
FINALS

THE SEVENTEENTH ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



Lee Chapel

November 14, 1996

4:00 p.m.

**THE SEVENTEENTH 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 the Washington and Lee Moot Court Teams and Board, are invited to participate. The competition was developed to provide participating law students with the opportunity to increase their skills in oral advocacy. The competition serves to provide the participants with both a competitive and a learning experience. The participants' writing skills are also evaluated with the submission of a brief on the issues dealt with in oral argument.

Students wishing to represent Washington and Lee in the National Moot Court Competition, Vanderbilt First Amendment Competition, Jessup International Moot Court Competition, or the Burton D. Wechsler First Amendment Competition will be selected solely on the basis of their ranking in the Davis Competition.

Davis participants compete individually. Competitors are designated counselor for either petitioner or respondent. 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, determines that person's advancement through the competition.

The Davis Competition is administered by third year students serving on the Moot Court Executive Board. Members of the Board structure the fic-

tional 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 law professors A. Ides, L. Fitzgerald and A. Massie. The Best Brief Nominees are selected by the Moot Court Executive Board, with the Best Brief Award selected by faculty members. Professors R. Groot, M. Grunewald and B. Murchison selected the Best Brief Award from among the Best Brief Nominees.

The 1996 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.

THE PARTICIPANTS

Counsel for the Petitioner

Ed Chun

Jennifer Lynch

Counsel for the Respondent

Christa Haas

Mary Beth Long

THE COURT

THE HONORABLE SAM J. ERVIN, III

(Judge of the United States Court of Appeals, Fourth Circuit)

THE HONORABLE PHYLLIS A. KRAVITCH

(Judge of the United States Court of Appeals, Eleventh Circuit)

THE HONORABLE JOHN T. NOONAN, JR.

(Judge of the United States Court of Appeals, Ninth Circuit)

WASHINGTON AND LEE MOOT COURT EXECUTIVE BOARD

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Justice, Davis Moot Court

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Justice, Jessup/National Teams

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Trey Hamilton

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Amy Smoyer

Justice, Negotiations/Client Counseling

Josh Burgess

Justice, Regional Client Counseling

Roger Groot, Davis Moot Court Advisor

IN THE SUPREME COURT OF THE UNITED STATES

Janet Reno,
Attorney General of the United States
PETITIONER,
v.
Naughty Netsurfers, Inc.,
RESPONDENT.

The 1996 John W. Davis Moot Court Competition involves the following factual scenario:

This year Congress enacted the Anti-Indecency and Effective Standards for Cyberspace Communications Act of 1996 (ESC). This statute makes it a felony for commercial content providers to transmit to minors, via the Internet, material which might be deemed "indecent" under the terms of the Act.

On June 5, 1996, John Doe, a ten-year old, accessed photographs of nude men and women engaged in explicit sexual acts while researching the history of photography for a school project. Doe gained access to these pictures through NetView, a popular software package which enables users to access the Internet via a personal computer. By typing in the word "picture" as his search term, John was able to view three depictions of men and women in sexual acts on his screen. These were part of a sales pitch for admission to Naughty Netsurfers' website; thus, there was no charge for John to see them. Naughty Netsurfers, Inc. markets sites that are accessible via the World Wide Web and that contain sexually explicit material designed for adult entertainment.

Naughty Netsurfers brought this suit in the U.S. District Court for the Western District of Davis against Janet Reno, the Attorney General of the United States, seeking a preliminary injunction against the enforcement of ESC. Naughty Netsurfers argued that ESC was unconstitutionally vague and overbroad; thus, it violated rights protected by the First Amendment and the Due Process Clause of the Fifth Amendment. The Government argued that ESC passes judicial scrutiny because it incorporates the definition of "indecent" already accepted by the judiciary and because it uses narrowly tailored means to achieve a compelling interest without interfering with First Amendment freedoms. The district court held that ESC was not unconstitutionally vague and that it was not unconstitutionally overbroad.

On appeal, the United States Court of Appeals for the Fourteenth Circuit reversed both of the district court's holdings. The court found that ESC was void for vagueness because its language left commercial content providers

unable to discern the relevant community standards for this particular medium; thus, ESC "chilled" Internet users' constitutionally protected speech. The court also found that ESC was unconstitutionally overbroad, concluding that it was not narrowly tailored to further the government's compelling interest in protecting minors from indecent speech.

The United States Supreme Court granted certiorari and will consider the following questions in the arguments before it today:

(1) IS ESC UNCONSTITUTIONALLY VAGUE BECAUSE ITS TERMS DO NOT GIVE ADEQUATE NOTICE OF WHAT KIND OF CONDUCT IT CRIMINALIZES?

(2) IS ESC UNCONSTITUTIONALLY OVERBROAD BECAUSE IT CAUSES ADULT INTERNET USERS TO STOP ENGAGING IN SPEECH TO WHICH THEY HAVE A CONSTITUTIONAL RIGHT?

**RESULTS OF THE
1996 JOHN W. DAVIS COMPETITION**

FINALISTS

Ed Chun
Christa Haas

Mary Beth Long
Jennifer Lynch

SEMIFINALISTS

Elizabeth Hodge
Sarah Kuehl

Melissa Morris
John Rogers

QUARTERFINALISTS

John Bateman
Jonathan Beamon
Jason Gizzerelli
Matt Gomes
Mark Huffman

Kathy Jough
Christie Richart
Joe Toris
Greg Urbancic
Allison Williams

BEST BRIEF NOMINEES

John Bateman
Jonathan Beamon

Melissa Morris
Christie Richart

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

JUDGE SAM J. ERVIN, III

Born in Morganton, North Carolina to Samuel James and Margaret Bruce Bell Ervin, Jr., Judge Ervin has led a distinguished life. Following his education in Morganton public schools, Judge Ervin continued his studies at Davidson College, earning a bachelor of science. Judge Ervin then earned his LL.B. at Harvard Law School.

Judge Ervin was appointed to the United States Court of Appeals on May 23, 1980. After serving as Chief Justice of the Fourth Circuit from February 14, 1989 to February 16, 1996, Judge Ervin resumed his current status as active circuit judge.

Prior to his appointment to the Fourth Circuit, Judge Ervin served in the United States Army, the Judge Advocate General's Corps and the North Carolina Army National Guard. From 1965-67, Judge Ervin was a member of the North Carolina House of Representatives.

Active members of the Presbyterian Church, Judge Ervin and his wife Elisabeth Crawford have four children: Samuel James, IV, Elisabeth Fore, Robert Crawford, and Margaret Bell.

JUDGE PHYLLIS A. KRAVITCH

Judge Kravitch was appointed to the United States Court of Appeals by President Jimmy Carter in 1979. Originally appointed to the Fifth Circuit, she was assigned to the Eleventh Circuit when it was organized in 1981. She was the third woman to serve as a United States Circuit judge and the first female federal judge in the southeast.

Judge Kravitch was born in Savannah, Georgia, August 23, 1920. She received a B.A. degree from Goucher college in 1941 and a LL.B. from the University of Pennsylvania in 1944 and served on the Board of Editors of Law Review. She received an honorary Doctor of Laws degree from Goucher College.

Judge Kravitch practiced law in Savannah, Georgia from 1944 until 1976. In 1976, she was elected a Superior Court Judge for the Eastern Judicial Circuit of Georgia, at that time the highest judicial office ever held by a woman in the State of Georgia.

Judge Kravitch was the recipient in 1991 of the American Bar Association Margaret Brent Award. She also received the Council of Jewish Women Hannah G. Solomon Award (1978), and the University of Pennsylvania Law School James Wilson Award (1992).

She served as a member of the Chatham County Board of Education (1949-1955), was President of the Savannah Bar Association (1973), a trustee of the Georgia Institute of Continuing Legal Education (1949-1955), a member of the Law School Council of the Emory University School of Law (1986-present), and a member of The Visiting Committee of the University of Chicago Law School (1989-1992). She presently serves on the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

Her chambers are in the Elbert P. Tuttle Court of Appeals Building in Atlanta, Georgia.

JUDGE JOHN T. NOONAN, JR.

After graduating *summa cum laude* from Harvard College, John T. Noonan, Jr., continued his education at Cambridge University, where he studied English literature; Catholic University, earning an MA and Ph.D. in philosophy; and Harvard Law School, earning an L.L.B.

With topics ranging from abortion to existentialism, Judge Noonan has published over 175 articles and book reviews. In addition, Judge Noonan has held numerous distinguished academic positions, such as chairman of the Program in Religious Studies at the University of California at Berkeley, professor of law at the University of Notre Dame Law School, and visiting professor at eight prestigious institutions. The recipient of countless awards and fellowships, Judge Noonan has also served as a member of numerous editorial boards, including the *American Journal of Jurisprudence*.

Married to Mary Lee Bennett Noonan and father of three, Judge John T. Noonan, Jr., currently serves as a circuit judge for the United States Court of Appeals, Ninth Circuit.
