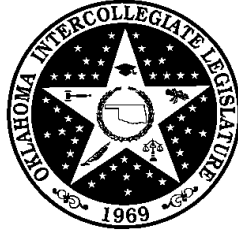


Fall 2006 Moot Court Competition



IN THE OKLAHOMA INTERCOLLEGIATE LEGISLATURE  
SUPREME COURT

Petitioner )  
NSA )  
) No. 2006 - 117  
)  
Respondents )  
Will Power, Peter Peed )  
And Euthymius O' Dollar )

PETITION FOR REVIEW

The following question has been certified on appeal to this court:

1. Did the district court err in determining that the Terrorist Surveillance Program violates the First and Fourth Amendments, the separation of powers doctrine and the Foreign Intelligence Surveillance Act.

FACTS OF THE CASE

The NSA warrantless surveillance controversy involves formerly secret eavesdropping program of the United States National Security Agency (NSA). The program, referred to by the government as the "Terrorist Surveillance Program", involves surveillance of certain telephone calls without informing the secret United States Foreign Intelligence Surveillance Court. The program was first brought to attention of the public by the New York Times newspaper in December 16, 2005. The government then publicly confirmed the existence such a program without giving details. According to information available to the public, the program involves NSA surveillance on phone calls placed between a party in the United States and a party in a foreign country, without FISA court authorization. Respondents are a group of prominent journalists, attorneys, and national nonprofit organizations who correspond and with people in the Middle East and Asia. Respondents believe the program inhibits their ability to communicate with sources, locate witnesses, conduct scholarship, and engage in.

## PROCEDURAL HISTORY

A federal judge ruled on August 17, 2006 that the program violates the Foreign Intelligence Surveillance Act (FISA) enacted by Congress as well as the First and Fourth Amendments of the United States Constitution and the separation of powers doctrine. The government appealed and a cert has been granted by the Oklahoma Intercollegiate supreme court.

## AUTHORITIES

1. United States Constitution.
2. Foreign Intelligence Surveillance Act (FISA)
3. The Authorization to Use Military Force (AUMF)
4. United States v. U.S. District Court, 407 U.S. 297 (1972)
5. Katz v. United States, 389 U.S. 347 (1967)
6. Title II of the USA PATRIOT Act
7. Marbury v. Madison
8. United States Code Title 50 (50 U.S.C.)

## COMPETITION RULES AND REGULATIONS

Fall 2006

- A. The court will assign your side (Petitioner/ Respondent) for all rounds excluding finals. Parties for the final round will be determined by a coin toss.
- B. All information regarding specific times and locations will be posted on the Supreme Court hotel room and the House and Senate Chambers.
- C. Only authority cases listed on the problem may be used. All cases have equal weight and all cases need to be cited during the round. You can not cite to a case discussed in one of the authority cases.
- D. A general court meeting will be held on Wednesday, November 15th, 2006 at 11:30 P.M. in the Supreme Court Hotel Room. The location of the Hotel Room will be announced during opening session. The meeting is not mandatory; however anyone wishing to compete must provide their name to *Chief Justice Martin Kattam* no later than 1:00 a.m., Thursday, November 16th.
- E. An undergraduate competition and graduate competition will take place. Graduate students are required to argue in the graduate competition, yet undergraduate students

may request to argue in the graduate competition. No leniency will be granted based on the fact that the student is an undergraduate arguing against graduate students.

### General Procedure

A. Arrive at your designated courtroom 10 minutes early. Court will begin on time. If a competitor is not present at his or her argument time, the competitor will forfeit the round and be disqualified from the competition. Any exceptions to these rules are at the sole discretion of the chief justice.

B. Petitioner will sit to the right of the bench. Respondent will sit to the left of the bench. Stand when the judges enter the room. Sit when the judges give you permission to sit.

C. Each Competitor will receive ten minutes to present his or her argument. The competitors in the final round will receive 15 minutes each.

D. The Chief Justice will ask if the petitioner has any announcements. The appropriate reply is to stand and say, "yes" and then state your name, school and who in the case you represent. If you are the petitioner this is also when you reserve your time for rebuttal. The petitioner may reserve up to three minutes for rebuttal. The Chief Justice will then ask the respondent if he has any announcements and again the respondent needs to give his/ her name, school and who they represent.

E. The Chief Justice will then say, "Petitioner you may begin." The Petitioner then should approach the podium and begin his or her argument.

F. Be courteous to the other competitor. Remain quiet while they are speaking and do not shuffle papers, taking notes is appropriate.

G. Dress in courtroom attire. Men should wear suits and women should wear Jackets and skirts or slacks. No jeans, capris, shorts, t-shirts or hats allowed.

H. A justice will be keeping time and will hold up time cards when there are five minutes, two minutes and one minute left. Do not exceed your allocated speaking time without the justice permission.

I. Sit down immediately after your conclusion. The next competitor should then approach the bench and wait a signal from the judges to begin.

J. Each competitor will receive oral critiques about their argument, either immediately following the round or when all rounds are completed.

### Argument: Petitioner

A. Begin by saying, "May it please the court, my name is \_\_\_\_\_ and I represent \_\_\_\_\_."

B. State all of your issues and the primary arguments you will use to address your issues.

C. Move directly into the facts of the case. The judge may interrupt you and state they are familiar with the facts and ask you to move directly into your issues.

D. At this point move directly into issue's points and sub points and the authority cases you can use to substantiate your arguments.

E. Expect to be interrupted with questions. Answers the questions clearly and concisely, and then transition back into your argument.

F. As time remaining decreases move into a conclusion and sum up your argument.

G. If you have reserved no rebuttal time, end with a prayer for relief, otherwise do not give it until the end of your rebuttal.

#### Respondent

A. Begin with same opening as the petitioner. The layout of your presentations should be similar to the petitioners. Be sure to also rebut the petitioner's argument as well as provide your own.

B. Respondents prayer for relief is much the same as Petitioner's. "For these reasons the Respondent respectfully requests that this court affirm the decision of the District Court." Then he/she should say "Thank You" and return to his/her seat.

#### Petitioner: Rebuttal

A. As stated above, the Petitioner may reserve rebuttal time. This gives him/her an opportunity to rebut specific issues addressed by the Respondent and reiterate his/her strongest arguments. Petitioner can reserve a maximum of three minutes for rebuttal. This time may include questions from the judges

B. Petitioner should close with a request for relief. "For these reasons the Petitioner respectfully request that this court reverse the decision of the District Court" (or whatever action you would like the court to take) and then say thank you and return to his/her seat.

#### General Tips

A. Be prepared to argue the full ten minutes, in case you have a cold bench.

B. Signpost. Introduce your issue with signpost, then signpost as you reach these issues in the body of your argument. If you are interrupted in your listing, answer the judge's question and then finish listing.

C. Always address the court as "Your Honor(s)."

D. If a judge asks you a question stops speaking immediately and answer the question. Let the judge finishing asking the question before answering. Try to begin your answer with yes your honor or "No, Your Honor." Never say I will address that issue later

E. Turn off your cell phones in the courtroom. If your cell phone goes off during the round you will be disqualified from the competition.

F. The entire purpose of oral arguments in an appellate setting is to address the concerns of the Court, not to completely rehash what you would have put in your brief. Questions mean the Court is interested and open to persuasion. Listen to the questions, identify the underlying concern and try to answer both.

G. Do not refer to yourself as "I" or "We". Use only "Petitioner, Respondent, or the Client's name.

H. Do not read or rely too heavily on your notes. Maintain eye contact. Project your voice. Speak at a deliberate pace. Although Hand gestures strengthen your persuasive argument, they can also be distracting if over-used.

I. As a final note, have fun. After you have completed your first round the rules and procedures will come more naturally to you. Just listen to the judges, the first time, and learn from your mistakes.

### Scoring

A. As a competitor you will be scored on Logical Argument (20pts), ability to answer questions (10pts), Legal Reasoning (10 pts), speaking ability (5 pts) and courtroom demeanor (5 pts).

B. The logical argument points are based upon how each judge views your argument as a whole: its logic, its completeness, its coherency, its accuracy, and its structure.

C. The ability to answer questions points are based upon how well the competitor answers the questions, how complete and accurate they are in their answers.

D. The Legal Reasoning points are given for how many cases are cited and how well they are used in the arguments.

E. The speaking ability points depend upon the competitor's posture, eye contact, assertiveness and overall speaking ability.

F. Finally, the courtroom demeanor points are based on how courteous, polite and professional the competitor is in the courtroom.