

**20th ANNUAL UVALDO HERRERA MOOT COURT COMPETITION**  
**DISPUTE SETTLEMENT BODY**

Hon. Javier E. Vargas, Chair; Hon. Peter M. Reyes and Hon. Celeste Villareal

**DECISIONS 2015**

**1. Question:** *“Will it be acceptable to form a moot court team with students from different law schools, but that are a part of the HNBA, and can at least four people be placed on a team?”*

**Decision:** The HNBA Moot Court Rules provide that teams must originate from the same law school, as this makes good policy. We give students the opportunity to have moot court experience in order to balance the experience other students may have had from competing on a law school moot court team. Also, it cabins the experience to education or academic experiences.

**2. Question:** *“Team 18 would like to request clarification on one of the rules. Rule 9 reads, ‘Judges will be advised that questions relating to the cases of Elonis v. United States of America will be acceptable during oral arguments.’ Does this mean that we will be allowed to cite the Elonis case in oral argument as well? Also, if the Elonis decision is published before we compete, will it still be allowed in oral argument?”*

**Decision:** Rule 9 provides that: “At oral argument, Team members are not prohibited from citing Puente v. United States of America and similarly, there is no prohibition on citing trial court and appellate decisions leading up to the case. Judges will be advised that questions relating to the case of Elonis v. United States of America will be acceptable during oral arguments.”

The Dispute Resolution Body has reviewed this issue and has determined that the case of Elonis v. U.S. can be cited during oral arguments. If a decision by the U.S. Supreme Court is published between now and the competition, however, neither the participants nor the judges need cite to it. The only cases to be cited are the trial court and appellate decisions leading up to that case.

**3. Question:** *“On behalf of Team #4, for purposes of the Oral Argument, we would like to get clarification on whether the team representing the United States should still address to the Court as representing the Respondent. Because the writ was granted to the United States, do we address ourselves as Petitioner during the Oral Arguments? The clarifications on the HNBA’s website do not mention if this also applies during Oral Arguments. Thank you.”*

**Decision:** The question posed is whether during oral arguments the particular Team representing the United States should address the Court as representing Respondent or Petitioner in light of the fact that the writ was granted to the United States. The question acknowledges that a similar question was posed previously but that it did not clarify as to whether it applied to oral arguments as well.

Consistent with its earlier clarification, Mr. Puente is the Petitioner and the United States is the Respondent for oral arguments. On December 8, 2014, the HNBA stated that Puente is the Petitioner and the U.S. is the Respondent since the cert petition lists Puente as the Petitioner. The HNBA further stated that “teams will be assigned to argue the questions presented from the perspective of (A) Petitioner (Puente) or (B) Respondent (United States)” and that any “seeming error in the style of the case should be disregarded.” This applies in all situations, whether arguing the questions presented in briefing or oral arguments.

**4. Question:** *“As a coach for one of the moot court teams competing at the HNBA competition, I am writing to advise you of an issue with our brief which was submitted to the HNBA.*

*As explained to me by our advocates, on the day for submission of their briefs our advocates submitted their brief with the designation ‘Team 20.’ They were subsequently called and informed by an HNBA employee that there was an error on their part and that the correct team designation number was, in fact, Team #21. They made the corrections and subsequently submitted their ‘original brief,’ which contains the team member’s names on the front and their ‘clean brief,’ which only lists the team designation number.*

*However, in the process of resubmitting their briefs, an earlier version of the brief was mistakenly submitted as the clean brief. This earlier version was missing essential parts such as the table of contents, contained an incomplete table of authorities and contained some formatting items which had yet to be finalized. However, the original brief submitted was the correct and final version of the brief. As you may know, the judges only review the clean brief and therein lies the issue.*

*I am respectfully requesting that the reviewing committee use the original brief which is the finalized draft of the brief. We would not need to resubmit any additional documents as the moot court committee is already in possession of this brief. Therefore, there lies no danger of any additional changes being made to the brief by anyone.*

*However, should the Committee prefer the clean brief, which omits the advocates’ names, I have attached it for their convenience. I can certify that it contains no material differences from the original brief version which was previously submitted and merely has the names of the team members redacted, per competition rules.”*

**Decision:** The 20th Annual Uvaldo Herrera Moot Competition Dispute Settlement Body has undertaken due diligence to carefully review this issue presented to us for resolution. It is the decision of the Dispute Settlement Body that the request to review the “Original Brief” referred to by Team 21 is DENIED. The score provided for the brief submitted by Team 21 is the final score that shall be used. No further action need be taken with respect to the briefs submitted by Team 21.

The reason for this decision is as follows. After reviewing the record and the submissions by Team 21, it has been determined that Team 21 initially e-mailed to the HNBA only a “Clean

Brief” that was incomplete (i.e., it lacked a table of contents, contained an incomplete table of authorities, contained formatting errors, etc.); Team 21 failed to submit an “Original Brief.” In addition, Team 21 mailed to the HNBA a hardcopy of a Clean Brief that was also incomplete. Team 21, therefore, failed to comply with the rules by not submitting an Original Brief, and the two Clean Briefs they initially submitted via e-mail and hardcopy were incomplete.

While it is true that once Team 21 was notified by the HNBA of the error in their team designation, they submitted a complete and final Original Brief, it is also true that they once again submitted an incomplete Clean Brief. Moreover, the submission of one complete brief only occurred due to notification from the HNBA on the separate issue of erroneous team designation. This does not change the fact that the initial submissions by Team 21 were incomplete. The errors in the first instance were on the part of Team 21.

**5. Question:** *“Once the Teams start advancing to the next rounds, how is it determined what side - the Petitioner or Respondent - will the Team be arguing?”*

**Decision:** As provided in the HNBA Moot Court Rule G6, the bailiff/timekeeper will execute a coin toss in each room to determine which side the Teams will argue.

**6. Question:** *“Wouldn’t it be unfair to have the opposing Team present and listening to the questions posed by the Court to other the Team, which will then argue on that brief?”*

**Decision:** Following due deliberation by the Dispute Settlement Body, your challenge is denied. It is the nature of Moot Court competitions that one team must go first and there will be some similarities in the questions asked by the judges given the discrete issues presented. The Teams went on the same order as previously, and this would not appear to be an unfair advantage.

**7. Question:** *“We just wanted to clarify an earlier correspondence where our Team disclosed the fact that one team member read a part of the Elonis Brief. We are raising it again so as to not disrupt any announcements regarding scoring in the unlikely event we advance. We want you to be aware of this fact in the event our penalty was not taken into consideration during scoring.”*

**Decision:** So noted; this issue has previously been adjudicated and the Team was penalized already.

**8. Question:** *“We were eliminated on Tuesday and we are waiting to review our score sheets for the preliminary rounds. If you could provide us with our score sheet, it would be most appreciated. If the score sheet is not available electronically, we are more than willing to pick up physical copies at your earliest opportunity.”*

**Decision:** In order to make the competition more educational, the Rules provide that the Teams “may formally request” and will be provided with their numerical scores under each category (i.e. oral presentation, responsiveness to questions, etc.), and the total score, but only after the competition is completed, so that they know where their strengths and weaknesses lie.

**9. Question:** *“The HNBA Moot competition has repeatedly changed the rules including up until March 16. The rules were never explained to the teams in either the opening session nor after the preliminary rounds on exactly how the rules would apply to the rounds considering the multiple changes in the rules.*

*We were advised at 4PM today that Team 5 was advancing to the semifinal rounds. We called our significant others, our professors and dean of our schools to advise them that we advanced and had the top scores out of the four teams. However, 30 mins later we were told we would no longer be advancing. Our team attempted to challenge the decision, however the individual that dropped us from the competition stated that we could not submit any type of challenge and that her decision was final.*

*According to the rules, however, we have this right. "The DSB may consult with other parties for purposes of achieving a fair and just resolution."*

*Are the rules academically fair? Top scoring teams can be eliminated even when their score is over 10 points higher than the teams advancing. We asked for our individual scores and were denied this information. There needs to be transparency in this process, the coaches should be able to obtain the scores. How can the team be told they cannot appeal the decision?*

*If this is indeed an educational endeavor - with significant scholarship funds awarded - it seems to me that there needs to be a hearing on a request for appeal. And that a fair and just resolution is achieved considering that this is an academic venture where students work extremely hard to achieve a certain end. We challenge the calculation of the scores and we would like to have them recalculated. Additionally, we would like to have access to the scores.*

*The scores obtained by the now four teams going into the semi-finals will eliminate Team 5 from the top Second or Third place position they held after 1/4 finals. Perhaps there should be another round tonight against the team that lost and then was reinstated or go against the lowest scored team of the four that advanced using the straight elimination rule now that it was explained.”*

**Decision:** Your written objection has been received and carefully considered by the Dispute Settlement Body. After thorough deliberation, we render the following decision.

IT IS ORDERED, that Team 5’s complaint is denied. Team 5 alleges that the rules have been repeatedly changed. In fact, there have been only three changes to the rules, which were posted on the HNBA website, and emailed to the teams, prior to oral arguments in San Antonio. No other formal or informal rule changes have been implemented.

Team 5 further alleges that they were notified at 4:00 p.m., Thursday, March 19, 2015, that they were advancing to the semi-final rounds, and then “30 minutes” later told they would not be advancing. In fact, only two minutes transpired when the Moot Court Director corrected the mistakes in the posting, and reposted the correct list of teams advancing. One member of the DSB was present and witnessed the entire incident.

Team 5 requested individual scores and were denied this request. The Rules do not allow any teams to be provided the score sheets during the competition, no exceptions. Rule changes on this issue will not be implemented at this late date.

The rules for oral arguments clearly enumerate that the quarter finals shall be scored and decided by straight elimination. Rule changes on this issue will not be implemented at this late date. Team 5’s request to change the rules and add an additional round is therefore also denied.

The rules for the competition have been posted on the HNBA website since November 24, 2014. Challenges and requests for rule clarifications have been submitted and answered following protocol prior to oral arguments. Team 5 had this same opportunity and did not exercise their rights or options in this regard. Team 5’s objection to not having the voluminous rules read or explained to them lacks prudence or reasonableness. Additionally, no other team expressed a concern or confusion about the meaning of “straight elimination” in the rules provided.

Therefore, Team 5’s objection and dispute submission is denied in full.