

23<sup>RD</sup> ANNUAL  
**John W. Davis**  
MOOT COURT COMPETITION

Fall 2002

WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW  
MOOT COURT EXECUTIVE BOARD

**23<sup>RD</sup> ANNUAL JOHN W. DAVIS MOOT COURT COMPETITION  
FALL 2002**

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**BRIEF SCHEDULE**

**2 SEPTEMBER AT 7 P.M.**

PROBLEM DISTRIBUTION, PICK UP  
COMPETITION NUMBER

**3 SEPTEMBER BY 9AM.**

BRIEF ASSIGNMENT SIGN-UP SHEET  
POSTED

**5**  
**4 SEPTEMBER AT 5 P.M.**

CUT-OFF FOR BRIEF SIGN-UP

**5 SEPTEMBER BY 5 P.M.**

FINALIZED BRIEF ASSIGNMENTS  
POSTED

**20 SEPTEMBER BY 5 P.M.**

**(MANDATORY) BRIEFS DUE**

**23<sup>RD</sup> ANNUAL JOHN W. DAVIS MOOT COURT COMPETITION**  
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**ORAL ARGUMENT SCHEDULE**

**22 SEPT–26 SEPT.....ROUND ONE**

**29 SEPT--3 OCTOBER..... ROUND TWO**

**4 OCTOBER..... POSTING OF QUARTERFINALISTS**

**7-8 OCTOBER .....QUARTERFINALS**

**9 OCTOBER.....POSTING OF SEMIFINALISTS**

**9 OCTOBER.....MEETING WITH SEMIFINALISTS**

**17 OCTOBER..... SEMIFINALS**

**18 OCTOBER.....POSTING OF FINALISTS**

**20 OCTOBER.....MEETING WITH FINALISTS**

**24 OCTOBER.....FINAL ROUND AND BANQUET**

**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 2002 John W. Davis Moot Court Competition are Sondra Binotto (binottos@wlu.edu) and Lindsay Roberts (robertsl@wlu.edu).

**II. QUESTIONS ABOUT THE COMPETITION**

- A. All questions regarding the problem should be directed to one of the Administrators. Competitors may either submit a question to the Moot Court Question Box, which will be located outside the Moot Court Board Office, or email the Administrators. The Administrators will promptly 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 Davis Moot Court Administrators at the meeting on September 2, 2002. The exam numbers are used during the competition to protect each participant's anonymity during brief scoring. See the Rules for Brief Submissions for further details.
- B. Each participant will receive an individual brief score that 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**

The Moot Court Administrators will be the Chief Judges for Rounds One and Two of the competition, as well as the Quarterfinal Round. The remaining judges for these rounds will be drawn from among the Members of the Moot Court Board and the Quarterfinalists from the 2001 Davis Competition. A panel of professors will judge the Semifinal Round (as well as the Best Brief Nominations), and judges from the Federal Court System will preside over the Final Round. The names of these judges will be announced when available.

#### **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 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 2002.

- B. Members of these teams may receive one (1) un-graded academic credit for their participation in the national competition.

## **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 these changes, if any, will be posted on the Moot Court Bulletin Board as soon as they are made.

## **VIII. GRIEVANCES**

The actions of the Moot Court competitors and the Moot Court Administrators will be governed by the Moot Court Board's Grievance Procedures at all times during the 2002 Moot Court Competition. As described in these Procedures, Moot Court Board decisions are final.

RESEARCH RULES

I. HONOR CODE

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

II. RESEARCH RULES

- A. The 2002 Moot Court Problem found its roots in *Andrade v. California*, 270 F.3d 743 (2001). As the problem refers to this opinion many times, you are certainly permitted to read this case. However, you may **NOT** access the Supreme Court of the United States website to obtain any brief that was submitted at any stage of this case, any amicus brief connected to this case, or the transcript of any oral argument connected to this case. In fact you may **NOT** access any briefs or transcripts of oral arguments connected to any cases currently before the Supreme Court, or cases that were previously before the Supreme Court. This problem is designed for the competitor to showcase their OWN brief writing and oral argument skills, not to copy those previously researched and argued by actual attorneys in pertinent cases to the problem.
- B. The issues to be addressed are those listed in the Writ of Certiorari, which you received in the problem packet. **NO OTHER ISSUES ARE TO BE DISCUSSED.** IF you have any concern over whether or not an issue needs to be raised, please contact Lindsay Roberts or Sondra Binotto. While the Administrators cannot advise you substantively, we will tell you if we want certain issues to be left out. Although this competition is to be challenging, we want everyone to be able to write good briefs, and we are not trying to hide the ball.
- C. Certain issues shall not be briefed or argued even if you find that the facts of the problem raise these points. Such issues are noted in an attachment to the problem.
- D. 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 problem with any person who is **not** a Washington and Lee law student. Such persons include, but are not limited to, faculty members, attorneys, students at other law schools, and faculty at other law schools and other institutions.
- E. LEXIS and Westlaw may be used to research this problem. However, **you may NOT use these databases & websites to access the prohibited information discussed in**

subsection (A) above. Participants should comply with library regulations involving computer research.

- F. Participants may refer to any reporters, treatises, law reviews, journals, casebooks and materials available in the law library. **However, these materials may NOT be used to access the forbidden materials discussed in subsection (A) above.**
- G. Written work **MUST** be each participant's own product. 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.
- H. Use of WestCheck 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

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**RULES FOR BRIEF SUBMISSIONS**

**I. HONOR CODE**

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

**II. BRIEF ASSIGNMENTS**

- A. Admission into the Davis Moot Court Competition requires the completion and submission of a brief for judging. Each competitor will be given the opportunity to select his/her own Brief assignment from **Monday, September 2, 2002 until Wednesday, September 4<sup>th</sup>**, by signing up on the Moot Court Bulletin Board. The Moot Court Administrators reserve the right, however, to randomly reassign competitors if there is not an even number of competitors self-assigned to each side of the case.
- B. **For purposes of writing the brief, each participant will choose and then sign-up for (see above) the role of either Petitioner or Respondent.** Final assignments will be posted on the Moot Court Bulletin Board on Thursday September 5<sup>th</sup> no later than 5pm.
- C. Anyone who drops out of the competition after signing up must notify Lindsay Roberts or Sondra Binotto as soon as possible.
- D. Anyone who wishes to participate in the competition but failed to sign up at the interest meeting on September 2nd must obtain special permission from Lindsay Roberts or Sondra Binotto. Only the most exceptional circumstances will be given consideration, and the decision of the Moot Court Administrators regarding admission into the competition will be final.
- E. The Administrators strongly encourage participants to remain on their assigned side as either Petitioner or Respondent for purposes of writing the brief. 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 Administrators must receive **written notification** of the change before September 6<sup>th</sup>, at 5pm. No participant will be permitted to switch sides after that time.
  3. The written notice must include ONLY the participants' competition numbers and an indication that both participants agree to the switch. Your competition number is the number received at the time of initially choosing a side. **The written notification must not compromise the anonymity of the participants changing sides.** (Note: The problem is designed so that the Petitioner and Respondent face equally difficult tasks in preparing the brief, so no tactical advantage will be gained by switching to the "easier side.")
- E. Participants are encouraged to discuss the problem and share research results, but each participant is personally responsible for writing his/her entire brief individually.
- F. **When submitting his/her brief, an individual must be identified only by that individual's competition number.** Briefs may not contain names or any other means of identifying the participant. The participant's competition number should appear on the cover page and at the end of the brief (i.e. - Respectfully submitted, 123). The Moot Court Administrators reserve the right to assess penalty points in accordance with Sec. VII, *infra*, and/or disqualify any competitor that has irreparably compromised his/her anonymity.

### III. CONTENT REQUIREMENTS

A. **Required sections of the brief:**

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

**Helpful Resources:**

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, as are the current Supreme Court rules. Also on reserve are copies of the Best Briefs from past Davis competitions.

- B. Briefs may NOT include an appendix.
- C. All citations must be complete, and must conform to the 17th edition of *A Uniform System of Citation* (the “Blue Book”).

#### IV. TECHNICAL REQUIREMENTS

- A. Only 8.5” x 11” white paper is acceptable.
- B. Top, bottom, right, and left margins are to equal 1” each.
- C. Briefs must be 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. The brief may be a **maximum of 20 pages long**.  
(Note: This page limit includes the Statement of the Case, Summary of the Argument, and the Conclusion. It **does NOT include** the Cover Page, Questions Presented, Table of Contents and Table of Authorities.)
- E. With the exception of lengthy law review or social study citations, all citations must be included in the text of the brief. Footnote citations must be in 12 point type.
- 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 use underline or small caps.

#### V. SUBMISSION OF BRIEFS

- A. Final Drafts

1. Each participant should submit five copies of his/her brief by 5:00 p.m. on Friday, September 20, 2002. Briefs should be turned in at the Moot Court Board Room. Each copy should be securely stapled in the upper left-hand corner. A large stapler is available in the law library for stapling.
2. The clock outside the Moot Court Board Room will be the official clock for determining whether a brief was submitted on time. Should the clock be unavailable, the Moot Court Administrators will make the final decision as to the appropriate deadline 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. The brief penalty points listed in Section VII, *infra*, may be deducted from the participant's overall brief score at the discretion of the Moot Court Administrators.

## VII. BRIEF PENALTY POINTS

- A. **Late filing of brief will cause the deduction of points as follows:**
  1. Friday, September 20, 2002, 5:01 p.m.....3 points
  2. Friday, September 20, 2002, 5:10 p.m.....6 points
  3. Friday, September 20, 2002, 5:20 p.m.....10 points
  4. Friday, September 20, 2002, 5:30 p.m.....15 points
  5. Saturday, September 21, 2002, 5:00 p.m.....25 points
  6. Sunday September 22, 2002, 5:00 p.m. ....50 points
  7. **NO briefs will be accepted after Sunday, September 22, 2002,  
at 5:00 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, Statement of the Case, Summary of the Argument, Argument or Conclusion

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

- E. **Mis-numbering of pages:** ..... 2 points

- F. **Failure to adhere to the margin requirements:** ..... 7 points

- G. **Improper line spacing:** ..... 10 points

- H. **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

(Note: Participants should be aware that exceeding the page limit may also affect the overall brief score awarded.)

- I. **Compromising your anonymity:** ..... 10 points

- J. **Failure to comply with printing requirements:** ..... 10 points

- K. **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 solely on the participant's brief score. 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 at the same time that the names of the Finalists are announced.

## **IX. DISCLAIMER**

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23RD ANNUAL JOHN W. DAVIS MOOT COURT COMPETITION  
FALL 2002

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**ORAL ARGUMENT RULES**

**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 Board Room by Saturday morning, September 21, 2002. REMEMBER—the first round may begin on September 22, 2002, depending on the number of participants.
2. If any participant has a scheduling conflict, such participant may trade times with 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 delivered to the Moot Court Boardroom twenty-four hours in advance of both scheduled arguments.** This rule will not apply to those arguments scheduled for the first day of Round One and the first day of Round Two.
4. If scheduling conflicts cannot be resolved, notify Sondra Binotto or Lindsay Roberts of the conflict as soon as possible. The Administrators will try to accommodate requests for changes in the event of exigent circumstances, but reserve the right to enforce the schedule.

B. During the first week of rounds (September 22-27), each participant will, if possible, argue the side that was argued in his or her brief. During the second week of rounds, each participant will argue the opposing side. However, the Moot Court Administrators reserve the right to assign an individual to an alternate side of the argument.

C. The names of advancing participants will be posted on the bulletin board outside the Moot Court Board Room 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 argue in the Quarterfinals. Eight Quarterfinalists will be chosen to participate in the Semifinals. Four Semifinalists will be selected to participate in the Final Round.

### 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 on questioning by the judges, and the time spent for each participant's 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 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 asked to stand up when the judges enter the courtroom and sit when the Chief Justice so indicates.
  - 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 always refer to cases 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. If additional time is granted, participants should complete their argument as quickly as possible. Failure to adhere to the STOP card may result in a deduction of your oral argument score.**
  8. Participants 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 his or her round in any way with a participant who has not yet argued.**
  - E. The first two rounds are closed. The Quarterfinals, the Semifinals, and the Final Round will be open to the public. **Participants advancing to the next level of competition are not permitted to view any rounds or videotapes of that particular level until the entire round has been completed.** A participant may view the videotape of his or her own oral arguments of any round at any time. 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. Davis Moot Court Semifinal and Final rounds from previous years are on reserve. We encourage participants to watch these in preparation for their oral 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 ONLY.**
- B. **Within each individual round, the two participants will NOT be graded against each other.** No participant will "win" or "lose" a round. Each person receives an independent score.

- C. The judges before who each participant is arguing do not have the arguing participant's 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 the argument:
    - a. Did the participant simplify and explain the issues and arguments in the case?
    - b. Did the participant use simple and comprehensible sentences?
    - c. Did the participant reach the heart of the case quickly?
  2. Organization:
    - a. Did the participant lead with his or her most persuasive point?
    - b. Did the participant make persuasive use of authority?
    - c. Did the participant employ sound reasoning?
    - d. Was the progression of the participant's argument logical?
  3. Control of the Argument:
    - a. Did the participant unnecessarily concede points?
    - b. Did the participant answer quickly and concisely?
    - c. Did the participant quickly and smoothly continue argument following questioning?
  4. Responsiveness:
    - a. Was the participant evasive?
    - b. Did the 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 case?
  - b. Was the participant honest in her statement of the facts and caselaw?

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 the participant address the judges as "Mr./Ms. Justice" or "Your Honor"?
  - b. Did the participant properly state case names ("Party against Party")?
  - c. Did the 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 the judges' questioning?
  - c. Did the participant postpone answers to questions?
3. Speech:
- a. Did the participant frequently use oral pauses?
  - b. Did the participant effectively use the microphone?
  - c. Was the participant's volume too loud or too soft?
  - d. Was the participant's tone varied?
  - e. Was the participant's speed too fast or too slow?

4. Style:
- a. Was the participant overly argumentative or confrontational?
  - b. Was the participant overly dramatic?
  - c. Did the participant make irrelevant emotional appeals?
  - d. Did the participant appear confident?
  - e. Did the participant appear sincere?
  - f. Did the participant appear too stiff or too casual?
  - g. Did the participant maintain composure when faced with difficult questions?
  - h. Was the participant able to deal with an absence of questions?
5. Appearance:
- a. Did the participant use distracting mannerisms or exaggerated gesturing?
  - b. Did the participant maintain eye contact?
  - c. Did the participant bring minimal paper to the podium?
  - d. Did the participant read extensively from the material?