the long run, it is what most efficiently eases our difficulties in dealing rationally and adequately with new and unexpected problems.

It is, therefore, essential that moot courts are not perceived merely as competitions in forensic eloquence but rather, and perhaps above all, as a chance to learn how to learn, that is to say, a chance to adopt, as a mental tool, the readiness, imagination and courage that is necessary to emancipate oneself from traditional legal positions and dogmatic legal thinking. Moot courts invite students to search instead for new answers to old questions, indeed, to raise new questions and seek new angles so as to get closer to the heart of the matter and to look for the relevant values and concerns that are otherwise neglected by one's opponent or by law in general.

The real challenge is that students shall learn not to always rely mindlessly on (seemingly) well-established positions and to take them for granted without questioning their rationale. Students shall be trained to always keep an open mind to the possibility for alternative positions and to make sure that the solution they propose makes sense from a societal and ethical point of view – even if it is not strictly in accordance with the law or the doctrine. Moot courts, thus, are a form of legal discourse in which students are invited to engage in a meaningful debate with fellow students and “judges” about the complex relation between the law and the values in a given case and to fully assess the arguments that transpire from the critical analysis of this relation. That is what moot courts are really about, in my view: to seek wisdom from the never-ending drive to get closer to the bottom of the matter.

Students who prepare for moot courts by trying to identify the interests beneath the conflict and to reflect on the purpose of the law, and by adding a moral perspective to their analysis, (apart from also thinking about what they will do if they are thrown completely off balance by their opponents or by the judges!), are