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**Better Pleasing the Court:
How the American Collegiate Moot Court Association Can Improve its Competition**

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Abstract

The American Collegiate Moot Court Association strives to educate undergraduates about the American legal system through participation in moot court, a simulated oral argument before an appellate court. Its competition structure, however, suffers from defects that undermine the educational value of the event. This article argues that the ACMCA ought to adopt certain reforms in its operational structure, including geographically locking its regional competitions, abandoning its practice of power-matching preliminary rounds, and rewriting its judging ballot. These goals would not only enhance the quality of the legal education received by its participants, but improve students' forensic learning experience as well.

Keywords: moot court, preliminary rounds, power matching, regional qualification, ballot structure

Better Pleasing the Court:

How the American Collegiate Moot Court Association Can Improve its Competition

Undergraduate debaters have only recently been able to experience legal argumentation first-hand. The American Collegiate Moot Court Association (ACMCA) was founded in 2000 to offer a national moot court tournament in January 2001, sponsoring an exercise in which law students commonly partake by simulating an oral argument before an appellate court (Knerr & Sommerman, 2001). Ten years later, the ACMCA has expanded to offer eight regional qualifying tournaments, in addition to the national championship (ACMCA, n.d.). As a sponsor of undergraduate speech and debate competition, however, the ACMCA has yet to adopt a number of time-tested strategies. In this article, I examine three problems within the ACMCA: its qualifying procedures, which favor larger and wealthier teams; its preliminary round organization, which powers teams at the national tournament before they even arrive; and, its ballot, which relies on ambiguous criteria in order to render a decision antithetical to the fundamental tenets of competitive debate. I then offer suggestions from modern speech and debate competition in order to improve the overall competitive experience offered by the ACMCA.

Qualifying Tournament Procedures

The ACMCA currently offers eight geographically dispersed regional tournaments: Eastern, Midwest, Western, Southwestern, Southeastern, Mid-Atlantic, South Central, and Upper Midwest (ACMCA, n.d.). These regions, however, are not geographically locked; that is, any institution may enter any regional tournament, even if it is not the one closest to them (ACMCA, 2010b). Although one “team” – that is, one group of two students – is prohibited from participating at more than one regional tournament each year (ACMCA, 2010b), the possibility remains that a single institution, and the same students, could compete at every regional tournament, so long as they partnered with a different student at each. Furthermore, although a single institution may not qualify more than eight teams to compete at the national tournament (ACMCA, 2010b), it is not restricted from competing at as many regional tournaments as it wishes, or doing so until it reaches its maximum number of eligible students.

This policy presents a number of problems. First, it inherently favors larger, wealthier institutions, since they have the means to travel to each of these different regional qualifying tournaments until the team qualifies all of its competitors. At the same time, it penalizes smaller institutions or student run teams who cannot afford to travel to multiple regional tournaments. Hosting geographically dispersed qualifying tournaments superficially ensures that

every student hoping to attend the national championship has a chance to do so, but fundamentally sends the message that the 64 openings for teams at the national championship are reserved for those with the financial means to travel, compete, and secure expert coaches.

The reasoning behind the ACMCA's decision to structure its tournaments in this way is not difficult to discern. First, by allowing schools to participate at as many regional tournaments as they see fit, students essentially "get more practice" by being able to travel and compete at more tournaments. Since these regional tournaments are the only undergraduate moot court tournaments available – unless a student's state has its own undergraduate moot court association, as in Texas – this is the only practice students may have before the national championship. Additionally, a high level of participation and competition is ensured by opening regional tournaments to any school wishing to attend. If the Southeastern region, for example, only has a small number of schools who have participated in the competition in the past, those students get a higher quality of competition by allowing other schools to travel and compete at their tournament as well. In essence, the rationale seems to be to promote participation and improve the quality of competition.

The ACMCA, however, can fulfill this goal by conforming to the practices of other national debate organizations and geographically locking their districts. In high school, both the National Catholic Forensic League (NCFL) and the National Forensic League (NFL) structure their national qualifying tournaments in this way – the former, by Catholic diocese (NCFL, 2010), and the latter, by NFL District (NFL, 2010). For undergraduates, the American Forensic Association (AFA) offers two means by which students may qualify for its National Individual Events Tournament: either by earning "legs" at invitational tournaments where at least nine schools competed, or by finishing in the top ten percent of his or her event at their District Qualifier (AFA, 2009). Geographically locking its regional tournaments ultimately prevents larger schools from abusing the open-door policy of its regional tournaments.

Additionally, in order to promote participation and improve the quality of its competition, the ACMCA should allocate a particular regional tournament's qualifying slots proportionally to the number of teams competing at the tournament, as other organizations do. The NCFL, for example, enforces League Quotas that determine "the maximum number of entries in each category that can advance to the Grand National Tournament from each local league" (NCFL, 2011). The NFL also links national qualification to "the number of contestants or teams actually participating in each event at the NFL District Tournament" (NFL, 2009, p. N6). The "top ten percent" qualifying

procedure used by the AFA at its District Qualifiers also allows for larger districts to qualify more students (AFA, 2009). Thus, if the ACMCA distributes the 64 qualifying slots based on the number of entries at the regional tournament, it will incentivize regional tournament directors to find other schools in their district and encourage them to participate in the organization. In doing so, the ACMCA not only levels the playing field for all participating schools, but encourages the activity's long term survival and proliferation among new schools.

Preliminary Round Power Matching at the National Tournament

Another troubling aspect of the competition sponsored by the ACMCA is its practice of power matching the preliminary rounds at its National Tournament. According to its *Rules*, the ACMCA pairs teams during national preliminary rounds “using a formula based upon their regional record and the historic strength of each regional tournament” (ACMCA, 2010b, p. 9). But the ACMCA does not identify this formula in its *Rules* nor anywhere else on its website. In any case, the idea of pairing teams so as to afford better teams a higher probability of winning – known as *power-matching* – before they even arrive at the tournament is counterintuitive.

Arthur W. Larson, then a Graduate Assistant at California State University in Northridge, conducted perhaps the only comprehensive study on power matching in forensics in 1972. While the participants in his study recognized that elimination rounds were usually paired high-low in elimination rounds (e.g., “the number one team with the sixteenth team and so forth”), the practice of power-matching was applied inconsistently during preliminary rounds. Because his survey found that coaches’ believe power-matching has “a significant bearing on [both] which teams advance to the elimination rounds [and] on the quality of the teams which advance to the elimination rounds,” Larson identifies high-low power matching as the system which is most “consistent with the principle of rewarding teams for doing well.” (1972, pp. 2, 4-5)

Although Larson advocates power matching the preliminary rounds high-low, he acknowledges that it must proceed “on a round-by-round basis;” a particularly important consideration because the ACMCA’s *Rules* advocate power matching the preliminary rounds based on a team’s performance at the regional tournament – before the team even reaches the national tournament several months later. This concept discourages teams who “barely” qualify to the tournament from working to improve their performance while simultaneously encouraging competitive stagnation among teams who handily qualify for the championship.

A review of high school and undergraduate debate organizations indicates that no national organization, high school or undergraduate, uses the kind of system implemented by the ACMCA. In all debate events, the NCFL

randomly matches Rounds I and II, powers Round III high-high – that is, “the number one team . . . is paired with the number two team and straight on down the line” (Larson, 1972, p. 4) – based on Rounds I and II, and powers Rounds IV and V high-low based on rounds I through III (NCFL, 2010). At its national tournament, the NFL pairs all preliminary rounds randomly, excepting that no competitor may debate someone from his or her own school or state, or someone he or she already debated (NFL, 2011). In undergraduate Lincoln-Douglas Debate, the National Forensic Association (NFA) randomly pairs the first and second rounds, then pairs rounds three and five high-high and rounds four and six high-low (NFA, n.d.a). Finally, the National Parliamentary Debate Association (NPDA) powers undergraduate Parliamentary Debate randomly during round one of the national championship, then powers rounds two through eight high-low (NPDA, 2011).

The only feasible justification for the powering of preliminary rounds could occur if students attended multiple moot court competitions, and their cumulative performance determined their preliminary round seating. Not only does this not occur, since, once again, these regional tournaments are the only undergraduate moot court competitions available, excepting those states that also offer such competition, but it also cannot occur because of the ACMCA’s rule that no team may compete at more than one regional tournament.

Additionally, because the ACMCA only offers qualification to “[t]he top 25% of the teams competing at each ACMCA sanctioned Regional Tournament[,],” the ACMCA’s National Tournament Committee is left in charge of “allocat[ing] the remaining bids to the National Tournament” (ACMCA, 2010b, p. 6). The recipients of these extra, at-large bids offered by the Committee are therefore powered low at the national championship. Thus, a team that has a ‘bad round’ at a regional tournament, but is still invited to the national championship through this reallocation process, might as well not even attend; they are guaranteed to be paired against the very best teams in the tournament, and to be knocked out of the competition early.

The ACMCA must abandon this process of power-matching preliminary rounds based on a team’s performance at their sole moot court qualifying competition, given that it is inconsistent “with the principle of rewarding teams for doing well” at the national tournament.

The ACMCA’s Ballot

Finally, and perhaps most bothersome, is the ballot used by the ACMCA for scoring its regional and national competitions. The ballot lists four criteria on which the students’ performance is to be judged: “Knowledge of Subject Matter” (“Preparation on facts, law, and record; reasoning, organization; full use of time; etc.”),

“Response to Questioning” (“Responsiveness to judges; authoritativeness; ability to think quickly and well and return to argument; etc.”), “Forensic Skills” (“Manner which is relaxed, confident, believable, poised; eye contact; ability to speak without reading notes; grammar; vocabulary; inflection; etc.”), and “Courtroom Demeanor” (“Professionalism; proper attire; respect toward the court; conversational approach, etc.”). All competitors receive a score of one to 100 on each of these criteria, and then the team’s scores are summed. Whichever team earns more points wins that judge’s ballot, and if a team wins all or most of the judges’ ballots, then they win the round; if the judges render a split decision – which, given the ACMCA’s practice of using two judge panels in many rounds, happens often – both teams receive a tie; and, if a team loses more judges’ ballots than they won, then they lose the round. (ACMCA, 2010a)

The problems associated with this scoring scheme are plentiful. The fact that the judge is not required to render a win-loss decision leaves the fate of the round in the hands of the competitors’ speech quality – but debate cannot function in this way. Judges must be trusted to set their personal opinions, even about the law, aside when they adjudicate a round; otherwise, no debate is actually held. Moreover, since the ACMCA offers speaker awards, which is calculated by summing an individual competitor’s scores on these ballots during their preliminary round – the same criteria that are used to determine whether they won or lost the round – the ACMCA essentially congratulates competitors twice based on the same standards.

The rationale for avoiding a win-loss declaration is inherent in the ACMCA’s *Rules*, which command that “[o]ral arguments shall be scored on the basis of quality of presentation, not on the merits of the case” (ACMCA, 2010b, p. 8). The fear is that competition judges, in being asked to decide questions of law, would decide the round based on their personal opinion of what the law should be. The ACMCA’s 2010 fact pattern, for example, tested the limits of technology during warrantless searches, and asked whether a juvenile may constitutionally be sentenced to life in prison for a non-homicide offense. These contentious issues might tempt a judge to rule based on what they think the law should be instead of the argumentation of the competitors.

Once again, no other national forensic organization shares this philosophy. The ballots for Lincoln-Douglas and Public Forum Debate in both the NCFL and NFL require the judge to issue a win-loss decision (NCFL, n.d.a; NCFL, n.d.b; NFL, n.d.a; NFL, n.d.b); the NFA requires a win-loss decision in undergraduate Lincoln-Douglas Debate (NFA, n.d.b); and, the NPDA states that, “[i]f, at the end of the debate, the judge believes that the proposition team has supported and successfully defended the resolution, they will be declared the winner, otherwise

the opposition will be declared the winner” (NPDA, 2008). This across-the-board consensus represents the very idea of argumentation: debate must yield a winner and a loser; otherwise, it is not debate.

The criteria themselves are also rather ambiguous. Dr. Paul Weizer, the Past-President of the ACMCA, edited *How to Please the Court*, a text that essentially serves as a how-to guide to participate in the ACMCA’s tournaments. Dr. Charles Knerr and attorney Andrew B. Sommerman, the latter of whom competed under Dr. Knerr’s instruction at the University of Texas at Arlington, authored a chapter in Dr. Weizer’s book which describes the moot court tournament generally and the Texas Undergraduate Moot Court Competition’s judging guidelines specifically. Given that Dr. Knerr was instrumental in the formation of the ACMCA, considering these criteria sheds light on the precise standards intended on the ACMCA’s ballot. One need only examine the Texas league’s specifications for the ACMCA’s fourth criterion, “Courtroom Demeanor,” in order to understand the inherent contradictions in the ACMCA’s ballot. Specifically, Knerr and Sommerman list the following standards for this last criterion:

1. Does the speaker appear to be trying to be helpful to the Court?
2. Does the speaker project an image of professional sincerity toward his/her client?
3. Is the speaker forceful without being overbearing?
4. Does the speaker talk to and look at the judges in a conversational manner INSTEAD OF READING A PREPARED TEXT?
5. Is the speaker courteous rather than sarcastic, condescending, or resentful?
6. Is the speaker poised and at ease rather than stiff and/or jittery?
7. Does the speaker display the proper degree of confidence?
8. Does the speaker use all of his/her time but not exceed his/her time limits?
9. Does the speaker begin with “May it please the court [*sic*]” and end with a specific prayer for relief?
10. Does the speaker demonstrate the skills of an effective advocate for the client? (Knerr & Sommerman, 2005, p. 93)

These standards, however, were not even hinted about on the ACMCA’s ballot until the 2010-2011 competitive season, when the ACMCA added them to the reverse of the actual ballot. These standards, however, contravene the ACMCA’s *Rules*; for example, they state that students may use notes, but the ballot’s standards specifically penalize their use. Furthermore, only the fifth and ninth standards have anything to do with the

professionalism and respect toward the court required by the ACMCA's *Ballot*; the rest would more appropriately be categorized under the "Forensic Skills" component of the *Ballot*. Basically, unless a student is blatantly rude and disrespectful toward his or her judges, he should receive a perfect score in this category: if so, then this category is useless, since very few, if any, students would demonstrate such an attitude; if not, then the criteria need to be reevaluated and explained more appropriately on the *Ballot*.

Finally, the point values need reconsideration. A one to 100 scoring system essentially asks judges to assign 'grades' to the competitors in each of these categories. Judges, however, have no standard to which they can relate when assigning these scores. Novice judges may think that every competitor they observe is "Excellent," meriting a score between 90 and 100. Other judges may be 'stingy' with their points, offering everyone only "Average" scores between 70 and 80. Limiting the number of points that may be offered on each category – e.g., from one to 25 – and demanding a win-loss decision would ensure that competitors both advance in the competition and receive speaker awards more appropriately.

Conclusion

The moot court experience is an important one for undergraduates considering legal careers. Like debate generally, students improve communication and critical thinking skills, improve their research and writing skills, and, hopefully, improve their chances of being admitted into law school (Knerr & Sommerman, 2001). More than any other debate event, however, undergraduate moot court competition practically prepares students for law schools (Knerr & Sommerman, 2001). While moot court is therefore more beneficial to aspiring law students than perhaps any other competitive forensic event, it is not particularly unique so as to warrant deviating from established undergraduate forensic standards. The ACMCA, therefore, should conform to those standards, thereby ensuring that the competitive experience it offers is a meaningful one for the law school-bound debater.

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