

THE MURDOCH MOOT COURT BENCH: THE DEVELOPMENT OF A MOOTING CULTURE

by Vernon Nase¹

This account is based on the author's experiences at Murdoch University between 2006 and 2008.

The concept of a Moot Court Bench (MCB), which I must specify from the outset, is a student organisation, was developed and refined by Law Schools in the United States. I would define a Moot Court Bench as a student body dedicated to creating and maintaining a mooting culture. The development of such a culture promotes the writing, analytical, research and advocacy skills of students.

The concept of a dedicated organisation, named the Moot Court, was brought to Australia by Professor Gabriël Moens and established at the University of Queensland, one of Australia's leading universities. The University of Queensland's Law School benefited greatly from its Moot Court Bench and the culture created and sustained by bench members, its Faculty coaches and a particularly active and supportive alumni group. As a consequence, the University of Queensland won many national and international moots, including the Willem C. Vis International Commercial Arbitration Moot, the World Final of the Phillip C. Jessup International Law Moot Court Competition and the Manfred Lachs International Space Law Mooting Competition (Asia-Pacific).

Sadly, while lipservice is paid to the need for advocacy training at most Australian Universities, some law schools fail to reach for their cheque books

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to fund mooting teams and advocacy training. Sometimes the installation of the facility, the Moot Court, is trumpeted by a law school but left as a symbolic icon that has more to do with branding and image than the quality of what takes place inside it. Too frequently some Law Schools are prepared to sit back and leave it to the student associations to organise and run internal competitions (with occasional unsuccessful forays into international competition) without perceiving the need for a supporting role on the part of the law school. All too frequently legal academics rail at the elitism of external mooting and claim that this elitism justifies their refusal to support external mooting competitions. Why should so much effort and resources be invested in so few? Surely our efforts and resources are best poured into the student body as a whole? So it goes that mooting in certain “scholarly” circles is perceived as elitist and therefore bad, evil, and to be avoided.

When one responds to such individuals by pointing to the notion of a “total mooting culture” concept they invariably tire of the conversation because they know better. But do they? The purpose of this article is to describe the Moot Court Bench concept as we have realised it at Murdoch University in the hope of inspiring other law schools to trial the concept.

Backdrop to its establishment

Like a number of universities in Australia, Murdoch University had only toyed with external mooting at the international level prior to 2006. They had entered a team in the Phillip C. Jessup International Law Moot Court Competition on one occasion without experiencing any success. However, they did have an active Law Student Association that staged internal Junior Mooting and Senior Mooting and Senior Trial Advocacy Competitions. However, there was no specific training or mentoring of students competing in these competitions and feedback on performance was limited. In short, there was a level of activity with no training and no motivation; a sink or swim mentality prevailed and there were no benchmarks of performance established. And staff involvement was very limited. This all changed at

Murdoch when Professor Gabriël Moens, who had initiated and mentored an era of outstanding achievement in external mooting competitions at the University of Queensland, became the Dean of Law at Murdoch in 2005.

In 2006 Murdoch's inaugural Moot Court Bench was established.

Structure of the Moot Court Bench

The Moot Court Bench is composed of up to 12 students, including a Chief Justice, an Executive Justice and Associate Justices. Students remain on the bench for a full year and receive credit for their work towards the subject LAW314 Moot Court Bench. They complete several assessment items as part of completing this subject. Intakes of students are staged so that there are always six experienced students on the bench. Once a bench is established we take in six students each six months and six students complete their time at the conclusion of each six months. Overall time spent on the bench is 1 year or two semesters.

Founding members of the initial Moot Court Bench were charged with creating a mooting culture through the organisation and staging of a range of mooting related activities. These included duties associated with internal, national and international mooting competitions, educational activities aimed at improving the quality of oral advocacy among all Murdoch Law School students, scholarship promotional activities and the production of a range of mooting publications, including a Mooting Manual, for inclusion on a Moot Court Bench website, for the guidance of all Law students.

Objectives of the MCB

While there are many objectives associated with a vibrant body like the Moot Court Bench, the following rank high in our priorities:

1. *to develop to a high degree students' knowledge of the skills involved in oral and written advocacy through the creation of a Moot Court Bench;*
2. *to impart mooting skills through the development of educational programmes; and,*
3. *to provide opportunities widely for all law students to develop advocacy skills through the provision of a range of mooting programmes , including judge in residence and lecture programmes, organisation of mooting competitions and the creation of opportunities to participate or to represent the Law School in external competitions.*

In support of the third objective (above) the Murdoch Moot Court Bench, in its day to day activities, focuses closely on serving all students. It does so by encouraging, training and mentoring first year students who are mooting for the first time. It also provides additional opportunities to moot and to receive feedback for students knocked out of mooting competitions in early rounds.

Supervision of the Bench

The Moot Court Bench is overseen by the Moot Court Committee consisting of a number of senior staff members and the moot court academic mentor. During the years 2006 to 2008 the composition of this Committee has remained stable and consisted of the Dean of the Law School, Professor Gabriël Moens, Ms Kate Lewins and Dr Vernon Nase. The author has also filled the role of Academic Mentor to the Moot Court Bench.

Training of the Students Serving on the Moot Court Bench

While the focus of the training given to students serving on the Moot Court Bench is largely on the job as they work on each project, there is a two hour introductory lecture given by the Academic Mentor to each new intake of students. This lecture is aimed at preparing the new intake to be able to sit on benches in student competitions. It focuses on the skills involved in sitting as a judge and includes the following matters:

- i. the types of questions asked and why;

- ii. the skills that judges look for in advocates;
- iii. the structure of submissions; and
- iv. the role of research.

Each student on the Moot Court Bench, when judging competitions, will sit with another more experienced student or a staff member until they are confident enough with the skills level to sit on benches as a single Judge.

The preparation of publications on mooting programs is an important aspect of the work of the MCB because it enhances the research, writing and editing skills of students.

In addition, we have particular programs such as a visiting speaker program and a Judge-in-Residence Program in which a range of legal professionals give lectures on different aspects of advocacy and the profession. In the past year, for example, we have had leading prosecution and defence barristers, tribunal members, and Federal Court and Supreme Court Judges speaking either solely to the Moot Court Bench or to all the students in the law school about the skills involved in advocacy as it is practiced in our Courts and Tribunals.

The Unit Guide for the subject suggests that we seek “to develop their understanding of oral advocacy skills but also they will develop a range of high level legal attributes associated with oral and written advocacy. In particular they will develop high level legal research and writing skills; and they will communicate these legal skills to other students through the preparation of mooting related publications, organization of mooting competitions and the provision of feedback and de-briefing activities.” In truth, this is just the starting point for what a Moot Court Bench can do for developing what I would call a “total mooting culture” within the Law school.

At Murdoch the Moot Court Bench develops many new ideas and initiatives, far more frequently than we had ever dreamed possible. In recent times, for

example, they have established an intervarsity mooting competition within Western Australia for the winners of the Junior Mooting Competitions in the four Law schools in Perth, namely, Murdoch, Western Australia, Notre Dame and Edith Cowan Universities. They have also recently established another internal competition, the Junior Trial Advocacy Competition and they have also liaised with a number of lecturers to assist in judging skills-based advocacy activities in particular subjects. At Murdoch these subjects include *Torts*, *Evidence* and *Australian Legal System*. In addition, our Moot Court produced a short video on mooting skills, *David's First Moot*. This video motivates students to participate in mooting competitions and helps them to overcome their fears of mooting while gently teaching some basic skills. Further, the Murdoch Moot Court Bench has developed some of their publications in both Mandarin and Japanese so that Asian Universities may access these resources.

Weekly Meetings

The students on the MCB meet with the Academic Mentor once each week in formal mode with an Agenda prepared by the Chief Justice of the Moot Court Bench. The Agenda generally lists the projects being undertaken by each student or team of students and provides an opportunity for progress reports, organisation for upcoming events and discussion leading to new initiatives. An example of a typical MCB meeting agenda is included below:

Moot Court Bench Agenda Week 8 Tues 15/4/08

Subject	Info/Issues	Further action
Congratulations to the Lachs Team!	Dr. Nase's team won best memorials and made it to the finals of the oral rounds in a very competitive moot.	
Sponsorship/General	Do we have a plaque for the door?	

<p>Samantha</p> <p>Aoning</p> <p>Angharad</p> <p>Sarah</p>		
<p>Maritime Moot</p> <p>Watna, Angharad, Rohan and Sarah.</p>	<p>How are the information packs for other teams coming along?</p> <p>Internet access?</p> <p>Update on dinner.</p> <p>Has Kate raised any further issues or issued a timetable yet?</p> <p>Volunteer drive - now that we have money perhaps we can put on lunch or make some other offer to entice volunteers.</p>	
<p>Speakers</p>	<p>We have a speaker confirmed for 6th May.</p> <p>Michael McPhee will be coming in August to speak about evidence and cross examination, so this will link up well with the evidence moot.</p>	
<p>Competitions Committee</p> <p>Shu Ying</p> <p>Sarah</p> <p>Elliot</p>	<p>Senior Mooting tonight - who is judging?</p>	

Intervarsity Junior Moot Sarah	Any responses from the other unis?	
International Moot Info Session Nick Elliot Shu Ying	Update	
BALSFD Watna Elliot Sam Aoning	Do we have a question/timetable for the event?	
T-Shirts Katie	Update on costs	
Newsletter	We would like a preliminary newsletter out by 2 nd May. Katie has emailed topics to everyone.	
Questions/Comments		

Formal Assessment

Although students serving on the Moot Court Bench will be heavily involved in undertaking many activities during their year on the MCB, there are still two formal assessment items to be completed by them as part of the subject

structure and in order to assess their marks for the subject. At Murdoch these consist of two items. They are:

1. Preparation of a Judgment or Arbitral Award (6000 words, worth 70%)

This involves preparing either (i) a full written judgment on a case, or, (ii) an arbitral award, or, (iii) drafting the International Maritime Law Mooting Competition problem. In the case of (i) or (ii) students are encouraged to prepare their judgment or award on a case that they have heard from the bench. This further attests to the originality of their work.

This Judgment or Arbitral Award is submitted initially to the Chief Justice of the Moot Court Bench who reads and countersigns it. Each item is then submitted to the Moot Court Bench Academic Mentor to be marked.

2. Preparation of a Participation Report (5 page report, worth 30%)

The Academic Mentor supervises and monitors Moot Court Bench activities and assigns a mark for each individual's contribution to the effective functioning of the Bench. The assessment is based on the degree of participation, level of preparation (where applicable), mastery of subject matter, the extent to which students seek to initiate ideas and to involve others in planned activities, teamwork and perceived understanding of issues. There are regular meetings with the academic mentor throughout the year on all aspects of the Bench's program.

The 5 page report covers a student's involvement in the activities of the Moot Court Bench and provides an opportunity for students to reflect on their role and

experiences, including the suggestion of refinements or improvements to the Moot Court Bench program. They are also required to submit separately, or as appendices to the Mooting Report, copies of all publications that they have personally or jointly prepared. Where a joint publication is submitted the student is required to indicate the level of his/her involvement as a percentage. This report is to be submitted initially to the Chief Justice who reads and countersigns it to verify its accuracy. Then it is marked by the Moot Court Bench Academic Mentor. The participation mark includes the level of personal contribution to and the quality of publications, competitions and educational activities while also referencing teamwork and cohesion.

Reflections

We have found that students, who join the Moot Court Bench, as they improve their understanding and skills level in all matters related to advocacy, soon realise that they have developed sufficient skills to nominate for the Murdoch law school teams competing in international competitions. More often than not our Moot Court Bench students find places in our international teams competing in the competitions listed below:

- The Willem C. Vis International Commercial Arbitration Moot
- The Philip C. Jessup International Law Moot Court Competition
- The Manfred Lachs International Space Law Moot Court Competition
- The International Maritime Law Arbitration Moot
- The Foreign Direct Investment International Moot Competition
- The International Virtual Moot (invitational contest restricted to universities with an electronic moot court facility).

The International Maritime Law Arbitration Moot and the International Virtual Mooting Competition are integral parts of the Murdoch Law School which administers both of these competitions.

It is perhaps a truism to observe that each university will have a different external mooting profile. The important thing is that each university ought to compete in at least one of the international moots as it provides a progression for students from internal to external competition be it at a national or international level, and it provides an opportunity to achieve excellence at the international level.

Within two years of establishing an external program at Murdoch we were able to point to strong performances in each of the above moots, including Best Memoranda, Finalists and Best Oralist Awards in the Vis Moot (2007-2008), Runners up, Best Oralist and Best Memorials for the Asia-Pacific Zone of the Lachs Moot (2007-2008), Best Claimant Memorial and Semi-finalists (Maritime Moot 2007) and Best Applicant Memorials (Jessup Australian Zone, 2008).

The Murdoch structure with each of the above moots is that there is a staff coach who works with teams competing in external moots over an extended period (as long as, for example, eight months). This work counts as part of the staff member's teaching load and the students earn credit towards their degree. At Murdoch they complete either LAW315 – Willem C. Vis International Commercial Arbitration Moot or LAW312 – Law Moot.

This is hardly largesse on the part of the law school to acknowledge the work put in by coaches and staff. The amount of work, involved in either coaching or participating in an international moot, far exceeds the work involved in any other subject. Because these moots tend to bridge semesters they are a substantial undertaking that, for staff, represent a major commitment to the values and ethos of the law school involved. This is the elite end of mooting and no one, who understands this domain, would disguise the fact that, to succeed here, there is a need for staff involvement by way of coaching and intensive preparation of students.

Resource implications for the total program include the allocation of a room to act as the headquarters of the Moot Court Bench, and from which they can operate, and the maintenance of several computers in that room. Further, at Murdoch we also provide a room to each team competing in a major external moot. Generally this will see three rooms occupied at any given time. Students engaged in international mooting are provided with security clearances to access their rooms after hours and at weekends. This allows them to build up resources in their rooms and to study in them as they prepare written submissions or oral arguments. It also has the effect of transforming the law school from a dead core during evenings and weekends and semester breaks into a place in which there is a detectable pulse of excitement.

Alumni are extremely helpful to both internal and external mooting programs and we attempt to draw in alumni to assist in coaching students by sitting on benches for both internal competitions and practices of the international teams.

It is acknowledged that for many Law Schools around the world funding is a vexed issue. However, here again a Moot Court Bench can assist by developing sponsorship proposals so that the profession may sponsor either individual teams, parts of a program or the whole program.

The Murdoch example has been described in order to show an example of what the author regards as a total mooting program, encouraging all law students to participate and catering also to the elite end through international competition. The Murdoch "model" is but one example of such a program and there is no pretence that it provides the perfect model. My purpose in writing this article has been to encourage other universities to embrace the concept. Yes, it does have resource implications, which I have indicated above, but the benefits achieved more than outweigh any negatives associated with the allocation of resources.