

FINALS

THE TWELFTH ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



Lee Chapel

November 15, 1991

4:00 p.m.

**THE TWELFTH 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 members of Washington & Lee Moot Court Teams and Board, 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 the Holderness Moot Court Competition, National Appellate Advocacy Competition, National Moot Court Competition, or International Moot Court 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.

Davis participants compete individually. Competitors are designated counsellor for either petitioner or respondent. The participants must submit a brief in addition to arguing the case before the court. Each

participant receives a score for the brief, which, combined with marks received for oral advocacy, 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 Dean R. Bezanson, Professor L. Halper, and Professor A. Massie. 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 E. Henneman and Professor L. LaRue aided in the selection of the Best Brief Award.

The 1991 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
1991 JOHN W. DAVIS COMPETITION**

FINALISTS

Johnny Sarber	Pam Zhulkie
Doug Kilday	Doreen Unis

SEMIFINALISTS

Lori Elliott	Jay Miller
Kelley Doran	Dan Munroe

QUARTERFINALISTS

Chris Lawson	Jim Lane
Lynn Watson	Joe Ciccone
Stephanie SenGupta	Kelly Smith
Kevin Nicholas	Susan Jewell

BEST BRIEF NOMINEES

Anthony Kostelecky	Jay Miller
Kevin Nicholas	Johnny Sarber
Kelly Smith	Monoka Venters

The members of the Moot Court Board would like to extend their appreciation to all student participants and faculty members 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

BLAKE W. BLACKWELL,

PETITIONER,

v.

WILLIAM AND LEE STATE UNIVERSITY,

RESPONDENT.

The 1991 John W. Davis Moot Court Competition involves the following factual scenario:

On October 31, 1990, Halloween night, Blake W. Blackwell attended a party at the Delta Gamma fraternity house on the William and Lee State University campus. Upon his arrival, Blackwell, a freshman at William and Lee, was given a Ku Klux Klan uniform as his "costume" which he wore throughout the evening. Later that night, one of the Delta Gammas dared Blackwell to go to the Black Student Alliance (BSA) house and "give them a Halloween scare." Blackwell, who was drinking, refused at first but then acquiesced.

At about 11:30 p.m., Blackwell burned a cross on the lawn of the BSA house, shook his fist at the house and shouted, "All blacks back to Africa!" Ken Mitchell, a black student who was watching this spectacle from the BSA house, angrily ran outside, tackled Blackwell and held him until the campus police arrived.

On November 2, 1990, the University expelled Blackwell due to his violation of the William and Lee Policy on Discrimination and Discriminatory Harassment of Students in the University Environment (the Policy). The applicable portions of the Policy state:

- (a) No student at William and Lee State University shall by any means willfully and intentionally injure, intimidate, oppress, threaten, victimize, or stigmatize any other person while at William and Lee because of the other person's race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status or handicap.
- (c) Any person found to have violated (a) . . . shall be punished by immediate expulsion with no opportunity for readmission at William and Lee State University.

The District Court of Lewis Hall held that Blackwell's expulsion did not violate his First Amendment right to freedom of speech and that the University's Policy was neither unconstitutionally overbroad nor vague on its face.

Blackwell appealed to the United States Court of Appeals for the Fifteenth Circuit. The Court of Appeals affirmed the holding of the District Court.

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

WHETHER THE TRIAL AND APPELLATE COURTS ERRED IN HOLDING THAT BLACKWELL'S EXPULSION FROM WILLIAM AND LEE STATE UNIVERSITY WAS NOT VIOLATIVE OF THE FIRST AMENDMENT?

THE PARTICIPANTS

Counsel for Petitioner
Johnny Sarber Doreen Unis

Counsel for Respondent
Doug Kilday Pam Zhulkie

THE COURT

THE HONORABLE SAM J. ERVIN, III
(Chief Judge, United States Court of Appeals Fourth Circuit)

THE HONORABLE JAMES M. SPROUSE
(Judge, United States Court of Appeals Fourth Circuit)

THE HONORABLE GLEN M. WILLIAMS
(Senior Judge, United States District Court Western District Virginia)

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Team Coach

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Allan Ides, Davis Moot Court Advisor

ACKNOWLEDGEMENTS

The Moot Court Board would like to extend our thanks and appreciation to the following students who have assisted in the administering of the competition.

David P. Cross

Edward S. Fischman

The Honorable Samuel J. Ervin, III

Judge Ervin was born in Morganton, North Carolina in 1926. He graduated from Davidson College in 1948 and received his law degree from Harvard University in 1951. Judge Ervin was in private practice from 1952 until 1967 when he became a Judge of the Superior Court of the 25th Judicial Circuit in North Carolina. He was appointed for life to the Fourth Circuit Court of Appeals by President Carter in 1980.

The Honorable James M. Sprouse

Judge Sprouse was born in Williamson, West Virginia in 1923. He graduated from St. Bonaventure University in 1947 and received his law degree from Columbia University in 1949. In addition, Judge Sprouse was a Fulbright Scholar and received a postgraduate degree in International Law from the University of Bordeaux, France. Judge Sprouse worked mostly in private practice from 1951 until 1979, although he worked for the Central Intelligence Agency from 1952 to 1957 and served as a Justice on the West Virginia Supreme Court of Appeals from 1972 until 1975. He was appointed for life to the Fourth Circuit Court of Appeals by President Carter in 1979.

The Honorable Glen M. Williams

Judge Williams was born in Lee County, Virginia in 1920. Judge Williams graduated from Milligan College in 1940 and received his law degree from the University of Virginia in 1948. He served as the Commonwealth's Attorney in Lee County until 1951 and served as a Virginia State Senator from 1953 until 1955. Judge Williams remained in legal practice in Jonesville until 1976. He was appointed for life to the United States District Court for the Western District of Virginia by President Ford in 1976.
