

**ORAL ADVOCACY TRAINING: A BEGINNER’S LOOK AT THE
WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION
MOOT FROM A COACHING PERSPECTIVE**

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1 INTRODUCTION

The Willem C. Vis International Commercial Arbitration Moot (‘Moot’) is an educational event in its nature, which basically means every participant has to derive the maximum educational benefit possible. Does it also mean that everybody has to speak during the oral elimination rounds in Vienna or Hong Kong, the culmination of the respective Moot’s programs?¹ My answer is, ‘Surely not’. The main reason is simple: all people have different strengths. Some are born to be extremely convincing public speakers, others are gifted with easy flowing and comprehensible writing, not to mention different (though more classically perceived) gifts of artistic or musical talents, or sporting ability. Consequently, and phrasing this quite directly, while it could be true that one could take the approach of intensive and persistent training of

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¹ The article deals with the Vis Moot preparation strategy in general – applicable thus, to the preparation for either the Moot in Vienna (see: <<http://www.cisg.law.pace.edu/vis.html>>) or the The Annual Willem C. Vis (East) International Commercial Arbitration Moot (see: <<http://www.cisgmoot.org>>).

students to improve weaknesses, it seems more reasonable to draw on natural strengths, particularly taking into consideration the fact that competition matters.² There is another side to the problem. It often happens that people feel somewhat insecure with themselves in an environment they are not totally comfortable with, or doing things that are unfamiliar to them. Practically, this insecurity coupled with the natural astonishment of the competition room itself, might not serve the speaker its best service, and possibly even lower their self-esteem should it result in the speaker's evaluations being lower than initially expected. However, as I have experienced in my time as a Moot coach, some students – despite the fact that their speaking abilities are nearly perfect – may not be interested in training for the Moot. As the Moot competition implies, a healthy combination of oral advocacy and substantive knowledge is required – relying solely on oral advocacy talent would not be able to meet the image of the successful Moot speaker.³

2 SELECTION PROCESS

After having made my position about oral participation clear, I now deal with certain issues arising in the course of selecting Moot oralists. It is obvious that this process is difficult from both psychological and tactical points of view. In terms of tactics, it is important to pre-define the number of potential oralists needed, divide their efforts appropriately at the memorandum preparation stage between procedural and substantive issues, and last but not least, find the oralist capable and willing to perform the task. One of the coaches of a quite successful team that finished in the top 32 (an honour taking into consideration the overall number of participants – 700), noted that in that year, as compared to the previous one, they were so successful because of the availability of the bright oralist who led the team. Last year, the coach explained, the endeavors were huge as well, however the oralists were just 'average', which did not let the team 'climb' far enough.

² In the author's opinion, the success of the 'Moot competition' is crucial not only for enhancing self-esteem of the Moot participants and their coaches, but also for other strategic reasons. Among those are the team's image building, which is a crucial element for the Moot teams coming from not the best well-known schools and the 'new' Moot regions. For example, the Commonwealth of Independent States (ex-USSR) region was represented in the Fourteenth Moot in Vienna with a total of fourteen teams as compared to eight teams participating in the Tenth Moot and two teams participating in Fifth Moot. This creates a good intra-school precedent encouraging the law school to finance the participation of the next generations of its students in the Moot, and provides a good example for the upcoming Moot teams to follow (a so-called 'Moot' or 'Viennese Dream' phrased by analogy with the better known 'American Dream'). Though one might argue that the sample reasons stated above are to a certain extent artificial and are substantially overwhelmed by the value of the Moot as an educational event, besides those reasons not being applicable to all participating teams, their significance for the overall global success of the Moot should not be underestimated.

³ Graves, J. M. and Vaughan, S. A., 'The Willem C. Vis International Commercial Arbitration Moot: Making the Most of an Extraordinary Educational Opportunity', *10 Vindobona Journal of International Commercial Law and Arbitration* (2006), at p. 194 (available online at: <<http://www.cisg.law.pace.edu/cisg/biblio/Graves-Vaughan.pdf>>).

From a psychological perspective, consideration needs to be made on the incorporation of the oralists' roles into the overall 'division of labour' within the team, as well as avoiding internal conflicts which could arise on the basis of the selection of particular individuals as oralists.

3 NUMBER

In deliberating over the number of oralists, one has to keep in mind two things. The individual educational effect of the Moot is arguably better achieved when every team member argues in Vienna or Hong Kong. The competitive effect, however, increases with the decrease in the number of those who argue.

It has to be admitted that the fostering of the educational effect, as in the first case, depends on the number of members in the team. Namely, in a team of twenty (I was a memorandum judge for a memo of one such team), the 'everybody argues' scenario could hardly be implemented. The same goes for the twelve-member team, described by Jeff Waincymer in his article as being part of a strategy he applies.⁴ I have seen a number of eight-member teams, however in none of those were all eight team members oralists. Usually half of the team members (four) are the pleaders, while the others are research assistants to them.⁵

What is typical is a team of four or five students, where each is given a chance to plead at least once. The four/five student team seems to be quite manageable in terms of the division (and completion) of labor, taking for granted that all the team members are about equally devoted to their missions. Moreover, it provides a good pre-moot oral advocacy training playground, as it is quite easily divisible into two pairs, one of which represents Claimant and the other one Respondent.

However, my position still is that four/five pleaders are more than effective enough for the oral presentation at the Moot's orals. My personal experience of pleading in Vienna for the two moot seasons, as well as an involvement in coaching, showed that the pleaders gain more experience, and should one wish to call it 'maturity' with their own progress of participation in the oral rounds of arguments. This namely means several interconnected things. One is, the more you plead in Vienna or Hong Kong, the less you fear to plead again, the less you are concerned with the environment you

⁴ Waincymer, J., 'International and comparative legal education through the Willem C Vis Moot program: a personal reflection', 5 (2001) *Vindobona Journal of International Commercial Law and Arbitration* 251, at p. 271. Available on the Internet courtesy of *Vindobona Journal*, at <http://www.maa.net/vindobonajournal/vj_documents/vj_article_waincymer_jeff_0111.pdf>. At pp. 278-9, the author mentions having twelve team members as a starting point. The selection of oralists for Vienna takes place later in time.

⁵ Here an admission for the possibility of eight oralists has to be made, however through the participation in two (Vienna and Hong Kong moots at the mean time). This strategy is successfully implemented *inter alia* by Georgetown University, which prepares two teams of four participants, one, respectively, for Hong Kong and the other for Vienna.

are in and the more time you've spent in preparations. This necessarily means 'the more you know a problem'.⁶ Additionally, if you've pleaded different viewpoints (which the luxury a more than four-pleader teams rarely bother to allow), you are much more flexible with 'tossing and turning' facts and laws. This allows you quite easily to adapt your presentation and rebuttal to the issues the opposing council have just raised.⁷ On the other hand, taking a four/five pleader mode, each pleader has one or maximum two opportunities to plead, usually in the same position (Claimant or Respondent) though before different opponents. What happens in such a case is that the student gets quite into one side's attitude (that of the Claimant or Respondent), by which certain benefits of the moot training (as well as a competitive advantage) are minimised. Moreover, though this is not an absolute truth at all times, some weight has to be given to competitive detriment suffered once the full-time (three-four hearings in a row) pleaders meet part-time (one-two hearings) pleaders in an argument.⁸

Thus, on the basis of the above, my strong suggestion would be to have two main pleaders team-wise. There is a necessity to make other team members plead at least at the internal rehearsals, thus the selection of 'the two' does not necessarily bar the access of the other team members to oral advocacy trainings.

4 *TASK DIVISION (ARBITRATION v SUBSTANCE)*

Speaking about the different tasks or better spheres of involvement in the course of the teams preparation, I have to recollect a demonstrative example from my first Moot participation in 2004. At that time our team, the team of the National University of 'Kyiv-Mohyla Academy', Kyiv, Ukraine, was possibly even too small, consisting just of two people – my team-mate and I. As it seemed to be reasonable in such

⁶ The counterargument I anticipate to hear from my opponents here will most likely rest on the role of the pre-moots in the experience-gaining process. Namely, it might be inferred, that the pre-mooting experience could provide a due forum for the self-esteem enhancement and presentation polishing for the oralists, serving in such a case, as an equivalent of the Vienna or Hong Kong orals. Though I do agree that some of the pre-moots could indeed play the above role, it has to be noted that a number of the Moot teams are precluded from the participation in the pre-moots of comparable significance, quite often due to financial restraints or lack of the neutral pre-moot arbitrators available to sit on the panel. It is obvious that a coach of the team, with whom the oralists are rehearsing on a regular basis, will provide much of the unexpected challenge to their team members performance, even should the other team (and not the members of the same team as in internal rehearsals) be presenting its arguments on the opposing side).

⁷ The no-more-than-four-pleaders mode, moreover, seems to be advocated by the Moot rules themselves in provision for the best oralist awards to the oralists who scored high pleading at least once on each side, which would not be possible should more than four pleaders be involved (See Rule 78 of the Fifteenth Vis Moot Rules). Additionally, implied advocacy could be traced in Rule 14 of the Fifteenth Vis Moot Rules, providing for the free admission to the Awards Banquet to only 4 team members and a coach.

⁸ No doubt the competitive disadvantage referred to above is minimal should a team with 'part-time' pleaders (i.e. oralists pleading one-two times at the actual Moot's orals) have the chance to pre-moot extensively with other moot teams, thus even the part-time pleaders receive enough practical training.

circumstances, we did not divide the tasks between ourselves in the course of the preparation of the memoranda, nor in the course of the oral pleadings in Vienna. We pleaded four times between the four different tribunals having divided the issues in the following manner: the first procedural issue was presented by my colleague and the second by me. Following this, I went on with the first issue on the merits, and my team-mate finished with the second substantive issue. The arbitrators were puzzled, as a matter of fact. All of them asked us the reason we had adopted such a strange division. The opposing teams were surprised as well, as all of them had a procedure/substance between the pleaders.⁹

The example above has been brought in to highlight several consequences arising from a particular mooting strategy. First, the issue of division between the pleaders is somewhat conventional for the Moot, thus it is better to keep the same division for the preparations and presentations themselves. Second, in case the team is bigger than just two people, the teamwork strategy will necessitate some of the issue divisions. Namely, it hardly seems efficient to work on all the issues that arise altogether, thus a division into smaller groups might be appropriate and helpful. In this case it is logical to make a division along substance/procedure (arbitration) domain lines, *inter alia* taking into account the (prospective) oralist assignment.

It also makes sense to have oralists work from the very beginning on the domain they will most likely deal with in the course of the pleadings. The assignment to the ‘domain’ in its turn, however, does not solve all the problems which may be faced during an oralist’s preparation. For instance, each of the domains have multiple sub-domains and issues, and it is not uncommon (or very practical) that such issues are divided by the team members working on the same domain in between themselves. Thus, the prospective oralist in fact fully covers one out of several issues presented within a domain. This, as a matter of fact, becomes fairly obvious at the initial stage of oral advocacy trainings, when much more attention is devoted to the issue a person spent more time on during a practice moot. However, even with this ‘minus’, the assignment to the domain overall practically has proven to be helpful enough due to some personal association thereto that arises in the course of preparation.

5 ‘CAPABLE AND WILLING’ ORALIST

It is hard to under evaluate the driving force of motivation and its influence on the success of the undertaking. Assuming the above statement is true, two implications

⁹ The other occasion on which I have witnessed the lack of clear division of tasks between oralists presenting procedural and substantive issues was the presentation of a particular team at the Fourteenth Moot orals. This team, though not totally disregarding the ‘domain-based’ division, decided to add up one of the substantive issues (in that case – the issue of contract modification) to the presentation of the oralist dealing with procedural matters. In my opinion such mixed division did not work well, because while being questioned by the panel on the substantive issues of the case, both oralists had to re-refer questions to each-other, as neither of them covered the whole domain of substance, which could have enabled them to answer each question posed individually.

could be made. First, only (or mostly) students that are highly motivated to participate in the Moot should be admitted to the team and moreover be selected to plead orally. Secondly, there are ways and means to motivate students to perform better. While the first implication usually works well, there might be problems with the second, *inter alia*, due to the fact that some other events, obligations or duties might still provide better motivation to give more attention to them than to the Moot. This is so even disregarding the Moot's attractiveness as a part of the legal education and training process.¹⁰

For instance, there are several motivational problems for the Central European University (CEU) students involved in the Moot. First, it has to be noted, the Moot mostly works for the students coming from Eastern and Central Europe, Asia and Africa, for the banal reason of getting a chance to travel around Hungary and subsequently also to Vienna on CEU cost.¹¹ This does not minimise the contribution of the students coming from the above regions towards the preparation, however it raises some concern that the students coming from the European Union¹² are almost never motivated enough to participate.

The other motivational challenge is an immense workload (due to the substantial coursework) CEU students are often experiencing at the time of their preparation and, additionally, an LL.M thesis submission deadline which immediately precedes or overlaps with the Vienna orals. In this case most of the students will concentrate on studies much more than on the Moot preparation. This unfortunately creates a negative reflection of the in-Moot achievement rate, even disregarding the potential of the LL.M students particularly concentrating on international business law issues in the course of the academic year.

The third CEU motivational issue is concerned with a so-called authority competition. The sense of the above is that the professor who has more authority in the eyes of the students, 'wins' their working time to the loss of the one who does not have that much authority. I should ask here, who in between us, PhD student coaches and the professors, lose the 'battle'? Finally, student motivation, as experience shows, is directly proportionate to the number of credits given for the moot participation, if any. Namely, it really makes a difference if none, one or several credits are assigned for the

¹⁰ In attempt to preclude the emergence of the 'priorities' problem, some schools expressly mention the 'ability to commit the amount of time necessary' as one of the Moot team admission requirements. This policy has been adopted by Macquarie University in Australia (see <<http://www.muls.org/default.asp?page=Competitions/External+Competitions/Vis+Moot/>>) and Loyola Law School in Los Angeles (see: <<http://vis.lls.edu/join.html>>).

¹¹ CEU does not participate in the Vis (East) Moot in Hong-Kong.

¹² It has to be noted here that the above participation incentives analysis for CEU has been made taking into consideration the region's most CEU Legal Studies Department International Business Law Program students come from. The USA is omitted from the above pattern for the reason that the students attending the program are usually exchange (visiting) students, which bars them from participating in the Moot team.

participation, as it gives students some additional flexibility in curriculum self-modeling to allow more time to the Moot preparation.¹³

The other point to be made in this regard is that regular work assessment could in some cases remedy the motivational defects, if such do occur. The main problem one might still experience here, however, is an authority problem. This could totally undermine the assessment efforts.

To sum up the above, a strategic step a coach has to make in preparation for the Moot is the selection of oralists who, besides having the public speaking abilities discussed above, possess a high enough degree of *initial* motivation. Furthermore, methods of enhancing their motivation need to be determined (such as through regular assessment and feedback performed either inside the team or by the coach).

6 *PSYCHOLOGICAL ASPECT: POSITIONING THE ORALISTS v THE OTHER MEMBERS OF THE TEAM*

It might be one of the worst Moot-related shocks for a student to be told that he or she would not be selected to be an oralist. Unfortunately, the success strategy described above presupposes the non-oralist position of the team, which is often a substantial part. There are several ways out of this situation practically addressed by the participating schools. Let's see their traits and aims.

The first one, applied quite infrequently, is a team-member/research assistant initial division. This approach is used *inter alia* in Cornell Law School, where two students from their second year of studies are admitted to the team (which is otherwise composed of four third year students or LL.Ms) as research assistants. This, namely, means that they are not going to undertake oralist roles. Moreover, they would not go to Vienna, but as a main incentive, have *cart blanc* for the full participation in the team the next year. This approach partially solves oralist problems. It justifies the non-oralist position by the actual lack of seniority, however it limits the non-orlists in rights as compared to the full fledged team members. Additionally, one should admit that the above approach is limited solely to the teams having several generations of

¹³ To draw some credit-assignment examples, CEU awards one credit for the Moot involvement, Cornell Law school as well as Pace Law School award two credits each (see: <http://appserv.pace.edu/execute/page.cfm?doc_id=23595> for Pace credit assignment). A minimum of three credits are awarded by Osgoode Law School (see: <[http://osgoode.yorku.ca/myosgood2.nsf/0/12FA2A3F49023B7A85256FFF0050582E/\\$FILE/11-200708syllabus-course_descriptions.pdf](http://osgoode.yorku.ca/myosgood2.nsf/0/12FA2A3F49023B7A85256FFF0050582E/$FILE/11-200708syllabus-course_descriptions.pdf)> under 'International Dispute Resolution: Vis Moot' heading), three credits are awarded by Loyola Law School (see: <<http://vis.lls.edu/join.html>>); a combination leading to the total of six credits is awarded to the team members in Stetson (see Graves, at p. 192). In fact, the survey conducted by Eric Bergsten amongst the participants of the Thirteenth Vis Moot (2005) incorporating the inquiries related to the organisation of the Moot preparation, showed that 63% of the schools participating in the 2005 moot offered some sort of the academic credit for the participation (see the complete version of the survey results in Graves, J., and Vaughan, S., *supra* fn 3, at pp. 203-6).

students around, and for this reason would not work where for instance one year-long LL.M programs are concerned.¹⁴

The second commonly used way is the selection of a particular number of oralists (from two to four) at the point when both memoranda are ready and oral advocacy training starts. In this case the positive effect is achieved by the increased competitive advantage in the course of the writing (as, most likely, students are trying to do their best in competing for the oralist's position). However, the in-team cooperation might get psychologically uneasy once the selections are made and, in the course of this, some expectations are lost. The in-team hostilities in such a case, should they be present, might achieve substantial gravity in disturbance of the oral preparation process and the climate. In the worst case, it could stay quite uneasy right until the mooting in Vienna. In the best case, however, nothing of the above will happen and the team members will take the duly reasoned selection decisions without objections. Additionally, from an objective point of view, it might be hard for the coach to fully evaluate students' oralist potential at the very beginning of the oral advocacy training, when the team members are not yet comfortable with the positions they plead.

To address the shortcomings of the previous method, the selection on the later stage of oral technique has been developed and used. This approach, allowing for some 'warm-up' period, encourages enthusiastic participation of the team, at least in early oral rehearsals. Furthermore, it helps in the justification of the particular oralist selection decisions, as the progress of individual team members in oral pleadings is visible not only for the coach, but also for the team overall. Amongst the complications with the implementation of this strategy, one might mention a necessity for more intensive rehearsals (to let all the team members try them out) and less attention and training devoted to the preparation of the oralists finally chosen. This is especially so when the decisions are made at a late stage of the training.

The fourth way out, which overlaps to some extent with the oralists/research assistants method described above, is the initial selection of oralists/research assistants technique. Namely, the decisions about the assignment of oralists' roles are openly made at the team-formation stage, thus those participants who accept the assistants' roles have to do it on a 'take it or leave it' basis, which to some extent prevents further in-team tensions. Alternatively, once the 'all oralists team' approach is chosen, only students having advanced enough in oral advocacy skills are offered to join the team. Selection in such cases includes the oral argument try-outs.¹⁵

Finally, the last method widely applied is based on the oralist pre-selection made by the coaches at the team formation stage, but not disclosed to the team members

¹⁴ Here the CEU example is demonstrative: the University is a graduate research institution hosting in the field of legal studies exclusively one-year-long LL.M programs.

¹⁵ The oral pre-selection arguments are mentioned as a part of the mooters selection process applied at Pace Law School (see: < http://appserv.pace.edu/execute/page.cfm?doc_id=23596> for details).

(including the prospective oralists) until the beginning of the oral advocacy phase. Unlike the oralists/research assistants and early oralist selection methods, this method promotes the feeling of initial equality between participants, which might be quite helpful in the memoranda preparation stage. This allows coaches to change their mind in case their initial assessment of a prospective oralist was mistaken, however it still leaves the late (oral phase) oralist selection related problem untouched.¹⁶

Whichever way may be chosen by the coach, however, except for the seniority-based one, serious attention has to be devoted to several team-spirit restoration factors. First, the provision of due and comprehensive reasoning in the selection decisions made of the team members. It may be advisable to set these (and the selection criteria themselves) in writing as well. Secondly, the repeated explanation of how the contribution of each team member, oralist or not, to the research done is helpful for the team as well as for their professional wellbeing. Thirdly, clear explanation of the openness of all the other Moot-related benefits. These include: Moot networking (both at the time of the actual competition¹⁷ and thereafter¹⁸); prospective involvement in the activities of the Moot Alumni Association (MAA);¹⁹ participation in a moot as an arbitrator²⁰ or team coach upon graduation; and the availability of extra-curricula training opportunities in international commercial arbitration or international sales law.²¹ These benefits should be made clear to participants disregarding their personal participation in orals. Fourthly, the provision of those not selected to plead as oralists in Vienna with the opportunity to participate in internal and external pre-moots as oralists, etc. The students have to realise that their participation in the moot is an

¹⁶ The other win-win psychological approach is utilised by the teams participating both in the Vienna and Hong Kong Moots. The Hong Kong (East) Moot precedes the Moot in Vienna in time and the oralists participating in the East Moot are not allowed to plead in Vienna, thus, the team may potentially assign the oralist roles to all the members.

¹⁷ For the reflection of the Zagreb Vis Moot team on the social side of the Moot, see 'Willem C. Vis International Commercial Arbitration Moot 1998: The Reports of the Zagreb Team', *Croat.Arbit.Yearb. Vol.5* (1998), 235; the reflections of the team of Johanm Wolfgang Goethe University are given in '12th Annual Willem C. Vis International Arbitration Moot – Overview and Personal Reflection by Law Students of Johan Wolfgang Goethe University', 6 *German Law Journal*, No. 7 (1 July 2005) 1121-1127].

¹⁸ For one of the networking options outside the actual competition, see 'The Vis Net' website, providing information and contact details for several generations of Moot alumni and Moot arbitrators, available at: <<http://thevisnet.com>>.

¹⁹ For details, see the website of the association, available at: <<http://maa.net/>>.

²⁰ The prospects of the participation in subsequent Moots as arbitrators, as well as the significance of such involvement, are highlighted by Eric Bergsten in 'Ten Years of the Willem C. Vis International Commercial Arbitration Moot', *Int. A.L.R.* 2003, 6(1), 37, at p. 41.

²¹ *Inter alia* a workshop on the practical aspects of international commercial arbitration has been offered this year by one of the leading Finnish law firms exclusively for the Vis Moot Team Participants (see: <http://www.ulapland.fi/includes/file_download.asp?deptid=24405&fileid=11330&file=20070907133557.pdf&pdf=1> for more details). The workshop has been announced prior to the formation of the Moot teams in Finnish law schools, thus serving as an additional mean to attract students to participate in the competition.

equally unforgettable and useful experience, independent of their participation in the Vienna orals.

7 *ORAL 'DEBATES' IN COURSE OF PREPARATION OF THE MEMORANDA*

The idea of trying out the arguments during the phase of the preparation of the memoranda has been presented by Jack Graves.²² Advocated on the basis of the value of pre-arguing the arguments for checking their effectiveness, this idea might deserve the attention of the schools offering more or less institutionalised moot preparation, as, clearly, the try-outs might take additional group sessions. It has to be admitted though, that a version of the group evaluation of the arguments will be put down in the memorandum. This is necessarily present in any model of the group Moot preparation, however taking a less formal form of discussion between the team members. The efficiency of this, even though being possibly less visible than the 'formal' pre-trial, is duly balanced with the scarce timeframe allocated for the memoranda preparation, which hardly allocates pleadings over arguments within.

8 *INTERNAL REHEARSALS*

Internal rehearsals is a moot practice tool to be utilised by the coaches both to train the oral advocacy skills in the team members and make, justify, or change their oralist selection decisions. The oral advocacy practicing phase is often favoured by students more than the prior, memoranda preparation phase, and is thus often followed by their willingness to devote more time to mooting (even should they be somewhat reluctant to do it earlier).

Internal rehearsals are highly influenced by the number of the team members/chosen oralists. The mock internal moot would ideally need four students, two pleading for Claimant and another 2 for Respondent, thus four team members altogether. Some of the teams, having more than four members in the first internal rehearsals, are trying to allocate the pleading time and issues in between all the members of the team. From time to time, they even make three or four students plead for Claimant and another three or four for Respondent. This technique helps to keep all (or most) of the students involved, and possibly stimulates somewhat deeper research on the issues entrusted to each of them. However, more knowledge should not mean that more time is allowed for the presentation of arguments: if students fail to be discerning (and merely cite all they know on a particular area), this will cause detriment to the Moot team. There must be an adherence to the time frame set for a moot.

The other tip for getting everybody involved is to use the so-called rotation of pleaders. The rotation could be random (in case no oralists are selected), quasi-random (once the oralists are selected, but the other team members are chosen to plead with

²² Graves, J., and Vaughan, S., *supra* fn 3, at pp. 188-89.

them randomly from the ‘pool’ of research assistants), or pre-scheduled (once a schedule of pleadings involving the team members is made). None of the modes laid down above are particularly detrimental, thus, it seems each of them could be used in team preparation. It is crucial, on the other hand, to require or at least encourage the presence of all the team members on each and every internal rehearsal organised, independent of actual participation as an oralist. This way, the awareness of all the team members with all the newly discovered nuances of the problem would not suffer, and the interest in exploring further can be enhanced.

Alternative arbitrator position techniques could be used to attract presence in such cases. Namely, the members who do not participate (or some of them) might be called to sit on the panel, questioning pleading colleagues and delivering comments at the end. Besides from the third-party review from the ‘knowledgeable outsider’ (presuming that the case is explored quite well after the two memoranda are written and submitted), this way the students are also getting a chance to check the effectiveness of their arguments from ‘outside the box’, thus often being the most objective judges of their colleagues performance.

9 *EXTERNAL REHEARSALS (PRE-MOOTS)*

Pre-moots expressly allowed by the Moots’ rules,²³ besides being a vehicle of improving public speaking and persuasion abilities, provide students with a chance to compare their achievements with those of the other teams. Further, they bring an important variety to the pre-Vienna (or pre-Hong Kong, as the case may be) mooting life. They allow some of the teams to travel to new destinations while letting others enrich their everyday life by being involved in the organisation and hosting of the pre-moots. Importantly enough, pre-moots provide the team members with a chance to experience presenting their arguments before different arbitrator panels, thus experiencing different styles of arbitrating and widening their scope of expectation of the Moot orals.²⁴

A number of successful attempts were made in pre-moot classifications (which imply overall that these events could differ). It is obvious that a local two to three team event would not be very comparable to the regional event involving ten to twenty teams.²⁵

²³ See Rule 73 of the Fifth Annual Vis Moot (East); Rule 74 of the Fifteenth Vis Commercial Arbitration Moot. Pre-mooting is often seen as a practical remedy for the absence of the national pre-selection rounds in the Moot’s structure, helping the students to improve the quality of their oral presentations and enhance their view over the Moot problem before the orals in Vienna or Hong Kong.

²⁴ One should agree with Jeff Waincymer here, that the oralists have to anticipate a chance of having an under prepared arbitrator as well as a perfectly well prepared one, thus being ready to modify a chosen persuasion strategy should the situation so require. See Waincymer, J., *supra* fn 4, at pp. 275-6.

²⁵ The examples of the big pre-moots should include the Dispute Resolution Society at Fordham University School of Law pre-moot attended in 2007 by the 25 teams from North America, South America and Europe. Also the K.U. Leuven Pre-Moot (in 2007 marked by the participation of more than 10 teams, see: <<http://www.law.kuleuven.be/ipr/eng/Leuvenpre-moot.htm>>) and Vis Peace Palace Pre-

Another major dividing line distinguishing the competitive and non-competitive pre-moots (e.g. pre-moots ultimately producing a winning team),²⁶ adds up even more 'flavour' to the assertion that the pre-moots vary in their nature and impact.²⁷

Several tactical issues arise once the pre-moot is planned. These include: which stage of the oral advocacy training a pre-moot fits best; how much preparation does the pre-moot require and what the balance between the pre-moot and the moot preparation should be; who should participate in the pre-moot; and should any other social activities involving the competing teams follow? Moreover, in opting for pre-mooting, some teams might feel somewhat uncomfortable with the actual sharing of their know-how (legal evaluation of the facts presented both in the memoranda and in the oral presentations) with the other teams. The direct competition in this case is excluded due to the fact that, according to the Vis Moot Rules, the pre-moots have to be notified in order to avoid the meeting of teams who had experience in pleading with each other at the actual competition.²⁸ Although this is so, one might rather have in mind an indirect competition enhanced due to the strengthening of the team's oral position as a result of interaction with the other teams.²⁹

The timing chosen for the pre-moots, to a substantial extent, frames the expectations there from and the actual outcome achieved. The early pre-moots (those taking place shortly after the submission of the second memorandum) would be valuable as a means of forming the teams perceptions of the sense of oral competition, emphasising the exchange of the substantive findings rather than skills. Pre-moots held at the later stage (and even in Vienna or Hong Kong itself shortly before the moot starts) would deal mostly with the 'competition of the presentations' rather than the exchange of the ideas on the merits.³⁰ The later pre-moots also have to be expected to provide more of

Moot in Hague should be mentioned. For smaller events, see for instance the schedule of the Lapland Moot team's pre-moots (mostly of regional scale): <<http://www.kolumbus.fi/visteam/team/schedule.htm>>.

²⁶ For more discussion on pre-mooting and the types thereof, see Graves, J., and Vaughan, S., *supra* fn 3, at pp. 195-9.

²⁷ Coming back to the evaluation of pre-mooting on the performance of the oralists, one has to bear in mind that the competitive event, being as a rule more similar to the ultimate orals, should be expected to contribute more to the overall (technical and emotional) preparation of the oralists than the non-competitive one.

²⁸ See Rule 73 of the Fifth Annual Vis Moot (East); Rule 74 of Fifteenth Vis Commercial Arbitration Moot.

²⁹ Concerns described are mentioned much rarely currently, and, moreover, often are not at all times justified. As mentioned above, the success of the team's presentation at the Moot depends on the multiplicity of different factors – substance of the case being just the one of them. Additionally, in most of the cases the Moot arguments are framed along practically the same lines, thus the substantive differences are rather marginal. On the other hand, mutual contribution into the development of the presentation-related skills (starting from the way of dealing with the facts and case materials in the course of the presentation to the non-verbal language and in-team interaction) and techniques fostered by the pre-moots should not be under evaluated.

³⁰ Here the term 'merits' is applied in reference to the analysis of facts of the case made and presented by the teams in both procedural and substantive domains.

a challenge for the team members from the arbitrators, *inter alia*. The reason for this is that a big part of them, being involved at least to some extent in the internal rehearsals (and possibly other pre-moots), have developed substantial familiarity with the moot problem as well. As a matter of fact, a tendency exists to place pre-moots to the later stage of preparation, however the positive experiences reported by the early pre-moot participants should not be ignored either.³¹

There is no doubt every coach considering the pre-moot participation for their team inevitably meets the issue of the time allocation between the pre-moot preparation and the preparation for the *main* moot.³² Though the two tracks do not look to be controversial at first sight and do overall have the same objectives, each pre-moot in a sense is a separate competition that requires specific preparation. The strategies adopted for the pre-moot, depending on the objectives set, might range. Teams may opt for the mere presentation of the position chosen by the team, leaving the response to the issues raised by the opposing team (or teams) to the ad hoc reactions. In this case, the pre-moot preparation might be as limited as skimming through the opposing teams' memoranda.

On the other hand, some teams may opt for a thorough analysis of the positions taken by the opposing teams with developing a particular line of argumentation on the basis thereof. This would require the team to research the 'new' authorities brought by the opposing teams, at least one session of the opposing teams' memoranda discussion, as well as drafting specific speeches in response. This technique could even include joining the step mentioned just above with an additional mock pre-moot rehearsal session. This would mean that part of the team would be presenting opponents' arguments and the other team members (usually oralists selected for the particular pre-moot round) would be in charge of rebutting them on the basis of a newly developed responsive position.³³ Obviously, the second and third models mentioned above would require substantially more preparation time than the first one. The choice, thus, will pretty much be dependent on the availability of extra time for the internal teamwork prior for the pre-moot.

In terms of participation, pre-mooting could be seen in several different manners. It could be approached as a means of getting more team members to plead³⁴ (as when

³¹ For the mention of the early positive pre-moot experience, see the mention of the 2005 pre-moot hosted by Harvard Law School just two weeks from the submission of the memorandum for respondent in Graves J., and Vaughan S., *supra* fn 3, at p. 197.

³² Though it is clear that the coaching strategies and methods vary, it is safe enough to presume that substantial time in course of the team preparation will be devoted to shaping its presentations aimed versus the four known competitors.

³³ It has to be admitted here, however, that the oral pleadings often depart from the written submissions. For the affirmation of the same, see Waincymer, J., *supra* fn.4, at p. 271. In the meantime, speaking about the pre-moots phase, the adherence of the oralists to memoranda could be witnessed frequently.

³⁴ See Graves, J., and Vaughan, S., *supra* fn 3, at p. 199.

pleading in Vienna options are usually limited), thus enhancing the interest of participation in the team. The same can be seen as a mean of double checking and conforming the oralist selection decisions made by the coach and, finally, and most of all, at the later stage of the preparation, as an additional chance to train the chosen oralists before the moot. Whatever approach is chosen, pre-moots definitely work for the benefit of the team as a whole. They give the team members (even those not eligible to go to Vienna, should that apply) a chance to experience the ‘close to real’ moot environment and evaluate their performance (or, alternatively, the performance of their team) against that of their competitors.

The issue of the pre-moot related social activities,³⁵ though not at all times on the agenda, could, if granted enough attention, serve as valuable contribution to the inter-team interaction and often, surprising as this can be, inter-team moot ideas exchange. The social interaction creates, moreover, an image of ‘being a part of the Moot’ in the early stage of preparation. Likewise, coming back to non-oralist team members, the social life in course of pre-mooting is one of the incentives that can remedy some of the discomfort those members might experience by not pleading in Vienna.

10 CONCLUSION

Oral advocacy training as a process encompasses a much broader scope of considerations, strategies and challenges than those described above. It incorporates a lot of fun as well. It is extremely vulnerable to the multiplicity of factors and their combinations. These factors include: the specialties of team members’ personalities and abilities; the curriculum of the law school they are involved in; and the funding for the training available for the existence of psychological interaction between (and within) the members of the team, including coaches. Also important is the appropriateness of the coaching approach chosen, and finally, luck. It is a learning process for all participants thereto – students, coaches, arbitrators and the related outsiders converted into the supporters of the team by necessity of witnessing the devotion of those directly involved. Because of the abovementioned factors, a search for the ‘one approach fits all’ approach to the Moot coaching in general and Moot advocacy training in particular is not viable. Still it does make sense to discuss the approaches that worked (as well as those that did not) to feel and understand the substance and objectives of the moot deeper. This discussion also acts to serve the next moot generations better in treating them on their way to Vienna or Hong Kong in the least invasive but most efficient manner.

³⁵ The ‘social’ side of the pre-mooting is emphasised in Graves, J., and Vaughan, S., *supra* fn 3, at p. 198.