

Results of the Eleventh Annual John W. Davis Competition

Semi-finalists

Robert Doyle

Emily Harben

Rebecca Graves

Doug Pettit

Quarter-finalists

Chris Armstrong

Chris Keulling

Scott Butler

Lisa McCrea

Teri Cianciola

Lori Phelps

David Cross

Chris Roberson

Edward Fischman

Richard Roberts

Sam Goncz

Susanna Surface

Rosemary Globetti

David White

Best Brief Nominees

Chris Armstrong

Rebecca Graves

Scott Butler

Lori Phelps

Elizabeth Ewert

Susanna Surface

Chris Keulling

Richard Roberts

Chris K. Robertson

Edward Fischman

*The members of the Moot Court Board would like to extend
their appreciation to the following:*

Roy Steinheimer

Joan Shaughnessy

Roger Groot

Lash LaRue

Lee Chapel Staff

Evans Dining Hall Staff

Buildings and Grounds

Law School Media Dept.

Otto Konrad

Each student who participated in this
year's competition.

FINALS

THE ELEVENTH ANNUAL JOHN W. DAVIS MOOT COURT COMPETITION

"I may be crank on the subject of moot courts; I have no doubt that Mr. Graves thinks I put too much stress on them . . . I concede that they may be overdone, and that after all the real school for the practitioner must be the court-room; but so much embarrassment can be saved for the young practitioner, and so much added to his capacity for serving those who are unfortunate enough 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

Lee Chapel

November 15, 1990

4:00 p.m.



The Participants

Counsel for Petitioner
Elizabeth Ewert and Alice Rodgers

Counsel for Respondent
Christopher K. Robertson and Kevin Reid

The Court

The Honorable Byron R. White
Associate Justice, United States Supreme Court

The Honorable Rhesa H. Barksdale
United States Court of Appeals, Fifth Circuit

The Honorable David M. Ebel
United States Court of Appeals, Tenth Circuit

The 1990 Moot Court Board

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Negotiations and
Client Counseling

Christopher J. McCool
Holderness Team Coach

Jim Phemister, Faculty Advisor

Allan Ides, John W. Davis Faculty Advisor

On January 25, 1990, Augustus Howard doing business as Howard Feed Co., (hereinafter Howard), entered into a contract for the purchase of a processing plant owned by Bayou Feed Co., (hereinafter Bayou). Howard is a Lewis Hall corporation and Bayou is a Louisiana corporation. As a condition of the contract, Howard was promised that the plant would produce at least 6 tons of feed per month and that the plant's equipment had been put in place in 1985. After signing the contract Howard gave Bayou a certified check for \$100,000 to serve as his deposit. After this contract was signed, Howard found out that a larger plant in Texas was available. The Texas plant was cheaper to buy and less expensive to run. As a result, he decided that he wanted out of the Bayou contract.

In order to get out of the Bayou contract, Howard hired Rosemary West, (hereinafter West), an attorney that practices in Lewis Hall. Howard presented West with a falsified Industrial Engineer's Report which stated that the Bayou plant did not have the promised production capacity. After this conversation and reading the report, West called Bayou's in-house counsel to tell them what she discovered. Bayou's counsel asserted that the conditions of the contract could be met. West then filed suit in Lewis Hall state court, on behalf of Howard, seeking relief from its obligations under the contract. The suit was filed without further investigation into the validity of the report.

On February 7, 1990, in response to the complaint, Bayou's litigation attorneys petitioned the federal district court to have the case removed to federal court based upon diversity of citizenship. Bayou's petition was granted and the case was removed to the Federal District Court for the District of Lewis Hall.

Shortly after removal of the action to federal court, Augustus decided to "juice up" the allegations of fraud by further alleging that Bayou misrepresented the age of the equipment in the plant. On March 3, 1990, Augustus gave the Economic Report to West, who again wrongly believed the second document to be totally authentic and true. Again, without making any inquiry into the authenticity of the Economic Report, West immediately amended her initial complaint to include the additional allegation that Bayou had fraudulently misrepresented the age of the plant's equipment.

Bayou, on March 17, 1990 then answered the Amended Complaint by filing a 12(b)(6) motion to dismiss the case and also requested sanctions in the form of attorney's fees, costs and expenses against Howard and West under Federal Rule of Civil Procedure 11, 28 U.S.C. §1927 and the court's inherent powers.

At the hearing on the motion, the District Court judge granted the motion to dismiss. Furthermore, the District Court ordered Howard to pay Bayou Feed Company \$100,000, representing all of the attorney's fees that Bayou incurred in defending the suit. The District Court sanctioned Howard \$50,000 in attorney's fees pursuant to Rule 11 and \$50,000 pursuant to its inherent powers. In addition, the court ordered Howard's attorney, Rosemary West, to personally pay Bayou \$3500 representing the total amount of Bayou's expenses and costs. The Fifteenth Circuit Court of Appeals affirmed the District Court Order. Howard and West appeal this order.

The questions to be briefed and presented at oral argument are the following:

- I. DID THE DISTRICT COURT ERR BY IMPOSING SANCTIONS IN THE FORM OF ATTORNEY'S FEES, EXPENSES AND COSTS AGAINST HOWARD AND WEST PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 11 AND 28 U. S.C. §1927 WHEN DIRECTLY CONFLICTING STATE LAW PROHIBITS THE IMPOSITION OF SUCH SANCTIONS?
- II. DID THE DISTRICT COURT ERR BY IMPOSING ADDITIONAL ATTORNEY'S FEES SANCTIONS AGAINST HOWARD PURSUANT TO THE COURT'S INHERENT POWERS WHEN DIRECTLY CONFLICTING STATE LAW PROHIBITS THE IMPOSITION OF SUCH SANCTIONS?