

THE 1997 JOHN W. DAVIS MOOT COURT COMPETITION: ORAL ARGUMENTS

I. HONOR CODE

THE WASHINGTON & 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 on Monday, September 29.
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 placed in box #231 twenty-four hours in advance of both scheduled arguments.
4. If scheduling conflicts cannot be worked out, notify Greg Urbancic or Christa Haas 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 (October 6-October 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 the 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 quarterfinal round. Eight quarterfinalists will be chosen to participate in the semifinal rounds. Four semifinalists will be designated for the final round.

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

III. THE ARGUMENTS

A. Oral arguments are limited to a total of fifteen minutes per person. This time limit

includes the introductions, the time spent by the judges in posing questions, and the 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 allotted for rebuttal. 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 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 their arguments with, "May it please the court, my name is _____ and I represent Party, the petitioner/respondent in this matter. Your Honors, . . ."
 - 6. Petitioners should refer to cases as "Party against Party" and not as "Party v. Party" or "Party versus 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 any way with a participant who has not yet argued.
- E. The first two rounds are closed. The quarterfinal, semifinal, and final rounds will be open to the public. However, 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. As above, a participant may view

the videotape of his own oral arguments from 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. Each participant may view his or her own rounds, in their entirety, at any time, but no participants may view any other oral argument until all participants have completed the particular round during which the videotape was made.
- 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 participant 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 participant's brief in front of them and will not knowingly have read the participant's brief. (Some of the judges are grading briefs and may have read the participant's anonymous brief). Each participant is not limited to arguments which were presented in the participant's brief but the rules which limited the issues which 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 is 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 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 participant's argument logical?
- 3. Control of argument
 - a. Did participant unnecessarily concede points?
 - b. Did 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 questions?
 - c. Was participant asked the same question several times before she provided an adequate answer?
- 5. Accuracy
 - a. Did participant make arguments based on facts not in the record?
 - b. Was participant honest in her statement of the facts and the case law?

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 judges as "Justice" or "Your Honor"?
 - b. Did participant properly state case names ("party against party")?
 - c. Did participant respond immediately to stop card?
 - d. Did participant provide clear and simple opening statement?
- 2. Deference
 - a. Was participant deferential and courteous to judges?
 - b. Did participant interrupt judges or refuse to stop for questions?
 - 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 questions?
 - h. Was counsel able to deal with absence of questions?
5. Appearance
- a. Did participant use distracting mannerisms or exaggerated gestures?
 - b. Did participant maintain eye contact?
 - c. Did participant bring minimal paper to the podium?
 - d. Did participant read extensively from material?

THE 1997 JOHN W. DAVIS MOOT COURT COMPETITION: RULES FOR BRIEFS SUBMITTED

I. HONOR CODE

THE WASHINGTON & 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 September 4, 1997.
- B. Anyone who drops out of the competition **must** notify Christa Haas or Greg Urbancic as soon as possible.
- C. Anyone who wishes to participate in the competition but failed to sign up at the meeting on Tuesday, September 2, 1997, **must** obtain special permission from Christa Haas and Greg Urbancic. 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 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 September 8, 1997, at 5:00 p.m.
 3. The written notice must include the participants' social security numbers and must indicate that both participants agree to the switch. **No** participant will be permitted to switch sides after September 8, 1997, at 5:00 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 name, social security number, and carrel number.
- G. **When submitting briefs, an individual should be identified only by social security number.** Briefs may **not** contain a name or any other means of identifying the participant. The participant's social security number should appear on the cover page and at the end of the

brief (Respectfully submitted, 999-99-9999).

III. CONTENT REQUIREMENTS

A. Required Sections of the brief:

1. Cover page (including participant's Social Security 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 to the United States Supreme Court. Supreme Court Practice¹ is a good reference. This book is available on reserve. Also on reserve are copies of the Best Brief Nominees' briefs from past Davis competitions.

B. Briefs may **not** include an appendix.

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

IV. TECHNICAL REQUIREMENTS

A. 8 ½" by 11" white paper.

B. Top, right, left, bottom margins 1".

C. Typed, double-spaced. The font **must** be Times New Roman. 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.

¹ Robert L. Stern, *Supreme Court Practice* (7th ed. 1993). Note that the technical requirements are not the same and that participants should conform to the requirements set forth in these rules.

- F. Laser or ink jet printers **must** be used. Dot matrix printers are not permitted.
- G. When citing a Supreme Court decision, cite to the United States Reports unless the case has not yet been reported in that series. If the decision is not reported in the United States Reports, cite only to West's Supreme Court Reporter.
- H. Use only italics and ordinary Times New Roman 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, September 19, 1997 at **noon**. Drafts will be returned by Monday, September 22, 1997 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 5 copies (original + 4) of his or her brief by 6:00 p.m. on Friday, September 26, 1997. 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 judged 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 eighty percent of the brief score while blue booking and grammar will each account for ten percent of the brief score.

C. Brief penalty points listed in Section IV will be deducted from a participants overall brief score.

VII. BRIEF PENALTY POINTS

A. Late Filing of Brief

1. Friday, September 26, 1997, 6:01 p.m. 3 points

2. Friday, September 26, 1997, 6:10 p.m. 6 points
 3. Friday, September 26, 1997, 6:20 p.m. 10 points
 4. Friday, September 26, 1997, 6:30 p.m. 15 points
 5. Saturday, September 27, 1997, 5:00 p.m. 25 points
 6. Sunday, September 28, 1997, 5:00 p.m. 50 points
 7. No Briefs will be accepted after Monday, September 29, 1997, 1:00 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,
Title Page, Statement of the Case, Summary of the Argument, Argument,
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 the printing requirements 10 points
 - J. Failure to serve the appropriate number of copies of your brief 5 points each

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 scores 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 two. 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 Board Bulletin Board as soon as such changes have been made.

THE 1997 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 actual Line Item Veto Act is Public Law No. 104-130, 110 Stat. 1200 (1996), codified at 2 U.S.C. § 691 et seq. You are permitted to look at it and conduct research using it, but be aware that we have made changes to the law and your arguments must be based on the law as it appears in the problem. You are permitted to read the legislative history of the Act, but you may not rely on such material in your brief if it does not appear in the problem.

B. The District Court decision on which the problem is based is *Byrd v. Raines*, 956 F. Supp. 25 (D.D.C. 1997). The Supreme Court decision is *Raines v. Byrd*, 117 S. Ct. 2312 (1997). 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 the case, any amicus brief connected to the case or the transcript of the oral argument. If you are unsure whether you can read something, ask Christa Haas or Greg Urbancic before reading it.

C. The issues to be addressed are those 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 PLAINTIFFS HAVE STANDING TO BRING A CHALLENGE TO THE ACT
- WHETHER THE APPROPRIATIONS IN THE PROBLEM FALL WITHIN THE ACT'S COVERAGE
- WHETHER THE PRESIDENT'S ACTION WAS A LEGITIMATE USE OF THE LINE ITEM VETO AUTHORITY

If you are unsure whether an issue should be discussed, ask Christa Haas or Greg Urbancic. 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.

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 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 schools and faculty at other schools.

- E. Lexis and Westlaw may be used to research this problem. Participants should comply with library regulations involving computer research.
- F. 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.
- G. 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.
- H. 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.

IV. **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: GENERAL INFORMATION

I. HONOR CODE

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

II. MOOT COURT ADMINISTRATORS

- A. The Moot Court Administrators for the 1997 John W. Davis Moot Court Competition are Christa Haas (carrel 231, chaas@wlu.edu) and Greg Urbancic (carrel 431, gurbanci@wlu.edu).
- B. All questions regarding the problem should be directed to the 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 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.
- B. 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.
- C. 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.
- D. Oral argument scores alone will determine rankings in the final round.

IV. JUDGES FOR THE FINALS

- A. Honorable Thomas A. Clark
Senior Circuit Judge, Eleventh Circuit
- B. Honorable Harry W. Wellford
Senior Circuit Judge, Sixth Circuit
- C. Honorable Diane P. Wood
Seventh 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. This award is made possible by contributions from Mead Data, Inc. and from 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 performs the best in the final round. The judges in the final round shall make the determination of which individual performs the best in that round. The other finalists may also receive a cash award.
- C. The winners of the Best Brief and Best Oral Advocate 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 on November 13, 1997.

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 1998.
- 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 such changes shall be posted on the Moot Court Board Bulletin Board as soon as such changes have been made.