

# Jessup Guide

## Jessup Oral Pleadings

### I. Introduction

Most Jessup competitors find oral advocacy simultaneously exhilarating and stressful. With practice and preparation, even the most reluctant public speakers, and even those whose first language is not English, can find themselves able to engage in a high-level discussion of international law with a panel of Jessup judges.

The oral pleadings phase is one of the most important phases of the Jessup Competition. Under the Jessup scoring system, which is covered by Official Jessup Rule 7.0, oral pleadings are worth two thirds of a team's total points in each round (a "round" or "match" is when two teams compete against each other, one team arguing the Applicant side and the other team arguing the Respondent side). Accordingly, a team with relatively low memorial scores can still win against an opponent by doing well during oral pleadings. Your preparations for oral pleadings should therefore begin immediately after submitting your written memorials—it is a new phase of the competition that provides ample opportunity to improve and expand upon the work your team undertook during the research and writing of your memorials.

In the White & Case Jessup International Rounds, and in most National and Regional Rounds, your team will argue four times (twice as Applicant and twice as Respondent) against four different teams in front of different judges, so the character and conduct of each oral round can vary widely. This makes it all the more important for your team to practice oral argument in front of each other, your team coach, professors, fellow students and as many other people as possible before your first Jessup oral round.

This part of the White & Case Jessup Guide provides advice on preparation for and conducting oral pleadings. These are only recommendations, as there are many different ways to prepare for and participate in a Jessup oral round, but they are based on many years of competing, coaching and judging Jessup teams and should therefore be helpful to most Jessup competitors.

Remember that in the oral advocacy stage you are seeking to persuade the judges as to the strength of your client's position. While you are communicating with the judges, they will ask you questions and a dialog will ensue. You will need to listen and respond to the judges as well as opposing counsel.

### II. Preparations Before the Oral Competition Begins

#### A. Determining How Your Team Will Argue

As described further below, a Jessup oral match consists of 90 minutes of argument between two teams, one team arguing the side of the Applicant, the other team arguing the side of the Respondent. Each team has 45 minutes to make its case, but only two members of a team can argue in any given match (i.e., your team's 45 minutes is divided between the first oralist and second oralist, with time reserved for rebuttal or surrebuttal). Thus, the order of a Jessup oral pleadings round is always:

A1 - > A2 - > R1 - > R2 - > Rebuttal - > Surrebuttal

Many Jessup teams decide which team members will argue Applicant and Respondent during the drafting of Memorials. This is usually a wise strategy: it will enable your team to develop familiarity with the facts and legal arguments supporting a particular side. Nevertheless, there may be circumstances when a particular team member should be assigned to argue a different position than what was originally planned. There are some important factors to consider when determining the order of pleading, so as soon as your memorials are finished, your team should undertake a critical assessment of their relative strengths and weaknesses to determine the ideal configuration for the oral pleading strategy.

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Given that a Jessup team can have between two and five members, your team will need to determine not only who is best suited to argue which side, but the order in which team members should argue. Several common options for order of pleading are outlined below. For the purposes of illustration, we assume a team consisting of five people unless otherwise stated.

The most traditional structure for a five person Jessup team consists of four oralists, each committed to one position, and one person acting as Of Counsel in all matches (four person Jessup teams may compete without an Of Counsel, or choose to have one of its non-speaking members sit at the counsel table). Thus, the same two people always argue Applicant, the same two people always argue Respondent, and the same person always sits Of Counsel. This structure is commonly used by teams who divide the memorial research and writing using the same assignments.

Some Jessup teams opt to have only two team members act as oralists, arguing both Applicant and Respondent. This structure is often used by teams that have fewer than four team members or teams on which two oralists are much stronger than their teammates. In this structure, the Of Counsel position may be rotated among the remaining team members.

Other combinations are possible. If your team has one orlist who is an exceptional speaker or has more Jessup experience than other team members, your team may consider having him or her argue both the Applicant and Respondent sides while the other team members split the remaining pleading duties.

Every Jessup team will have different considerations when determining who will argue and in what order. Teams should be well-balanced in terms of pleading style, and the styles of the first and second orlist should not be so different as to reduce the overall effectiveness of the submissions. For example, it may not be ideal if the first orlist has an aggressive style of pleading and the second orlist is quiet and conciliatory—judges might find the contrast unappealing (and distracting) and spend more time focusing on the differences between members of the same team rather than the other team. In constructing your team, you should consider which oralists' styles will complement each other.

You should also consider the future of the Jessup at your university. Younger and inexperienced members of the team should be given the opportunity to plead or act as Of Counsel—it will give them the experience they will need for future years.

#### **Official Jessup Rule 10.6**

**States an orlist is eligible for ranking and individual orlist awards only if he or she has argued two or more times during the Preliminary Rounds. Therefore, if an orlist argues only once, he or she is not eligible to win an orlist award. This may affect your decision as to which pleading structure to choose.**

#### **B. Of Counsel**

The team member acting as Of Counsel has an important role to play, both in researching and writing the Memorials and during oral pleadings. During oral pleadings, Of Counsel is permitted to sit at the counsel table and may communicate in writing (never verbally) to the two oralists when they are not pleading. This can be a great advantage to a Jessup team: without the stress of oral argument, the Of Counsel team member can concentrate on listening to the judge's questions and opponent's arguments and prepare helpful comments or arguments for his teammates. Of Counsel can have a calming influence on nervous pleaders.

Some Jessup teams appoint the same person to sit Of Counsel in all matches. In such a case, Of Counsel must be very familiar with all Applicant and Respondent arguments. Other teams will have one of the oralists arguing the opposite position to sit Of Counsel (i.e., a team member arguing Respondent will be Of Counsel when the team is arguing Applicant, and vice versa). Whatever configuration your team chooses, the Of Counsel team member should always be ready to supply his or her teammates with key facts and arguments that can be used during oral pleadings.

#### **C. Opponents Memorials**

In the White & Case Jessup International Rounds, and in most National and Regional Rounds, your team will receive the Memorials of your competitors in advance. It is critical that your team read them thoroughly before the oral match (see video clip entitled "[Read your opponent's memorial](#)" in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)).

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Jessup teams will almost always learn something new about the Jessup Problem while reading competitor’s memorials, either in the form of new arguments or important cases and articles that your team had not previously considered. Memorials from the opposing team will also give you insight into your opponent’s style and substance. If an opposing team’s memorial is unsophisticated, it may mean that the team was unable or unwilling to conduct much research. If a team relies heavily upon sources from a particular part of the world (or a particular area of international law), it may mean that the team has more expertise in that area and less in others. Each of these subtle clues may help your team prepare for the oral match.

Keep in mind that Jessup teams are not obliged to base their oral arguments upon their memorials. Teams are permitted to expand, enhance and take positions different than those set out in their memorials. For this reason, do not assume that everything written in your opponent’s memorials will be what they actually argue during oral pleadings.

#### D. Dividing the Arguments

As described in the White & Case Jessup Guide sections on [Working with the Compromis](#) and [Writing Jessup Memorials](#), the Prayers for Relief at the end of the Jessup Compromis form the basis of Applicant and Respondent’s substantive claims. There are generally four claims set out in the Prayers for Relief, although some years have only three claims.

In Jessup Problems with four Prayers for Relief, typically, Jessup teams will assign the first two claims in Applicant’s Prayer for Relief to the first Applicant oralist and the second two Prayers for Relief will be addressed by the second Applicant oralist. Likewise, the first Respondent will address the first two claims in Respondent’s Prayer for Relief, and the second Respondent will address the second two claims. Most Jessup judges expect the issues to be presented in this order, so this is safe tactic for most teams.

However, your team might consider changing the order of presentation in exceptional circumstances. For example, the first oralist argues the first and fourth claims, and the second oralist argues the second and third claims (see Section V.B. Organization of Arguments in the White & Case Jessup Guide chapter on [Writing Jessup Memorials](#)). There might be two reasons to do this: 1) if two of the issues are closely linked, even if they do not follow one another in the Compromis, or 2) if two of the issues will require much more time to address than the other two issues. In the latter case, changing the order might provide a balance between the oralists.

If your team intends to change the order of presentation of issues, you should explain this to the judges and make it clear which oralist will cover which issue. The Bench Memorandum, your opponents’ arguments, and the judges’ preparations are all based upon the order of claims presented in the Compromis. Failure to alert the judges may confuse them and may result in lower scores.

#### E. Dividing Speaking Time

Each team has 45 minutes to make its case. This includes time reserved for rebuttal (when Applicant) or surrebuttal (when Respondent). Your team needs to think carefully of how to divide this time and practice various time allocations before the competition.

The Official Jessup Rules place some restrictions on how time may be allocated:

- (a) Your team may allocate no more than ten minutes for rebuttal or surrebuttal;
- (b) No single oralist may argue for more than 25 minutes, including rebuttal or surrebuttal.

Accordingly, the traditional way to divide speaking time is to allocate 20 minutes for the first oralist, 20 minutes for the second oralist, and five minutes for rebuttal or surrebuttal. However, while practicing your oral pleadings, your team may find that certain arguments take more time to present than others. Accordingly, you may want to amend the speaking time by allocating more time to one speaker and less to the other. Your team may also decide to reduce your time allocated for rebuttal.

Time allocations may not be changed once submitted to the Bailiff. If the first oralist does not use all of his or her time, the extra minutes do not get transferred to the next speaker and cannot be used in rebuttal/surrebuttal.

A point of courtesy in the Jessup Competition: the team arguing the Respondent side might approach the Applicant team before the match begins to ask how many minutes will be reserved—this will help the Respondents determine how much time to allocate for surrebuttal. It is considered to be polite and a matter of collegiality for the Applicant side to tell the Respondents so they can plan surrebuttal accordingly.

### Foreign-Language Interpreters:

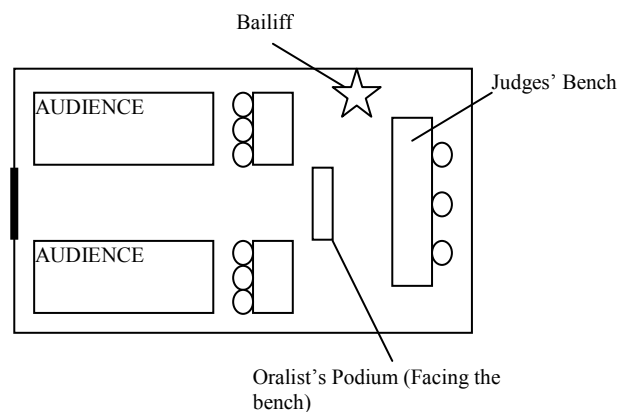
At the White & Case International Rounds and some National Rounds, teams may use professional interpreters (Official Jessup Rule 7.8 governs the use of interpreters). In such cases, teams may request an extension of oral argument time, up to 20 minutes. It is rare for Jessup teams to use interpreters at the White & Case International Rounds, often because the cost of interpretation may have to be assumed by the requesting team. Nonetheless, if your team wishes to use interpreters during the oral rounds, you must notify the competition administrators as early as possible before the oral rounds so that proper arrangements may be made.

Jessup judges have the discretion to extend your speaking time during the match. For example, if your allocated time expires in the middle of your answer to a judge's question, you should stop immediately, advise the Court that you have run out of time and ask the Court's permission for additional time to answer the question and/or briefly conclude your argument. If the judges decide to extend your time, this will not reduce the speaking time of the other oralist or the time allocated for rebuttal/surrebuttal. This extension of time is solely at the discretion of the judges; some judges choose to give oralists extra time, while others do not.

### III. Immediately Before the Match: What To Do Upon Entering the Courtroom

At the beginning of the Competition, you will receive a schedule of your matches. You should arrive at your courtroom 15 to 20 minutes before your match is scheduled to start. This allows time to view the courtroom and allows the Bailiff and the competition administrator to confirm that you are present and ready to argue.

A typical courtroom layout is illustrated below. The two counsel tables are behind and on either side of the Oralist's Podium, facing the Judges' Bench. The Applicant team is to the oralist's left (judges' right), and the Respondent team is seated to the oralist's right (judges' left).



Your team will have two or three members at the counsel table: the two oralists and, if you wish, one team member acting Of Counsel. As noted above, Of Counsel does not speak during the match, but may help the oralists by preparing research materials, notes, and observations. All other members of your team, coaches and any spectators must sit in the audience for the duration of the match and are not permitted to have any contact with the team members at counsel table or the Court.

Take some time to look around the courtroom. Confirm that you are comfortable with the speaking podium (or speaking stand), especially if it is too tall or too short. Test the acoustics of the room by practicing a few lines of your oral argument to make sure your voice carries well (in a large courtroom, you may have to speak louder or be aware of echoes).

Any research materials you will need during the match should be placed neatly on the counsel table and should be well organized and easily accessible. Do not pile dozens of books and binders on your counsel table. Some Jessup competitors believe that a counsel table weighted with thick textbooks will intimidate the other team and convey to the judges that your team has conducted extensive research. In fact, it simply makes your team look over-anxious. It is highly unlikely that you will refer to most of your research materials anyway, so only keep what you absolutely need at the counsel table.

Make sure you have some blank paper at counsel table and working pens since you will want to take notes during the match or communicate in writing with your co-counsel. Speaking or whispering at counsel table is strictly forbidden (see Official Jessup Rule 7.6.2). If water is not provided, bring your own. Remember that the match lasts 90 minutes and you are not permitted to leave the counsel table during that time, so be prepared.

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When your opponents arrive, you should wish them good luck and behave courteously. You may be nervous, but remember that the Jessup is supposed to be an enjoyable learning experience, so be friendly to your fellow competitors.

The Bailiff plays a crucial role during the oral pleadings. He or she is in charge of the procedure of the match and will keep track of the speaking time during the match. If you have any questions about the layout of the courtroom, the height of the podium, water glasses, or other courtroom set-up matters, politely bring them to the Bailiff's attention prior to the match. The Bailiff will try to accommodate your reasonable requests and answer your questions.

The Bailiff's chief responsibility before the match is to collect the names of the oralists and the amount of time that the teams have reserved for each part of their argument. This information will be provided to the judges before the match. Your team should tell the Bailiff who will be arguing first and second for your team, and how many minutes each oralist will argue. At this time, you will also reserve time for rebuttal (if you are Applicant) or surrebuttal (if you are Respondent), but you do not need to tell the Bailiff which oralist will argue rebuttal or surrebuttal. Many teams do not decide which oralist will argue rebuttal or surrebuttal until after the match has begun.



A Bailiff collects oralist information before a round

#### **IV. Oral Pleadings: A Basic Overview**

Once the Bailiff has collected the necessary information for both teams, those in the courtroom will be instructed to be seated and await the arrival of the Jessup judges. Below is a brief description of oral round procedure.

The Bailiff will announce the entry of the judges into the courtroom by asking all present to rise (you must stand up):

"All rise. The International Court of Justice is now in session. President [NAME] and the Honorable Judges [NAME] and [NAME] presiding."

The judges will sit down at the Judges' Bench, and the President, who will be seated in the middle of the three judges, will ask the teams and audience to be seated (do not sit down before you are instructed by the President—this is a matter of Jessup tradition and professional courtroom behavior).

The Bailiff will then announce:

"The case before the Court is the matter of [APPLICANT] versus the [RESPONDENT]. The Applicant and the Respondent are each allocated 45 minutes to present their pleadings."

Once the Bailiff sits down, the first Applicant oralist should stand up and move behind the podium, facing the judges. The President will tell the first Applicant oralist to begin, at which point he or she should state that they appear for the Applicant, introduce themselves and their Co-Agent, then summarize the aspects of the argument that each Agent will address and state the allocation of time. They should then start oral argument. When the first Applicant concludes, he should return to the counsel table and be seated. The second Applicant oralist should stand up and approach the podium, wait to be recognized by the President, and then start with a brief introduction in which he or she outlines the submissions that they will be making and then start oral argument. Upon conclusion, the second Applicant oralist should return to the counsel table and sit down.

The first Respondent oralist will then stand behind the podium, wait to be recognized by the President, and state that they appear for the Respondent, introduce themselves and their Co-Agent, then summarize the aspects of the argument that each Agent will address and state the allocation of time. They should then start oral argument. Upon conclusion, he or she should be seated and replaced at the podium by the second Respondent oralist.

The second Respondent oralist should wait to be recognized by the President and start with a brief introduction in which he or she outlines the submissions that they will be making and then start oral argument. Upon conclusion, the second Respondent oralist should return to the counsel table and sit down.

Once the second Respondent oralist has finished arguing, if Applicant has reserved time for rebuttal and opts to make a rebuttal, one of the two Applicant oralists should stand at the podium, wait to be recognized, and present Applicant's rebuttal. Once Applicant's rebuttal has concluded, if Respondent has



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reserved time for surrebuttal, one of the two Respondent oralists should move to the podium and present surrebuttal. When Respondent's surrebuttal is concluded, the oral match is completed.

If the Applicant has reserved time for rebuttal but elects not to make a rebuttal, one of the Applicant oralists should go to the podium and inform the Court that Applicant has elected not to use its right of rebuttal, thank the Court, and sit down.

During each oralist's argument, the Bailiff will keep track of the time remaining for that oralist. Typically, the Bailiff will hold up placards (or signs) with a number indicating how much time remains (the Bailiff will try to make sure the oralist and the judges clearly see the placards). Traditionally, the Bailiff will display a placard indicating that there is 15, ten, five, three, and one minute remaining in the argument, and when time has expired (the placard will have "STOP" printed in large letters).



A Bailiff holds up a timecard in the Georgian Jessup Competition

When surrebuttal is concluded, the Bailiff will announce:

"The Honourable Court is now adjourned. Will the teams and audience please leave the room while the Judges deliberate."

Your team and all the spectators should leave and wait outside the courtroom until the Bailiff asks you to return (sometimes it is the judges who will be escorted from the room by the Bailiff).

Once the judges have completed their private deliberations, the Bailiff will invite the teams and audience to return to the courtroom. The judges will deliver a few brief remarks about the match, including positive aspects and suggestions for future improvement.

## V. Oral Pleading Style and Structure

### A. Jessup Terms of Art

The Jessup Competition has developed a unique terminology, inspired by or taken from the terminology used by the ICJ. Your team should be familiar with these terms and practice using them before the actual competition.

#### Judges

The three judges are referred to as "Your Excellencies." When speaking to one judge, say "Your Excellency." When referring to a judge in the third person, say "His Excellency" or "Her Excellency." (For example, "As His Excellency has already noted, this point is correct.") It is also permissible to refer to a judge by name, for example, "Judge [Smith]."

#### The President

The head of the judge panel sits in the middle of the panel, and is referred to as the President. When speaking or referring to this judge, say "Madam President" or "Mister President," as appropriate. "Your Excellency" is also appropriate.

#### Oralists

Jessup oralists are referred to as Agents. When referring to your teammate, you may refer to him or her as your Co-Agent. When referring to your opponents, you may refer to them as "Agents for Respondent" or "Agents for Applicant," or "Our Friends" or "Our Honourable Friends." Note: It is not customary or recommended to refer to yourself or the other oralists by name, for example, as "Agent Smith."

### B. Pleading Style and Attire

In preparing your oral arguments, it is important to keep in mind the criteria and qualities the judges will be looking for in a Jessup round. For basic guidance, please see a sample [Oral Round Scoresheet](#). The Oral Round Scoresheet instructs the judges to consider knowledge of the law; application of law to the facts; ingenuity and ability to answer questions; style, poise, courtesy and demeanor; and time management and organization.

Most Jessup judges are accustomed to hearing oralists for whom English is their second (or third, or fourth) language. You should not worry that your accent or an occasional imprecision in English will be counted against you so long as you enunciate to the best of your ability and do not speak too quickly.

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Here are some tips to improve your speaking style:

- Stand up straight at the podium and make direct eye contact with the judges. Do not focus too extensively on one judge—a good oralist makes eye contact with all three judges.
- Speak slowly, clearly and in a strong voice.
- Your speaking style should be formal, but conversational.
- Jessup judges will frequently interrupt you with questions; this is not a negative reflection on the quality of your presentation and may even be an indication you are doing well. When asked a question, you should respond directly and be respectful of the Court at all times. Pause briefly before you answer a question and show the judges that you are thinking about the response (see Section VII.D below for further advice on how to address judge questions).
- When a judge begins speaking, you should immediately stop speaking and listen: Jessup judges consider it a major breach of decorum to interrupt or attempt to “speak over” a judge when he or she is speaking. Never interrupt a judge when he or she is speaking. Politeness in the courtroom is essential.

You should dress in business attire for your oral rounds. For men, this typically means a suit and tie. For women, it means a suit with skirt or pants. The Jessup is an international competition, and so business-appropriate local and cultural variations are permitted.

### C. Bringing Notes to the Podium

During a Jessup oral round, your speaking style should be conversational. Therefore, you should not read directly from a prepared speech. You may bring notes and other materials to the podium with you, but with limited time to speak you do not want to spend time sifting through your notes. Furthermore, reading from prepared materials breaks eye contact with the judges, which decreases the conversational character of the oral pleadings.

Team members at counsel table may not pass any written materials to the oralist at the podium. This includes notes, texts of treaties, or even the Compromis itself. While he or she is standing at the podium, the oralist is alone. It is not recommended that the oralist retrieve a treaty or reference

book from the counsel table during his or her presentation—the oralist will look unprofessional and unprepared. Therefore, if you believe you will need the text of a treaty or other reference during your argument, you should have it with you.

Many Jessup oralists choose to bring to the podium only an outline of their presentation, with excerpts of key treaty clauses, citations, and a copy of the Compromis. By doing this, they avoid bringing up the entire text of a lengthy treaty or reference book, most of which they will never use. However, it is wise to have a copy of the Compromis with you at the podium in case you need to refer to it.

### D. Behavior at Counsel Table

When seated at counsel table, your team should pay attention to the judges and to the oralist at the podium, regardless of whether the oralist is from your team or not. You should display professionalism at all times, and do nothing to distract the judges or the oralist at the podium. Team members at the counsel table may not speak or even whisper to one another—all communication must be written and done discreetly.

#### **Official Jessup Rule 7.6.2**

**States that communication at the counsel table between Team Members shall be in writing to prevent disruption. Teams and team-affiliated spectators must avoid all unnecessary noise, outbursts, or other inappropriate behavior which distracts from the argument in progress.**

### E. General Notes on Argumentation

With the Applicant side presenting its arguments first, they will have to decide how and whether to preemptively “respond” to the Respondent’s arguments before they are presented. Some judges prefer that the Applicant only deal with its own arguments. Other judges believe that the Applicant should anticipate and address the major counter-arguments which Respondent will likely raise, but only if Applicant has sufficient time to do so and without detracting from the Applicant’s main pleadings. Often, the best middle path is to be aware of the Respondent’s likely arguments and refer to them, and refute them, in the context of an answer to a judge’s question.

By contrast, the primary purpose of Respondent’s main pleading is to respond. A team’s Respondent argument will change

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considerably from one match to the next. While Respondent should present its entire argument—especially with respect to those claims for which it is the complaining party—it will likely have to modify its argument to respond to the issues that Applicant has addressed. For example, if the Applicant based its entire claim upon an interpretation of the Articles on State Responsibility, Respondent should modify its argument to address the Articles on State Responsibility, rather than sticking to a prepared speech about some other source of law that is not a priority in the particular match.

The purpose of the rebuttal by the Applicant is to refute a limited number of points raised by the Respondent. No new arguments may be raised during rebuttal. Respondent’s purpose in surrebuttal is to respond to the Applicant’s rebuttal. Respondent may not raise legal issues on surrebuttal that were not raised during Applicant’s rebuttal.

## VI. A Typical Practice Regimen

Success in the oral rounds is built upon extensive practice in the weeks and months before the competition.

You should not begin formal oral practice until after you have completed your memorials. Furthermore, Official Jessup Rule 2.4.7 states that you are not permitted to hold practice rounds in front of anyone except your team members and registered team advisors until after your memorials are officially submitted. Teams should focus on finalizing their written arguments before turning to the oral pleadings.

Once you begin preparing for the oral rounds, your team should practice as much as possible and draw judges from a wide variety of sources. Of course, you will want to practice in front of professors and practitioners, but arguments in front of other students and non-experts are also useful. By practicing in front of judges who are not intimately familiar with the *Compromis* or experts in international law, your team will learn to better explain sophisticated or unfamiliar arguments in a clear, concise and easy to understand manner.

Practicing oral matches in front of your teammates is especially useful. You have worked together for many months, and you know the strengths and weaknesses of each other’s arguments. Remember, however, not to let your practice matches interfere with the relationships that your team has created. By January, you have worked on the *Compromis* together for several months. Your teammates can be your best helpers in improving your arguments, but can also be your most merciless critics. Try to be kind to one another, and always remember that the purpose of oral practices is to improve the entire team.

Law students have busy schedules, so it can be difficult to find time for 90-minute, full-team practices. If pressed for time, consider shorter practices—for example, a 45-minute practice during which only the Applicant side argues, or a 45-minute practice in which the first Applicant argues against the first Respondent.

When scheduling your practices, leave plenty of time at the end of the practice for comments and questions from the judges. You will want to ask the practice judges questions about your poise and your style, as well as other non-substantive matters concerning the structure and flow of your argument. These post-practice discussion sessions are often the most useful portion of the practice.

When choosing the location of your practices, try to choose several different settings. Some Jessup matches are held in large courtrooms, others are held in small classrooms. Sometimes the setting is very formal, and other times, it is extremely informal. If possible, you will want to ensure that all of your oralists are prepared to argue in any setting.

At least once before your oral competition, you should have a full “dress rehearsal,” in which the entire team practices in formal business attire. In this case, you will probably want to have the team’s coach, practicing lawyers, and/or other professors sit as judges. Some teams turn this into a “good-luck party,” and invite other students from the school to sit in the audience and watch. This final rehearsal will be your closest approximation of the setting and pressure of a real Jessup match.

## VII. An Annotated Example of a Jessup Oral Round

The following sections discuss general Jessup presentation strategy during oral pleadings. Every competitor will take a different approach, but the suggestions below are derived from long-standing Jessup traditions, as well as the Official Jessup Rules, and should therefore be useful to most Jessup competitors, especially those who have never participated in the competition before.

To illustrate a typical Jessup oral match, a fictitious transcript is presented below along with annotations and references to further analysis in the *White & Case Jessup Guide* (references are set out in the right-hand side column).



<b>Applicant 1:</b>	Good morning, Your Excellencies. May it please the Court, my name is Andrew Adams, and I am Agent for the Applicant, the Republic of Andova. My Co-Agent is Beth Bilbo. I will be addressing the first two issues concerning state responsibility, and Ms. Bilbo will address the second two issues concerning international environmental law. Both my Co-Agent and I will take 20 minutes each for our presentations, and Applicant has reserved five minutes for rebuttal.	Introduction (see Section VII.A.)
<b>Applicant 1:</b>	Before I begin, Mr. President, would you like a brief review of the material facts?	Statement of the Facts (see Section VII.B.)
<b>President:</b>	No, thank you Agent. The Court will refer to your written Memorials.	
<b>Applicant 1:</b>	Thank you, Your Excellency. The first issue before the Court is whether Andova is responsible for the acts of the private, independent paramilitary organization, ARAS. The answer to this question is “No,” for three reasons.  First, ARAS is a private organization not under the control or direction of Andova.  Second, Andova neither authorized nor endorsed ARAS’s terroristic actions.  And third, Andova has demonstrated by capturing and prosecuting the leaders of ARAS that it does not endorse the activities of ARAS. I will address these three points in turn.	Road Map (see Section VII.C.)
<b>Applicant 1:</b>	First, ARAS’s terrorist attack is not attributable to Andova because ARAS is a private organization not under the control or direction of Andova.  Your Excellencies, in 2006 the United Nations International Law Commission promulgated the Guidelines on Terrorist Attribution, a summary of the customary international law concerning state-sponsored terrorism. Article 7 of the Guidelines discusses the question of control or direction. That Article...	Applicant— First Oralist (see Section VII.E.1.)
<b>Judge 1:</b>	Agent, before we begin: The ILC Guidelines are not a treaty. Should this Court even pay attention to the Guidelines?	Questions from Jessup Judges (see Section VII.D.)
<b>Applicant 1:</b>	Yes, Your Excellency. According to Article 38(1)(d) of this Court’s Statute, this Court may have recourse to the writings of leading publicists. The International Law Commission is certainly a leading publicist: it is the U.N. organ entrusted with the study of international law, and it is a body to which this Court has frequently referred in its prior Judgments.	
<b>Judge 1:</b>	But Agent, publicists are only permitted as a supplementary source of law. What are we supplementing here?	

<b>Applicant 1:</b>	<p>Your Excellency, in this case, the ILC was tasked with describing the current state of customary international law. Under Article 38(1)(b) of this Court’s Statute, customary international law is one of the three primary sources of law to which this Court has recourse. In this case, the ILC’s writings on the matter are being introduced in order to explain the scope and content of customary international law.</p> <p>Your Excellencies, Article 7 of the Guidelines discusses the question of control or direction. That Article states, “Where a private organization does not receive any funding or instructions from a State, the acts of the organization may in no instance be attributed to the State.”</p>	
<b>Judge 1:</b>	I think that point is fairly clear, Agent. But what about the Andovan Prime Minister’s statements, calling ARAS “my brothers in arms?”	
<b>Applicant 1:</b>	Your Excellency, that takes me to my second reason, namely, Andova never authorized nor endorsed...	
<b>Judge 2:</b>	I think that calling them his “brothers” sounds like an endorsement to me, Agent.	
<b>Applicant 1:</b>	Your Excellency, the ILC Guidelines are quite clear in this regard. According to Article 14 of the Guidelines, and I quote, “Mere political statements of support for an organization, without an express endorsement of the specific illegal acts, does not constitute endorsement.”	
<b>Judge 2:</b>	Agent, assuming we find that ARAS’s actions are attributable to Andova, are you liable for the consequential environmental damage?	
<b>Applicant 1:</b>	No, Your Excellency. My Co-Agent will develop this argument more fully, but briefly, Rallavia itself is responsible, because it failed to intervene adequately to stop the harm.	
	<i>Applicant 1’s argument on the first issue continues.</i>	
<b>Applicant 1:</b>	<p>Your Excellencies, for all of the foregoing reasons, ARAS’s terrorist attack is not attributable to Andova. The second issue before the Court today is whether Andova is responsible for the environmental damage caused to Rallavia by reason of the collapse of the border dam between the two states. The answer to this question is “no,” for two reasons.</p> <p>First, Respondent has failed to meet its burden of demonstrating that it was Andova’s failure to repair the dam that caused its collapse.</p> <p>Second, even if Andova is partially at fault for failure to upkeep the dam, it was a hurricane which caused the dam to collapse. This is an “Act of God” or force majeure, which falls under one of the exceptions to the doctrine of State Responsibility.</p>	Transition to Second Issue (see Section VII.E.3.)
<b>President:</b>	Agent, is it your contention that Andova may be partially responsible for the collapse?	
<b>Applicant 1:</b>	No, Your Excellency. The fact is, no one knows. Most importantly, Respondent doesn’t know. It bears the burden of proving Andova’s liability, and nowhere in its Memorial does it bring forward facts proving this point.	
<b>President:</b>	Agent, if Respondent is able to prove here today that Andova failed in its upkeep of the border dam, then do you lose this point?	
<b>Applicant 1:</b>	No, Your Excellency. In this case, Applicant relies upon its second reason, namely, that a natural act, or “Act of God” caused the collapse, and Andova is not responsible under international law for natural acts. I will proceed to that argument, if Your Excellency wishes.	
	<i>Applicant 1 continues pleading on the second issue, and realizes he is almost out of time.</i>	

<b>Applicant 1:</b>	Your Excellency, for each of the two foregoing reasons, Applicant contends that Andova is not responsible for the...	First Oralist Concludes (see Section VII.E.4.)
	<i>The Bailiff holds up a sign indicating "STOP"</i>	
<b>Applicant 1:</b>	Madam President, I see that my time has expired. May I briefly conclude my response to Madam President's question?	
<b>President:</b>	Very briefly, Agent.	
<b>Applicant 1:</b>	Madam President, the direct cause of the collapse was the hurricane that hit the border area. Even if it could be proven that Andova failed in its upkeep of the dam, which Respondent cannot prove, Andova can still not be held responsible for the natural act that ultimately caused the collapse and resulting damage to Rallavia.	
<b>President:</b>	Thank you.	
<b>Applicant 1:</b>	Thank you, Your Excellencies.	
	<i>Applicant 1 collects his notes, returns to counsel table, and sits down. Applicant 2 stands up with her notes, approaches the podium and waits for the President's instruction to proceed.</i>	
<b>Applicant 2:</b>	<p>Good morning, Your Excellencies. May it please the Court, my name is Beth Bilbo. I will now address the final two issues before the Court. First, whether Andova is legally responsible for the environmental damage which resulted from the terrorist attack; and second, to what extent Andova is culpable for the harm to Rallavia caused by global warming.</p> <p>Turning to the first issue, Your Excellencies, Andova is not legally responsible for the environmental damage for three reasons.</p> <p>First, as my Co-Agent has already discussed, the terrorist acts by ARAS.</p> <p>Second, even if those acts are attributable to Andova, the environmental damage was not the foreseeable consequence of those acts.</p> <p>And third, Rallavia is itself equally responsible for the damage, by not taking adequate steps to intervene at any early stage of the damage.</p>	Second Oralist Begins (see Section VII.F.1.)
<b>Judge 2:</b>	Agent, before we begin, I'd like to clarify a couple of points that your Co-Agent argued at the end of his argument. Did I understand him correctly, that Andova believes that it did not fail in its responsibility to upkeep the border dam?	
<b>Applicant 2:</b>	No, Your Excellency. The facts do not lead us to make a conclusion on this point one way or another. But even if Andova had failed, the ultimate cause of damage was a hurricane, which is an "Act of God."	
	<i>Applicant 2 continues argument on the issues. The Bailiff then holds up a sign that indicates there is less than one minute left.</i>	
<b>Applicant 2:</b>	<p>Your Excellencies, I see that my time is short. For the foregoing reasons, and those stated by my Co-Agent, Applicant respectfully prays,</p> <p>First, that this Court determine that the acts of ARAS are not imputable to Andova;</p> <p>Second...</p>	Second Oralist Concludes (see Section VII.F.2.)
	<i>The Bailiff holds up a sign that reads "STOP"</i>	

<b>Applicant 2:</b>	Madam President, I see that my time has expired. May I briefly conclude my Prayer for Relief?	
<b>President:</b>	No.	
<b>Applicant 2:</b>	Thank you, Madam President.	
	<i>Applicant 2 collects her notes, returns to counsel table, and sits down. Respondent 1 stands up, places his notes at the podium, and waits for the President to instruct him to proceed.</i>	
<b>President:</b>	Give us a moment, Agent.	
<b>Respondent 1:</b>	Thank you, Madam President.	
<b>President:</b>	Go ahead, Agent.	
<b>Respondent 1:</b>	Good morning, Madam President, Your Excellencies. May it please the Court, my name is Charles Carlton, and I am Agent for the Respondent, the Republic of Rallavia. My Co-Agent is Diane Davis. For the first 20 minutes, I will address the first two issues, concerning the imputability of certain third-party activities to the Applicant. For the second 20 minutes, Ms. Davis will address the final two issues, concerning the environmental implications of Andova's actions. Respondent has reserved five minutes for surrebuttal.	The Respondent (see Section VII.G.)
	<i>Respondent's argument proceeds in the same fashion as the Applicant's (i.e., Respondent 1 concludes, Respondent 2 begins, Respondent 2 concludes). Upon completion of Respondent's argument, the Applicants decide to exercise their right of rebuttal. Applicant 1 stands at the podium with only a page of notes and waits for the President to instruct him to proceed.</i>	
<b>Applicant 1:</b>	Good morning again, Your Excellencies. Applicant has two points to make on rebuttal.	
	First, nowhere in the Compromis does it indicate that Andova expressly endorsed the activities of the ARAS terrorists.	Rebuttal and Surrebuttal (see Section VII.H.)
<b>President:</b>	Agent, is this responsive to Respondent's argument? I didn't hear Respondent claim that Andova had endorsed ARAS's activities.	
<b>Applicant 1:</b>	Yes, Madam President. Agent for Rallavia referred to the first terrorist attack as "done at the behest of Andova." Nowhere in the Compromis does it indicate that this was done at Andova's behest.	
<b>President:</b>	Okay, Agent.	
<b>Applicant 1:</b>	Second, Respondent twice referred to the "Treaty of Peace" between Rallavia and Andova. It is important to note that the Compromis, at paragraph 46, indicates that this treaty was never ratified by Rallavia. Under the Vienna Convention on the Law of Treaties, therefore, it does not create any obligations or rights upon which Rallavia can rely today.	
	If I may be of no further assistance to the Court, this concludes Applicant's oral submissions.	
	<i>Applicant 1 returns to counsel table. Respondents pass notes quietly between one another, and then Respondent 1 comes to the podium, with one sheet of paper. He waits to be acknowledged by the President.</i>	
<b>Respondent 1:</b>	Madam President, Your Excellencies, Respondent respectfully waives its surrebuttal. If I may be of no further assistance to the Court, this concludes Respondent's oral submissions.	

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## A. Introduction

The introductory sentence in the transcript above is typical in the Jessup. There can be some variation in the precise words or order, but it is best to settle on a standard introduction, memorize it, and recite it in each match. National or stylistic variations are also welcome. Some teams also introduce Of Counsel (for example, John Smith will serve Of Counsel in this matter). Some oralists choose to stand when they are introduced.

It is very important to wait for instruction from the President before beginning your presentation. Frequently, the judges are checking their notes before the match begins, so it is proper deference and courtesy to wait until the judges are ready for you to begin. Finally, the first oralist should always tell the judges how much time each oralist intends to take, as well as how many minutes your team is reserving for rebuttal. This allows the judges to plan their questions accordingly (see video clip entitled “[Introduction](#)” in the multimedia section at [www.jessup.whitecase.com](#)).

## B. Statement of the Facts

After a self-introduction, the first Applicant oralist should offer to present a summary of the facts from the Compromis. With limited time available, you do not want to summarize the facts unless requested by the judges, so always ask first.

More often than not, the President will decline the offer. Many judges do not think it necessary to hear the facts and will want you to commence your argument right away. However, if the judges want to hear a summary of the facts, you should not merely recite every detail from the Compromis. You should prepare a concise summary of the key facts of the case, focusing in particular on those facts which will become relevant in your legal argument (but without ignoring facts that are problematic for the Applicants). As a general rule, if your summary of the facts takes more than a minute, it is too long.

## C. Road Map of Issues

Jessup oralists should always explain to the judges precisely how the first issue will be addressed (at this time, you need not explain in detail how you intend to argue your second issue – it will take up too much time and confuse the judges). The purpose of this explanation is to inform the judges of the legal basis of the claim and to give them an outline or “road map” of your argument (see video clip entitled “[Road map-Applicant](#)” in the multimedia section at [www.jessup.whitecase.com](#)). If a judge is confused about the structure of your argument, he or

she may ask questions at inconvenient times rather than waiting for the appropriate occasion later in your argument. You need only briefly summarize your Co-Agent’s claims in your introduction. You do not need to explain your Co-Agent’s issues or preview her arguments.

Your plan of argument should be explained in short and clear sentences (i.e., one sentence per issue). You should also describe the relationship between different arguments. For example, “First, Andova did not support the terrorists. Second, even if this Court finds that Andova supported the terrorists, Andova did not know that they were terrorists.” This explains to the Court that your second argument is in the alternative to your first argument.

Jessup competitors should remember and practice the “IRAC” method of presenting an oral argument: present the **I**ssue, identify the **R**ule, describe the **A**pplication of the rule, and state the **C**onclusion (see video clip entitled “[IRAC](#)” in the multimedia section at [www.jessup.whitecase.com](#)). This approach will help to make your oral pleadings clear, concise and logical.

The ICJ is a court of law; arguments which do not rely upon one of the legal bases described in Article 38(1) of the ICJ Statute have no place before the Court. Therefore you should state the legal basis for your claim with precision (see video clip entitled “[Lead with the law](#)” in the multimedia section at [www.jessup.whitecase.com](#)). For example, “Your Excellencies, Article 16 of the International Covenant on Civil and Political Rights states, ‘...’ In this case, Respondent has breached this obligation because ...” In this example, you see a statement of a legal Rule and an Application of the rule to the facts of this case.

As mentioned previously, a team’s oral arguments are not limited by its memorial (see video clip entitled “[Arguments not contained in your memorial](#)” in the multimedia section at [www.jessup.whitecase.com](#)). Your team may alter the arguments set out in your memorial or decline to make them entirely. Most judges are familiar with this Jessup practice, but your team should be careful of disavowing what was written in the memorials. If a judge asks why you are not making a particular argument from the memorial, be direct and say you now have a better argument. You might tell the judge “[u]pon further research, we determined that there was a stronger argument to be made in the limited time available during oral arguments.” If a judge asks you to explain an obvious contradiction with your memorial, be honest and say “[a]fter further research, we determined that that argument was legally imprecise.”



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## D. Questions from Jessup Judges

### 1. Preliminary Comments on the Role of Questions in the Jessup

Unlike in the real ICJ, where pleadings are far more formalistic, Jessup judges enjoy asking questions and ask them for a variety of reasons. Some judges ask questions to test how well you know the facts or the law. Other judges ask questions to see how able you are to return to the structure of your argument, as reflected in your “road map.” Sometimes, a judge asks a question out of pure curiosity. Questions from Jessup judges should be expected and should be embraced as one of the most challenging but enjoyable aspects of the competition (see video clip entitled “[Common judge question](#)” in the multimedia section at [www.jessup.whitecase.com](#)).

Do not be intimidated if a judge asks you difficult questions, or if a judge phrases his or her questions in a confrontational or argumentative way. This does not necessarily mean that the judge dislikes your argument or that you are “losing” the match. Often times, a judge asks a difficult question (or sounds confrontational) because you are doing a good job, and wants to determine the depth of your knowledge and your flexibility in engaging difficult questions.



A Jessup judge asks questions during an oral round

### 2. Answering Questions

It may seem obvious, but when a Jessup judge asks a question, answer it. Do not be evasive or long-winded, even if the question is directly aimed at a weak point in the argument. Jessup judges are testing your ability to give a credible, well-stated and direct answer even if the law or facts are not in your favor.

To this end, if a judge asks a question that calls for a “yes” or “no” answer, then the first word of your answer should be “yes” or “no” (see video clip entitled “[Answer ‘yes’ or ‘no’](#)” in

the multimedia section at [www.jessup.whitecase.com](#)). The temptation to be evasive must be resisted. Evasiveness will usually provoke the judges to ask more, and often more aggressive, questions. Of course, Jessup oralists can qualify a response by responding “Yes, Your Excellency, but...” and then link your qualification back to the main structure of your argument and provide the relevant legal or factual support for the qualified answer.

Setting out a connection to your main outline or “road map” is a key skill to practice. Jessup judges are interested in your ability to move from issue to issue while maintaining the integrity of the outline of what was presented at the beginning of the pleadings (for example: “Yes, Your Excellency. Article 117 of the treaty sets a territorial limit of 200 miles on the Applicant. This relates directly to my second argument, that Applicant has breached that treaty by attempting to exercise jurisdiction outside its territorial limit.”). Sometimes, questions from the judges come at such a rapid pace that it becomes self-defeating to constantly try to refer each answer to the main structure of your outline. Nonetheless, learning to recognize the appropriate opportunity to guide the judge’s back to your plan of argument is a skill all Jessup oralists should strive to develop (see video clip entitled “[Bringing judges back to road map](#)” in the multimedia section at [www.jessup.whitecase.com](#)).

Jessup oralists, particularly those competing at the White & Case International Rounds, will often find themselves bombarded with multiple and simultaneous questions and comments from the judges (see video clip entitled “[Active bench](#)” in the multimedia section at [www.jessup.whitecase.com](#)). A key skill to develop is to listen carefully to each question, reformulate the questions in a clearly organized and logical plan of response, inform the judges how you intend to answer (implicitly seeking their approval), and then proceed with your response. For example, if all three judges have asked successive and/or overlapping questions, you might say “Your Excellencies, given the several questions and comments from the Court, if I may, I will first respond to the question from Madam President with respect to state responsibility, the answer to which is directly related to the comments by Your Excellencies as to whether Mr. X was acting on behalf of the state.”

Jessup judges will sometimes ask questions that contain multiple parts. Again, you should help the Court by presenting a well-organized plan to answer the question. For example, “Your Excellency’s question raises three key issues which I intend to answer successively: first, what is the relevant legal standard of

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state responsibility applicable in these circumstances; second, did the Applicant violate that standard; and third, is there some exception in international law that might excuse Applicant's behavior?"

If a judge asks about a point of law, explicitly cite the source of law to demonstrate your command of the argument (see video clip entitled "[Cite specific law or Compromis section](#)" in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)). For example,

"No, Your Excellency. According to Article 47 of the treaty, the obligation is on the accusing State to prove each aspect of its claim." If a judge asks about the facts of the case, directly cite the relevant paragraph(s) in the Compromis. For example, "Yes, Your Excellency. According to paragraph 27 of the Compromis, Mr. Smith returned to his home at 8:00 in the morning." This demonstrates mastery of the law and the facts.

Finally, always be honest with the Court. If you do not understand a judge's question, ask for clarification. For example, "Your Excellency, I'm afraid I do not understand your question—could you please clarify what you mean?" (see video clip entitled "[Ask to clarify a question](#)" in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)). If a judge asks you about a case you have not read, it is best simply to admit it. For example, "Your Excellency, I'm afraid I am not familiar with that case."

#### **Write Down Every Question:**

Someone on your team (either Of Counsel or a team member in the audience) should write down every question the judges ask during the match. This includes questions asked of the other team. These questions are useful in preparing for future matches, as many judges ask the same questions. If possible, a team member should also note the answers to the questions, and the judges' reactions. These notes will help you determine what arguments the judges like and dislike, which may be useful in future matches.

In summary, keep the following key points in mind when answering questions:

- (a) Answer the question directly and briefly, to allow the judges to ask follow-up questions if they wish;
- (b) Demonstrate that you understand the relevance of the question to your argument;

(c) Demonstrate that you know and understand the law and facts applicable to your answer; and

(d) Return to your argument.

## **E. Applicant—First Oralist**

### **1. Main Pleading**

The main pleading must be a presentation of the law and facts to support the Applicant's legal conclusion. If you follow the outline of your argument as presented to the judges, you will be better able to deal with judge's questions that force you to move back and forth between different issues. It is helpful to occasionally remind the judges of your outline of argument. For example, "Yes, Your Excellency. That question leads to Applicant's second argument in support of this claim. Namely,..." Remember, Jessup oralists must be flexible but still try, when appropriate, to bring the judges back to the original argument structure.

The first oralist will often be asked a question relating to an argument to be made by his or her Co-Agent. The proper response is to briefly answer the question, and politely inform the judge that your Co-Agent will address the question more fully. Judges sometimes use these questions to test your understanding of your Co-Agent's arguments. Other times, judges are trying to demonstrate an apparent conflict between your argument and your Co-Agent's. If it happens frequently, it may also be a clue that your introduction is insufficiently clear as to the allocation of issues between the oralists. In any event, it is best to answer the question and to the best of your ability, and promise that your Co-Agent will explain the answer more fully.

### **2. Transition to the Second Issue**

Each oralist typically addresses two claims. Therefore, at some point during oral argument, you will need to conclude discussion of the first issue, and move to the second issue. This will occur either (a) once the first issue has been adequately addressed or (b) once you have spent too much time on the first issue (see video clip entitled "[Transitioning to another issue](#)" in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)).

The proper way to transition from the first issue and begin arguing the second issue is illustrated in the transcript above. You should introduce the second issue, explain precisely how you intend to address it (i.e., a "road map" for the judges), and then proceed to your main pleading.

Jessup oralists often find that, as a result of multiple and constant questions from the Court, there is very little time left

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remaining to address other issues. Do not be afraid to point this out (politely) to the Court: “Your Excellencies, I see that time is short. If I might, I would like now to move to my second issue, namely...” Jessup judges often get caught up in the dialogue with the oralists (a good thing) and will appreciate being told that time is running short. The President will usually be the one to invite you to move to the second issue.

### 3. Conclusion

Conclusions that are hasty and missing key details can detract from an otherwise good performance by an oralist. Accordingly, it is always wise to prepare and memorize a concise conclusion that will last no longer than 45 seconds. The goal, which is not always achievable, is to start the conclusion shortly after the Bailiff indicates that there is one minute remaining.

As a back-up, you should also prepare an even shorter conclusion, no longer than 10 seconds, for those circumstances where you have run out of time completely. This version should basically state, “For all of the foregoing reasons, Applicant respectfully requests that this court find that [FIRST CONCLUSION] and that [SECOND CONCLUSION].”

Keep in mind that once the Bailiff holds up a sign that says “STOP,” you must immediately stop talking, note that your time has expired and ask the President for permission to finish your point and conclude. Assuming the President agrees, once you finish your point, use the short version of your conclusion, thank the Court, and sit down (see video clip entitled “Conclusion without time left” in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)).

## F. Applicant—Second Oralist

### 1. Main Pleading

Most of the advice set out above applies equally to the second Applicant oralist. However, the second oralist has the extra duty of paying careful attention to the first oralist’s pleadings, for two reasons. First, if the first oralist was having difficulty with a particular question, the judges may ask the second oralist to deal with that question or issue. In this situation, the second oralist must answer the question fully, although with references to the points made by the first oralist (see video clip entitled “Questions about Co-Agent’s arguments” in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)). Second, the second oralist must be careful not to contradict any arguments made by the first oralist. The Compromis is often written to create

apparent conflicts between the two oralists’ arguments, and the judges will try to exploit these conflicts as a test of your skills (see video clip entitled “Inconsistencies between pleadings” in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)).

### 2. Conclusion

The conclusion of the second Applicant oralist should, whenever time is available, include a statement of the Prayer for Relief. The Prayer for Relief can be memorized and recited verbatim from the Compromis. If you have run out of time, and the President permits, you may ask the Court to refer to and grant the Prayer for Relief as set out in your memorial.

## G. The Respondent

Pleading advice for the Respondent is generally the same as those described above for the Applicant. However, the Respondent’s task differs from that of the Applicant in several respects, most of them deriving from the fact that the Respondent must respond to the Applicant’s arguments (see video clip entitled “Road map-Respondent” in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)).

During Applicant’s oral presentation, Respondents should pay careful attention to the oralists and the judges. Whenever possible, Respondents should specifically refer to Applicant’s arguments when presenting your arguments. If Applicant’s arguments are incorrect, you should dispute them (see video clip entitled “Respondent clarifies facts or law” in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)); if Applicant’s arguments are correct or uncontroversial, you may make yourself appear reasonable and honest to the judges by agreeing. For example, “As Applicant has already argued, it is uncontested that 43 people were trapped in the building for two days. Respondent does not disagree with this characterization.”

If the Applicant did not offer a Statement of the Facts, or if the Court declined Applicant’s offer of a Statement of the Facts, there is no need for the Respondent to offer a Statement of the Facts. If Applicant did present a Statement of the Facts, then the first Respondent oralist may “respond” to that Statement of the Facts, to the extent absolutely necessary to correct or clarify any facts recited.

The Respondent must not only defend against the claims made by the Applicant, but must also respond to any anticipatory defenses and counterarguments raised by Applicant. Respondent may, of course, bring up new legal and factual

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arguments in its main pleading. But it should also address the major legal and factual arguments raised by Applicant, by contesting the facts and the law relied upon by Applicant, or demonstrating that the Applicant's argument does no harm to Respondent's case. On this last point, the most common tactic is the demurrer (i.e., challenge the legal sufficiency of Applicant's argument). For example, "Your Excellency, Applicant argued that Respondent may not rely upon the International Covenant on Civil and Political Rights because Respondent is not a party to that Convention. However, Respondent does not base any of its arguments upon that Convention, and relies instead upon the Convention Against Torture."

## H. Rebuttal and Surrebuttal

Once Respondent has concluded its arguments, if Applicant has reserved time for rebuttal, she must return to the podium. If Applicant has not reserved any time for rebuttal, the match ends when Respondent concludes its arguments. The Applicant may either begin its rebuttal or waive rebuttal.

Under the Official Jessup Rules, rebuttal must be responsive to Respondent's main pleading. Applicant may not introduce new substantive arguments on rebuttal, nor may it revisit its own arguments that Respondent did not address. Likewise, during surrebuttal, Respondent may only respond to Applicant's rebuttal. Respondent may not introduce new points, nor may it return to points raised by Applicant or Respondent in their main pleadings, unless those points were also raised in Applicant's rebuttal.

The usual format of a good rebuttal is a small number of very short arguments, each of which is directly responsive to a specific point raised by Respondent in its arguments. A rebuttal should begin by telling the judges how many points you will raise. For example, "Your Excellencies, Applicant raises three points on rebuttal. First..."

It is good to begin each point by demonstrating that the point is connected to Respondent's argument. For example, "First, Respondent stated that the Iran Hostages case stands for the proposition that a State may broadly endorse the actions of private actors. This is incorrect." Then explain the correct holding of the case, and briefly demonstrate why this correction is important to the case at hand. Then move directly to your next point.

Conclude your rebuttal by thanking the Court. There is no need to recite your Prayer for Relief or to formally conclude:

you have already concluded during your main pleading (see video clip entitled "[Rebuttal](#)" in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)).

Surrebuttal proceeds in the same fashion, except that your issues are limited to those specifically raised by Applicant during its rebuttal. Often, you will simply "re-correct" the "corrections" that Applicant presented during rebuttal or explain why Applicant's corrections are irrelevant or misguided (see video clip entitled "[Surrebuttal](#)" in the multimedia section at [www.jessup.whitecase.com](http://www.jessup.whitecase.com)).

When deciding whether to exercise your right to rebut, remember that judges are permitted to ask questions during rebuttal and surrebuttal. In fact, judges are permitted to ask questions during rebuttal or surrebuttal that are irrelevant to the rebuttal or surrebuttal. Judges sometimes ask extraneous questions when, for example, there is a hotly disputed point between the two teams that was not fully explored during the main pleadings. Such questions are rare, but possible, so be prepared.

### 1. Waiving Rebuttal or Surrebuttal

#### **Official Jessup Rule 7.3.1**

**States that each Team may reserve up to ten (10) minutes for rebuttal or surrebuttal. As a courtesy to the judges, Teams should announce whether they intend to reserve time for rebuttal or surrebuttal at the beginning of their oral argument, and how much time they intend to reserve. Failure to announce will not waive the right to rebuttal or surrebuttal. Only one Team Member may deliver the rebuttal or surrebuttal. The rebuttal or surrebuttal must be delivered by one of the two oralists participating in the Oral Round. The Team need not indicate prior to rebuttal or surrebuttal which of its two eligible Team Members will deliver rebuttal or surrebuttal.**

Waiving rebuttal (or, for Respondent, waiving surrebuttal) is a relatively simple matter, but it should not be undertaken lightly. Since waiver can easily be misinterpreted as arrogance, as a general proposition it should only happen if there truly are no issues in direct contention at the conclusion of Respondent's argument. To waive rebuttal, one oralist must walk to the



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podium, wait to be acknowledged by the President, and then simply state, “Applicant respectfully waives rebuttal.” (or “Respondent respectfully waives surrebuttal.”) If Applicant waives rebuttal, the match ends: Respondent does not get to take surrebuttal, and need not take the podium to waive its surrebuttal.

Finally, remember that if the Applicant waives rebuttal, the Respondent cannot make a surrebuttal. Thus, if a Respondent oralist made a disastrous mistake in its argument or otherwise performed poorly, the Applicant may wish to waive rebuttal, in order to avoid giving the Respondent the opportunity to make a correction or have the final chance to make a positive impression on the Court.



An oral round in the 2009 White & Case UK Jessup Competition

## 2. Points of Rebuttal

Once you have decided to exercise rebuttal or surrebuttal, address no more than two or three important points. In the best-case scenario, each rebuttal point should satisfy three criteria: (1) your opponent is clearly wrong; (2) you can quickly explain why your opponent is wrong; and (3) the point is material to the outcome of the case. “Material to the outcome,” means that, if left uncorrected, the point might win the case for your opponents and, if corrected, the point might win the case for your team.

Many teams make the mistake of using rebuttal or surrebuttal to correct every error in their opponents’ arguments. You should trust that the judges noticed most of the errors, even if they did not call attention to them. Do not spend your rebuttal focusing

on minor errors in Respondent’s argument. If you have nothing but harmless corrections to your opponents’ arguments, you may want to waive rebuttal. A bad rebuttal can destroy an otherwise positive impression the judges might have of the Applicant, so do not take this risk unless you have a powerful rebuttal prepared.

## 3. Determining Who Should Deliver the Rebuttal and Surrebuttal

There are two approaches to deciding who should deliver the rebuttal. One approach is for the oralist whose issues will be raised on rebuttal to deliver the rebuttal. Remember that judges are permitted to ask questions during rebuttal and surrebuttal, so if an oralist delivers a pre-written rebuttal on issues with which he is not familiar, he may be asked questions that he is not prepared to answer.

Another approach is for the stronger oralist to deliver the rebuttal, regardless of what issues are to be rebutted. In this case, rebuttal is very short, reducing the chance that the judges will ask a large number of difficult questions of the oralist. Teams that use this method usually decide on their rebuttal oralist well before the Competition, and this oralist studies both his and his Co-Agent’s arguments closely.

## VIII. After the Match: Comments, Complaints and Infractions

### A. Comments from the Judges

Once the judges have completed their deliberations, they will offer general comments on the match, and perhaps advice and compliments on specific aspects of the match. Some judges prefer to give general observations to all of the oralists, while others will give specific comments to each of the four oralists. The judges will not reveal the results of the match, either directly or indirectly (except in run-off rounds when the winning team moves on to another advanced round).

Jessup judges usually provide comments, positive and negative, that are intended to help the competitors in future Jessup matches. Pay attention and take these comments to heart: you will often be given valuable thoughts and advice that will also be useful in your future career as a lawyer.



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**Jessup judges are instructed as follows:**

- (1) they may not reveal the result of the match directly or indirectly, or how any particular judge voted;
- (2) they may not reveal the contents of the Bench Memorandum, the confidential explanation of the case that is provided to judges before the oral rounds; and
- (3) they may not give substantive advice to the competitors about the strength or weakness of any particular argument.

## B. Penalties and Breaches of Decorum

In rare instances, your team may have a formal complaint about the conduct of the match or a violation of a rule. These may be brought to the attention of the Bailiff in accordance with the Official Jessup Rule 11.2. Such complaints are always delicate and can cause great consternation among the competitors. It is for this reason that your team may not bring complaints to the attention of the judges, and out of respect to the other team, you should not bring complaints to the attention of the Bailiff in front of the other team.

The most common violation is *improper courtroom communications* (Official Jessup Rule 7.6). Team members at counsel table are not permitted to talk, or even whisper during the match. Team members at counsel table are not permitted to pass notes to the oralist at the podium. Team members or guests in the audience must also remain silent throughout the match, and must not communicate, in writing or in any other way, with the judges, team members at counsel table, or the oralist at the podium.

Another common penalty is *scouting* (Official Jessup Rule 7.7.1). Team members and others affiliated with a team are only permitted to watch matches in which their team is competing and may not attend any other matches until your team has been eliminated from the competition.

A third penalty is violation of *anonymity* (Official Jessup Rules 2.8 and 7.10). Teams may not directly or indirectly reveal their school or country of origin to judges until they have been eliminated from the competition. Obviously, an oralist may not tell a judge where he or she attends school. But it also means

that counsel and spectators should not wear clothing or pins that indicate what school they are from, and should not have books, notebooks, or other materials in the courtroom which might accidentally indicate their school or country of origin.

There are also several “discretionary penalties” which may be imposed by the competition administrator. These are also serious penalties, but are not as precisely defined as the non-discretionary penalties described above. These include engaging in poor sportsmanship (e.g., being discourteous), submitting multiple frivolous complaints against other teams, engaging in inappropriate behavior at counsel table, and exhibiting blatant disregard for the procedures and requirements outlined in the Rules. In addition, teams have been assessed discretionary penalties for behavior of their guests in the audience, for example, when a guest speaks loudly on a cellphone or talks during the match.

Finally, note that violations of some rules are not subject to penalties. For example, if Applicant’s rebuttal falls outside the scope of Respondent’s main pleading, this is not subject to a penalty. In fact, Respondent would be out of order to complain about this violation. The judges are expected to pay attention to the Rule, and either correct the Applicant during the match or simply consider the violation when scoring the match.

## C. Complaint Procedure

If your team believes that a violation of the Rules has occurred, you must notify the Bailiff in writing within five minutes after the end of the match. The written complaint must clearly describe the violation and the parties involved. In practice, this means you should prepare a very short note, indicating your team number and the other team’s number, and describe very briefly what happened. During the judges’ deliberations – and out of sight of the judges – you should politely take the Bailiff aside, inform him that you are filing a complaint, and give him the note. At the proper time, he will inform the competition administrator of the complaint, and the competition administrator will address the complaint, often by interviewing your team and the other team, the judges, and perhaps other witnesses.



Competitors shaking hands following an oral round

#### D. Judge Conflicts

It sometimes happens that a team member recognizes a judge on the panel as a personal or professional acquaintance. In this event, it is very important to be familiar with the Rule regarding judging conflicts. According to Official Jessup Rules 5.3 and 5.4, there are certain restrictions on who may judge a given team. If you believe that a judge in your oral match should not be permitted to judge that match, you must notify the Bailiff prior to the beginning of the match. The Bailiff will briefly suspend the match and notify the competition administrator, who will make a decision regarding the conflict. Again, you should not call this conflict to the attention of any of the judges.

Note that judges' conflicts are extremely rare, and not every personal conflict is the basis for disqualifying a judge. For example, just because you or your coach recognizes a judge does not mean that the judge must be disqualified. The judge may not recognize or remember you or your coach, thus eliminating the conflict. Merely because a judge is an alumnus of your school (or your opponent's school) does not automatically disqualify the judge. You should carefully read Official Jessup Rules 5.3 and 5.4 before proceeding with a complaint against a judge, because frivolous complaints about a judge conflict is grounds for a substantial discretionary penalty under the Official Jessup Rules.

## IX. Conclusion

The advice contained in this part of the White & Case Jessup Guide will only be truly valuable if your team practices regularly before the competition. With practice will come greater confidence. Even the most experienced advocates at the highest levels of the legal profession practice oral argument in front of colleagues and constantly discover aspects of their speaking style in need of improvement or refinement. Jessup competitors will undoubtedly find the same.

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We look forward to the opportunity to meet many of you throughout your participation in the Jessup. If you have questions, comments or suggestions about the White & Case Jessup Guide, or the Firm's participation in the Jessup, please contact

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