

Preparation for either moot court or a mock trial begins in the NYU School of Law Library in Vanderbilt Hall on Washington Square South. "The case may be fictional," says Tyler Domino (GAL '09, LAW '17), "but you are arguing from real case law." After exhaustively researching his brief, Caleb Seeley (LAW '17) estimates he spent about 20 hours writing it and another five to 10 practicing his oral advocacy.



# MOOT v.

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# MOCK

*You've heard of both, but unless you are or were in law school, chances are you probably can't detail the differences between moot court and a mock trial. We rule that unacceptable!*

The School of Law has two legal sandboxes in which to practice the skill of oral argument: moot court and mock trials. Beyond their members' passion for courtroom litigation, these two groups diverge in numerous ways. NYU's Moot Court Board is concerned with the kinds of cases that end up in US Courts of Appeals or the Supreme Court of the United States—questions of constitutionality, for instance. Its 80 members write and present briefs about a point of law before a judge or panel of judges.

NYU's mock trials team, the Trial Advocacy Society, on the other hand, is smaller (between 20 and 25 members) and argues cases that most of us associate with TV and movie lawyers like Alicia Florrick, Perry Mason, and Atticus Finch. They cross-examine witnesses (typically played by students on opposing teams), raise objections, and prevail upon a jury in an imaginary lower-court criminal or civil trial.

Another major difference: once a year, the Moot Court Board (which is actually classified as a journal rather than an organization) publishes the *Moot Court Casebook*, a nationally recognized compendium of 10 to 15 fictitious cases that are written mostly by second-year law students.

Two of these cases are argued in the fall and spring rounds of the Orison S. Marden Moot Court Competition, a prestigious annual NYU-only event that earns participants course credit. Meanwhile, the Trial Advocacy Society, an entirely student-run entity with no faculty advisers or coaches, is chock-full of seat-gripping action.

Although moot and mock tend to align with different career goals, some students try both. Daniel Peck (LAW '17), a finalist in the 2017 Marden, characterizes moot court as “cerebral and academic” and mock trials as “a little more theatrical.” In the latter, he adds, you're expected to be “adversarial and sparring,” whereas in moot court the vibe is like “talking to a senior partner within a law firm.”

“I thoroughly enjoy both in different ways,” says Kimberly La Fronz (LAW '18). “In mock trials, the audience you're preparing for is the average person, and you have to break the law down to basic concepts so they understand it. Whereas [moot court] judges are scholars in the area you're arguing.”

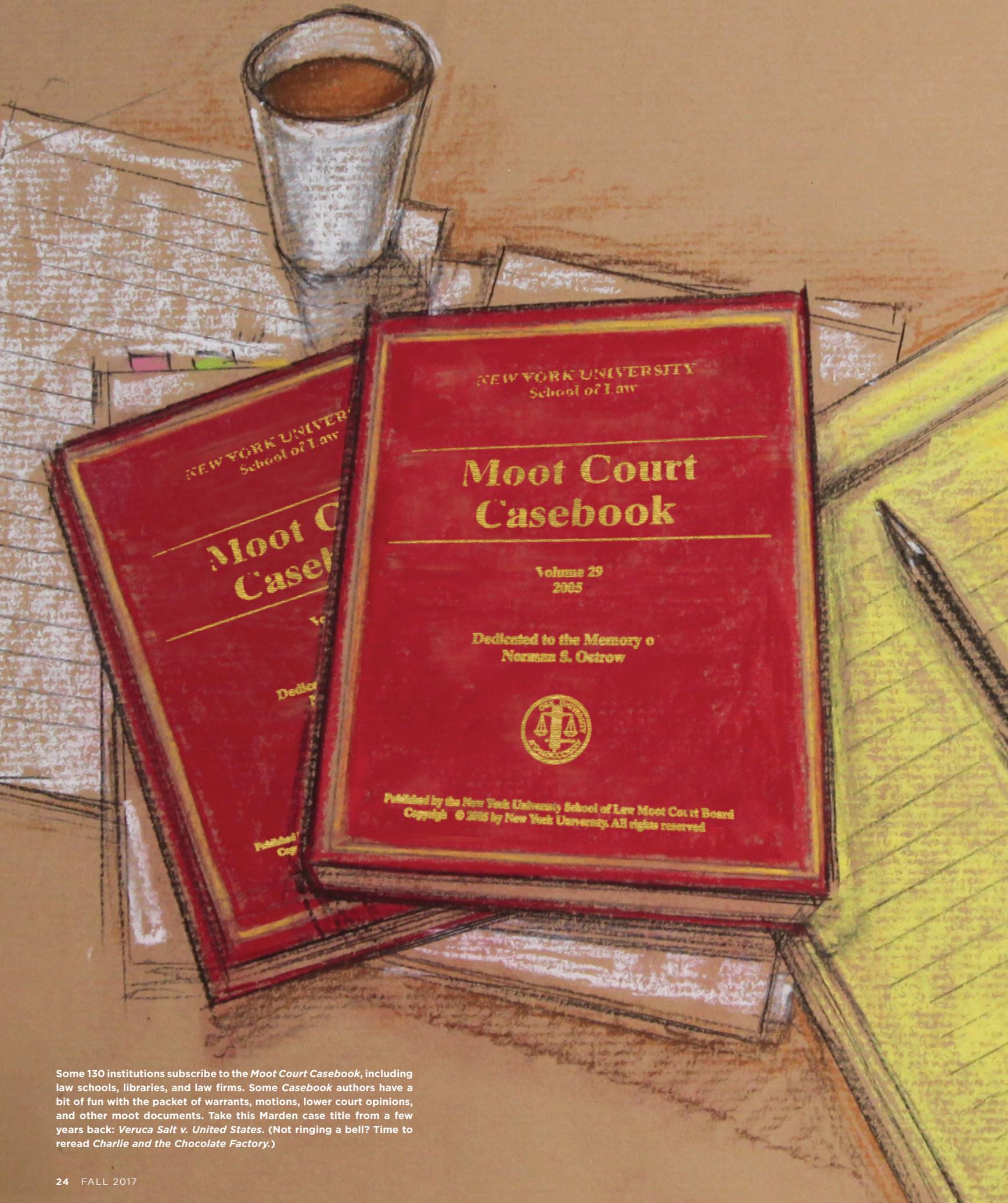
Here, we take a judicious look at moot court, then mock trials. It'd be a crime not to read on. (And no more law puns, we promise.)

# MOOT

Although judges often rattle students at Marden with their probing questions, they also provide confidence-building tools by critiquing their performances afterward. "That was the biggest help for me," says Tyler Domino. At his first Marden, "I was not good," he admits. He believes it was the judicial feedback that helped him get to the finals the following year. "I learned things like answering the question immediately and directly, using less hand gestures, and not speaking too quickly," Domino says.







NEW YORK UNIVERSITY  
School of Law

# Moot Court Casebook

Volume 29  
2005

Dedicated to the Memory of  
Norman S. Ostrow



Published by the New York University School of Law Moot Court Board  
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Some 130 institutions subscribe to the *Moot Court Casebook*, including law schools, libraries, and law firms. Some *Casebook* authors have a bit of fun with the packet of warrants, motions, lower court opinions, and other moot documents. Take this Marden case title from a few years back: *Veruca Salt v. United States*. (Not ringing a bell? Time to reread *Charlie and the Chocolate Factory*.)

# MOOT

What makes an ideal moot court case? “One that raises interesting, cutting-edge legal issues about which there are no clear answers, and which therefore forces students to draw on all their legal training,” says Adjunct Professor Zachary Goldman (LAW ’09), executive director of the NYU School of Law Center on Law and Security. It should also be topical, explains Marden executive editor Colleen Creeden (LAW ’17), but not so high-profile that its central questions have already been ruled on by higher courts.

The first round of the three-part Marden Competition is held in the fall, with some 60 second- and third-year students taking part. The top performers return for the second portion: the spring semifinals. Those contenders are winnowed down to four students who will participate in the Finals Panel, an event that has drawn many prominent judges over the years, including four justices currently sitting on the US Supreme Court.

Creeden and her fellow Moot Court Board members knew they wanted the spring 2017 proceedings to address technology and its thorny relationship with government surveillance—not unlike the real-life example of Playpen, a child pornography website on which the FBI used sophisticated malware to unmask users logging on through anonymous browsers. A resulting suit was never resolved in court because the FBI opted to drop its charges against a suspect rather than disclose details about its software. Creeden and her team consulted with Goldman, who had taught aspects of the case in his Fourth Amendment class, as well as with Adjunct Professor Andrew Schaffer, an expert on criminal procedure. They then asked their colleagues on the *Moot Court Casebook*, whose works are

performed at moot courts at other schools and even in law firm training, to write the perfect case.

What resulted was *United States of America v. Joe Malone*, which centered on a man whose computer was hacked by the government during an investigation into a website allegedly trafficking in drugs. *Malone* turned on two meaty questions: whether, in the discovery process, the government should be required to disclose details about its malware and whether it had violated the Fourth Amendment when it advertently deleted some of Malone’s personal files. “It involves complex issues of search and seizure as applied to high technology,” says Schaffer, who has, by his count, helped the moot court prepare at least a dozen times.

Mathura Sridharan (LAW ’18) probably understood all the ins and outs of the hacking subplot better than most; before law school she had earned a BS in electrical engineering and computer science as well as economics and a master’s in electrical engineering and computer science at MIT. The only second-year student among the four finalists, Sridharan walked off with both Marden awards—for Best Oral Advocate and Best Brief Writer.

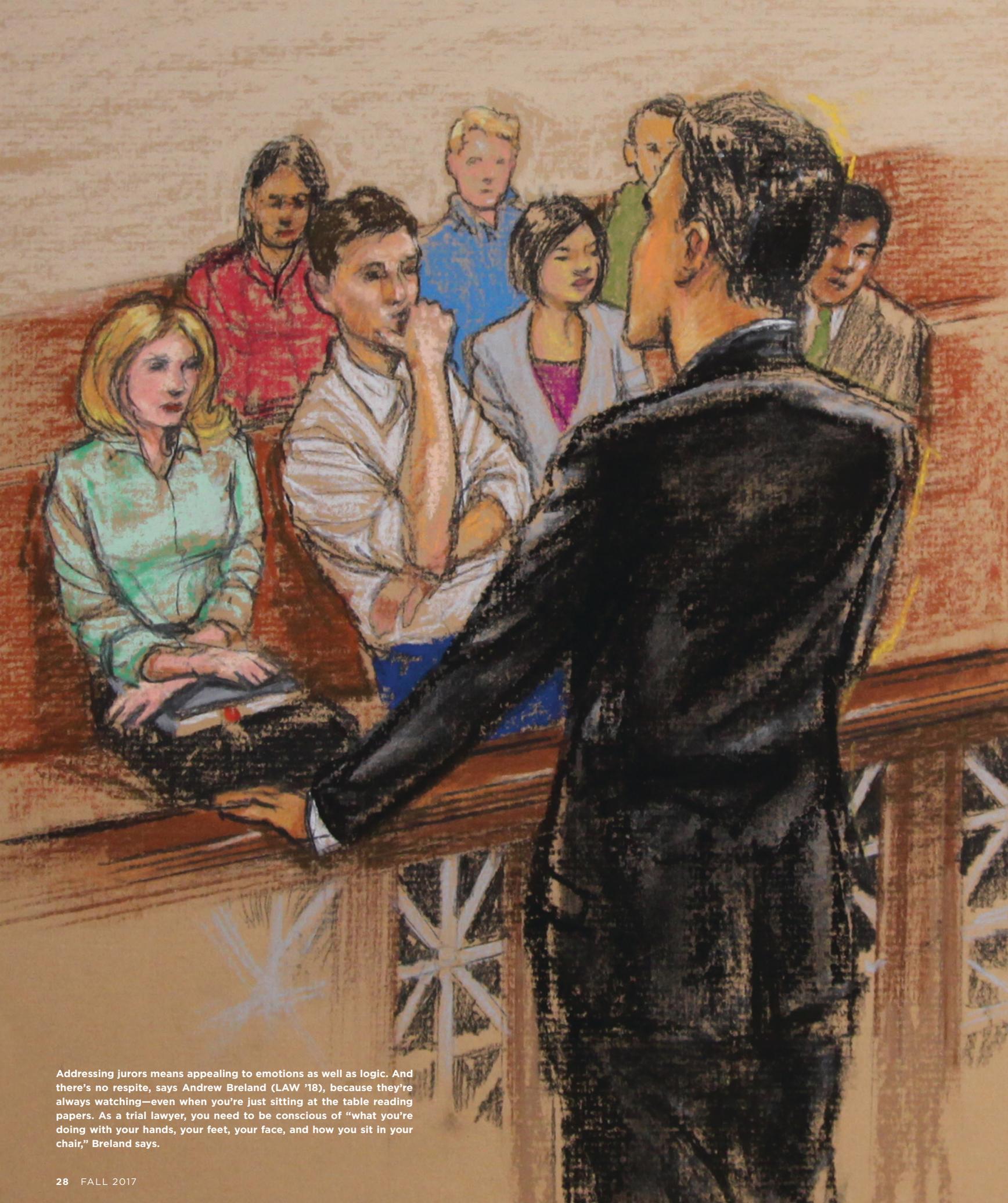
Sridharan describes herself as an “adrenaline junkie” who boxes in her spare time and regards moot court as another way of “getting into the ring.” Nonetheless, she says she found the competition nerve-racking. One hallmark of the appellate court experience is quizzing by the judges. “You never know what you’ll be asked, and you’re always worried about getting caught flat-footed,” says finalist Daniel Peck. Learning how to gracefully admit you don’t have an answer—without losing your cool or train of thought—is a skill many moot court veterans cite as invaluable.

# MOCK

Cross-examining witnesses adds scary unpredictability to the mock trial experience. You don't know what they're going to say, says Savannah Ashby (LAW '18); the key is to ignore your own nerves and simply listen. "Each time you participate, you grow," Ashby says. "You learn something new about the best way to handle an unexpected situation."







Addressing jurors means appealing to emotions as well as logic. And there's no respite, says Andrew Breland (LAW '18), because they're always watching—even when you're just sitting at the table reading papers. As a trial lawyer, you need to be conscious of “what you're doing with your hands, your feet, your face, and how you sit in your chair,” Breland says.