Dialogues in US Supreme Court Oral Hearings

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Abstract. Dialogue protocols in Artificial Intelligence and Law have become increasingly stylised, intended to examine the logic of particular legal phenomena such as burden of proof, rather than the procedures within which these phenomena occur. In this paper we will return to the original idea of using dialogue to model particular procedures by examining some very particular dialogues - those found in oral hearings of the US Supreme Court. We will then consider some important characteristics of these dialogues, and illustrate the paper with examples taken from a close analysis of a case often modelled in AI and Law, *California v Carney* (1985).

Keywords: Legal argumentation, dialogue types, persuasion, deliberation, values

1 Introduction

Dialogue games were originally introduced into AI and Law as a way of modelling legal procedures [8], but more recently they have been used rather to capture the logic of aspects of legal reasoning, such as reasoning with cases (e.g. [10]) or particular legal phenomena such as burden of proof (e.g. [11]), and in consequence have become somewhat stylised and unrelated to any particular legal dialogue. In this paper we will consider some particular dialogues which form a clearly defined stage of the US Supreme Court process, namely the Oral Hearings stage.

We begin by providing some necessary background. We will recall the notion of dialogue types used in [13], briefly describe the Supreme Court processes and the role played by the oral hearings, and describe the particular case we will use as a running example, *California v Carney* (1985)[1].

1.1 Characterising Types of Dialogue

Walton and Krabbe [13] have identified six main types of dialogue: persuasion, deliberation, negotiation, inquiry, information-seeking and eristics, each of which has some sub-types. When analysing dialogues, it is important to be aware of the

[1] The full transcript of the Oral Hearing is available at holmes.oyez.org/cases/1980-1989/1984/1984_83_859.

type of the dialogue, since shifts between dialogue types often lead to misunderstandings and fallacies; the dialogue types characterise the speech acts available and provide the context to interpret them. Walton and Krabbe characterise dialogue types based on:

- The dialogue initial situation which identifies the initial conditions that give rise to the dialogue.
- The dialogue overall goal, shared by all participants, which defines the characteristics of a successful dialogue outcome.
- The individual goals of the participants which help to determine the reasons for particular move choices by the participant which should lead towards the main goal, while at the same time respecting their own best interests.

In this paper we will identify the initial situation and goals appropriate to Oral hearings of the US Supreme Court, which will help to drive our analysis of the dialogues.

1.2 Supreme Court Process

Typically the Supreme Court has an appellate jurisdiction, reviewing cases that have been decided in lower courts and either affirming or reversing the lower courts decision. The Supreme Court receives number of *certiorari* requests from parties who are not satisfied with the lower court decision asking for a review of their cases. Normally, when a case for consideration of *certiori* is accepted, the petitioner and respondent write briefs setting out their positions and recommendations to prepare the Justices for the oral argumentation. Briefs may also be supplied by other interested parties, such as the solicitor general. These are the so-called *amicus curiae* (friend of the court) briefs. When the justices have considered all the briefs, the oral hearings take place. The total time for the oral argumentation is just one hour, thirty minutes for each party. Normally the petitioner will begin, reserving some of his thirty minutes for rebuttal. The respondent will follow for thirty minutes, and the petitioner will finish taking the remaining time for a rebuttal. Following the oral hearing, the justices meet in a justice conference to discuss and vote on the case. Following this the opinions are prepared: one justice will be chosen to write the opinion of the Court, and the other justices may, if they wish, write their own concurring or dissenting opinions.

The Supreme Court is expected to give a decision in the case under review, but they need to look to the past and the future as well. Their decision needs to be expressed as a rule which will be applicable to future cases, and which will, as far as possible, be consistent with previous decisions of the Court: see e.g. [9].

1.3 A case study: *California v Carney*

This case is concerned with whether the exception for automobiles to the protection against unreasonable search provided by the Fourth Amendment applies to

mobile homes, in particular motor homes in which the living area is an integral part of the vehicle. The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A search is considered reasonable if a warrant has been obtained. The exception for automobiles was introduced in the *Carroll* case in 1925, when a car carrying contraband was stopped and searched without a warrant. In *Carroll*, there is no mention of privacy: the justification was in terms of exigency, that the law could not be enforced if a warrant were required as the evidence would simply disappear into the night and another jurisdiction. The facts of this case (sedan on freeway) are as strong as can be in terms of exigency.

The notion of an automobile exception developed over the years through a series of cases, with elements of privacy being considered as well as exigency. *South Dakota versus Opperman* (1976) gives a clear statement incorporating reduced expectations of privacy in addition to exigency, and was used as the current rule by the majority in *Carney*. In *Opperman* an illegally parked car was impounded and searched without a warrant. Marijuana was found in the glove compartment.

> The reason for this well settled distinction is twofold. First, the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. ... But the Court has also upheld warrantless searches where no immediate danger was presented that the car would be removed from the jurisdiction. ... Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office ... Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection. As an everyday occurrence, police stop and examine vehicles

Note that in Opperman there was no exigency at all. *California v Carney* arose when drug agent officers arrested Carney who was distributing marijuana from inside a motor home parked in a public parking lot in the downtown of San Diego for unknown period of time. After entering the motor home, without first obtaining a warrant, the police officer observed marijuana . This motor home was an integral vehicle with wheels, engine, back portion and registered as a house car which requires a special driving license. On the other hand, it has some interior home attributes such as refrigerator, cupboard, table, scale, bag and curtains covering all the windows. The question was whether warrantless search legal in this case under the fourth amendment because satisfying the exception for automobiles. The California Superior Court *affirmed* the warrantless search because of the automobile exception. However, The California Supreme Court *reversed* the lower court decision indicating that the search violated the fourth amendment rule. After granting *a certiori*, The U.S. Supreme Court *reversed* the California Supreme Court decision stating that the search was reasonable and did not violate the fourth amendment rule.

California v Carney has often been used in AI and Law to explore Supreme Court oral argument (e.g. [12], [3]), and to consider the interaction of two competing values (e.g. [6]). In *Carney*, the competing values are enforceability of the law, which makes exigency important, and citizens' rights, which include the right to privacy.

2 Models of Reasoning with Cases in AI and Law

Modelling reasoning with legal cases has been a central topic of AI and Law from the beginning, and there is now a good degree of consensus, especially with regard to the main elements involved. This consensus can be expressed as a tree of inference with a legal decision as the root and with evidence as the leaves. Between the two we have a number of distinct layers.

Immediately below the decision we have a level of issues [7], or values [4], which provide the reasons why the decision is made. The idea here is that laws are made (and applied) so as to promote social values: whether a value is promoted or not is an issue. Where more than one value is involved and they point to different decisions, the conflict needs to resolved. Sometimes it is appropriate to give priority to one value over another (as in [4]), sometimes a balance needs to be struck (as in [7]). Thus the Fourth Amendment exists to protect *Privacy*, and the automobile exception to enable *Law Enforcement*: in a particular case the issues will be whether there was sufficient exigency and/or insufficient expectations of privacy. Note that the relation between issues may be seen as a matter of ordering, or requiring a balance between the values: there is as yet no consensus on this point [5].

At the next level down there are a number of *factors* [1]. Factors are stereotypical fact patterns which, if present in a case, favour one side or the other by promoting a value. Factors are required to enable generalisation across the infinitely varied fact situations that can arise, and so permit the comparison of cases. The factors are thus used to determine whether values are promoted, and so to resolve the issues. Sometimes (as in [1]) it may be convenient to group several factors together under more abstract factors, so that we have two or three layers of factors, moving from the base level factors through more abstract factors, before reaching the issues.

Below the factors we have the fact patterns used to determine their presence. These may offer necessary and sufficient conditions, but more often they offer either a set of sufficient conditions, or in less clear cut cases, a number of facts supplying reasons for and against the presence of the factor which need to be considered and weighed to make a judgement.

At the lowest level there is the evidence. Facts are determined by particular items of evidence, and where evidence conflicts a judgement will need to be made: often this judgement is made by a jury of lay people rather than lawyers. In the lower courts there will be real items of evidence, particular witness testimonies and the like. But by the time a case reaches the Supreme Court, the facts are usually considered established and beyond challenge. The Supreme Court does,

however, need to consider what should count as evidence, and whether this will be generally be available, so that the rule can be applied in future cases. For example a birth certificate is normally required as evidence of age, other evidence being considered unreliable, or unlikely to be available.

Thus a complete argument for a case will comprise a view on what can be considered as evidence for relevant facts: what facts are required to establish the presence of various factors, and how they relate; how the factors can be used to determine the issues; and, where issues and values conflict, how these conflicts should be resolved. We will present these requirements in the form of an argumentation scheme in the next section.

2.1 An Argumentation Scheme for Oral Hearings

We have the following set of premises (each illustrated with an example from *California v Carney*):

- **Values Premise**: The following values are relevant to decide the legal question. *Law Enforcement and Privacy are the values relevant to determining whether a case falls under the automobile exception.*
- **Issues Premise**: The values are considered as these issues. *The issues are whether there was sufficient exigency (so that Law Enforcement is promoted) and insufficient expectations of privacy (to consider privacy) to permit a search without a warrant.*
- **Issues Linkage Premise**: The issues should be considered collectively as follows. *The issues are related as Sufficient Exigency* $\vee$ *Insufficient Privacy.*

We then have a number of factor premises, one for each issue.

- **Factors for Issue Premise**: The following factors are relevant to resolving the issue. *Vehicle Configuration and Location are relevant to resolving Sufficient Exigency.*
- **Factor Linkage Premise**: The factors relevant to the issue should be considered collectively as follows. *Sufficient Exigency is resolved by considering Vehicle Configuration* $\wedge$ *Location.*

Finally we need a number of fact premises, one for each factor:

- **Facts for Factor Premise**: The following facts are relevant to determining whether a factor is present. *Wheels and Means of Propulsion are relevant to determining Vehicle Configuration.*
- **Fact linkage Premise**: The facts relevant to the issue should be considered collectively as follows. *The presence of Vehicle Configuration is determined by considering(Wheels* $\wedge$ *Engine)* $\vee$ *(Boat* $\wedge$ *(Engine* $\vee$ *Oars* $\vee$ *Sail)).*

Note that we do not need to consider the evidence level as part of the arguments: the facts to be used have already been determined by the lower court.

We can now consider the critical questions that can be posed against the scheme. The relationship between a level and the level above is often referred

to as a *test*. The questions relate to the *test too broad* and *test too narrow* arguments of [3], but our more articulated scheme offers a finer granularity since it identifies various different aspects with respect to which in which the test may be deficient.

CQ1: Are all the issues relevant?
CQ2: Are there other issues which are relevant?
CQ3: Are the issues linked correctly?
CQ4: Are all the factors really relevant to this issue?
CQ5: Is there an additional factor relevant to this issue?
CQ6: Is the relationship between factors correct?
CQ7: Are all the facts relevant to determining the presence of this factor?
CQ8: Is there an additional fact relevant to the presence of this factor?
CQ9: Is the relationship between facts correct?
CQ10: Can these facts be observed by the appropriate person?

These CQs permit a test to be challenged as too broad or too narrow at all three levels, and in two ways. As well as challenging the breadth and narrowness in terms of the elements used (e.g. CQ1 and CQ2), the breadth and narrowness can also be challenged in terms of the way the elements are combined, as in CQ3. It should also be noted that it is quite common to combine, for example CQ1 and CQ2 into a single question, effectively suggesting the substitution of one element for another. These could be expressed as additional CQs, but here we will rely on combinations of CQs. Note also that CQ10 relates to whether the tests can be applied by the person responsible for applying them in the operational situation: a test that cannot be applied in the actual situation is not acceptable.

In [2] the response to such questions is said to be one of:

Save the test: effectively deny that the question is pertinent to the test; for example if CQ8 is posed suggesting that an additional fact would change the position with respet to some factor, it can be maintained that the same position continues to hold.
Modify the test: Exclude an item (e.g. CQ1), add an item (e.g. CQ2) or change the linkage (e.g. CQ3);
Abandon the test: This means withdrawing the current proposal and proffering a new one.

In the course of the hearing the various elements of the proposal emerge. The dialogue is often not well structured: the questions are not posed in any particular order, and may be interleaved with the presentation of the proposal, so that the proposal is modified as it is presented. None the less, the aim of each counsel is to present and defend an instantiation of the scheme which will decide the case for their client, and the justices aim to get clearly stated alternative schemes between which they can choose.

3 Oral Hearings

In this section we will describe the initial situation, the individual goals and the collective goal for Oral hearings in terms of the computational model developed in the previous section.

Recall that as part of the Supreme Court procedure, there are three nested dialogues in the main oral argumentation dialogue. The overall aim is to identify a complete argument (a full instantiation of the scheme of the last section) for each of the petitioner and the respondent, expressed as clearly and unambiguously as possible. Each of the three dialogues will involve a counsel and nine justices. We will not distinguish between the justices here. Essentially they will all ask critical questions to clarify and challenge the arguments presented by counsel, although the particular questions they pose may well be motivated by their own views of the case.

In the *initial state* of the petitioner presentation, briefs from the petitioner, respondent and any "friends of the court" are available. These will set out (and justify) a set of tests forming candidate arguments: the arguments of each counsel will, if accepted give rise to a decision for their clients. These briefs will also state the accepted facts of the case, and draw attention to relevant precedent cases. The *collective goal* is to obtain a clear statement of the argument for the petitioner. Individually *the counsel* will wish to state his argument and answer any critical questions satisfactorily: modifying his tests if necessary. *The justices* will wish to clarify any points that had not been made clear in the original brief, and to pose challenges arising from other briefs.

The *collective goal* of the second dialogue, the respondent presentation, is to obtain a clear statement of the argument for the respondent. The respondent dialogue differs in its *initial state* because the petitioner has already presented. Thus as well as presenting his own argument, *counsel for the respondent* may wish to rebut the argument proposed by the petitioner, and so will have the goal of casting doubt on the petitioner's argument as well as presenting his own argument. *The justices* remain interested in clarification and eliciting answers to questions arising from the other briefs.

While the *collective goal* of the rebuttal dialogue is again a clear statement of the arguments, the *initial state* now also contains the respondent's argument and the individual goal of *the counsel* is to pose questions against this argument. *Justices* usually say very little during this stage, but they may seek clarification of the exact questions being posed.

The goal of the three dialogues together is to provide a clear statement of the arguments for the petitioner and the respondent to provide a basis for the justices to decide the case.

4 Illustrations with *California v Carney*

Using the model proposed above, we have analysed the oral arguments of *California v. Carney*. There is no space for the full analysis here, but we provide

example extracts from each of three component dialogues, showing the arguments proposed and some critical questions posed against them.

4.1 Dialogue One - Petitioner Oral Arguments

The petitioner maintains throughout the dialogue the position that exigency is the only issue here, and that the relevant abstract factor of *inherent mobility*, that is, the capability of quickly becoming mobile, using the configuration of the vehicle as the base factor, ensures a sufficient exigency for the automobile exception to override the privacy protection of the fourth amendment. He proposes that this can be determined using easily observed facts such as *the vehicle has wheels* and the *vehicle is self-propelled*. One justice poses CQ7, suggesting that wheels might be enough, so that trailers are also covered, but the counsel rejects this suggestion and maintains his test. The question of boats is also raised (CQ8) suggesting that there must be some other consideration to cover boats. In this case the test is modified to disjoin *boat with oars* to provide an additional sufficient condition (CQ9).

Figure 1 illustrates the petitioner argument. An important feature of the argument is that the issues of privacy and exigency are kept separate. A justice challenges this, using CQ3, based on the Solicitor General's brief, which suggests that both are applicable.

> **Unidentified Justice**: You prefer a single rationale for the exception to the warrant requirement Namely, you think "mobility" is practically the sole criteria; and the Solicitor General at least thinks that there are two.
> **Petitioner**: Well, I think there is more than one, and I think they're independent of one another,

The Solicitor General argued that there are some circumstances where a mobile home results in expectation of privacy (privacy issue) that must be considered in addition to exigency (CQ3). One example of these circumstances is when the motor home is stationary in a mobile home park for a significant period of time (CQ5). The petitioner rejects the use of the length of time parked as this cannot be determined by the law enforcement officer (CQ10). The notion of location is, however, accepted as a factor additional to vehicle configuration relating to exigency (modifying the test in response to CQ5), claiming that while a vehicle in a residential location (such as a mobile harm park) might not be considered inherently mobile, and so issues of privacy would become relevant, a vehicle in a regular parking lot can always be considered inherently mobile.

> **Unidentified Justice**:Well, anyway, you certainly would differ with the Solicitor General as to the application of the exception in a park, in a mobile home park?
> **Petitioner**: Under the circumstances that's been presented, yes, I would.
> **Unidentified Justice**: Of course that isn't the issue here, is it? This is

in a public parking lot.
Petitioner: That's correct, Your Honor. That is not presented in this case.
And if I might address the Solicitor General's position and explain why ours is a little bit different: The reason for our difference with the Solicitor General is because that a law enforcement officer in the field has to determine whether or not this vehicle is now placed in a constitutionally protected parking spot: if an individual is going to come upon this vehicle he's not going to know whether it's been parked in this particular motor home lot for a period of three months, or two weeks, or how long.

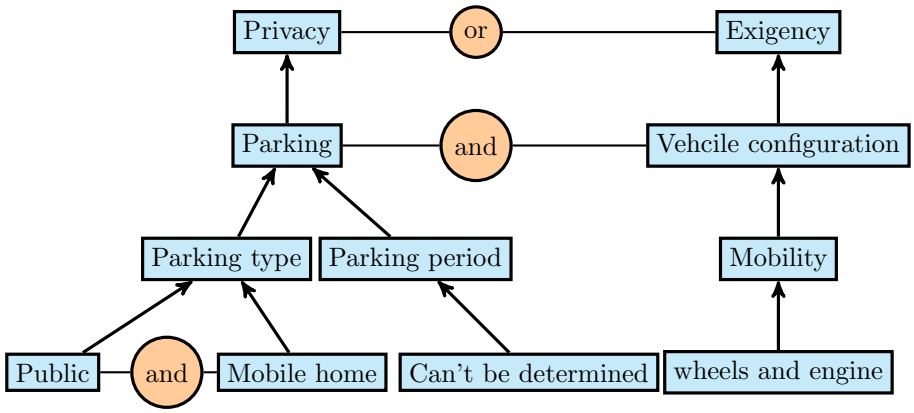

Figure 1: Petitioner's Argument

4.2 Dialogue Two - Respondent Oral Arguments

The respondent presents a rather different argument. He insists that both *exigency* and *privacy* need to be considered. He aims to establish sufficient expectations of privacy on the grounds that the motor home can be used for residential purposes as well just transportation unlike a regular passenger automobile *(However, transportation is not its sole function)* and this can be determined by the presence of facts about configuration such as: *cab and the living quarters are part of a single unit*. Also to be considered are whether there are attributes associated with a home, established using facts such as *containing a bed and a refrigerator* and whether it is used to store and transport personal items[2]. Additionally he aims to show that the exigency is lessened since the vehicle is not ready to be moved (*is inoperable*), because there is no driver present, and there are curtains drawn over the windscreen. Also because it was parked in downtown San Diego a warrant could easily have been obtained. The respondent's argument is shown

[2] This is intended to align it with precedent cases involving luggage being transported in a car where the automobile exception did not apply.

as Figure 2. Viewed as rebuttal of the petitioner's argument, this adds privacy as an issue (CQ2), and conjoins rather than disjoins the two issues (CQ3). Readiness to move and possibility of obtaining a warrant are introduced as additional factors for assessing exigency (CQ5). The additional factors *capable of use as a home* and *used to store and transport personal items* are proposed as additional factors relating to privacy (CQ5). The relationship between these factors was not discussed, although CQ6 was available to clarify it had any justice wished to do so.

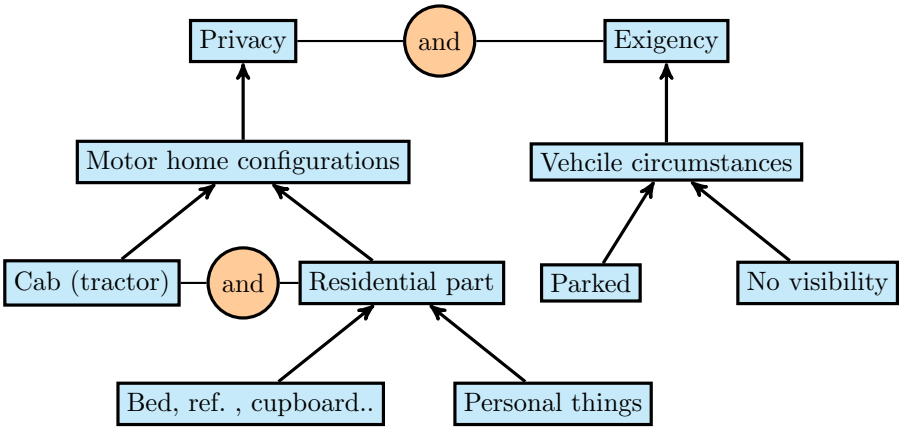

Figure 2: Respondent's Argument

The extract below is an attempt by a justice to suggest that the fact that the cab and the residential part are a single unit is not essential (CQ7) for the required vehicle configuration factor to be present. The respondent saves his test by pointing out that if we have a trailer and tractor configuration, the greater expectations of privacy apply only to the trailer, and the exigency applies only to the tractor. Under pressure, however, the respondent eventually modifies the test by introducing the *personal effects* factor (CQ5).

> **Unidentified Justice**: Assume now that the automobile vehicle is the tractor that would pull the otherwise immobile motor home, or whatever you want to call it. Now you could search the tractor, but not the–
> **Respondent**: I think that's true. And the reason is–
> **Unidentified Justice**: –The tractor can take off down the street and go 70 miles an hour on the highway?
> **Respondent**: –The reason is, the tractor has a privacy interest which society is less prepared to recognize. It's a diminished privacy expectation, as opposed to the motor home or the trailer itself.
> **Unidentified Justice**:Well, they're equally... when they're attached, they're equally moveable, aren't they?
> **Respondent**: Exactly. But one is used for private living residential purposes, and the other is used for transportation. As a matter of fact–
> **Unidentified Justice**:The other one isn't used for transportation in the

abstract, but only in connection with what it pulls. Isn't that so?
Respondent: –Yes, that's correct.
Unidentified Justice:People don't go out on the highway on the tractor alone, do they?
Respondent: Ordinarily not. The tractor partakes more of the automobile, because it doesn't have... it is not the kind of repository for personal effects.

4.3 Dialogue Three - Petitioner Rebuttal

In the last of the three nested dialogues, the petitioner attempts to rebut the tests introduced by the respondent by adding new facts and/or factors or showing the inapplicability of the tests to prove insufficient privacy.

According to the respondent argument above, that the living quarter is is an integral part a vehicle should attract sufficient privacy expectations. However, in the following extract the petitioner claims that it is not possible to determine these residential facts (CQ10), and in this particular case there was no evidence of food or personal items inside the motor home. So even if the personal effects factor were relevant, that is CQ5 succeeds, it does not apply to *Carney*.

But the record does not at all support this particular assertion.
And in particular, if one examines the photographs that are a part of the record in this case that were submitted to this Court, looking at the picture of the refrigerator will show that there is marijuana in the refrigerator, but there is no food.
And when they examined the cupboards in this case, there's no underwear, there's no sheets, there's marijuana.
There's nothing in the record to suggest Mr. Carney was using this as his home, and in fact that is the problem.
There is no way to determine, in these particular class of vehicles, when they are and are not being utilized as a home, objectively.

5 Concluding Remarks

In this paper we have considered an important class of legal dialogues relating to reasoning about cases, namely the Supreme Court Oral hearings.

We have:

- Located these dialogues in the overall Supreme Court process;
- Identified that the dialogue consists of three distinct sub-dialogues;
- Presented a model of the argumentation based on the current state of the art in models of reasoning with cases in AI and Law in the form of an argumentation scheme with associated critical questions;

– Characterised the three sub-dialogues in terms of their initial state, and individual and collective goals, expressed in terms of this model;
– Illustrated all points throughout using extracts from the transcript of a case much discussed in the AI and Law literature.

In future work we will present out full analysis of the transcript of *Carney*; and then apply the analysis to other related cases (such as those discussed in [5]). We will also relate the arguments that emerge from the Oral hearing to those that are expressed in the opinions of the Justices. We conjecture that the move from oral hearing to opinion will involve not only restructuring the arguments, but also, and more importantly, selection between the options and justification of the choices made. This last should be especially interesting for work on argumentation schemes since it provides a reasoned acceptance or rejection of critical questions, a topic which is as yet relatively unexplored in computational argument.

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