

# Appellate Tips for Evaluators

## CASE INFORMATION

City of Fort Worth, State of Texas charged Torrance Rush, Defendant is charged to having committed the Class C Misdemeanor offenses of Minor Driving Under the Influence of Alcohol and Failure to Yield to a Pedestrian.

From the Court of Appeals, Second District, At Fort Worth  
PETITION FOR DISCRETIONARY REVIEW

We grant Torrance Rush, appellant, request for review in this case as to the following issues:

- (1) **Whether the trial court erred in denying appellant's *Boston* challenge during *voir dire*,**
- (2a) **Whether the trial court erred in denying appellant's motion for new trial due to an alleged *Brady* violation,**
- and**
- (2b) **Whether the trial court erred in denying appellant's motion for new trial due to ineffective assistance of counsel?**

## EVALUATORS AND SCORING

1. The decision on team and judge scores will be made by one or more evaluators who are Youth and Government judicial alumni, law students, sitting or retired trial and appellate judges, or any licensed attorneys.
2. Evaluators score the attorney team performances and the judge's performance. Each evaluator fills out a ballot for each attorney team and the judge. If there is more than one evaluator, the evaluators should not consult with one another during this process.
3. NO COMPLETED BALLOTS ARE TO BE VIEWED BY ANY TEAM MEMBER OR ANY OTHER PERSON DURING THE COMPETITION, in compliance with the educational goals of the Judicial Program.  
These are to be returned to the tournament staff after the round has been concluded and the winning team recorded. Score and comment sheets for a team will be copied and distributed to that team's coach after the competition is completed.
4. Conference staff will check evaluator ballots for complete scoring and for improper scores. Whenever possible, evaluators will be asked to make any necessary corrections. When an evaluator cannot be located, or other circumstances prevent timely consultation with the evaluator concerning the ballot, conference staff will correct improper entries before the ballot is totaled, or take other appropriate action.

## 5. General Scoring Guidelines

- a. Please be sure to completely fill in your name and all the participants' names on the evaluation forms. The Bailiff in your room can help you with this task
- b. In scoring, start at 3 and work your way up or down from there based on performance
- c. **Remember these are high school students and not college or law school students therefore please provide constructive but kindly worded critiques.**
- d. PLEASE FILL OUT THE COMMENT FORM. There is not always time for critiques following the trial and your comments are so helpful to the attorneys teams and judges as they prepare for their next rounds. If there is time you may give oral feedback but we ask that you ALWAYS provide some written feedback on your comment form.
- e. Please return your evaluation packet to the judicial table promptly so the forms can be tabulated in a timely manner.

## 6. What we expect from the Attorney teams and Judges in each category of scoring:

- a. Attorneys
  - i. Knowledge and use of facts: Do they reference facts from the case
  - ii. Knowledge and use of case law:
    1. Do they reference case law;
    2. Do they reference cases not on the list of case citations (this is permitted and encouraged to do additional research)
  - iii. Effectiveness/Persuasiveness of Argument
    3. How strong is their argument
    4. Does the argument make sense
    5. Is the argument logically put together
    6. Some arguments in this case may be weaker than others but do the students advocate for their client
    7. Is their argument clear and concise
  - iv. Ability to Respond to Questions
    8. Are they able to respond to questions
    9. Do the answers make sense
    10. Do they ask for clarification when they don't understand a question (this is ok)
    11. Do they become lost when trying to get back their argument
  - v. Demeanor/Presentation
    12. Do they rise when the judges come in the courtroom
    13. Do they talk and whisper at counsel table (not okay)
    14. Are they respectful of the judges
    15. Are they respectful of the other team
    16. Are they prepared for their argument

## b. Judges

- i. As a judge in the Court of Criminal Appeals, they are expected to be knowledgeable of the case, including the facts, the issues, and the relevant case law. They are also expected to be fair and impartial to the parties, and fulfill their duties as a judge in a dignified, professional manner.
- ii. Questions to the attorneys are appropriate for seeking clarification of their arguments. It is extremely improper to be harassing or disrespectful to the attorneys. While they are permitted and encouraged to interrupt the attorney's presentation to ask a question, common courtesy and decency mandates that questions be asked in a respectful, dignified manner.
- iii. As a judge, they are expected and required to be fair and impartial. While you may personally believe that one side's position has more merit, it is improper to make statements that give the appearance of impartiality to one of the parties.

## 9. Other Basic Rules

- a. For the purposes of this year's competition, the arguments are being presented to the Texas Court of Criminal Appeals. Before each round begins, the teams will be assigned to represent either the Appellant or the Appellee. The Appellant team presents its arguments first, and is then followed by Appellee's arguments. The Appellant will then have the opportunity to provide a brief rebuttal, which will be presented by only one of the two attorneys for Appellant's team.
- b. Each team has a total of thirty minutes to present their argument. This time can be divided in any manner chosen by the team, except that (1) each lawyer of the team must present at least 5 minutes of the argument, and (2) except for rebuttal, each lawyer may go to the podium only one time; in other words, one attorney of a team cannot give 2 minutes of the argument, sit down and let his or her partner speak for 5 minutes, and then return to the podium to conclude the argument [excluding rebuttal]. A suggested time division of the arguments is as follows:
  - i. Appellant Lawyer #1 - 13 minutes; Appellant Lawyer #2 - 12 minutes
  - ii. Appellee Lawyer #1 - 15 minutes; Appellee Lawyer #2 - 15 minutes
  - iii. Appellant Rebuttal - 5 minutes
- c. Attorneys do not need to use all their time but they should make good use of their time and use a significant portion of their time.

- d. During the course of the oral arguments, the justices should interrupt and ask the attorney's questions regarding the argument. The attorney speaking should answer their questions, and then return to their argument.
- e. While the attorneys are permitted to take an outline or other materials with them to the lectern, reading the entire speech is really no more effective than having memorized the entire speech such that they are unable to answer questions or respond to points made by the other team. A certain amount of flexibility is required.

10. How the rounds are conducted

- a. As evaluators, you will be seated on the far right or left side of the bench. Before beginning the round, the students should provide you their names, team numbers and which side they represent. The judges should also provide the evaluators with their information for the judges evaluation form
- b. All attorneys must open their presentations with "May it please the Court," and identify themselves by name. They should begin their argument with "May it please the Court . . ." and then identify who they are, and who they represent.
- c. The speaker should next tell the Court what issue they will be addressing:
- d. The first speaker for Appellant should offer to give the Court a brief overview of the facts though the judges can decline. The Appellee is not required to do this unless the Appellee believes the Appellant omitted some important facts.

11. Format of the Competition

- a. Attorneys enter the courtroom and set up at the counsel tables. There will be someone at the bench keeping time. Each attorney will need to give the timekeeper and evaluators the following information:
  - i. Their name
  - ii. Whether they are Appellant or Appellee
  - iii. Which speaker they will be (Appellant #1 or #2 or Appellee #1 or #2)
  - iv. How much time they will need for their presentation
- b. A Bailiff will announce the entry of the judges. The timekeeper may also be the Bailiff.
- c. The Judges will come in and sit down and call the case.
- d. The Presiding Judge will ask: "Is the Appellant ready"
- e. The Appellants will stand completely up. One team member (typically the first to speak) looks directly at the Presiding Judge and answers: "Appellant is ready, your honor." (Appellants then sit down)
- f. The Presiding Judge will ask: "Is the Appellee ready"

- g. The Appellees will stand completely up; one team member looks directly at the Presiding Judge and answers: "Appellee is ready, Your Honor." (Appellees then sit down).
- h. The Presiding Judge will instruct the Appellants that they may proceed
- i. The Appellant first speaker will approach the podium and begin. As soon as the Appellant #1 finishes, Appellant #2 will approach and begin their argument
- j. Once both Appellants have made their argument, the first Appellee will approach the podium and begin. As soon as the Appellee #1 finishes, Appellee #2 will approach and begin their argument.
- k. Once both Appellees complete their argument, the Appellant (one speaker only) will approach the podium and make their rebuttal. **THE APPELLEE DOES NOT GET A REBUTTAL.**
- l. The Presiding Judge will announce that the judges will retire and make their decision.
- m. As the justices rise to leave, the Bailiff will ask everyone in the courtroom to please rise. Once the justices leave, everyone can sit down.
- n. As the justices return to render their decision, the Bailiff will ask everyone in the courtroom to please rise.
- o. The justices will give the parties their decision.
- p. The evaluator may give the judges and attorney a critique of their performance; however, keep in mind that there is only about 15 minutes scheduled in between rounds so be helpful but succinct.**