



Moot Courts: Instructions

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I. The assignment

The Philosophical Problems of Law and Justice course includes 5 moot courts, during which students play the role of Lawyers presenting their case in oral arguments to the justices of the “Ultimate-Supreme Court.” For each case, there will be 6-8 Lawyers, 3-4 representing one side of the case, and 3-4 representing the other. I will be the Chief Justice; and everyone else will be an Associate Justice of the Ultimate-Supreme Court. So you will each be a Lawyer once and an Associate Justice four times.

Associate Justices prepare for each Moot Court by consulting at least 3 of the sources marked with a star listed on the bibliography (pp. 7-9 of this document). They write up a “Justice Prep Sheet” that lays out the main arguments for each side of the case and raises at least two questions for each team of Lawyers. I will randomly call on Associate Justices to grill the Lawyers during Q&A, so be prepared!

Associate Justices deliberate about the merits of each side’s arguments and issue their decision at the end of the Moot Court. The Ultimate-Supreme Court’s ruling is the one supported by a majority of Associate Justices.

For 2 of the 4 Moot Courts that they attend, Associate Justices also write a short “Justice Brief” (500-700 words) in which they justify their opinion at the issue of the Moot Court, assessing the strength of Lawyers’ arguments. At the end of these Briefs they also propose an overall grade for each team. Details about the Justice Prep Sheet and Justice Brief are included pp. 27-28.

You will sign up for your Moot Court—the one where you serve as a Lawyer, since you’ll always be an Associate Justice in the other ones—on **Friday September 13**. NB: Lawyers interested in serving in the first Moot Court are invited to make themselves known before then .

The 5 Moot Courts concern:

1. The International Military Tribunal at Nuremberg

This Moot Court models the International Military Tribunal (IMT) at Nuremberg, which the victorious Allied Powers (the US, Great Britain, France, and the USSR) set up at the end of World War II, for the purpose of trying the top political, military and economic leadership of the Nazi regime. The Nazi regime and its collaborators killed up to 6 million Jews, around 7 million Soviet civilians, around 3 million Soviet POWs, around 1.8 million non-Jewish Polish civilians, hundreds of thousands of Serbs, people with disabilities, and Roma, and thousands of religious and sexual minorities and dissidents. The Nuremberg defendants were charged with crimes against peace, war crimes, and crimes against humanity. They included, among others, ALBERT SPEER—Hitler’s friend, favorite architect, and Minister of Armaments from 1942 until the end of the war,

ERNST KALTENBRUNNER—Chief of the intelligence service (SD), Secret State Police (Gestapo), Criminal Police (Kripo) 1943-45; and HERMANN GORING—Reichsmarschall, original head of the Gestapo, and Commander of the Luftwaffe 1935-45, the second highest ranking Nazi official.

The judges and prosecutors all came from the Allied side. The defendants certainly bore a staggering degree of moral guilt for the part they played in the atrocities committed by the Nazis; but were they legally guilty as well?

To be resolved by the Ultimate-Supreme Court: whether the conviction of the Nuremberg defendants was legitimate and lawful.

Lawyers will examine whether the Nazi officers are legally guilty of each of the charges brought against them and assess the overall legitimacy of the IMT. Their respective arguments are as follows:

Prosecution: Allies	Defendants: Nazis
<p>Defendants (a relevant number of them) are guilty of four counts under international law: war of aggression, war crimes, crimes against humanity and conspiracy to commit the other crimes.</p> <p>The International Military Tribunal set up to try them is legitimate and charged with administering valid law.</p>	<p>Defendants (a relevant number of them) are <u>not</u> guilty of the charges. Their actions were legal under the Nazi system of law and that they were not bound by international law.</p> <p>The International Military Tribunal set up to try them is completely illegitimate.</p>

2. Gun Control

This Moot Court is modeled on *District of Columbia v. Heller* (2008). Washington, D.C.'s Firearms Control Regulations Act of 1975 bans residents from owning handguns, automatic firearms, high-capacity semi-automatic firearms ("assault weapons"), and unregistered firearms. Exceptions to the ban are allowed for police officers and guns registered before 1976. The law also requires firearms kept in the home to be "unloaded, disassembled, or bound by a trigger lock or similar device." Dick Heller files suit against the handgun ban and trigger lock provision, arguing they infringe on his Second Amendment rights.

To be resolved by the Ultimate-Supreme Court: whether a municipal handgun ban is constitutional.

Lawyers will examine the following legal issues (see respective arguments below):

- i. What does the Second Amendment protect?
- ii. Do DC's FCR Act's handgun and assault weapon ban and trigger lock provision violate the Second Amendment? Why or why not?

Petitioner: Heller	Respondent: DC
<p>In its original meaning, the Second Amendment protects individuals' right to self-defense in the home. Because this</p>	<p>The Second Amendment protects a collective right to bear arms. DC has a legitimate state interest in preventing gun</p>

right is fundamental, we need to apply strict scrutiny to statutes that purport to limit it. The DC statute, with its trigger lock and handgun ban, violates the plaintiff's Second Amendment rights.	violence. Courts need to apply the normal standard of review, that is, rational basis review, when considering gun control laws.
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3. Plural Marriage

Plural marriage refers to marriage between more than two people. Some polygamous plaintiffs have filed lawsuits in federal courts against criminal bigamy statutes, initially arguing that the Free Exercise Clause of the First Amendment protects their plural marriage practices (cf. the 1878 case, *Reynolds v. United States*). After *Lawrence v. Texas* (2003), in which the Court ruled that the criminalization of sexual intimacy by same-sex couples, violates the Fourteenth Amendment guarantee of equal protection of laws, polygamists added substantive Due Process arguments to their arsenal (see *Utah v. Green* in 2003 and *Utah v. Holm* in 2006).

Our third Moot Court shall take on polyamorous, not polygamous, relationships, so as to focus on the equality-under-the-law argument. The Lawyers tasked with defending the constitutionality of plural marriage are free to invent their ideal plaintiffs (e.g., a happy triad or “thrupple”) and present their particular grievances (these should be similar to those suffered by same-sex couples before *US v. Windsor*). The Lawyers will pass on the details of their test case to the opposing team as soon as possible and no later than a week before the Moot Court.

To be resolved by the Ultimate-Supreme Court: whether the state ought to recognize plural marriage.

Lawyers will examine the following constitutional issues:

- i. Does the state's enforcement of monogamy through family law constitute a form of discrimination against non-monogamous people (i.e., a Fourteenth Amendment issue)?
- ii. Does it violate the First Amendment's protection of freedom of conscience?

Lawyers also address this basic political-philosophical question:

- iii. Liberal states are committed to treating every citizen as full equal and respecting their liberty, moral views, and lifestyle choices. Do liberal commitments (justice, equality, dignity) require the recognition of plural marriage?

Petitioner: loving thrupple TBD	Respondent: US
Current law, which prohibits plural marriage, violates the First and Fourteenth Amendment constitutional protections. It discriminates against polyamorous people as it fails to recognize their loving relationships.	Current law does not violate the constitutional rights of polyamorous people: they can still cohabit. Plural marriage would promote intrinsically egalitarian power relationships to develop in the family.

Justice, equality, and dignity <i>require</i> recognizing the right to marry more than 2 people in liberal democratic states.	Plural marriage is bad for child welfare and family stability. It certainly isn't required on the basis of liberal democratic commitments.
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4. Civil Disobedience

After tens of thousands of protesters disrupted construction of an oil pipeline in North Dakota, by chaining themselves to construction equipment, pitching tents along the route, and blocking roads, oil and chemical companies lobbied states to make anti-pipeline protests a crime. Louisiana is one among many states that enacted such legislation. HB 727 (2018) amends the state's definition of "critical infrastructure" to include gas and oil pipelines and provides for the offense of "unauthorized entry of a critical infrastructure," making the latter a felony punishable by imprisonment with or without hard labor for up to five years and a fine of \$1,000. In May 2018 as Energy Transfer Partners was building its Bayou Bridge pipeline across the state, water protectors from the L'Eau Est La Vie (Water is Life) camp were mounting tree- and water-based protests against the project. At least seven protesters were arrested and charged with critical infrastructure trespassing crimes under HB 727. The Bayou Bridge pipeline was completed in March 2019.

Our fourth Moot Court is based on these facts, but it sets out an imagined lawsuit: the L'eau Est La Vie water protesters appeal their convictions, arguing that Louisiana's HB 727 violates their free speech rights, targeting them because of their anti-pipeline protests. They claim they shouldn't be punished at all and that Bayou Bridge Pipeline LLC, and by extension the state of Louisiana, wrongly interfered with their activities. We imagine the case winds its way to the Ultimate-Supreme Court after lower courts reversed and then upheld the defendants' convictions.

To be resolved by the Ultimate-Supreme Court: whether HB 727 infringes on freedom of speech.

Lawyers' arguments will address:

- i. the constitutionality of Louisiana's HB 727 (and, correspondingly, the constitutionality of the protesters' criminal convictions)
- ii. the social/moral value of civil disobedience and whether it should be legally protected (not punished at all)

Petitioner: L'Eau Est La Vie	Respondent: Louisiana
HB 727 violates constitutional rights protected under the First and Fourteenth Amendments. The law is used as a tool to suppress peaceful protests on open waters. Civil disobedients shouldn't be punished: we should protect everyone's right to contribute to the democratic discourse	HB 727 does not violate any constitutional rights. The law is rationally designed to both protect vital infrastructure and keep people safe. Disobedience, even civil, threatens social stability and the rule of law and it must always be punished.

through protests.	
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5. Surveillance

This Moot Court is modeled after *Wikimedia v. NSA* (ongoing). In 2013, former Central Intelligence Agency (CIA) analyst and National Security Agency (NSA) contractor Edward Snowden leaked a very large trove of classified documents revealing that the NSA had been spying on citizens' electronic and phone communications and collecting the communication records or 'metadata' of virtually everyone in the US, without obtaining warrants from the Foreign Intelligence Surveillance Court (the Court was established under the 1978 Foreign Intelligence Surveillance Act (FISA) to oversee requests for surveillance warrants against foreign spies inside the US). Snowden and many other critics, including judges and lawyers, deemed the warrantless 'dragnet' surveillance program unlawful—in violation of domestic law (FISA), the Constitution (the Fourth Amendment), and international law (the UN's International Covenant on Civil and Political Rights). After the national and international outcry at the revelations, which made headlines for months, Congress passed a new law, which ended the NSA's bulk collection of Americans' phone records, among other changes. However, the NSA now directly goes to private phone companies when seeking data and still doesn't need to obtain a court order. The NSA still conducts *upstream surveillance*: it intercepts and searches massive amounts of Americans' internet communications, by combing international internet traffic as it moves across service providers' backbone infrastructure. This spying occurs under Section 702 of the FISA, which allows the NSA to engage in warrantless surveillance of Americans who communicate with targets located abroad.

The Wikimedia Foundation, which runs Wikipedia, has sued to stop the government from searching its internet communication. The American Civil Liberties Union (ACLU) filed the lawsuit in 2015. They argue that the NSA's Upstream spying regime violates the First and Fourth Amendment, along with other laws. In response, the NSA spent 2 years challenging Wikimedia's standing to sue. Courts finally allowed the suit to proceed. As of June 2018, the NSA used a legal tactic called the "state secrets privilege" to hide basic facts about Upstream surveillance from Wikimedia and the court, arguing that it is protected classified information. The NSA even refuses to confirm it has searched a single one of Wikimedia's trillions of communications with its users around the world.

For the Moot Court, we will assume the court has ruled in favor of Wikimedia and allowed the lawsuit to go forward. Both parties will agree on the general operational details of the program, which are publicly known since Snowden's leaks. However, the NSA will continue to defend the need for secrecy around its surveillance programs.

To be resolved by the Ultimate-Supreme Court: whether upstream surveillance of citizens' internet communications is constitutional.

Lawyers will examine these questions in their arguments:


- i. Is the NSA's spying program authorized by law?

- ii. Does it violate the US Constitution (First and Fourth Amendments)? Does the NSA's spying program invade privacy? What kind of intrusion does it constitute?
- iii. What does the Fourth Amendment protect? Why is (digital) privacy important?
- iv. Is the program justified? Is government secrecy around the program justified?

Petitioner: Wikimedia	Respondent: NSA
<p>The PATRIOT Act (esp. Section 215) does not allow widespread surveillance. The surveillance constitutes an unreasonable and impermissible search under the Fourth Amendment. It also violates the First Amendment's guarantee of free speech.</p> <p>Digital privacy is essential in this day and age, especially to protect us from our governments' tyrannical interference in our lives. Although it is not strictly necessary for your argument, you should also be prepared to deny the necessity and efficacy of the surveillance program for counterterrorism purposes.</p>	<p>The PATRIOT Act (esp. Section 215) allows widespread surveillance. The surveillance does not amount to a search at all. People do not expect their communications, let alone metadata about these, to be kept secret (digital privacy not a big deal).</p> <p>The surveillance program—and secrecy about it—are necessary and efficacious in the context of the war on terror.</p>

* * *

Here are the deadlines for the Lawyers in the Moot Courts. Write them down in your calendar as soon as you know your Moot Court.



Moot Court Deadlines	First read and team meeting by:	Meet with MacKenzie by:	Polished PPT Presentation due:	Moot Court 	Moot Court Paper due:
Nuremberg *	Sept. 14	Sept. 18	Sept. 20	Sept. 24	Oct. 1
Guns	Sept. 19	Sept. 26	Oct. 3	Oct. 8	Oct. 15
Marriage	Sept. 29	Oct. 6	Oct. 13	Oct. 18	Oct. 25
Civil disobedience	Oct. 10	Oct. 17	Oct. 24	Oct. 29	Nov. 5
Surveillance	Oct. 24	Oct. 31	Nov. 7	Nov. 12	Nov. 19

* Deadlines are a little different for this Moot Court since it is so early in the semester.

II. Bibliography

Lawyers read ALL the sources below: it is critical that they master both sides of the argument. Associate Justices consult at least 3 of the sources marked by * (except for the first Moot Court, for which they can simply read 2). Resources marked ** count for 2.

I am always trying to improve the list of readings. If your own research leads you to a particularly illuminating podcast, documentary, short opinion piece, or scholarly article, please let me know! If you found an article arduous and unhelpful, I'd like to know too.

Moot Court	Readings
<p>Nuremberg</p>	<p>Nuremberg Trials Proceedings¹, including...</p> <p>* Charter of the International Military Tribunal²</p> <p>* Robert H. Jackson, Opening Statement Before the International Military Tribunal³, November 21, 1945 (abridged)</p> <p>** Charles E. Wyzanski, Nuremberg: A Fair Trial? A Dangerous Precedent⁴</p> <p> Stanley Kramer, Judgment at Nuremberg (1961)⁵</p>
<p>Gun Control</p>	<p>* Summary of District of Columbia v. Heller⁶ (2008)</p> <p>*  Roxanne Dunbar-Ortiz, Loaded: A disarming History of the Second Amendment (15 min)</p> <p>* Richard Posner, In Defense of Looseness⁷</p> <p>National Rifle Association (NRA) Amicus in support of Heller⁸</p>

¹ http://avalon.law.yale.edu/subject_menus/imtproc_v1menu.asp

² <http://avalon.law.yale.edu/imt/imtconst.asp>

³ <http://www.roberthjackson.org/the-man/speeches-articles/speeches/speeches-by-robert-h-jackson/opening-statement-before-the-international-military-tribunal/>

⁴ http://www.theatlantic.com/magazine/archive/1946/04/nuremberg-a-fair-trial-a-dangerous-precedent/306492/?single_page=true

⁵ The hyperlink is to an article about the film's historical accuracy. The film is on reserve at the Northeastern Library.

⁶ <http://www.cga.ct.gov/2008/rpt/2008-R-0578.htm>

⁷ <http://www.newrepublic.com/article/books/defense-looseness>

	<p>* Summary of Scalia's majority opinion⁹</p> <p>NRA's Amicus brief in support of appellants in <i>Gould v. O'Leary</i> (2018)</p> <p>New Jersey and other Attorney Generals' brief in support of appellees in <i>Gould v. O'Leary</i> (2018)</p> <p>**  <i>More Perfect, The Gun Show</i>¹⁰ (70 min)</p> <p>*  <i>Philosophy Bites: Jeff McMahan on Gun Control</i>¹¹ (19 min)</p> <p>* John Paul Stevens, Repeal the Second Amendment</p> <p>** David Cole, <i>The Right to Bear Arms</i> (Part II of <i>Engines of Liberty</i>)</p> <p>Hugh LaFollette, <i>Gun Control</i></p> <p>Michael Huemer, Is There a Right to Own a Gun?¹²</p>
Plural marriage	<p>* Loving v. Virginia (1967)</p> <p>*  <i>Constituting America</i> podcast on Lawrence v. Texas (2003), US v. Windsor (2013), Obergefell v. Hodges (2015) (12 min)</p> <p>* Jonathan Rauch, No, Polygamy isn't the Next Gay Marriage</p> <p>* Elizabeth Brake, Why Can't We Be (Legally-Recognized) Friends?</p> <p>Ronald Otter, <i>Three May Not Be a Crowd</i></p> <p>Elizabeth Brake, <i>Minimal Marriage</i></p> <p>Laurie Shrage, <i>Polygamy, Privacy, and Equality</i></p>
Civil	<p>Some important Supreme Court cases: Brown v. Louisiana¹³ (1966); United States v. O'Brien¹⁴ (1968); Gillette v. United States¹⁵ (1971);</p>

⁸ https://www.nraila.org/heller/proamicusbrieffs/nra_amicus_heller.pdf

⁹ <http://www.nationalreview.com/bench-memos/50849/district-columbia-v-heller-scalias-majority-opinion/ed-whelan>

¹⁰ <https://www.wnycstudios.org/story/radiolab-presents-more-perfect-gun-show/>

¹¹ <http://philosophybites.com/2013/02/jeff-mcmahan-on-gun-control.html>

¹² <http://home.sprynet.com/~owl1/guncontrol.htm>

¹³ <https://www.oyez.org/cases/1965/41>

¹⁴ http://www.law.cornell.edu/supct/html/historics/USSC_CR_0391_0367_ZO.html

¹⁵ <http://supreme.justia.com/cases/federal/us/401/437/>

disobedience	<p><i>Cohen v. California</i> (1971); Office John Doe v. Deray McKesson; Black Lives Matter; Black Lives Matter Incorporated¹⁶ (civil lawsuit filed 2019) and this Atlantic article about it¹⁷; Spoon v. Bayou Bridge Pipeline LLC et al.¹⁸ (ongoing civil rights lawsuit filed in August 2018)</p> <p>* Articles about HB 727 laws and lawsuits in The Intercept¹⁹ and in Louisiana Record²⁰</p> <p>* Carl Cohen, Law, Speech, and Disobedience</p> <p>* Herbert J. Storing, The Case Against Civil Disobedience</p> <p>John Rawls, <i>A Theory of Justice</i> (esp. pp. 363-368 and 371-377)</p> <p>Joseph Raz A Right to Dissent?</p> <p>Kimberley Brownlee, Civil Disobedience, esp. § 3-4</p> <p>Candice Delmas, Civil Disobedience, Injustice, and Punishment</p> <p>* Matthew Humphrey, Democratic Legitimacy, Public Justification and Environmental Direct Action</p>
Upstream Surveillance	<p>ACLU v. Clapper (2013)²¹</p> <p>Klayman v. Obama (2013)²²</p> <p>Smith v. Maryland (1973)²³</p> <p>Katz v. U.S. (1967)²⁴</p> <p>* WIRED, The ACLU's Biggest Roadblock to Fighting Mass Surveillance²⁵</p>

¹⁶ <https://law.justia.com/cases/federal/appellate-courts/ca5/17-30864/17-30864-2019-04-24.html>

¹⁷ <https://www.theatlantic.com/ideas/archive/2019/04/doe-v-mckesson-lawsuit-black-lives-matter/588346/>

¹⁸ <https://www.macarthurjustice.org/case/spoon-v-bayou-bridge-pipeline-llc-et-al/>

¹⁹ <https://theintercept.com/2018/08/22/recent-arrests-under-new-anti-protest-law-spotlight-risks-that-off-duty-cops-pose-to-pipeline-opponents/>

²⁰ <https://louisianarecord.com/stories/513142667-pipeline-protesters-challenge-law-that-makes-trespassing-at-critical-infrastructures-a-felony>

²¹ <http://www.scotusblog.com/2013/12/judge-upholds-nsas-phone-data-sweeps/>

²² <http://www.scotusblog.com/2013/12/judge-nsa-phone-sweep-likely-invalid/>

²³

https://www.bloomberglaw.com/public/desktop/document/Smith_v_Maryland_442_US_735_99_S_Ct_2577_61_L_Ed_2d_220_1979_Cour/1?1540755074

²⁴ <https://www.oyez.org/cases/1967/35>

Jon Penney, [Internet Surveillance, Regulation, and Chilling Effects Online: A Comparative Case Study](#)²⁶



* [David Cole on NSA Spying](#)²⁷ (17 min)

* Eric Posner, [The NSA's Metadata Program is Perfectly Constitutional](#)²⁸



* *Philosophy Bites* (podcast): Tom Sorell on [Surveillance](#)²⁹ (18 min.)

* Brennan Center, [Surveillance Factsheet](#) (2014)³⁰

Lynch, *Amicus Curiae* in Support of the Plaintiffs in *ACLU v. Clapper*
Dorota Mokrosinska, Privacy and the Integrity of Liberal Politic: The
Case of Government Internet Searches

²⁵ <https://www.wired.com/story/wikimedia-nsa-surveillance-privacy-lawsuit/>

²⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2959611

²⁷ <http://www.opensource.im/nsa-spying/david-cole-on-nsa-spying-video.php>

²⁸

http://www.slate.com/articles/news_and_politics/view_from_chicago/2013/12/judge_pau_ley_got_it_right_the_nsa_s_metadata_program_is_perfectly_constitutional.single.html

²⁹ <http://philosophybites.com/2013/01/tom-sorell-on-surveillance.html>

³⁰

<http://www.brennancenter.org/sites/default/files/analysis/Government%20Surveillance%20Factsheet.pdf>

III. Preparation

Reading and thinking

The key is to get a clear view about the arguments on both sides and the main issues raised by the case.

- Start reading the materials accompanying *both sides* of the Moot Court *early*. This way, you will get a head start on your preparation and paper. In addition, you'll be able to identify in all the lectures from now on, the issues, theories, and arguments that relate to your case.
- It's important to have sufficient background to understand the issues, so feel free to read other sources too.
- Approach the readings by following the 3 steps outlined in Philosophy for Beginners (on Blackboard).
- Write down in a 2-column chart the arguments for each side.
- Try and develop the claims on each side into full-blown arguments.
- Think of how the opposing side will counter your arguments and how you can (a) prevent some of their objections by refining your own argument, and (b) respond to their objections.
- Think of how you will counter the other side's objections to your arguments.
- You should use other authors we have studied in class, besides the ones listed with your case, if it seems particularly helpful and relevant.
- It is generally a good idea to familiarize yourself with the impact on real people's lives of the issue discussed by reading other sources than the ones listed (news, documentaries, etc.). Make sure to choose reputable sources and not to get lost in a mountain of information.

Note: Do not worry about being original. A lot has been written on the issues we are considering and I do not expect you to come up with a new argument that nobody had thought of before. It already takes much effort and reflection to assimilate the arguments and present them in a clear, logical manner.

Team work

Each team of Lawyers will work together in preparing their presentation before the Ultimate-Supreme Court. You should meet up with your fellow Lawyers as early and frequently as possible to go over the facts of and issues raised by the case and your team's position.

- Go over the following questions with your team: What are the main issues? What laws apply? What are the best arguments for our side? What will the other side object? What is the most devastating objection to our arguments? What is our best response? What will the other side argue and what will our rebuttal be?

- Next, devise your argumentative strategy, clearly laying out what you will defend and how.
- Then divide the argumentative labor: who will do what in the presentation?
- You should get in touch with opposing counsels to make sure you're on the same page (e.g., re. the particular defendants at the IMT you plan to bring up).
- You will submit a polished, complete draft of your Moot Court presentation (typically PowerPoint or Prezi) **5 days before the Moot Court** (late submissions will be penalized). You'll email MacKenzie and me your draft, **CCing everyone on the team**. You can also send us an invitation to edit your Google doc, but even if you do so, (a) you still need a separate email with all team members CC'd; (b) remember to grant editing, not just viewing access; and (c) share the doc with both c.delmas@northeastern.edu and candice.delmas@gmail.com. I will give you extensive feedback on your presentation and ask you to revise it accordingly. Failure to take into account the feedback in your final presentation will be penalized.
- You will share your presentation with opposing counsels 36 hours before the Moot Court (again, CCing your whole team, MacKenzie, and me), so that everyone can prepare as well as possible for the round of rebuttal.
- You will rehearse your argument together as a team, to ensure that the presentation appears as a seamless, organic whole.
- Your presentation must be **around 13-17 minutes long**. Shorter or longer presentations will be penalized.
- You will each practice your portion of the presentation individually to make sure you know it by heart and barely use your notes.

The Free Rider Problem

If you discover that your group has one or more free riders, absentees, or people who are in some way interfering with the group's effort to accomplish its work, then you need to let me know about it as early as possible so we can sort the situation out. Any individual accused of non-cooperation with their team will have the opportunity to respond, but may be denied the option of making the presentation, and hence of earning the points.

The Glossophobia Problem

Some people are uncomfortable with public speaking. I don't want this assignment to traumatize anyone. So if you are really terrified of public speaking, discuss it with me, MacKenzie, and your teammates. You may decide on a particular labor division whereby you do some heavy lifting for your team from behind the scenes, that is, take on more work in the preparation of the Moot Court in exchange for minimal participation in the in-class debate. Let me know ahead of time if you decide to share labor this way as I'll have to readjust the grade breakdown (cf. Associates Justices' grades of Lawyers).

Schedule a meeting with TA

Each team will meet with MacKenzie about 2 weeks before the Moot Court, so that she can make sure that everyone is on the right track. You are to email her, CCing your team members, ahead of time to let her know how your preparation is going and to arrange a meeting.

IV. The Moot Court

The Lawyers are to present their arguments before the Justices of the Ultimate-Supreme Court and try to persuade them to rule their way.

Plaintiffs or prosecutors go first in the oral arguments. Both teams arrive at least 5 minutes before class to set up their presentations on the class computer. It's best to download your presentation as a PPT ahead of time (ideally on a USB): you may have issues setting up and presenting if it's on a Google doc.

The format of the Moot Courts will be as follows:

- Plaintiffs' or prosecutors' arguments: 13-17 minutes
- Defense counsels' arguments: 13-17 minutes
- Round of rebuttal: 5-8 minutes
- Questions for both sides by the Associate Justices: 30 minutes
- Deliberation and ruling of the Ultimate-Supreme Court: in closing

Your presentation before the Ultimate-Supreme Court

- Each Lawyer team's presentation will be no shorter than 13 minutes and no longer than 17.
- It will be supported by PowerPoint or Prezi and, if you want, a handout, and look impeccable.

Each oral argument will consist of the following:

- (1) An opening statement in which you:
 - introduce yourselves
 - present the case and the issues it raises (both teams will do this—don't worry about repeating the basic facts)
 - set forth your position very clearly
 - give a brief preview of the rest of the presentation: who will talk about what
- (2) A clear position on the issues

Provide the best arguments in support of your thesis (not every argument you can think of—only the most compelling ones).

- (3) An eloquent closing statement in which you summarize your position and stress for the Justices the significance of the decision they are about to make.

You must be ready to rebut to the opposing team's arguments and answer the Associate Justices' questions in the Q&A that follows your presentation.

Tip: Make flash cards, one for each objection to your position, so you can take a look at them when the Delegates of the Ultimate-Supreme Court push you on a point.

Note: In the presentation you will not directly cite any source from the bibliography, unless they're previous legal cases or classical philosophers we read in class. Do not reference so-and-so's blog post, podcast, book, or journal article. It would interfere with your message to the Associate Justices. The idea is that, as Lawyers, you have spent a long time reflecting on the issues before the Ultimate-Supreme Court and you are thus very well positioned to present the *reasons* and *evidence* that have led you to defend one side of the Moot Court rather than the other. So: focus on the reasons and evidence and don't worry about attributing each idea or data to its proper source.

However: In the Moot Court paper, you must properly reference everything (ideas, arguments, data). Please let me know if you do not understand this note and distinction.

Your PowerPoint or Prezi slides

Visual auxiliaries to presentations, for better and for worse are a staple of professional life. It's important to learn how to use them efficiently, and it's a skill you'll probably use again and again in your studies and professional career. Here are some principles to keep in mind—all based on the feedback I have given to students over the years:

1. Your slides ≠ your notes

My most frequent comment on Lawyers' PPT draft is: "*Trim the text!*" Your slides should *not* contain as much information as your notes.

- Your notes are the script of your presentation: they may be very detailed, reminding you exactly when to click for the next slide, when to pause, the details of an argument, etc. (However, you should have practiced your presentation enough that your notes are there only for security and not to be relied on too heavily, let alone read out loud.)
- The slides include the bare minimum of information:
 - The text should not look like your own notes or script (never have phrases like "We will argue that" on your slide, even though you'll say that in the argument).
 - The text on each slide should be succinct, that is, brief and concise.

2. Aim for precision and concision

- Each slide should be as informative as possible, including a clear, informative title (not "Our Position" or "First Argument") and precise declarative bullet points.
- Each slide should concisely formulate the central argument without containing much text at all.
- The number of words on each slide should not exceed 100. Always ask yourself whether each particular sentence must be included.
- Keep direct quotes to a minimum.

3. Make it elegant and fun

- Polish the slides: they represent your work.
- Each slide or nearly each slide should have some eye-catching illustrations.

Presentation style

Lawyers arguing before the Ultimate-Supreme Court should not read out loud their arguments; instead they should speak from their notes, without reading. They should make eye contact with the Associate Justices and Chief Justice and resort to a bit of theatricality (through tone, gestures, etc.). They should speak loudly, not mumble. We will try to follow standard legal talk and procedures: all Lawyers will start their oral arguments by saying “Ms. Chief Justice and Honorable Justices, may it please the Court.” We will address Lawyers as “Counsels.”

Please do your best to do this properly! It will be much more enjoyable and interesting for everyone—and it’s a great exercise for you. Very few people are “natural” public speakers; for most people it takes a lot of work to address an audience without [insert your physical reaction to public speaking: sweating, blushing, etc. etc.]. So practice your presentation alone *and* with your teammates. Make sure you are able to articulate your arguments with just a few bullet points. I cannot emphasize it enough: ***the key to a good presentation lies in your being well prepared for it, which involves rehearsing it many times.***

FAQ: Should Lawyers dress up for the Moot Court?

A: That’s entirely up to you, but they often do!

Self-Assessment

No later than 24 hours after the Moot Court, you will send me and MacKenzie an email assessing your preparation for, and performance at, the Moot Court. The subject of the email should read: “PHIL 2301 Moot Court # [number]: Self-Assessment.” In the body of the email (not in a separate document), you will answer the following questions:

- When did you first get in touch with your fellow Lawyers?
- When and how many times did you meet?
- Had you and your fellow Lawyers done the reading and thought about the issues before meeting?
- When did you meet with MacKenzie?
- How would you describe your interactions and preparation for the presentation?
- How would you rate your performance before the Ultimate-Supreme Court?
- What was your greatest strength?
- What was your greatest weakness? What would you have done differently?
- Suggest an overall grade for yourself and each of your partners re. preparation and performance* (copy and paste the grading scale below in your email and briefly explain how it applies to both yourself and each of your teammates)
- Did you enjoy the experience?
- Is there anything you think we could do to improve the assignment?

The self-assessment counts toward the Moot Court grade.

* Here is the grading scale:

10. Lawyer organized our meetings and came totally prepared to each, having done the readings and absorbed all the ideas and arguments. Without this Lawyer, our team

would not have done so well. Lawyer was crucial to our preparation and motivation, and to putting the presentation together. Lawyer kicked ass in the Moot Court, demonstrating complete mastery of all the material, issues, and arguments.

9. Lawyer organized our meetings and came well prepared to each, having done the readings and absorbed all the ideas and arguments. Without this Lawyer, our team would not have done so well. Lawyer helped putting the presentation together. Lawyer did well in the Moot Court, demonstrating good understanding of all the material, issues, and arguments.

8. Lawyer came prepared to each meeting, having done the readings. Lawyer did their share in putting the presentation together. Lawyer did fine in the Moot Court, and knew their part of the argument well, though they relied on others in the Q&A.

7. Lawyer came to each meeting, having done most of the readings. Lawyer had to be reminded to do their share in putting the presentation together. Lawyer did okay in the Moot Court, despite relying on their notes. Lawyer relied on others in the Q&A.

6. Lawyer displayed lack of motivation and preparation at our team meetings, forcing me/us to do more work. Lawyer didn't do so well in the Moot Court.

5. Lawyer was arguably free riding.

4 and below. Lawyer was free riding or otherwise obstructing the team's progress. Moot Court would have gone better without Lawyer.

V. How to Write the Moot Court Paper in 6 Simple Steps

Each Lawyer will be required to write a Moot Court paper of approximately 2,500 words. Although it is due 1 week after the Moot Court, the paper should already be in polished draft form *before* the Moot Court. MacKenzie and I will help you organize your paper: come see us during office hours!

If you and another teammate have an especially good and productive relationship, you may request to jointly write your paper. To do so, each prospective co-author is to email me a formal request that details (a) your reasons for wanting to co-write the paper, (b) your expectations about your collaboration, and (c) your labor division. If I allow you to do it, I will also ask you to write up a reflection about your experience.

Your Moot Court paper will be a piece of **philosophical** writing. In the panel before the Ultimate-Supreme Court, you will have focused on making your side of the issue the strongest it could possibly be, at the expense of the other side. In the paper, however, you are no longer the Lawyer trying to win the case: your inner Philosopher should take over. You are now to judge the reasons and evidence on *each side* as impartially as possible. So your tone in your paper is more cautious, less definitive than in the Moot Court. You may well find it very hard to satisfyingly respond to an objection from the other side—and that's okay. You may even decide to defend the other side's position.

As I said earlier, another big difference between the Moot Court itself and the paper is that every idea should be adequately referenced in the paper, not in the Moot Court.

Your goal in the paper is *not* to summarize the arguments that were made during the Moot Court or the questions that were asked. Why not? For one, a summary of what happened in class will not make for a good dialectic (or logical structure). Moreover, the arguments made by the other team may not have been *the* best arguments against your position. Finally, the paper should show you carefully read and engaged with the literature accompanying the case, whereas the Lawyers may have glossed over the more complex arguments before the Ultimate-Supreme Court for the sake of persuading the audience.

Instead, the paper should present what you consider to be the strongest argument given on each side. Your paper must demonstrate critical engagement with all the literature accompanying the Moot Court.

Finally, it is essential that you write for an audience who is completely unaware about the issues you're addressing. This may seem, but is absolutely not, in tension with the philosophical nature of your paper: your philosophical writing should be clear and

accessible and it can only be those things if it properly explains everything and doesn't assume anything.

Step 1: Construct a paper outline

The merits of your paper will greatly depend on its overall clarity, which in turn depends on its structure. So your outline is really IMPORTANT: the writing process will go smoothly as long as you have a solid, fairly detailed outline. You should keep electronic copies of the various stages and drafts of your outline: they will help you regroup if you're feeling lost as you are composing the paper.

Your paper should have the following general structure:

i. Introduction.

A good introduction should set up the reflection. It contains the following three elements:

- (1) One long paragraph describing the issue (and basic facts) and motivating the reflection,
- (2) One paragraph posing the central question(s), stating your main thesis/theses, and announcing the structure of your paper.

ii. The body of the paper.

This will include, for instance:

- (1) The 3 best arguments for your side on the legal and ethical issues
- (2) Some strong objections against these arguments and rebuttal (you may also examine and respond to the objections directly after each argument)

Or else, it could consist of:

- (1) The other side's best arguments for their position
- (2) Your objections to these arguments and defense of your own position (you may also articulate the objections directly after each argument)

iii. Conclusion.

The conclusion should restate your thesis, summarize the main arguments you have used to support it, and mention some possible implications of your evaluation.

Step 2: Write a draft of your paper

Once you've thought about the arguments, and written an outline for your paper, then you're ready to sit down and compose a first draft. Write the body of the paper first, saving the introduction and conclusion for last. See the writing tips and guidelines below.

Step 3: Read and revise your paper

You should expect to go through at least two drafts of your paper before submitting it. Don't be afraid to revise your paper dramatically if you find you have changed your mind, or have missed an important point the first time around.

Step 4: Get a fresh critical eye on your paper

This step involves two different activities, which I shall call: (1) the Stupid, Inattentive, Mean Interlocutor (SIM) test, and (2) the non-philosopher friend (layman) test.

i. The SIM test

The SIM test goes like this: Imagine you read your essay out loud to SIM, an individual who is Stupid, Inattentive, and Mean. SIM has mediocre mental capacities and focus, and is very unsympathetic to your position.

- SIM is stupid, so you have to explain everything you say to him in simple, bite-sized pieces. What is obvious to you is not so to SIM. In particular, SIM doesn't get rhetorical questions, i.e., questions whose answer is so obvious that it is not worth stating.
- SIM has trouble keeping focused and he doesn't want to figure out what your convoluted sentences are supposed to mean, or what your argument exactly is, if it's not already obvious.
- SIM is mean, so he's not going to read your paper charitably. For example, if something you say admits of more than one interpretation, he's going to assume you meant the less plausible thing.

ii. The layman test

Now read your paper out loud to a non-philosopher friend or family member who is not in your class: if they can understand what you are saying, you are ready for step 5. If not, go back to the SIM test.

Step 5: Proofread your paper

Thoroughly check the footnotes and edit your paper for grammar and spelling. A poorly edited paper seriously compromises its grade, because it suggests that you skipped a number of the steps above and does not predispose your reader (grader/me!) to be charitable with you.

Step 6: Format your paper

Your paper should:

- be between 2,200 and 2,700 words in length and include a word count at the end
- have an original title (not: Moot Court #1)
- be double-spaced, in 12-point, readable font, with 1 inch margins
- contain complete footnotes and a bibliography at the end
- be formatted in word doc (no PDF or Pages)
- be titled "2301 MCP# [number]_LastName" (in case I download it to grade it)
- be submitted on Blackboard within one week of the Moot Court

Tip: use this as a checklist. By satisfying these format requirements, you'll automatically gain 5 points on your paper grade.

Feedback on papers

You are welcome to stop by my and/or MacKenzie's office to talk about your paper. I don't read drafts.

Paper deadlines

Late paper submissions will result in deductions of grades (i.e., -3 points for each day past the deadline). Failure to submit the papers within 3 days of the due date will result in an 'F' for the assignment.

Northeastern Writing Center Bonus

I will grant a 5-point bonus to students who elect to schedule an appointment with a tutor at the Northeastern Writing Center to discuss a draft of their assignment prior to the due date. The Northeastern Writing Centers provides one-on-one consultation to discuss specific pieces of writing or answer questions you may have concerning your writing.

To take advantage of this extension you must (1) send me proof that you went to the Writing Center, and (2) attach a 250-word reflection of your experience with your final paper explaining (a) how you revised your draft into the submitted essay, (b) how your consultation with the tutor impacted your essay, and (c) what forms of feedback you received where most/least useful and why. Failure to meet these two simple conditions will void your bonus. To learn more about this resource and schedule a meeting with a tutor, go to <http://www.northeastern.edu/writingcenter/>

VI. Writing Tips and Guidelines

DO:



Use simple straightforward prose

Keep your sentences and paragraphs short; and *use everyday words*. The rule of thumb is: if you wouldn't say it, don't write it.

Don't begin your paper with pseudo-eloquent claims such as "Since the dawn of time, people have pondered the question...".



Explain every concept or theory you introduce

Yes, even if it's something that seems obvious to you like "consent" or "free speech": define and explain. Just imagine your audience is from a different country and not familiar at all with the U.S. society and political system.



Consider the best arguments on the other side

Although you are to forcefully argue for one side of the case, you must consider the other side's best arguments and their objections to your position. Neither ignoring nor "strawmaning" the other side (i.e., misrepresenting so as to make it look weaker than it is) is allowed in a philosophy paper. As I said, you must be a public speaker before the Ultimate-Supreme Court and a philosopher on paper. The latter is nuanced and thoughtful and may concede some of the other side's points.



Carefully develop and explain your arguments

If your arguments are based on a philosopher we read in class, you must explain the philosopher's theory as if your reader had never taken a philosophy class before. For instance, don't just say that John Stuart Mill argues for a harm principle. Explain what this principle is and does, and what Mill means by "harm."



Make the structure of your paper crystal clear

Don't make the reader do all the work in figuring out how the various parts of an argument fit together. Make it explicit when you're reporting your side's or your opponent's view. The reader should never be in doubt about whose claims you are presenting in a given paragraph. Feel free to divide your paper into sections and subsections, using headings or numbers, to help guide your reader through the paper. You should also use signposts such as:

- I will begin by...

- As I shall argue, ...
- Before I say what is wrong with this argument, I want to...
- These passages suggest that...
- Further support for this claim comes from...
- A good illustration of this point is...
- Before evaluating this argument in detail, I will...
- One may object that...
- In response to this objection...

You may use the first-person pronoun, “I,” freely, especially to tell the reader what you're up to (e.g., “I've just explained why... Now I'm going to consider an argument that...”).



Use examples

Often the best way to convey a point to your reader is to illustrate it with a vivid example. Take the distinction between “malum in se” and “malum prohibitum”: “malum in se” refers to things that are just wrong in and of themselves, while “malum prohibitum” designates things that are prohibited by law but would otherwise be morally permissible. The distinction makes sense, but it is instantly *illuminated* by the use of examples. Rape is malum in se: it is morally wrong whether the law prohibits it or not; overparking on campus is a malum prohibitum offense: it violates the letter of Northeastern University’s Parking and Traffic Regulations.



Provide complete references

Every concept, theory, argument, statute or law that you paraphrase or quote, and every source of information you use, should be referenced in a footnote. I prefer them to endnotes, so I can see the reference on the same page. Footnotes make it easy for your readers not only to see what sources you used, but also to find them. They contain the essential details of the work (such as the author, title of book or article, year of publication, journal, publisher, translator) so as to facilitate identification of the text. Last but not least, proper references shield you from accusations of *plagiarism*, which is a grave offense.

Providing adequate references to works sounds tedious, but it’s an important skill to acquire and it will serve you well throughout your academic studies (and for some, in your career). So work on it!

If you have some difficulty footnoting, try and find the specific instructions for your word processing program. The format for footnotes I favor is *Chicago Manual*. There is an online citation guide from the *Chicago Manual of Style*, which is very easy to follow, as it contains examples of footnotes that cite various types of sources. You can find it here: http://www.chicagomanualofstyle.org/tools_citationguide.html

DON'T:

✗ Digress

There should be nothing in your paper that does not contribute to the support of your thesis. Digressions that are irrelevant to the paper topic interrupt the flow of your argument and are distracting and confusing for your reader. When going through the first draft of your paper, ask yourself of every sentence: "Is this sentence necessary for my argument?", and, if so, "Is this the best place in my paper for it, or would it be more effective elsewhere?"

✗ Over-quote

If you think you absolutely need to quote an author, do so, but do so sparingly. Try to keep yourself to a maximum of seven quotations per paper, of no more than one or two sentences. Where possible, paraphrase instead: *i.e.* summarize the author's claim in your own words, and reference the passage in a footnote. Paraphrases should not involve merely changing a few words, but should be sufficiently distinct from the original to demonstrate your understanding of the passage selected.

✗ Ask rhetorical questions

A rhetorical question is a question whose answer is so obvious that it is not worth stating. In a philosophy paper, you should always assume that the answer to your rhetorical question is *not* obvious to your reader and *is* worth stating. So ask a question if you want, but *always answer it!*

VII. How you'll be graded

The Moot Court assignment is worth 55% of your final grade. It includes:

- Lawyers' preparation and performance at the Moot Court 15%
- Lawyers' Moot Court Paper 30%
- 4 Justice Prep Sheets 5%
- 2 Justice Briefs 5%

1. Team Preparation and Performance at the Moot Court (15%)

Your team's preparation and performance at the Moot Court will be graded using the following rubric:

You and your teammates met the Moot Court deadlines (re. meetings, PPT draft submission, etc.).		10
You contributed to the team effort (peer grade).		10
You did well before the Ultimate-Supreme Court (average self- and Judges' grades).		20
You submitted your complete Self-Assessment on time.		10
MOOT COURT PREP AND PERFORMANCE (TOTAL)		(50)

2. Moot Court Paper (30%)

You'll be graded on three basic criteria:

- How well do you understand the issues you're writing about?
- How good are the arguments you offer?
- Is your paper clearly written and well organized?

The grading rubric I will use to evaluate your papers will look like this:

The introduction <i>introduces</i> the issue, highlights its significance, and presents the precise questions it will answer.		5
The introduction includes a detailed statement of the thesis.		2
The introduction announces the structure of the paper.		2
The structure of the paper is clear and easy to follow. In particular, it is always clear 'who's talking' at any given point (you or your opponents).		3
The conclusion summarizes the main points made in the paper and closes by opening to some further reflection.		3
▪ ORGANIZATION (TOTAL)		(15)
The concepts and arguments are clearly and accurately presented: each concept, case, law, theory, or argument that is mentioned is properly explained.		12.5
The paper makes good use, and demonstrates proper understanding of the materials accompanying the case.		12.5

▪ CLARITY AND UNDERSTANDING (TOTAL)		(25)
The arguments are concisely presented, precisely explained, well-supported (including with empirical evidence) and insightful, and they are illustrated with concrete examples.		25
The paper presents good objections and demonstrates nuanced and thoughtful reasoning about the issue		25
▪ EVIDENCE OF CRITICAL ABILITY (TOTAL)		(50)
The paper is properly formatted according to the Instructions.		5
The paper is well-written and properly edited (no typos or grammatical errors).		5
Penalty for lateness (-3 points per day, up to 3 days)		
Writing Center bonus (+5 points, proof required)		
▪ COMPLIANCE WITH THE REQUIREMENTS (TOTAL)		(10)
	TOTAL	100

Tip: Keep a copy of this grading rubric by your side as you write the paper; and use it as a checklist in the editing stage.

3. Justice Prep Sheets (5%)

Before arriving at the Ultimate-Supreme Court, Delegates submit on Blackbaord an electronic copy of their prep sheet about the day's Moot Court. They also bring a hard copy to class. The prep sheet demonstrates that they have consulted at least 3 of the sources accompanying the issue (including podcasts and documentaries). In it, the Associate Justices outline the main arguments for and against the issue (bullet points are fine but there should only be full sentences and no less than 300 words total) and propose 2 questions for each side of Lawyers.

Prep sheets will be graded on a 5-point scale. *No late prep sheet will be accepted.*

4. Justice Briefs (5%)

After 2 of the 4 Moot Courts, you will have 2 days to write a short reaction (500-700 words) articulating your ruling on the issue(s). Why did you rule the way you did? Did you already know how you would vote before listening to the Lawyers? Did they make you change your mind? Why or why not?

In addition, you will give a grade to each of the Lawyers, using the following grading scale. Don't forget to write down their names during the Moot Court!

- 10.** Lawyer kicked ass in the Moot Court, demonstrating complete mastery of all the material, issues, and arguments.
- 9.** Lawyer did well in the Moot Court, demonstrating good understanding of all the material, issues, and arguments.
- 8.** Lawyer did fine in the Moot Court, and knew their part

of the argument well, though they appeared to rely on others in the Q&A.

7. Lawyer appeared unprepared and clearly relied on their teammates.

6 and below. Lawyer didn't speak much or at all in the Moot Court and seemed checked out.

Note: Per the glossophobia problem (p. 13), some Lawyers may agree with their teammates to contribute behind the scenes and be discrete during the Moot Court. I would discount Judges' grades and weigh peer grades more heavily in those cases.

Justices may only submit Briefs following moot courts they actually attended. Justice briefs, which are to be submitted on Blackboard, are graded on a 5-point scale and worth 5% of your final grade.

Final note: Don't hesitate to contact MacKenzie and me if you have any questions at all. We will do our best to help you rock your Moot Court!

