

THE 1998 JOHN W. DAVIS MOOT COURT COMPETITION: GENERAL INFORMATION

I. HONOR CODE

THE WASHINGTON AND LEE HONOR CODE IS FULLY APPLICABLE TO ALL ASPECTS OF THIS COMPETITION.

II. MOOT COURT ADMINISTRATORS

- A. The Moot Court Administrators for the 1998 John W. Davis Moot Court Competition are Stacey Black (carrel 429, sdblack@wlu.edu) and Ken Lammers (carrel 176, klammers@wlu.edu).
- B. All questions regarding the problem should be directed to one of the Administrators. The Administrators will post the question and the answer on the Moot Court Bulletin Board which is located next to the Moot Court Board Office.

III. OVERALL SCORING

- A. Each participant must obtain an exam number from the admissions office. The exam numbers are used during the competition to keep the participants anonymous during brief scoring.
- B. Each participant will receive an individual brief score which will comprise 40% of the score used in determining advancement from rounds one and two to the quarterfinals. Oral argument scores will comprise 60% of the score used in determining advancement from rounds one and two to the quarterfinals.
- C. Brief scores comprise 25% of the score used in determining advancement from the quarterfinals to the semifinals. Oral argument scores comprise 75% of the score used in determining advancement from the quarterfinals to the semifinals.
- D. Brief scores comprise 15% of the score used in determining advancement from the semifinals to the finals. Oral argument scores comprise 85% of the score used in determining advancement from the semifinals to the finals.
- E. Oral argument scores alone will determine rankings in the final round.

IV. JUDGES FOR THE FINALS

- A. Honorable Diana Gribbon Motz
Fourth Circuit
- B. Honorable Rhesa H. Barksdale
Fifth Circuit

B. Honorable William G. Byson
Federal Circuit

V. AWARDS

- A. The Moot Court Board shall give the Best Brief Award to the individual who submits the most outstanding brief. A cash prize will be awarded to the individual submitting the Best Brief. The award is made possible by contributions from Mead Data, Inc. and from the Martin P. Burks Memorial Fund.
- B. Benjamin R. and Philip G. Gardner will give the Gardner Brothers Award to the Best Oral Advocate. This is the individual who receives the highest score in the final round. The judges in the final round shall make the determination of which individual should receive the Best Oral Advocate award. The other finalists may also receive a cash award.
- C. The winners of the Best Brief and Best Oral Advocate awards will be announced following the completion of the final round.
- D. The Moot Court Board will give certificates to all individuals advancing to the quarterfinals round and will host a banquet in their honor.

VI. QUALIFICATIONS FOR NATIONAL COMPETITIONS

- A. The finalists, semifinalists, and quarterfinalists will be eligible for one of the national competitions to be held in the spring and fall of 1999.
- B. Members of these teams may receive one (1) ungraded academic credit for their participation in the national competitions.

VII. DISCLAIMER:

The Moot Court Board reserves the right to make any alterations, amendments, additions, deletions, or other changes to these guidelines as the Board deems necessary and proper. Notice of any changes will be posted on the Moot Court Board Bulletin Board as soon as they are made.

THE 1998 JOHN W. DAVIS MOOT COURT COMPETITION: RESEARCH RULES

I. HONOR CODE

THE WASHINGTON & LEE HONOR CODE IS FULLY APPLICABLE TO ALL ASPECTS OF THIS COMPETITION.

II. RESEARCH RULES

- A. The problem is based closely on two lower court decisions: *Hopwood v. Texas*, 861 F. Supp. 551 (W.D.Tex. 1994) and *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996). You are permitted to read these cases. We encourage you to base your arguments on those articulated in the decisions, but you may not cite to these cases. In addition, **YOU MAY NOT READ** any brief that was submitted at any stage in either case, any amicus brief connected to the cases or the transcript of any oral argument. If you are unsure whether you can read something, ask Stacey Black or Ken Lammers **before** reading it.
- B. The issue to be addressed is that listed in the Writ of Certiorari. **No other issues are to be discussed.** The following are issues which we do NOT want you to brief or argue even if you believe the facts of the problem raise these issues:

- WHETHER THE PLAINTIFF HAS STANDING TO BRING THIS CHALLENGE
- WHETHER THE PROPER STANDARD OF REVIEW IS STRICT SCRUTINY

If you are unsure whether an issue should be discussed, ask Stacey Black or Ken Lammers. We will not tell you what you should argue, but we will tell you if we intend for an issue to be left out. Although this competition is meant to be challenging, it is not meant to be a game of hide-the-ball.

- C. Participants may freely discuss the substantive issues of the problem with one another and with other Washington and Lee law students. Participants are **strictly prohibited** from discussing the substantive issues of the problem with any person who is not a W & L law student. Such persons include but are not limited to faculty, attorneys, students at other law schools and faculty at other schools.
- D. Lexis and Westlaw may be used to research this problem. Participants should comply with library regulations involving computer research.
- E. Participants may refer to any reporters, treatises, law reviews, casebooks and materials available in the W & L law library, the undergraduate library, or on Westlaw or Lexis. This includes internet materials.
- F. Written work **must** be each participant's own product. Review of drafts may be conducted

only by submission to the Moot Court Board. Other students may not read briefs or supply commentary in any form. After all the briefs have been submitted, participants may exchange briefs as they wish, but no brief may be given to a participant without the author's express permission.

- G. Use of citecheck or any other computerized program designed to check for citation errors is **strictly prohibited**. Use of grammar check programs is also **strictly prohibited**, but the use of spellcheck programs is allowed.

III. **DISCLAIMER:**

The Moot Court Board reserves the right to make any alterations, amendments, additions, deletions, or other changes to these rules as the Board deems necessary and proper. Notice of any such changes shall be posted on the Moot Court Board Bulletin Board as soon as such changes have been made.

The 1997 John W. Davis Moot Court Competition: Rules for Briefs Submitted

I. Honor Code

The Washington and Lee Honor Code is fully applicable to all aspects of this competition.

II. Brief Assignments

- A. For purposes of writing the brief, each participant will be assigned the role of either Petitioner or Respondent. Assignments will be posted on the Moot Court Bulletin Board by Sept. 4, 1998.
- B. Anyone who drops out of the competition must notify Stacey Black or Ken Lammers as soon as possible.
- C. Anyone who wishes to participate in the competition but failed to sign up that the meeting on Tuesday Sept. 1, 1998, must obtain special permission from Stacey Black and Ken Lammers. Only the most exceptional circumstances will be given consideration. The names of those who are permitted to enter late will be added to the list of the participants posted on the Moot Court Bulletin Board.
- D. The Board strongly encourages participants to remain, for purposes of writing the brief, on their assigned side as either Petitioner or Respondent. However, changes are allowed under the following conditions:
 - 1. A participant may change sides only if another participant is willing to exchange places.
 - 2. The Board must receive written notification of the change before Sept. 11, 1998, at 5 p.m.
 - 3. The written notice must include participants' competition numbers and must indicate that both participants agree to the switch. No participant will be permitted to switch sides after Sept. 11, 1998, at 5 p.m.
- E. Participants are permitted and encouraged to discuss the problem and share research results, but each Participant is personally responsible for writing his or her entire brief.
- F. When registering for the competition, Participants should submit their names and carrel numbers.

- G. When submitting briefs, an individual should be identified only by that individual's competition number. Briefs may not contain names or any means of identifying the Participant. The Participant's competition number should appear on the cover page at the end of the brief (Respectfully submitted, 123).

III. Content requirements

A. Required sections of the brief:

1. Cover page (including Participant's competition number)
2. Question (s) Presented
3. Table of Contents
4. Table of Authorities
5. Title Page
6. Statement of the Case
7. Summary of the Argument
8. Argument
9. Conclusion

Generally briefs should follow the format prescribed for briefs presented in the United States Supreme Court. *Supreme Court Practice* is a good reference. This book is available on reserve. Also on reserve are copies of the best briefs nominees' briefs from the past Davis competitions.

B. Briefs may not include an appendix.

C. All citations must be complete and must conform to the 16th addition of a *Uniform System of Citation* (the "Blue Book").

IV. Technical Requirements

A. 8.5 in. by 11 in. white paper.

B. Top, right, left, bottom margins one inch.

C. Typed, double-spaced. The font must be Courier New. The font size must be 12 point. No other font or font size is permitted.

D. 20 pages maximum.

(This page limit includes the Title Page, Statement of the Case, Summary of the Argument, and the Conclusion. It does not include the Cover Page, Table of Contents, Table of Authorities, and the Questions Presented.)

E. With the exception of lengthy law review or social study citations, all citations must be included in the text.

- F. Laser or ink jet printers must be used. Dot matrix printers are not permitted.
- G. When citing Supreme Court decisions, cite to the United States Reports unless the case has not yet been reported in that series. If the decision is not reported in United States Reports, cite only to West's Supreme Court Reporter.
- H. Use only italics and ordinary Courier New font in citations. Do not underline or use small caps.

V. Submission of Briefs

A. Rough Drafts

1. Rough drafts are optional.
2. Participants may submit a rough draft of their brief for review. Rough drafts must be submitted no later than Friday, Sept. 18, 1997 at noon. Drafts will be returned by Monday, Sept. 21, 1998 at which time Participants may schedule meetings with the Moot Court Board Members who have read their briefs.

B. Final Drafts

1. Each Participant should submit five copies (original plus four) of his or brief by 6 p.m. on Friday Sept. 25, 1998. Briefs should be turned in at the Moot Court Board Room. Each copy should be securely stapled in the upper left-hand corner.
2. The clock outside the Moot Court Board Room will be the official clock for determining whether a brief was submitted on time.

VI. Brief Scoring

- A. Briefs will be graded by members of the Moot Court Board.
- B. Each Participant will be given a brief score out of a total possible 100 points. The Participant's score will be based on three components: content and organization, blue booking, and grammar. Content and organization will account for 80 percent of the brief score while blue booking and grammar will each account for 10 percent of the brief score.
- C. Brief penalty points listed in section VII will be deducted from the Participant's overall brief score.

VII. Brief Penalty Points

A. Late Filing of Brief:

1. Friday, Sept. 25, 1998, 6: 01 p.m. . . . 3 points
2. Friday, Sept. 25, 1998, 6:10 p.m. . . . 6 points
3. Friday, Sept. 25, 1998, 6:20 p.m. . . . 10 points
4. Friday Sept. 25, 1998, 6:30 p.m. . . .15 points
5. Saturday, Sept. 26, 1998, 5 p.m. . . . 25 points
6. Sunday, Sept. 27, 1998, 5 p.m. . . . 50 points

7. No briefs will be accepted after Sunday Sept. 27, 1998, at 5 p.m.

B. Incorrect Font . . . 5 points

C. Incorrect Font Size . . . 5 points

D. Failure to Include Any of the Following Sections: . . . 2 points each

Cover Page, Question(s) Presented, Table of Contents, Table of Authorities, Title Page, Statement of the Case, Summary of the Argument, Argument, or Conclusion.

(Participants should be aware that an omission of any of these sections may also affect the overall brief score awarded to the Participant)

E. Misnumbering of Pages . . . 2 points

F. Failure to Adhere to the Margin Requirements . . . 7 points

G. Page Limit

1. For the first page (or part thereof) exceeding the page limit . . . 4 points
2. For the second page (or part thereof) exceeding the page limit . . . 3 points
3. For each additional page (or part thereof) exceeding the page limit . . . 1 point each

H. Compromising Your Anonymity . . . 10 points

I. Failure to Comply with Printing Requirements . . . 10 Points

J. Failure to Serve the Appropriate Number of Copies of Your Brief . . . 5 points

VIII. RESULTS

- A. The Moot Court Board will nominate three to five briefs for the Best Brief Award. These selections will be based on brief score only. A panel of professors will select the " Best Brief" from the briefs nominated by the Moot Court Board.
- B. The names of the nominees for the Best Brief Award will be posted on the Moot Court Bulletin Board following the end of round 2. The briefs nominated for the Best Brief award will then be placed on reserve at the circulation desk.

IX. DISCLAIMER

The Moot Court Board reserves the right to make any alterations, amendments, additions, deletions, or other changes to these rules as the Board deems necessary and proper. Notice of any such changes shall be posted on the Moot Court Bulletin Board as soon as such changes have been made.

THE 1998 JOHN W. DAVIS MOOT COURT COMPETITION:
ORAL ARGUMENTS

I. Honor Code

The Washington and Lee honor code is fully applicable to all aspects of this competition.

II. The Process

A. Scheduling of rounds

1. Oral argument schedules for each round will be posted on the Bulletin board outside the Moot Court Boardroom on Monday, Sept. 28.
2. If any participant has a scheduling conflict, such participant may trade times another participant who has been assigned to the same side.
3. Trading of times will only be honored if a written note regarding the change is placed in either box 176 or box 429 twenty-four hours in advance of both scheduled arguments.
4. If scheduling conflicts cannot be worked out, notify Ken Lammers or Stacey Black of the conflict as soon as possible. The Moot Court Board will try to accommodate requests for changes in the event of exigent circumstances, but reserves the right to enforce the schedule.

B. During the first week of rounds (Oct. 5-Oct. 9), each participant will argue the side which was argued in her brief. During the second week of rounds, each participant will argue the opposing side.

C. The names of advancing participants will be posted on the bulletin board outside the Moot Court Board Office as soon as possible after the completion of each round of arguments. Those advancing participants must initial their names as soon as the results are posted to signify that they wish to advance in the competition.

D. Sixteen participants will be chosen to participate in the quarter final round. Eight quarter finalists will be chosen to participate in the semi-final rounds. 4 semi-finalists will be designated for the final round.

E. Participants will be randomly assigned sides after each advancement.

III. THE ARGUMENTS

- A. Oral arguments are limited to a total of 15 minutes per person. This time limit includes the introductions, the time spent by the judges imposing questions, and time spent for participants' responses to the judges' questions.
- B. Petitioners may reserve time for rebuttal. Rebuttal time is limited to a maximum of five minutes and is subtracted from the total time allowed to the petitioner. Each individual petitioner may choose how much time is to be allowed for rebuttal. The rebuttal must be reserved in advance of the presentation of the petitioner's oral argument by asking the Chief Justice (e. g. "Your Honor, I respectfully request to reserve three minutes of my time for rebuttal").
- C. Participants must observe the following rules of decorum when arguing:
 - 1. Facing the bench, petitioners are seated on the left and the respondents are seated on the right.
 - 2. Participants are to stand up when the judges enter the courtroom and sit when the Chief Justice tells them to sit.
 - 3. When the Chief Justice asks if each side is ready, participants are to stand up and say, "Yes, your Honor, the petitioner is ready", or "Yes, your Honor, the respondent is ready."
 - 4. Participants should address each judge as "Your Honor."
 - 5. Participants should open arguments with, " May it please the court, my name is [YOUR NAME] and I represent [PARTY], the petitioner/respondent in this matter. Your Honors, . . ."
 - 6. Participants should refer to cases and as "Party against Party" and not as "Party versus Party" or "Party v. Party."
 - 7. Participants should stop immediately when they see the "STOP" card, and should ask for more time if they wish to continue. Granting of additional time is completely within the discretion of the judges.
 - 8. Petitioners should thank the Court for its time at the completion of their arguments.
- D. During each week of rounds, no participant who has already argued may discuss her round in anyway with a participant who has not yet argued.

- E. The first 2 rounds are closed. The quarter final, semi final, and final round will be opened to the public. However, participants advancing to the next level of competition are not permitted view any rounds or videotapes of that particular level until the entire round has been completed. As above, a participant may view the videotape of his own oral arguments of any round at anytime. Again, once a round has been completed, any person may view any videotape of any oral argument from that round.
- F. Videotapes will be made of each round and placed on reserve at the circulation desk.
- G. Moot Court semifinal and final rounds from previous years are on reserve. We encourage participants to watch these in preparation for their arguments.

IV. SCORING

- A. No score sheets will be returned to any participant after the competition. Moot Court judges will provide each participant with an oral critique of their argument after the first round.
- B. Within each individual round, the two participants will not be graded against each other. No participants will win or lose a round. Each person receives an independent score.
- C. The judges before whom each participant is arguing do not have the arguing participants' briefs before them and will not knowingly have read the participants' briefs. (Some of the judges are grading briefs and may have read a participant's anonymous brief). Each participant is not limited to the arguments that were presented in the participant's brief but the rules that limited the issues that could be argued in the briefs remain applicable.
- D. Each participant's oral argument score will be comprised of two equally weighted scores, one for the content of the participant's argument and one for the form in which it was presented.
- E. In grading the content of each participant's argument, the judges will be considering the quality of the participant's argument based on the following guidelines:
 - 1. Communication of argument
 - a. Did the participant simplify and explain the issues and arguments in the case?
 - b. Did participant use simple and comprehensible sentences?
 - c. Did participant reach the heart of the case quickly?

- 2. Organization

- a. Did participant lead with her most persuasive point?
- b. Did participant make persuasive use of authority?
- c. Did participant employ sound reasoning?
- d. Was the progression of the participant's argument logical?

3. Control of Argument

- a. Did the participant unnecessarily concede points?
- b. Did the participant answer quickly and concisely?
- c. Did participant quickly continue argument following questioning?

4. Responsiveness

- a. Was participant evasive?
- b. Did participant respond to questions with a question?
- c. Was the participant asked the same question several times before giving a satisfactory answer?

5. Accuracy

- a. Did the participant make arguments based on facts not in the
- b. Was the participant honest in her statement of the facts and case

F. In grading the form of each participant's argument, the judges will be considering the quality of the participant's presentation based on the following guidelines:

1. Decorum

- a. Did participant address the judges as "Mr./Ms. Justice" or "Your Honor?"
- b. Did participant properly state case names ("party against party")?
- c. Did participant respond immediately to the stop card?
- d. Did the participant provide a clear and simple opening statement?

2. Deference

- a. Was the participant deferential and courteous to the judges?
- b. Did the participant interrupt the judges or refuse to stop for
- c. Did participant postpone answers to questions?

3. Speech

- a. Did participant frequently use oral pauses?
- b. Did participant effectively use microphone?
- c. Was participant's volume too loud or too soft?
- d. Was participant's tone varied?
- e. Was participant's speed too fast or too slow?

4. Style

- a. Was participant overly argumentative?
- b. Was participant overdramatic?
- c. Did participant make irrelevant emotional appeals?
- d. Did participant appear confident?
- e. Did participant appear sincere?
- f. Did participant appear too stiff or too casual?
- g. Did participant maintain composure when faced with difficult
- h. Was counsel able to deal with an absence of questions?

5. Appearance

- a. Did participant use distracting mannerisms or exaggerated
- b. Did participant maintain eye contact?
- c. Did participant bring minimal paper to the podium?
- d. Did participant read extensively from the material?