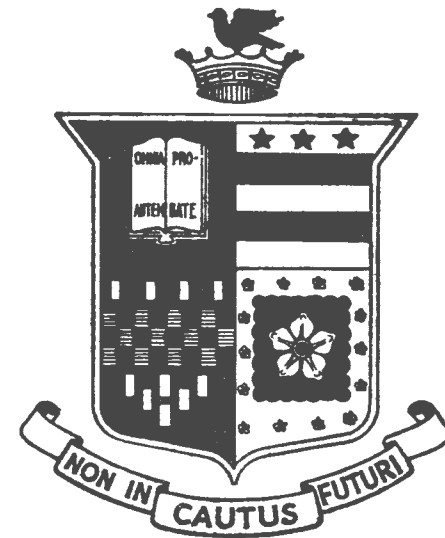


# FINALS

THE NINTH ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



Lewis Hall

November 11, 1988

4:15 p.m.

## THE NINTH ANNUAL JOHN W. DAVIS MOOT COURT COMPETITION

"I MAY BE CRANK ON THE SUBJECT OF MOOT COURT; 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 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.

Students wishing to represent Washington & Lee in both the National Appellate Advocacy Competition or the William & Mary 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. Five faculty members then judge the semifinal rounds. This year, the faculty bench included Dean R. Bezanson, Professor W. Geimer, Professor A. Massie, Professor J. McMorrow, 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 McMorrow and Professor Zanolli-Natkin aided in the selection of the Best Brief Award.

The 1988 John W. Davis Moot Court 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**

Scott Broyles	Terry Flynn
Nanette Dory	Caroline Roberts

**SEMIFINALISTS**

David Anthony	Juliette Falkner
Elizabeth Doyle	Steve Mayo

**QUARTERFINALISTS**

John Anderson	Dave Koch
Pui Chi Cheng	Lynn Lewis
Paul D'Amato	Russell London
Nanette Heide	Stan Morris

**BEST BRIEF NOMINEES**

David Anthony	Beth Doyle
Steve Mayo	Julie Falkner
Paul D'Amato	
Russell London	

**DAVIS MOOT COURT ADMINISTRATORS**

Louise DiMatteo	Scott Stimpson
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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 UNITED STATES  
JOEY FLINT,  
PETITIONER,  
THE UNITED STATES OF AMERICA,  
RESPONDENT.

The 1988 John W. Davis Moot Court Competition presents the issues of whether a Federal Rules of Criminal Procedure 12(b) (1) pretrial motion based on outrageous conduct by DEA officials, granted following a jury verdict of guilty, constitutes an acquittal for purposes of the Double Jeopardy Clause; and whether, under the Due Process Clause of the Fifth Amendment, the conduct of the DEA officials was so outrageous as to bar prosecution.

Nineteen year-old Joey Flint, who had no previous convictions or arrests on narcotics charges, was arrested by agents of the Drug Enforcement Administration (DEA) for selling what is commonly referred to as "crack." Initially, DEA agent Slate, acting on rumors, approached the defendant with some previously confiscated crack and offered him 10% of all the money he would receive if he sold the drug. Flint refused, stating that he did not know Slate well enough to trust him.

In attempts to gain Flint's trust, Slate solicited the help of Barney Rock, a longtime friend of Flint. When Rock suggested he might inform Flint of the plan, Slate lied to him, implying that Flint was having an affair with Rock's wife. Furthermore, Slate offered Flint an "easy job for good pay" and a "woman and a hotel room for the night" if he would sell the crack. Flint agreed to sell the crack if he could pick out the woman. Slate solicited the services of a prostitute with government funds but informed her not to have intercourse with the defendant until after the planned arrest of the defendant. Notwithstanding Slate's instructions, Flint engaged the services of the prostitute prior to his arrest. Finally, Slate smoked a marijuana cigarette with the defendant shortly before the sale was to take place.

In the Federal District Court of Bedrock, Flint made a Fed. R. Crim. P. 12(b) (1) motion to dismiss based on the conduct of the DEA. The trial judge held a pretrial evidentiary hearing on the motion, but deferred ruling on it until all the evidence was presented at trial. The case went to the jury which returned a guilty verdict. The trial judge then granted the motion to dismiss.

The Government appealed to the United States Court of Appeals for the Twelfth Circuit. The Court of Appeals held that the Double Jeopardy Clause did not bar appeal and the conduct of the DEA was not so outrageous as to bar prosecution.

The Supreme Court of the United States granted certiorari on the following questions:

- I. WHETHER A PRETRIAL MOTION GRANTED FOLLOWING A JURY VERDICT OF GUILTY CONSTITUTES AN ACQUITTAL AND THEREFORE BARS APPEAL BY THE GOVERNMENT UNDER THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT.
- II. WHETHER THE CONDUCT OF THE DRUG ENFORCEMENT ADMINISTRATION WAS SO OUTRAGEOUS AS TO CONSTITUTE A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

## THE PARTICIPANTS

### Counsel for Petitioner

Caroline O. Roberts                      Nanette K. Dory

### Counsel for Respondent

P. Scott Broyles                      Terrence F. Flynn

## THE COURT

THE HONORABLE MAX ROSENN  
(U.S. Court of Appeals, Third Circuit)

THE HONORABLE EDITH JONES  
(U.S. Court of Appeals, Fifth Circuit)

THE HONORABLE E. GRADY JOLLY  
(U.S. Court of Appeals, Fifth Circuit)

## THE 1988 MOOT COURT BOARD

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## THE 1988 NATIONAL MOOT COURT TEAMS

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### Members

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Denise Y. Lunsford	Edward P. Tiffey

## THE 1988 INTERNATIONAL MOOT COURT TEAM

Gladys L. Yates, Capt.

Paul A. Anders	Anna Dennis
Patricia A. DeLaney	Jacqueline A. Loughman

## The Honorable Max Rosenn

Judge Rosenn graduated from the University of California at Berkeley in 1928, received his Bachelor of Arts from Cornell in 1929, and received his law degree from the University of Pennsylvania in 1932. Judge Rosenn served as a first lieutenant in the Army from 1944 to 1946. He practiced law in Wilkes-Barre, Pennsylvania from 1932 to 1941 and from 1947 to 1970. He served as Special Counsel for the Pennsylvania Department of Justice, Assistant District Attorney in Wilkes-Barre, and Secretary of Public Welfare for Pennsylvania. Judge Rosenn was appointed to the Third Circuit Court of Appeals in 1970 by President Nixon, where he now sits as senior judge.

## The Honorable Edith Jones

Judge Jones graduated from Cornell University in 1971 and received her law degree from the University of Texas with honors in 1974. She was the Research Editor for the Texas Law Review and she is a member of the Order of the Coif. Judge Jones practiced law from 1974 to 1985, and served as General Counsel for the Republican Party of Texas from 1982 to 1983. Judge Jones was appointed in 1985 to the Fifth Circuit Court of Appeals in Houston, Texas by President Reagan.

## The Honorable E. Grady Jolly

Judge Jolly received his Bachelor of Arts in 1959 and his law degree in 1962 from the University of Mississippi. He served as Trial Attorney for the National Labor Relations Board from 1962 to 1964, Assistant U.S. Attorney for the Northern District of Mississippi from 1964 to 1967, and Trial Attorney for the Tax Division of the Department of Justice in Washington, D.C. from 1967-1969. He practiced law in Jackson, Mississippi from 1969 to 1982. He was appointed in 1982 to the Fifth Circuit Court of Appeals in Jackson, Mississippi by President Reagan.