



Supreme Court Program Delegate Outline

Congratulations on becoming a part of an elite group of delegates in our exciting Supreme Court program! We, the Penn Model Congress board, are excited to have the opportunity to add this special program to our conference for the fourth year, and we sincerely hope that you enjoy your experience in the Supreme Court as well as in the traditional legislative conference. Please be aware that you are still required to prepare a bill for committee sessions.

We feel that it is important to stress that the Supreme Court delegates are, in a sense, forfeiting potential full session awards. We recognize, accordingly, that these delegates are some of the most accomplished students at the conference. Performing markedly well among such a distinguished group is deserving of the utmost recognition, and as such, the top delegate team in each courtroom will be recognized, based upon their performance in the sessions.

Following are a brief outline of the Supreme Court program, our expectations of you, suggested guideposts to follow in approaching the cases, and the materials that you will need to prepare for oral argument.

We have pared down the reading for each case to the majority opinions and the dissents from the Supreme Court decisions. Use the decisions to prepare your oral argument carefully yet thoroughly, with the 30 minute time limit in mind. Choosing selectively the points which you will make in oral argument will serve you best. That is, it will be much to your advantage to hammer home a smaller number of arguments rather than to merely mention any and all of the points that you can—quality over quantity. It is also important to remember that your argument will be derailed and interrupted repeatedly by the Justices' questioning. Your reading from brief notes or speaking points is acceptable as a petitioner or as a respondent; your writing out speeches is strongly discouraged and is wholly ineffective in this format.

The PennMC Executive Board recognizes that by providing all delegates with the actual text of the decisions, we are presenting students with the outcome of each case in advance. Accordingly, the real challenge is not simply reciting verbatim the Justices' arguments, but adapting them to suit your own knowledge and speaking style while simultaneously bringing new arguments to the table and/or building upon the ones already presented. We expect some degree of overlap with the content of the decisions, but innovative use and creative application of the arguments will be rewarded.

As far as your role as a Justice, advance preparation for oral argument will provide you the basis from which to question your fellow delegates. We expect that your questioning be additive to the debate and be empty of any personal attacks directed at your peers. Understand that your questions may contain some points of your own that may lead on or shut down the petitioner or respondent's argument. This is common practice on the U.S. Supreme Court.

What follows immediately is an excerpt from the original Supreme Court proposal available on the Penn Model Congress website. Included are the general and more detailed logistics of the program and our broad expectations of the Supreme Court delegates. Come the conference, your faculty advisor(s) will be provided with the relevant information as to where you are required to be during the program.

General Logistics:

Delegates will function in teams of two as petitioner, as respondent, and as justice on a rotating basis for three different cases. Each courtroom will contain three teams of two Supreme Court delegates and one PennMC staff member who will act as the Chief Justice. The PennMC staff member in each of the four courtrooms will participate in questioning as little as possible, allowing the Justice delegates to determine for the most part the direction of the discussion. Your team number, courtroom, and role for each case can be found on the Supreme Court Schedule, also on the PennMC website.

Detailed Logistics During Sessions:

The sessions will be 3 hours in length. Identical to oral argument on the U.S. Supreme Court, the petitioner and the respondent will be allotted 30 minutes each, inclusive of questioning from the Justices, to present. Upon the completion of oral argument, the petitioner, the respondent, and the PennMC staff member will leave the room for 10 minutes in order to allow the Justice delegates to deliberate and form preliminary opinions. Following the 10 minutes, the PennMC staff member will enter the room for no more than 5 minutes to discuss the outcome of the deliberation, to cast his or her vote, if necessary to determine a majority, and to ensure that the opinions (brief in length) of the Court are prepared. The petitioner and the respondent will reenter the room and the opinions of the Court will be read and discussed lightly for anywhere between 5 and 10 minutes. The Court will break for 5 minutes and, following the recess, will begin the same process again with the second case and the new roles. Please be advised that delegates will be absent from their Friday and Saturday Full Sessions.

What will be expected of the Supreme Court delegates:

Oral Argument: We are looking to mimic the actual U.S. Supreme Court as closely as possible in our proceedings. Fittingly, we will look for delegates to articulate argument based upon the elements of law examined in the case materials, not upon the factual circumstances of the cases. We will not expect, however, that the delegates go into searching detail on the evolution of Court's decisional doctrine surrounding the various constitutional provisions referenced

either explicitly or implicitly in the case materials. Supplemental materials provided to the delegates will outline clearly the appropriate legal issues and precedent to, respectively, consider and consult. Despite the challenge associated with a delegate's communicating properly legal arguments without an established background in law, we feel that our adhering strictly to the procedures of the U.S. Supreme Court will offer the Supreme Court delegates a unique and a more accurately representative experience.

Operative Rules: The same rules regarding a delegate's conduct in the main conference will apply to that in the Supreme Court sessions. Parliamentary procedure will not explicitly apply because of the unique procedures of a session of oral argument on the U.S. Supreme Court. The Supreme Court delegates acting as petitioners and as respondents will be required to begin their arguments in the customary manner, "*Mr./Madame Chief Justice, and may it please the Court.*" The petitioner typically reserves a portion of his or her time (normally 3 to 5 minutes) for a rebuttal/conclusion following the respondent's argument. While this will not be explicitly required of the delegates, it will be encouraged. During oral argument, the delegates acting as Justices may interrupt the petitioner or respondent at anytime with questions. The petitioner or respondent will be required to discontinue his or her argument and to answer the Justice's question. Questions from Justices on the U.S. Supreme Court tend to help further along the petitioner or the respondent with his or her case, and are not exclusively for the Justice's information. This practice will not be discouraged during the conference. Throughout the sessions, the PennMC staff member acting as the Chief Justice will ensure that the delegate Justices maintain respect for the petitioners and the respondents and that the Justices' questioning remains additive to the discussion and lacks any pejorative motivations.

Teamwork: What makes this opportunity especially valuable is the high place of dynamic teamwork required within the Supreme Court delegate teams. We feel that this Supreme Court exercise, while enlightening and informative as to the processes of the U.S. Supreme Court and as to the interpretation and articulation of legal concepts, will prove to be markedly constructive in its showcasing the delegates' abilities to work efficaciously on high performing teams.

Preparation Guideposts

As mentioned earlier in these materials, oral argument on the U.S. Supreme Court does not involve questions strictly of fact or circumstance. The issues presented deal exclusively with the U.S. Constitution and Federal Law (and, implicitly, the laws of the States). As important to your argument as the enclosed decisions may be, you must be sure to avoid focusing only on the facts of the cases. What is important is examination of the following: how the facts of the cases apply to the constitutional decision making process; whether the facts and circumstances of the cases demonstrate the need for a shift in the Court's doctrine; or, whether the cases mark fundamental shifts in American society and require validation by the nation's highest and most influential Court. Accordingly, your job as petitioner or as respondent is to argue for your assigned side in the context of the American legal system.

The three cases you will be examining are actual decisions handed down by the Supreme Court in recent years. Each case marks an important step in the construction of the current Court's decisional doctrine. *Everson v. Board of Education of Ewing Township* (Case 1) addresses the issue of tax reimbursements for transportation to and from both secular and non-secular schools, and deals explicitly with the Establishment Clause of the First Amendment. *Kyllo v. United States* (Case 2) addresses the Warrant Requirement of the Fourth Amendment, as it pertains to the legality of thermal imaging as a means of procuring probable cause for a search warrant. Case 3 will be handed out at the close of Session 1, on Friday, February 26th. While there are many more sources of information available on these cases (including but not limited to petitioner and respondent briefs, several *amici curae* briefs, and numerous articles), we discourage you from consulting them. Your role in this program does not involve your producing the most historically accurate argument or questioning. We want you to prepare to give your *own* argument and ask your *own* questions, irrespective of the cases' actual transpirations in the Courts. All case materials may be found on the Penn MC website.