McGeorge is the law school of the University of the Pacific. Our student enrollment is 550, of which 100 are part-time students in our evening program. McGeorge is a second-tier law school, according to US News. (We are currently ranked #142 by that publication.) Our average entering LSAT for the current academic year was 151.

The enrollment was greater when I joined the faculty in 2000, then more than double its current size. But at the time we had nothing even approximating the Moot Court Program we have now. The development of our program, we are currently ranked 12th according to the Houston Law Center’s calculations, is what I want to describe in this paper.

In 2003 I took over the coaching responsibilities for the ABA NAAC (American Bar Association National Appellate Advocacy Competition), the single competition that McGeorge semi-regularly engaged in at that time. Other than the ABA competition, we had sporadically entered Jessup and New York National. That was about it. And our participation in any of them occurred only when a group of students would ask to have a team. In other words, we had nothing that could be called a program and there was no faculty interest in developing one.

There are about 130 schools that participate in the ABA competition. They start in one of 6 regional competitions, and ultimately four teams from each region advance to the nationals held annually in Chicago. I had two terrific students on the ABA team in 2003. They advanced from the regional to Chicago, where, if memory serves, they made it to the quarter-finals. It was partly that success, and partly the insight I gained of how valuable moot court competitions could be as an experiential learning activity, that led me on a crusade to develop a moot court program at McGeorge.

It wasn’t easy, and we still have unrealized goals in our plan, but we have developed a three-year program that provides as many as 30 students each year with an ABA-approved experiential four-unit graded course in appellate advocacy that is the backbone of our program.

So, how did we do it?

After that first year, I was bound and determined to field two ABA teams every year. The following year, I did field two teams, but only by twisting the arms of several students whom I had identified as strong candidates. In one instance, I may have twisted too hard, because one of the two teams never got their brief written and finally had to drop out. That was a lesson learned. The other team, however, advanced out of the regional rounds and got us to Chicago again.

As we continued to do well at the ABA regionals – we again got a team to Chicago in 2006 – I used the success we were having in that single competition to start making some noise with my faculty colleagues. My pitch was that moot court enhanced a full set of skills that are essential to
a successful career as a practicing attorney. Those skills – research, analysis, writing, and oral advocacy – cannot be fully taught in podium classes, which, at the time, were the staple of the curriculum at McGeorge (and at many other ABA law schools in the pre-Carnegie Report era of legal education).

I didn’t have much immediate success. Our dean at the time never quite understood the difference between mock trial and moot court. She liked being able to publicize the success of a specific competition team, but she wasn’t interested in my pitch to establish an official moot court presence on our campus.

I had better luck with some of my faculty colleagues, enough, in fact, so that in 2006, I received provisional approval for a four-unit seminar entitled “Advanced Appellate Advocacy” that would be the course that prepared moot court team members for their competitions (which at the time was still limited to the three big ones and an occasional attempt at one of the many others I was becoming aware of). Getting that course approved was the first big break I needed in establishing a legitimate moot court program at McGeorge.

Still, that first year of my course was pretty much of a mess. Because it was scheduled when many of the students had other classes, I only had 50% attendance for many of the scheduled classes. The Associate Dean and I worked out that problem in the second year by scheduling the class on Friday evenings (from 5:00 to 7:00). The students didn’t like it, and, in truth, they still aren’t crazy about it, but they don’t have other classes then, so they have no legitimate excuse not to attend. And, as I’ll explain, the class has become much less burdensome because of the culture that has built around it.

But as to that first year, in addition to the scheduling snafu, I didn’t really have a course structure, let alone a formal syllabus. Most evenings, we would just sit and talk about various aspects of being a moot court team member. Topics varied from how to find time to write the brief to how to overcome nerves in an oral argument. By my second year, I had a better sense of what I needed to be doing in the course. It’s in a lot better shape now, as I’ll explain a little later.

The second big break I needed occurred in 2008, when the faculty approved a new two-year legal writing program for all McGeorge students. Entitled “Global Lawyering Skills,” this program has become the vehicle by which McGeorge students gain the initial training in (and, more importantly, develop the interest in and passion for) moot court.

Here is how the two-year GLS program works:

The first year is devoted primarily to predictive writing (the CREAC paradigm). Students are given typical first-year associate assignments that involve researching, analyzing, and writing on issues contained in relatively simple case files. This year, for example, the major assignment I gave my students required them to study a series of documents and correspondence over 100 years that resulted in issues regarding the continued existence and usefulness of a right-of-way easement.

In order to provide an international law component, I had migratory birds nesting on the right-of-way, thereby creating a treaty issue for the students to grapple with as well. The students wrote an eight-page predictive memo for this assignment, and many ended up using it as their writing sample for job interviews.
The first-year is geared to get students proficient in basic legal research, legal analysis and predictive writing. But that experience is now enhanced by the 1L moot court competition that is run by the McGeorge Moot Court Honors Board. So now I need to digress just a tad to explain the development of the Honors Board.

As I said previously, my initial work with the fledgling McGeorge Moot Court Program largely consisted of twisting arms to get students to participate and sitting students in a seminar room where discussions were more-or-less aimed at understanding how to be successful in competitions. But by 2009, the interest in moot court among the students had begun to blossom.

And so for that academic year, I established a rudimentary honors board with the intent that all moot court team members be on it. I appointed one of the competition students as the chair of the honors board and instructed her to put together a structure that would provide four purposes: (1) out-reach to current students; (2) out-reach to moot court alums; (3) publicity (both within the law school and outside of it); and, most importantly, (4) the development of a first-year internal moot court competition, to be conducted in the spring semester (after the first-year students had learned the fundamentals of legal research, analysis, and writing in their GLS I course).

The McGeorge Moot Court Honors Board now has those four standing committees. It receives funding from the Student Bar Association to run the campus out-reach and the first-year competition every year. The out-reach includes two presentations on appellate advocacy (often by sitting appellate judges) that are open to the entire McGeorge community.

The first-year competition is open to all first-year students. The case file is developed by the honors board committee under my supervision. This year the issue involved an attempted extradition from Canada of a U.S. citizen accused of treason (punishable by death in the U.S., but Canada doesn’t recognize the death penalty).

The competition is one of the highlights of the first year at McGeorge. Students are graded on the brief they submit (they are assigned the side they must argue) and the oral arguments they make (the final round is argued to a panel consisting of current trial and appellate court judges). The top performers in the competition are then offered positions in their 2L year as moot court research assistants, which is an aspect of the program we created after the first couple of 1L competitions so as to reward those who had done well and to give them an “apprenticeship” in moot court competitions. (I’ll say more about the research assistants in a moment.)

Our GLS I class, with the option of the 1L moot court competition, produces some good moot court potential, but it is in our second year course, GLS II, where the students get classroom instruction in the core skills that translate to moot court success. In the second-year course, the students work through a case file from initial pleading through first appeal. The course starts with the complaint and answer that frame the litigation between the parties. Students are assigned their client at the beginning of the year, and they stay with that client all the way through the course.

In the fall semester, they either file or respond to motions to dismiss and motions for summary judgment with transcripts from evidentiary hearings and other discovery files made part of the record. In the spring semester, they then write either the appellant’s or appellee’s brief to a
first appellate court, arguing either in favor of or against the trial judge’s rulings on the pre-trial motions from the fall semester. They then prepare and deliver moot-court style appellate arguments to three-judge panels to conclude their course work.

The case we developed this year dealt with a terrorist threat received by the FBI via an anonymous tip. The defendant was a foreign national who was apprehended at a highway checkpoint, questioned without being given Miranda warnings, and then searched without a warrant. And, she was not given the full rights provided by the Vienna Convention on Consular Relations, which added a little treaty issue for the students to handle.

All second-year students at McGeorge are required to take GLS II. It has become our signature course at the law school, and our “Final Four” is the signature event during the academic year. The McGeorge Final Four are the top oral advocates (two from each side in the appeal) from a series of elimination rounds flowing out of the final oral arguments all students give. The panel of judges for this final round has included state Supreme Court justices and judges from the U.S. Court of Appeals. (Earlier rounds are judged by faculty members and local practicing attorneys.)

As a feeder for the moot court competitions, the GLS II course is almost a perfect fit. First of all, it serves to eliminate students who might otherwise have thought to apply for moot court because it would look good on their resume. The amount of work required of the students in GLS II dissuades any who seek moot court as an easy path to a job.

But more importantly, the performance of students in GLS II provides the best conceivable alternative to conducting auditions for positions on the moot court teams. All students in GLS II are given grades on their briefs and on each of their oral arguments (those on pre-trial motions and the appeal). Those grades, in addition to personal statements, resumes, letters of reference, and overall law school GPA, are the criteria used in choosing the team members in the late spring of each year.

And the selection process has been institutionalized beyond identifying and scoring the particular criteria. Each year ten members of the out-going honors board review all of the applications for next year’s board.

The selection committee interviews all applicants. (Last year we had about 50 for the 25 board positions, so it is competitive.) Interviews are conducted by two-member teams, who then report to the full committee. Once the field has been pared down to the spaces available, invitations are sent. Rarely does an invited student turn down the opportunity. Each honors board member will then compete in two competitions, one in the fall and one in the spring. They know going in that they will be busy.

We are only budgeted by the school to enter ten or eleven competitions each year. It isn’t for a lack of support from our dean. Jay Mootz, who is stepping down next month, has been great, and his replacement, Michael Hunter Schwartz, has already indicated that he knows the difference between mock trial and moot court. So we’ve made significant progress in that department.

We’ve also made progress in terms of alumni support. I mentioned that one of the standing honors board committees is alumni-outreach. Over the years, we have garnered increased assistance
from our growing pool of alums. We now have an alumni coach for every competition. Each team also has a faculty coach, so we have made big progress in gaining faculty acceptance for what we are doing. Our faculty is tenure-based, and tenure is still highly dependent at McGeorge on publishing. Thus, for faculty members to devote time to coaching, they are making a real sacrifice, a sign that they believe in what we are doing.

To summarize what our competition teams get in terms of support, they each have a faculty coach, an alumni coach, and a student coach. The student coaches are members of the honors board. They sit on all practice rounds and, to the extent the rules of the competitions allow, they provide support to the team members. (Usually that support is limited to work done after the briefs have been submitted.) They write bench briefs for the other coaches and guest judges and direct the work of the second-year research assistants.

The research assistants are those stars from the previous year’s 1L competition I mentioned earlier. This year we had eight of them assigned to specific competitions. They assist in researching the issues for the other coaches and, where permitted, the team members. And they learn, as they record all questions asked by the judges during practice rounds and summarize the comments after each round. They circulate those notes to all team members and coaches after each practice. At McGeorge, we require every team to have ten practice rounds before each competition.

The success of our moot court program has infiltrated the classroom. Many podium courses now include simulations and many of our podium profs sit as guest judges in our practice rounds, thereby gaining a better sense of how moot court-type simulations can enhance learning and improve overall lawyering skills. So, in that more subtle sense, we have put the academic side of moot court into our traditional class structure.

Returning to my course, that Friday night “seminar,” the Advanced Appellate Advocacy course has also taken shape. Far from a seminar, it is now an ABA-approved experiential course. I set up my syllabus to cover instruction in the four skill sets required for effective work in appellate advocacy: research, analysis, writing and oral advocacy. All moot court team members are required to take the course. It is graded, and the students understand that the grade is closely tied to the work they do in their competitions.

I spend half of the fall semester on legal writing. Most of the students already have good writing skills when they get to my course, but I’m always amazed at how many have never learned the basic punctuation rules for semi-colons and have never learned how to construct a series of items in parallel form. These are small points, to be sure, but they can make the difference between a best brief and a mediocre one.

So I spend a solid two hours on the basic rules of writing, and I assign homework to ensure that my team members know those basic rules and have those basic skills.

I also devote a fair amount of time to brief structure. Again, I may be old fashioned, but I know from grading briefs that it matters if you have an A without a B or if you have an umbrella that contains a substantive argument that you repeat in the body of the brief. So I assign homework that requires the team members to construct a brief solely based on the headings pertinent to the issues I identify.
(By the way, for my texts I continue to use Mary Beth Beazley’s excellent *Practical Guide to Appellate Advocacy*, to which I add Bryan Garner’s collaboration with the late Antonin Scalia, *Making Your Case, The Art of Persuading Judges*. I also use portions of the draft of my own text, “Effective Legal Writing with the White-Glove Inspection,” which I hope to have completed by this time next year.)

I also devote a class to stating rules. Students learn how to identify rules in the first-year courses, but even after our intense second-year GLS II course, many have not grasped the way a rule can be fashioned from a case to support the argument they need to make. I stress the value of ambiguity that is inherent in many published cases. Cases can be read to say diametrically opposed things depending on how ambiguities in the opinion are interpreted. So we spend a full two-hours learning how to use ambiguity to our advantage.

And I spend a lot of time drilling my team members on the ten steps of the white-glove inspection. This is the fool-proof method of proofreading that guarantees an error-free document. It is taught at McGeorge in all of our GLS classes and is included in our GLS text book. All of our moot court teams are required to devote five full days to white-gloving the final draft of their competition briefs. Many of my alums tell me that they still remember the all-nighters they pulled with their teammates making sure that every comma was properly placed (step five) and that every case name was properly spelled (step six).

I devote the second half of the fall semester to oral argument skills. Here, we do a lot of peer review with moots in class of teams that are near their competition. We call them dress rehearsals, and I have found that more learning takes place in this process than in all the reading I could assign and all the videos I could show the class.

In the spring semester I spend more time on fine-tuning analytic skills, which we do by reviewing briefs for the competitions that are underway. (Most spring competitions require that briefs be submitted in early January.) The balance of the semester is spent with more in-class dress rehearsals and in doing the committee work of the honors board (with emphasis on the 1L competition and the campus out-reach sessions).

We end the year with two celebratory events. The first is a party at my house, and the second is an advocacy awards night when the entire McGeorge community gathers to witness the “hardware” that our moot and mock teams have earned over the year.

And when I think back to the way things were when I first began to teach at McGeorge, I realize that we have, indeed, come a very long way. And, yes, we still have the Friday evening class, which has become a happy place, with ample evidence of deeply formed friendships and a strong sense of pride.