

ACKNOWLEDGEMENTS

The members of the Moot Court Board would like to extend our thanks and appreciation to the following persons who gave their time assisting us in our advocacy programs this semester.

U.S. Magistrate Glen E. Conrad
Dean Bezanson
Dean Grunewald
Professor Geimer
Professor Groot
Professor Halper
Professor Ides
Professor Kitch
Professor Larue
Professor Massie
Professor Morris-Collin
Professor Murchison
Professor Phemister
Professor Shaughnessy
Professor Sundby
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Ross Haine, Esq.
Claude Worrell, Esq.

Carole Shorter
Margaret Williams
Mike Joyce
Bobby Lilly
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Alex Rueda
Johnny Sarber
Adri Spain
Linda Newell
Beth Gaines
Arthur Perry
Tom Williams

We would like to express our deep appreciation to Benjamin and Philip Gardner of Gardner, Gardner, Barrow & Sharpe in Martinsville, Virginia. Due to their generous support, the Gardner Brothers Award is given annually to the Best Oralist and the writer of the Best Brief in the John W. Davis Moot Court Competition.

We also greatly appreciate the financial support of the law firm of Mezzullo & McCandlish in Richmond, Virginia.

FINALS

THE THIRTEENTH ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



Lenfest Center

November 19, 1992

4:00 p.m.

**THE THIRTEENTH 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 interscholastic moot court teams.

Davis participants compete individually. Competitors are designated counselor for either petitioner or respondent. The participants must submit a brief in addition to arguing the case before the court. Each participant received 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 both substantively and administratively controlled 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 quarterfinal rounds, and grade the briefs submitted by all participants. Three faculty members then judge the semifinal rounds. This year, the faculty bench included Professors Allan Ides, Ann Massie, and Scott Sundby. 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 Brian Murchison, Dean Mark Grunewald, and Professor Robin Morris-Collin aided in the selection of the Best Brief Award.

The 1992 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
1992 JOHN W. DAVIS COMPETITION**

FINALISTS

Ivan Colao
Chris Kowalczuk

Elizabeth Mason
Jackie Stroh

SEMIFINALISTS

Chip Ford
Patricia Munroe

Silvia Simpson
Rob Thomas

QUARTERFINALISTS

Ed Farren
Brian Greene
Tom Kleine
John Lemmon

Shaun Peck
Mike Poll
Margaret Sharbel
Nick VanBuskirk

BEST BRIEF NOMINEES

Steve Buhr
Ivan Colao
Chip Ford

Ben Kalny
Chris Kowalczuk
Elizabeth Mason

The members of the Moot Court Board would like to extend their appreciation to all students who participated in this year's program. Without 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
SITTING IN DAVIS

HOLY FUNDAMENTALIST CHURCH

PETITIONER.

V.

CITY OF DANBURG

RESPONDENT.

The 1992 John W. Davis Moot Court Competition involves the following factual scenario:

The Holy Fundamentalist Church brought suit for an injunction against the City of Danburg after the city issued a permit to the Jewish Community Center, allowing that group to erect a twenty-two foot Menorah in Danburg's City Park.

City Park is a centrally located, ten acre plot of land which runs north to south in the city of Danburg. It is the only public park in Danburg other than Court Park. Court Park is public land surrounded by the city's primary government buildings such as the courthouse, the police station and the City-County Building. City Park adjoins two government buildings on its northernmost side, the post office and the department of motor vehicles, and two government buildings on the south, the public library and the Board of Education Building. City Park is typically used for recreation, with a pond, a playground, and several paths for bikers and walkers. There are also shelters which groups can use for picnics or parties.

City Park is recognized as a public forum. Many organizations have used the park for demonstrations, rallies, protests, displays and exhibits. Previous activities include: a Pro-Choice rally; a two-day sculpture exhibit; a Fourth of July concert at which a group called "The Village People" performed; a "Dunk Your City-Councilman" contest sponsored by the city to raise money for downtown renovations; and several "Teen Dances." After this action was initiated, a group of local citizens was permitted to tie yellow ribbons around the trees in City Park in support of American troops fighting in the Persian Gulf War. Even more recently, an independent presidential candidate gave a speech in City Park to thank volunteers for their efforts in placing his name on the November ballot.

Danburg City Ordinance § 4786-1 provides guidelines for the use of Danburg's public parks.

Upon a duly submitted application, the City Commissioner may issue to any person, organization, association, club, society or other group of any type, a permit to use and occupy any portion of Court Park or City Park, for the purpose of making or presenting any program, public address, exhibit or display, or for any other organized or semi-organized purpose whatever.

Under City Ordinance § 4780-4, a "duly submitted application" includes a \$25 permit fee, which is intended to cover any clean-up, water, and electricity expenses.

In 1987, the Danburg Jewish Community Center (JCC) sought a permit from the city. The JCC wished to place a twenty-two foot Menorah at City Park in celebration of Chanukah. JCC requested that the permit be valid for approximately ten days, which would include the eight-day display, plus construction and removal time. Danburg's City Commissioner granted the permit, and the JCC has sought and has been granted a renewal of its permit every year at Chanukah since 1987. JCC has paid the \$25 permit fee each year. During the eight days of Chanukah every year, the Menorah stands unattended, with no other displays near it. It is lighted by electricity twenty-four hours a day. The electricity comes from the sources at City Park and is thus paid by the city. However, it is conceded that the permit fee covers this bill.

Every year the Menorah is placed on the same spot of the park. The Menorah stands on the southern edge of City Park, directly beside the City Library. The Menorah and the library face a heavily traveled street which borders the southern edge of City Park. Located directly across the street is the property of the plaintiff, the Holy Fundamentalist Church.

During the 1987 display, several concerned citizens complained that the Menorah's presence beside a city building seemed to indicate a preference by the city of the Jewish religion over their own faiths. In response to such complaints, the city of Danburg requested that the JCC place a sign on the Menorah indicating that the JCC was responsible for its erection and maintenance. In each year following 1987, the JCC has placed a two foot by one foot sign to the left of the Menorah, which states "In Celebration of Chanukah, the Danburg Jewish Community Center Has Placed This Menorah For The Enjoyment Of All." There have been no complaints since the placement of this sign, outside of this suit.

The Holy Fundamentalist Church brought suit for an injunction under 42 United States Code section 1983 due to what it perceived as unconstitutional behavior by the city. The Holy Fundamentalist Church claims that the Menorah display on public property violates the Establishment Clause of the First Amendment.

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

DID THE APPELLATE COURT ERR IN HOLDING THAT THE CITY OF DANBURG DID NOT VIOLATE THE ESTABLISHMENT CLAUSE BY ALLOWING THE JEWISH COMMUNITY CENTER TO DISPLAY A MENORAH ON PUBLIC PROPERTY?

THE PARTICIPANTS

Jackie Stroh	<i>Counsel for Petitioner</i>	Chris Kowalczuk
v.		v.
Ivan Colao	<i>Counsel for Respondent</i>	Elizabeth Mason

THE COURT

THE HONORABLE HARRY M. CARRICO
(Chief Justice, Supreme Court of Virginia)

THE HONORABLE JAMES G. EXUM, JR.
(Chief Justice, North Carolina Supreme Court)

THE HONORABLE LEANDER J. SHAW, JR.
(Justice, Florida Supreme Court)

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The Honorable Harry L. Carrico

Chief Justice Carrico was born in Washington, D.C. in 1916. He received his law degree from George Washington University in 1942. From 1943-51, he became a judge in the Trial Justice Court (with time out for service in the U.S.N.R. in World War II). Justice Carrico entered private practice from 1951-56, when he became a judge for the Sixteenth Judicial Service. He became a member of the Supreme Court in 1961. On March 10, 1990, the Virginia Assembly commended Chief Justice Carrico for his service on the Supreme Court and gave him singular title of Chief Justice of Virginia. Chief Justice Carrico frequently addresses members of the Bar on the subject of professionalism and regularly participates in the Virginia State Bar's mandatory course on professionalism for newly admitted members of the Bar.

The Honorable James G. Exum, Jr.

Justice Exum was born in Snow Hill, North Carolina in 1935. He received his Bachelor of Arts from the University of North Carolina at Chapel Hill in 1957, and juris doctor from New York University School of Law in 1960. Upon graduating from law school, he served a one year law clerkship for Chief Justice Emery B. Denny of the North Carolina Supreme Court. From 1961-67, he worked in private practice in Greensboro, North Carolina. In 1967, he served on the North Carolina House of Representatives and was also appointed as a North Carolina Resident Superior Court Judge until 1974. He has served on the North Carolina Supreme Court since 1975, and was appointed Chief Justice in 1986. Justice Exum's extensive list of activities includes service with the United States Army Reserve JACG Corps; vice president of the North Carolina Bar Association, and chairperson of the American Bar Association Criminal Justice Standard Committee.

The Honorable Leander J. Shaw, Jr.

Leander J. Shaw, Jr., was born in Salem, Virginia, and grew up in Lexington. He graduated from West Virginia State College in Institute, West Virginia in 1952 and earned his Juris Doctor degree from Howard University in Washington, D.C. in 1957. Between college and law school, Justice Shaw served as an artillery officer in the Korean conflict. After a distinguished career as a law professor, sole practitioner, public defender, state's attorney, and judge, Shaw was appointed to the position of Justice of the Supreme Court of Florida in 1983. He served as chief justice from July 1, 1990 to June 30, 1992. Justice Shaw received the degree of honorary doctor of laws from Washington and Lee in 1991.