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# FINALS

THE NINETEENTH ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



Moot Courtroom

November 12, 1998

4:00 p.m.

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THE NINETEENTH ANNUAL JOHN W. DAVIS  
MOOT COURT COMPETITION

"I MAY BE CRANK ON THE SUBJECT OF MOOT COURTS; 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 THE 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 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 Dean H. St. G. 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 Moot Court Competition, Jessup International Moot Court Competition, or the J. Braxton Craven Memorial Moot Court 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 fictional problems, judge both the preliminary and quarterfinal rounds, and grade the briefs sub-

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mitted by all participants. Three faculty members then judge the semifinal rounds. This year the faculty bench included law professors L. Fitzgerald, C. Mabry and L. LaRue. The Best Brief Nominees are selected by the Moot Court Executive Board, with the Best Brief Award selected by faculty members. Professors R. Danforth, A. Massie and M. Poirier selected the Best Brief Award from among the Best Brief Nominees.

The 1998 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.

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## THE PARTICIPANTS

### Counsel for the Petitioner

David Brown      Duncan Pitchford

### Counsel for the Respondent

Adrienne Maddox      Matt Smith

## THE COURT

THE HONORABLE RHESA H. BARKSDALE  
(Judge of the United States Court of Appeals, Fifth Circuit)

THE HONORABLE WILLIAM C. BRYSON  
(Judge of the United States Court of Appeals, Federal Circuit)

THE HONORABLE DIANA GRIBBON MOTZ  
(Judge of the United States Court of Appeals, Fourth Circuit)

## WASHINGTON AND LEE MOOT COURT EXECUTIVE BOARD

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Laura Fitzgerald, Davis Moot Court Advisor

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## IN THE SUPREME COURT OF THE UNITED STATES

Central University School of Law

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Commonwealth of Davis,  
PETITIONERS,

v.

Ewing T. Boles,  
RESPONDENT.

Competitors in the 1998 John W. Davis Moot Court Competition argue based on the following fact pattern:

The Commonwealth of Davis has a long history of official discrimination against minorities throughout its public school system. The Davis Constitution mandated the maintenance of separate schools for Caucasian and minority children until 1955. Because Davis created few minority colleges, minorities had extremely limited opportunities to attain education beyond the secondary level. After the United States Supreme Court mandated desegregation of public education across the country, Davis adopted a policy of official resistance to integration. Public institutions of higher education, such as the Central University School of Law, remained segregated until the 1960s. In primary and secondary education the problem continues to the present. Twenty desegregation lawsuits remain pending against Davis public school districts.

Against this historical backdrop, Central University School of Law developed a commitment to affirmative action in its admissions policy. Over 3000 individuals apply to the Law School every fall for a place in the entering class of 300 students. In order to make initial admissions decisions, the Law School assigns each applicant a Central University Index ("CUI") score, computed by adding the applicant's LSAT score to their undergraduate grade point average in a set ratio. In 1995, The Law School automatically offered admission to any applicant with a CUI of 93 or above and automatically denied admission to applicants with CUI scores below 85. Applicants with scores between 85 and 92.99 were placed in a "discretionary zone."

An Admissions Committee reviewed individually the credentials of applicants in the discretionary zone. Law School policy required the Admissions Committee to add two points to the CUI score of each African American and Native American applicant who scored in the discretionary zone. In addition, the Admissions Committee could raise or lower the CUI score of an individual within the discretionary zone for factors including but not limited to the strength of his or her undergraduate program and participation in extracurricular activities. The Committee had discretion to add additional points to or subtract points from any applicant's

score in order to enhance diversity. However, the Committee may not raise any candidate's CUI score above a 92.5. The Law School offered applicants admission according to the rank of their adjusted CUI scores until 300 applicants accepted admission.

The Law School's goal is to create a minority student population each year that reflects approximately the same percentages of minorities which graduated from undergraduate institutions in Davis that year. In general, the admissions policy successfully accomplishes this goal. The class that entered the Central University School of Law in 1996 contained 27 Native Americans, 66 African Americans and 207 Caucasians. The Law School's records indicate that without the adjustments made by the Admissions Committee at most 9 Native Americans and 16 African Americans would have been admitted.

Ewing T. Boles, a Caucasian male, applied for admission to the Law School in the fall of 1995. Boles' CUI score of 91.77 placed him in the discretionary zone for admissions. The Admissions Committee did not adjust Boles' CUI score and did not offer Boles a place in the 1996 entering class. After discovering that the Law School had admitted to the 1996 class an African American student with credentials identical to his, Boles became aware of the Law School's affirmative action policy. Boles filed an action in the United States District Court for the Western District of Davis alleging that the Law School's race-conscious admissions policy violated the Fourteenth Amendment of the United States Constitution. Boles contended that any preferential treatment given to a group based on race violates the Equal Protection Clause and is unconstitutional. The Law School argued that Boles' equal protection challenge failed because the admissions policy met the required constitutional standard of strict scrutiny. The Law School maintained that two compelling government interests existed to justify the program: 1) attaining the benefits of a diverse student body; and 2) remedying the present effects of past discrimination against minorities. The Law School also argued that its admission program was narrowly tailored to achieve those interests.

The district court upheld the admissions program, finding it consistent with the Equal Protection Clause. The United States Court of Appeals for the Sixteenth Circuit held that the admissions program violated the Equal Protection Clause and reversed the district court opinion. The United States Supreme Court granted certiorari to Central University School of Law and set oral arguments for November 12, 1998. Today the Court will consider the following questions:

(1) WHETHER A COMPELLING STATE INTEREST EXISTS TO JUSTIFY, UNDER THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION, THE USE OF RACE AS A FACTOR IN CENTRAL UNIVERSITY SCHOOL OF LAW'S ADMISSIONS POLICY; AND

(2) WHETHER THE ADMISSIONS PROGRAM AT CENTRAL UNIVERSITY SCHOOL OF LAW IS NARROWLY TAILORED TO ACCOMPLISH THAT GOAL.

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**RESULTS OF THE  
1998 JOHN W. DAVIS COMPETITION**

**FINALISTS**

David Brown	Duncan Pitchford
Adrienne Maddox	Matt Smith

**SEMIFINALISTS**

David Dardis	Brad Giles
Jacob Doughty	Heather Travis

**QUARTERFINALISTS**

Rob Bailey	Amy Devin
Stephen Bell	Jeannie Hanna
Gary Bruce	Devon Munro
Amy Burden	Molly Shuttleworth

**BEST BRIEF NOMINEES**

Rob Bailey	Stephen Bell	Jacob Doughty
Brad Giles	Duncan Pitchford	

The members of the Moot Court Executive Board would like to extend their appreciation to all students 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.

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**JUDGE RHESA H. BARKSDALE**

Rhesa Hawkins Barksdale was born in Jackson, Mississippi, on August 8, 1944, the fourth of six sons of the late John Woodson and Mary Bryan Saunders Barksdale. In 1966, he graduated 92nd in a class of 579 from the United States Military Academy, where he was on the Dean's List, Head Football Manager, and in the Chapel Choir, and participated in Brigade Boxing and the Student Conference on United States Affairs.

He served in the United States Army from 1966 to 1970, with final rank of Captain. His senior year at West Point, he volunteered for service in Vietnam; and, after completing Airborne and Ranger Schools and training at Fort Hood, Texas, with the First Squadron, First Armored Cavalry Regiment, he served in Vietnam in 1967-68 as a platoon leader and later executive officer with Troop C of that Squadron, and as an assistant Division operations officer with the Americal Division. Decorations include the Silver Star, Bronze Stars for Valor and for Meritorious Service, Purple Heart, and Vietnamese Cross of Gallantry with Silver Star. After graduating in 1969 from the Armored Officers' Advanced Course at Fort Knox, Kentucky, he served in 1969-1970 as an Assistant Professor of Military Science at the University of Akron, where he attended law school at night.

In 1972, he graduated first in his class from the University of Mississippi School of Law, and was selected its outstanding graduate. A member of the Editorial Board of the Mississippi Law Journal, he was selected as the Phi Delta Phi national graduate of the year and to Outstanding Young Men in America and Who's Who in American Colleges and Universities.

Following service in 1972-73 as a Law Clerk to Justice Byron R. White at the Supreme Court of the United States, he practiced law for 17 years with Butler, Snow, O'Mara, Stevens & Cannada in Jackson, Mississippi, engaged primarily in commercial litigation. He served in 1976 as an instructor in Constitutional Law at Mississippi College School of Law, and in 1975-76 in the University of Mississippi Paralegal Course. In 1982-85 he served as Chairman of the Mississippi Vietnam Veterans Leadership Program. He was a Presidential Elector for George Bush and a delegate to the Republican National, State and County Conventions in 1988; and served on the Executive Committee for the Mississippi Republican Party.

Appointed by President George Bush to the United States Court of Appeals for the Fifth Circuit on March 12, 1990, he began serving on April 1 of that year. He is a member of the Episcopal Church and the Charles Clark Chapter American Inn of Court.

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## JUDGE WILLIAM C. BRYSON

After graduating *magna cum laude* from Harvard College in 1969, Judge Bryson earned his J.D. from the University of Texas School of Law in 1973.

Prior to his appointment to the United States Court of Appeals in 1994, Judge Bryson served as a Law Clerk to Judge Henry J. Friendly, United States Circuit Judge, and Justice Thurgood Marshall of the United States Supreme Court.

From 1975-78, Judge Bryson practiced law with Miller, Cassidy, Larroca & Lewin in Washington, D.C. He served as Assistant to the Solicitor General, U.S. Department of Justice, from 1978-79 and as Chief of the Appellate Section of the Criminal Division from 1979-82. From 1982-86, Judge Bryson served as Special Counsel to the Organized Crime and Racketeering Section and as Deputy Solicitor General from 1986-94. In 1994, he served as Acting Associate Attorney General for the U.S. Department of Justice.

In 1994, Judge Bryson was appointed by President Clinton to the United States Court of Appeals for the Federal Circuit and began service on October 7 of that year.

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## JUDGE DIANA GRIBBON MOTZ

Diana Gribbon Motz graduated from Vassar College and the University of Virginia Law School, where she served on the Editorial Board of the Law Review and on the Moot Court Board.

Prior to her appointment to the Court of Appeals in 1994 by President Clinton, she served for three years as an Associate Judge of Maryland's intermediate appellate court, the Maryland Court of Special Appeals.

From 1985 to 1991, Judge Motz was a litigation partner in a large Baltimore law firm. Before that, she worked in the public and private sector, serving as Chief of Litigation in the Maryland Attorney General's Office from 1981 to 1985.

In 1988, Chief Justice Rehnquist appointed Judge Motz to the fifteen member, congressionally created, Federal Courts Study Committee. In 1996, she was appointed to the Judicial Conference Advisory Committee on Appellate Rules. Judge Motz is a member of various bar associations and the American Law Institute. She serves on several community boards, including the Boards of Trustees of the Johns Hopkins University and the Johns Hopkins Hospital.

A number of organizations have honored Judge Motz. Most recently, the Girl Scouts of Central Maryland awarded her its Distinguished Woman award and the Woman's Bar Association of Maryland presented her with the Rita C. Davidson award.

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