No point is ever moot when you’re preparing to argue before the United States Supreme Court.

Hence the widespread practice of running through your arguments—mooting—in front of various audiences ahead of the big day in Washington. That’s what happened during a recent afternoon in Ann Arbor as a panel of nine stern-faced Michigan Law professors assembled on the podium at the front of Honigman Auditorium.

Before them stood Michigan Law Professor David Moran, ’91, counsel of record in the double-jeopardy case Evans v. Michigan. “You’re just getting prepared for oral argument, to get you to think of all the possible questions the justices might ask,” said Moran, who cofounded the Law School’s Innocence Clinic. “You want to do enough moots on each case so that you’re never surprised.”

The mooting and all of Moran’s other preparation worked; on February 20, the Court ruled in favor of Lamar Evans, whose case Moran presented in November.

Evans v. Michigan sought to determine whether a defendant can be tried again after the trial judge erroneously holds a particular fact to be an element of the alleged crime, then grants a directed verdict of acquittal because the prosecution failed to prove that fact. The defense argued that the charges actually required prosecutors to prove that the building wasn’t a dwelling house, and the judge agreed—then determined that the prosecution had failed to prove that element. With that, she granted Evans’ motion for a directed verdict of acquittal.

Prosecutors appealed, and the Michigan appellate courts decided the trial judge erred. But they also said the double-jeopardy clause didn’t bar a retrial. And it was that question that ended up at the U.S. Supreme Court.

In preparing for oral arguments, Moran had the professoriate of a top-tier law school on hand to ask him the pointed questions. “Chief Justice” (aka Dean) Evan Caminker led the charge, joined by professors Nicholas Bagley, Scott Hershovitz, Joan Larsen, Julian Davis Mortenson, Paul Reingold, Margo Schlanger, Sonja Starr, and Christina B. Whitman, ’74.

The moot was sponsored by the Criminal Law Society and American Constitution Society. A dozen Michigan Law students, who had been taking Moran and Friedman’s seminar on the case, “An Insider’s View to Supreme Court Practice,” mooted him previously; they also attended the arguments in Washington.

In the end, Moran said, the Supreme Court “reaffirmed the principle it had recognized for over a century: an acquittal, whether by a judge or jury, is final and the State cannot put a citizen through the ordeal of a retrial following an acquittal simply by identifying errors in the trial leading to the acquittal.

“To put it simply, it’s the State that puts people on trial, and the Double Jeopardy Clause stands for the proposition that it is the State, not the citizen, who must bear the risk that mistakes are made during that trial.”—JM