



WASHINGTON AND LEE
UNIVERSITY

FINALS

THE EIGHTH ANNUAL JOHN W. DAVIS MOOT COURT COMPETITION



Lewis Hall

November 13, 1987

4:15 p.m.

THE EIGHTH ANNUAL JOHN W. DAVIS
MOOT COURT COMPETITION

"I MAY BE CRANK ON THE SUBJECT OF MOOT COURTS; I HAVE NO DOUBT MR. GRAVES THINKS I PUT TOO MUCH EMPHASIS ON THEM . . . I CONCEDE THAT THE THING MAY BE OVERDONE; AND THAT AFTER ALL THE REAL SCHOOL FOR PRACTICE MUST BE COURTROOM; BUT SO MUCH EMBARRASSMENT CAN BE SAVED THE YOUNG PRACTITIONER, AND SO MUCH ADDED TO HIS CAPACITY FOR SERVING THOSE WHO ARE UNFORTUNATE TO BE AMONG HIS EARLY CLIENTS, THAT I HARDLY THINK TOO MUCH CARE CAN BE TAKEN IN TRAINING HIM, SO FAR AS POSSIBLE, IN THE TOOLS OF THE TRADE."

—JOHN W. DAVIS, April 30, 1898, in a letter written to Professor H. St. Tucker.

The John W. Davis Moot Court Competition is held annually in the fall semester. All second and third year students, except Burks Scholars and present and former members of the Washington & Lee Moot Court Teams, are invited to participate. Originally, the competition was developed to provide second and third year law students with an additional opportunity to increase their skills in oral advocacy. This goal is still maintained today in serving to provide the participants with both a competitive and a learning experience. The participants' writing skills are evaluated with the submission of a brief on the issues dealt with in oral argument. The participants' oral skills are also critiqued after each preliminary round, with the scores used to determine whether the participant will advance to the next level of rounds.

Student wishing to represent Washington & Lee in both the National Appellate Advocacy Competition or the Holderness Competition will be selected solely on the basis of their ranking in the Davis Competition. While this competition is a non-credit activity, students will earn academic credit for their participation on the inter-scholastic moot court teams. In addition, participants will be eligible for consideration as candidates for positions as Burks Scholars or as members of the Moot Court Board.

Although the Davis Competition is essentially an individual competition, briefs must be written and submitted by teams of two students. Each writer will receive an individual score for the brief, which, combined with marks received for oral advocacy, will determine each person's advancement through the competition.

The Davis Competition is administered by third year students serving on the Moot Court Board. Members of the Moot Court Board structure the fictional problems, judge both the preliminary and quarter-final rounds, and grade the briefs submitted by all participants. Three faculty members then judge the semifinal rounds. This year, the faculty bench included Professor E. Henneman, Professor G. Johnson, and Professor J. Phemister. The Best Brief Nominees are selected by the Moot Court Board, with the Best Brief Award designated by both the Board and selected faculty members. Professor Grunewald, Professor Henneman, Professor Johnson, and Professor Phemister aided in the selection of the Best Brief Award.

The 1987 John W. Davis Moot Court Competition has over thirty-six competitors who contended with the issues of sovereign immunity and negligent hiring. The competition culminates today with the announcement of the Best Oral Advocate and the Best Brief Award following the presentation of all the arguments.

RESULTS OF THE 1987 JOHN W. DAVIS COMPETITION

FINALISTS

Laura Gray	Alicia Lehnes
John Hall	Darrin McCullough

SEMIFINALISTS

M. Tim Porterfield	Robert Muth
Thomas Mack	Scott Stimpson

QUARTERFINALISTS

Louise DiMatteo	Angelo Maragos
Phil Edwards	Joe Shephard
Jenifer Grundy	Mark Stiles
Debbie King	John Wagsul

BEST BRIEF NOMINEES

Robert Bullivant	Laura Gray
M. Tim Porterfield	Robert Muth
Angelos Maragas	Mark Boyes
Lou Mondello	Davis Koch

DAVIS MOOT COURT ADMINISTRATORS

Tracie Grove	Michael Rossignol
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The members of the Moot Court Board would like to extend their appreciation to all student participants, faculty members and state and federal judges who participated in this year's program. Without any of these individuals, the John W. Davis Moot Court Competition could never enjoy the success it has received over the years.

IN THE SUPREME COURT OF THE STATE OF GREENACRES

FRED DRUCKER, THROUGH HIS GUARDIAN *AD LITEM*,
HAZEL DRUCKER,

PETITIONER,

v.

STATE UNIVERSITY AT HOOTERVILLE, THROUGH THE BOARD
OF TRUSTEES FOR STATE UNIVERSITY, THE BOARD OF
GOVERNORS FOR THE STATE UNIVERSITY AT HOOTER-
VILLE, AND THE ATHLETIC DEPARTMENT OF THE STATE
UNIVERSITY AT HOOTERVILLE,

RESPONDENT.

The 1987 John W. Davis Moot Court Competition presents the questions of the possible abrogation or modification of sovereign immunity and the possible adoption of the doctrine of negligent hiring. Petitioner, Fred Drucker, brought suit against the State University at Hooterville for injuries sustained through the alleged negligent hiring of the university's custodial engineer, Arnold Ziffle. Drucker and his son, an All-American high school football player, visited SUH's campus during the SUH-North Olly Tech game to tour the facilities. When Drucker wandered into a nearby weight room, his entrance startled Ziffle, who was conducting a narcotics transaction with a football player. Ziffle grabbed a dumbbell and struck Drucker in the temple. This cranial injury left Drucker in a coma for three weeks, later resulting in severe brain damage. Drucker's wife challenged the state's defense of sovereign immunity by initiating a cause for negligent hiring against SUH.

In the Superior Court of Greenacres, Judge Stein denied SUH's motion for summary judgment based upon the doctrine of sovereign immunity, but granted SUH's motion for summary judgment in refusing to recognize the doctrine of negligent hiring. In the Greenacres Court of Appeals of the Second District, Judge Branch upheld the superior court's decision denying SUH's motion for summary judgment on sovereign immunity, but held the doctrine of negligent hiring as a valid cause of action. However, Judge Branch held, as a matter of law, that SUH is not liable on a claim of negligent hiring under the uncontroverted facts contained in the record below.

The Supreme Court of Greenacres granted certiorari and certified the following questions:

- I. WHETHER SOVEREIGN IMMUNITY PREVENTS SUIT FROM BEING BROUGHT AGAINST A STATE UNIVERSITY FOR ITS HIRING OF A CUSTODIAL ENGINEER FOR THE UNIVERSITY'S FOOTBALL STADIUM?
- II. (A) SHOULD THIS COURT RECOGNIZE NEGLIGENT HIRING AS A VALID CAUSE OF ACTION?
(B) IF THIS COURT DOES RECOGNIZE NEGLIGENT HIRING, THEN IS RESPONDENT ENTITLED TO SUMMARY JUDGMENT UNDER G. R. C. P. 212?

THE PARTICIPANTS

Counsel for Petitioner
Darrin L. McCullough, Laura L. Gray

Counsel for Respondent
John F. Hall, Jr., Alicia M. Lehnese

THE COURT

THE HONORABLE HENRY E. FRYE
(North Carolina State Supreme Court)

THE HONORABLE PATRICIA WALD
(U.S. Court of Appeals, D.C. Circuit)

THE HONORABLE H. EMORY WIDENER, JR.
(U.S. Court of Appeals, Fourth Circuit)

THE 1987 MOOT COURT BOARD

Glenn C. Alexander	William K. Schwartz
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James K. Phemister, Faculty Advisor	

THE 1987 NATIONAL MOOT COURT TEAMS

Captains

Vito A. Gagiardi, Jr. William E. Morrissey, Jr.

Members

Patricia A. Malesardi	Marie J. Buttarazzi
William Kyle Tresch	Andrew Wright

THE 1987 INTERNATIONAL MOOT COURT TEAM

Alan K. Ragan, Capt.	
Michael Archie	H. Knox McMillan
Phillip G. Feeney	Donald C. Schultz

The Honorable Henry E. Frye

Justice Frye was born in Ellerbe, North Carolina in 1932. He graduated from the North Carolina Agricultural and Technical State University in 1953, and received his law degree from the University of North Carolina Law School in 1959. Justice Frye practiced law in Greensboro, North Carolina, from 1959 to 1962 and from 1965 to 1983, and served in the North Carolina House of Representatives from 1969 to 1980. He was appointed to the North Carolina Supreme Court by Governor James B. Hunt in 1983.

The Honorable Patricia M. Wald

Judge Wald was born in Torrington, Connecticut in 1928. She graduated from Connecticut College in 1948, and received her law degree from Yale Law School in 1951. Judge Wald clerked for the Honorable Jerome T. Frank of the United States Court of Appeals for the Second Circuit from 1951 to 1952, and practiced law in Washington, D.C. in private practice, in public interest groups, and in the federal government. She served as the Assistant Attorney General for Legislative Affairs just prior to her appointment to the bench. Judge Wald was appointed to the United States Court of Appeals for the District of Columbia Circuit in 1979 by President Carter, where she now sits as chief judge. Assistant Professor of Law Gwen Johnson clerked for Judge Wald from 1981 to 1982.

The Honorable Hiram E. Widener, Jr.

Judge Widener was born in Abingdon, Virginia in 1923. He graduated from the United States Naval Academy at Annapolis in 1944, and received his law degree from Washington and Lee University School of Law in 1953. In between naval service and his appointment to the bench, Judge Widener practiced law in Abingdon, Virginia. Judge Widener was appointed to the United States District Court for the Western District of Virginia in 1969, and was appointed to the United States Court of Appeals for the Fourth Circuit in 1972 by President Nixon.