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Using *Hamilton's* "Farmer Refuted" to Teach Oral Argument

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You don't have to be a regular in the New York theater scene to have heard of the Broadway musical *Hamilton*. Arguably one of the most popular Broadway shows of all time, especially among younger generations, *Hamilton* has captivated audiences around the country.¹ Broadway veteran Lin-Manuel Miranda wrote the lyrics and music and starred in the original production of this show that chronicles the life of our first Secretary of Treasury, Alexander Hamilton. The production won 11 Tony Awards in 2016 and has launched several regional productions and tours, bringing the show to millions around the world.²

Although I have been a fan of the musical almost since its inception, I first saw the show in 2017—and, yes, it was worth all the hype. But my pedagogical interest in *Hamilton* began soon after I was first introduced to the original cast recording. One day, while walking the dog and listening to the music, I realized that the sixth song in the production, entitled "Farmer Refuted," was a virtual blueprint on how to conduct an effective oral argument. So, as I listened to it "nonstop,"³ a plan began to form about how I could use that song to teach oral argument to my first-year legal writing students.

¹ See *Tony Awards Live Updates 2016*, L.A. TIMES: ENT. & ARTS, <http://www.latimes.com/entertainment/arts/culture/la-et-cm-tony-awards-live-updates-20160612.htmlstory.html> (last visited Aug. 7, 2019).

² Robert Viagas, *Hamilton Tops Tony Awards with 11 Wins*, PLAYBILL (June 12, 2016), <http://www.playbill.com/article/tony-time-its-broadways-biggest-night>.

³ Forgive my pun—the First Act of the musical ends with a number entitled, "Non-Stop."

I. "Farmer Refuted"

The song "Farmer Refuted" gets its name from an essay written by Alexander Hamilton.⁴ The essay was penned in response to letters circulated by Reverend Samuel Seabury that expressed concern about the upcoming Revolutionary War. A staunch loyalist, Rev. Seabury signed his letter, "A.W. Farmer," hence the title of Hamilton's response, "Farmer Refuted."⁵ Lin-Manuel Miranda's song takes some poetic license and pits Hamilton against Rev. Seabury in a debate, in the street. But what makes this applicable to oral argument is how Hamilton attacks Rev. Seabury. He doesn't necessarily attack the substance of the argument; instead, he mostly attacks the forensics by which it is delivered. It is these attacks that make the song a virtual blueprint of how to—or, in some cases, how not to—conduct an oral argument.

II. First-Year Oral Arguments

Like in most law schools, Nova's first-year legal research and writing (LRW) course has a mandatory oral argument requirement for students that is the capstone of their first-year legal writing experience. While most 1Ls are familiar with speech and debate competitions, or have seen an opening statement on *Law and Order*, very few have seen an appellate oral argument before they came to law school. First-year students do not understand that appellate arguments are more formal, nor do 1Ls understand that the advocate will be asked questions by the bench. Many are surprised to learn that policy and the implications of a future ruling might be discussed more than

⁴ Alexander Hamilton, *Farmer Refuted*, in *THE PAPERS OF ALEXANDER HAMILTON: VOLUME I: 1768–1778*, at 81 (Harold C. Syrett & Jacob E. Cooke eds., Columbia University Press 1961) (1775).

⁵ Samuel Seabury, *FREE THOUGHTS, ON THE PROCEEDINGS OF THE CONTINENTAL CONGRESS* 30 (1774); Samuel Seabury, *LETTERS OF A WESTCHESTER FARMER, 1774–1775*, at 44 (Da Capo Press 1970) (1930).

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the facts of the very case under consideration. When they discover they must complete an oral argument exercise, many students become anxious and approach it with trepidation. Therefore, many LRW professors spend quite a bit of time preparing their students for this capstone experience by helping to alleviate their anxiety. I use a variety of teaching tools to do this, such as bringing in Moot Court students to do a demonstration, giving numerous handouts, and providing lots of time for practice. But it is no secret that students learn better when we show them something they are already familiar with and how it applies to the new skill they are learning. Therefore, my most recent addition to the oral argument preparation pedagogy is using the *Hamilton* song to demonstrate it.

III. The Lesson Plan

I always play a song at the beginning of class, and “Farmer Refuted” is the song for this day. But once the song is played in its entirety, I break it down and pick apart the lyrics to show the students how to conduct an effective oral argument. Each line that I have plucked from the song has its own slide, and I trim the audio to play just that part of the song when each slide changes. I then take each lyric, almost line by line, to show how it applies to oral argument. The first several lines are from Samuel Seabury’s narrative:

“Hear ye, Hear ye! My name is Samuel Seabury.”⁶

At the beginning of the song, Rev. Seabury introduces himself to the audience. Accordingly, I use this to illustrate to the students that the first thing speakers must always do in an oral argument is introduce themselves, just as they would in any type of speech or debate. They should give their name and explain who they represent.

“And I present free thoughts on the proceedings of the Continental Congress!”

Next, the speaker should tell the Court why she is there, what the speaker is going to argue, and

who she represents. This is commonly referred to as the “roadmap of an argument.” Although most of an oral argument should be flexible and organic, the introduction is an exception to this rule—it should be memorized, although it should not sound written and rehearsed. To this end, the beginning of an oral argument is very much like a speech. The speaker must situate the bench for what will follow and frame the issues. More specifically, she should indicate who she represents, how she wants the court to rule, and list the arguments she is going to make.

“Heed not the rabble who scream revolution, they have not your interests at heart.”

Although Rev. Seabury has a strong opening, he does make some mistakes. These non-examples are still effective teaching tools. One of the most ineffective things that Rev. Seabury does is start off by attacking his opponents, rather than setting out his points persuasively. Furthermore, this language is somewhat inflammatory and insulting to the other side. As can be seen from Hamilton’s response below, the language only serves to put the opponents on the defensive, which is not particularly persuasive, and certainly not a way to begin an argument. Instead, a speaker should start with the strongest argument for her side.

“Chaos and bloodshed are not a solution.”

Again, Rev. Seabury has chosen to talk about why the other side is wrong, rather than argue his own points. I explain to the students that his speech is actually descending into chaos, the thing he is asking us to avoid, because the speech does not have any sort of roadmap to let the audience know where it is going. Instead, the speaker should clearly outline her points, and stick to that format if possible, starting with the strongest argument.

“Don’t let them lead you astray.”

One of the biggest differences between a speech and an oral argument is that a judge will interrupt an oral argument with questions. This is usually one of the scariest things for beginning oral advocates. I tell them that they need to practice how to answer the question effectively and then transition back into their argument. Further, it is important to understand that they must be prepared to vary the argument in light of the Court’s stated

⁶ Original Broadway Cast of *Hamilton*, *Farmer Refuted*, on *HAMILTON: AN AMERICAN MUSICAL* (Atlantic Records 2015).

concerns. But a good speaker always knows how to implement “controlled flexibility.” She knows how to answer the question asked and appear flexible, but she can also use a judge’s question to connect with arguments she was going to make anyway. A good way to implement this is to begin the answer with, “Yes (or no, depending on the question), and that brings me to my second point . . .” Then the speaker can answer the question and show the Court that she is following her roadmap.

“This Congress does not speak for me.”

I use this statement to talk about facts. It is important that if speakers represent the appellant, they should give a short version of the facts from their perspective. However, if they represent the appellee, it is completely appropriate to point out any incorrect facts or misleading statements made by the appellant.

“They’re playing a dangerous game. I pray the king shows you his mercy. For shame. For shame. . . .”

This is the end of Rev. Seabury’s narrative, and although it is important to end persuasively, it is not necessary to degrade the other side. I remind the students that it is always important to remember their opponents are professionals, just like them, and in both Moot Court land and real life, opposing counsel may not always have control over which side they represent or who their client is.

Once Rev. Seabury’s character finishes his speech, it’s Hamilton’s turn. The following lyrics are spoken by Hamilton’s character.

“Honestly, look at me, please don’t read!”

This was the first line in the song that made me start thinking about using this song in class, and it may be the most instructive thing Hamilton says. The importance of eye contact cannot be overstated. It allows a speaker to create a rapport with the judges, and it keeps the judges focused on the speaker. When a speaker looks down at her outline, the judge tends to look down or away as well, and the speaker has lost the attention of the panel. Many first-year students rely too heavily on their notes, and therefore lose that connection with the bench that is created through eye contact.

“Don’t modulate the key then not debate with me!”

I use this opportunity to reiterate that students must be prepared to answer every possible question the panel could ask. When asked a question, it is important that the speaker maintain composure and avoid looking startled, even if the answer does not occur to her immediately. I tell the students to stop, take a breath, and think about an answer before jumping in and risk spouting nonsense. Further, if students bring up a case, I tell them it is important to make sure they know the facts, holding, and reasoning of that case because the Court might ask those questions. Additionally, it is imperative to stop speaking the second a judge begins to ask a question, and make sure to listen carefully to the question.

“I’d rather be divisive than indecisive”

This is a perfect line to illustrate the importance of always giving a yes-or-no answer to a question, even if it appears to hurt the argument. The trick is to be direct, but then turn the answer around or distinguish the case. For example, I tell the students they can say, “Yes, Your Honor, it is a large burden to overcome, however, . . .” Or, “Yes, Your Honor, that case does appear to help the other side, but if you look at the reasoning, the case might actually help my client because . . .” I explain to students that the important thing is not to give vague answers. The judges will pick up on the fact that the speaker is trying to avoid the question, and it will reflect poorly on them. And while they should be direct, I tell them to make sure not to be defensive and not to argue with the Court or ask a question of the panel.

“Look at the cost, n’ all that we’ve lost n’ you talk about Congress?”

Although we’ve just discussed how students should answer questions with an effort to get back to their outlines, it is also important to show the students that there are times when the speaker must go where the Court takes her, even if that was not what was planned. Sometimes students prepare heavily for a discussion of Issue A, but the panel is clearly more concerned with Issue B or the policy implications. Therefore, although

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the speaker should try to control the flow of the argument, it is also important to discern when an argument is not persuading a panel and be willing to abandon that argument and move on to something that will be more effective.

“Why should a tiny island across the sea regulate the price of tea?”

Theories and themes are not just for trials. A strong theory of the case focuses the arguments and gives a framework around which to structure the entire case. The theory created by Hamilton’s character, and stated in this line, encapsulates everything the revolution stood for in one sentence: England was not in tune with what was going on in the colonies because it was “across the sea,” and this “tiny island” should not dictate the colonists and their daily lives, such as “the price of tea.” In addition, this line has the hallmarks of a good theme: it rhymes and is memorable.⁷ Some academics and practitioners suggest that speakers even announce the theme at the beginning: “This case is about a woman who just wants to get her daughter back.” Instead, I suggest to the students that the best theory is the one that is woven throughout each argument and is obvious without being announced at the beginning.

“If you repeat yourself again, I’m going to scream.”

This lyric shows the students that their argument should move in a linear fashion, if at all possible, and should not be repetitive. But if a judge asks a question about a topic that has already been discussed, the speaker should answer the question again without saying something like, “As I said earlier, Your Honor.” That kind of response is condescending and suggests that the speaker wasn’t listening.

Additionally, the conclusion of the argument should be brief. Though it should remind the court how the speaker wants it to rule, the conclusion should not be a repetition of the arguments. This is another exception to the no-memorizing rule;

I tell the students to know their conclusion and be ready to recite it when the time is up.

“Silence! A message from the King!”

Finally, when the timer says, “stop,” I tell the students they must stop. If they are in the middle of their concluding sentence, finish the sentence, thank the Court, and sit down. If they are in the middle of making a point, however, and haven’t gotten to their conclusion yet, I tell them to say, “Chief Judge/Justice, I see that my time has expired, may I briefly conclude?” If the request is granted, thank the Court, abandon the point, and give a one-sentence, no longer than 10-second, conclusion. I tell the students if they are in the middle of answering a judge’s question, however, they should say, “I see that my time has expired, may I finish answering the question and briefly conclude?” If the request is granted, I tell the students to thank the Court, answer the question, and then give a one-sentence, no longer than ten-second, conclusion.

IV. Conclusion

Using familiar references, such as *Hamilton*, demonstrates to students that what we are teaching has roots outside the legal writing classroom and transcends the Bluebook and CREAC.⁸ Iconic references images also help the students remember the concepts later if they can connect them with something they’ve seen in the “real world.” And if it encourages them to expand their cultural horizons or piques their interest in one of the Founding Fathers, there’s nothing wrong with that, either.

⁷ See Camille Lamar Campbell & Olympia Duhart, *PERSUASIVE LEGAL WRITING: A STORYTELLING APPROACH* 57–58 (2017). This theme is reminiscent of the famous O.J. Simpson theory: “If it doesn’t fit, you must acquit!”

⁸ See Victoria S. Salzmann, *Here’s Hulu: How Popular Culture Helps Teach the New Generation of Lawyers*, 42 *McGEORGE L. REV.* 297 (2011).