
JOHN W. DAVIS, 1892, 1895L

The annual Moot Court Competition at Washington and Lee is named in honor of John W. Davis, 1892, 1895L. Renowned for both his advocacy skills and his public service, Davis was considered the finest Supreme Court attorney of his day. Davis argued before the Court 139 times before his death in 1955, at the time a 20th century record.

Davis was born in 1873 in West Virginia, and attended Washington and Lee for both his undergraduate and law degrees. Davis taught at Washington and Lee for three years after his graduation, but chose private practice over a permanent position at W&L. Davis practiced law in Clarksburg, West Virginia from 1897-1913, serving as a U.S. Congressman during 1911-13. From 1913-1918, he served as United States Solicitor General, after which he served as ambassador to the Court of St. James until 1921. Upon returning from London, Davis became the head of the prominent New York firm of Davis, Polk and Wardwell. He rejected an appointment to the Supreme Court in 1922, choosing instead to continue to practice before it. He unsuccessfully ran for President as the Democratic nominee in 1924, losing to Calvin Coolidge. Davis then left the political arena, and spent the remainder of his life devoted to private practice.

Davis' advocacy record presents a complex and seemingly self-contradictory history. He is best known for successfully defending the steel industry against seizure during the Korean War in *Youngstown Sheet and Tube Company v. Sawyer* and for unsuccessfully defending segregation of public schools in *Brown v. Board of Education*. However, Davis also spoke in defense of religious liberty when Al Smith was attacked during the 1928 presidential campaign because of his Catholicism, and defended, *pro bono*, a Yale divinity professor in the landmark case for conscientious objection, *United States v. McIntosh*.

Students of appellate advocacy know well *The Argument of An Appeal*, an address given by Davis to the Association of the Bar of the City of New York in 1940. Davis sets forth his "ten commandments" of oral argument, which, if followed, lead to success for the attorney and client. His admonitions, from "know your record from cover to cover" to "read sparingly and only from necessity" guide the participants today in the competition named in his honor.

FINALS

THE TWENTIETH ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



MOOT COURT ROOM

SYDNEY LEWIS HALL

NOVEMBER 11, 1999

4:00 P.M.

**THE TWENTIETH ANNUAL JOHN W. DAVIS
MOOT COURT COMPETITION**

“I may be crank on the subject of Moot Court; I have no doubt that 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 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 at the Washington and Lee University School of Law. All second and third year students, except members of the Washington and Lee Moot Court Teams and Executive 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 participants with both a competitive and a learning experience. The writing skills of the participants are also evaluated with the submission of a brief on the merits of the issues dealt with in oral argument.

Students wishing to represent Washington and Lee in the National Moot Court Competitions, J. Braxton Craven, Jr. Memorial Competition or the Vanderbilt University First Amendment 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 the petitioner or respondent in a mock case before the United States Supreme Court. 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 the participant'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 submitted by all participants. Three faculty members then judge the semifinal rounds. This year the faculty bench included law professors L. LaRue, B. Sullivan and P. Metzger. The Best Brief Nominees are selected by the Moot Court Executive Board, with the Best Brief Award selected by faculty members. Professors Q. Hopkins, R. Krotoszynski and D. Brown selected the Best Brief Award from among the Best Brief Nominees.

The 1999 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 PETITIONERS

David DuBose Meredith Guthrie

COUNSEL FOR THE RESPONDENT

Matthew Engle Anne Guillory

THE COURT

THE HONORABLE RICHARD S. ARNOLD
(Judge of the United States Court of Appeals, Eighth Circuit)

THE HONORABLE DOLORES K. SLOVITER
(Judge of the United States Court of Appeals, Third Circuit)

THE HONORABLE H. EMORY WIDENER, JR., '53L
(Judge of the United States Court of Appeals, Fourth Circuit)

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IN THE SUPREME COURT OF THE UNITED STATES

John C. Young,
Andrew D. Smith,
George Sherman,
Douglas Jackson,
and Davis Military Institute,
PETITIONERS

v.

Susan E. Harlan,
RESPONDENT

Competitors in the 1999 John W. Davis Moot Court Competition argue based on the following fact pattern:

Davis Military Institute recently admitted female students to the previously all-male institution. As with DMI's integration of African-American students during the 1960s, the appearance of women cadets has created friction among the student body, the Administration and alumni. DMI officials have taken several steps to smooth the integration process, including the establishment of a Sexual Assault Policy, administered by the venerable all-student Honor Council at the school.

Respondent Susan E. Harlan matriculated in the first class of cadets to contain female students in the fall of 1996. At the end of her freshman year, Harlan, who attended DMI on a full academic scholarship, was ranked first in her class. After such a promising first year, Harlan alleges that on the evening of November 17, 1997 she fell victim to male hostility toward female cadets at DMI. According to her allegations, a male DMI student, subsequently identified as Petitioner John C. Young brutally attacked her in the basement of the female dormitory at DMI. During the attack, another male DMI student, later identified as Petitioner Andrew D. Smith, allegedly looked on while brandishing a knife to block Harlan's only path of escape. Harlan also alleges that during the attack Petitioner Young made derogatory statements about women and the presence of women cadets at DMI. Harlan sought treatment for her injuries at the DMI infirmary, where she was told by DMI officials not to report the incident to the police or to seek further treatment at Davis General Hospital.

Harlan initiated a complaint under the DMI Sexual Assault Policy the following spring after learning the identities of Petitioners Young and Smith. The Honor Council absolved Smith of any responsibility, but found Young guilty of violating the Sexual Assault Policy and ordered his expulsion from DMI. Young appealed the decision to the Vice-Commandant of DMI, Petitioner George Sherman, who upheld the decision without comment. However, during the following summer, the Commandant of DMI, Petitioner Douglas Jackson, ordered the matter reopened. The Vice-Commandant himself conducted a new hearing, where Harlan was denied counsel, access to previous testimony or the ability to cross-examine Young's witnesses. The Vice-Commandant reversed his previous decision, and Young was allowed to graduate from DMI.

Harlan brought a civil action against Petitioners in the United States District Court for the Western District of Davis, alleging various state law violations as well as violations of the Violence Against Women Act ("VAWA"). Congress had recently passed the VAWA as a method for affording women who are victims of crimes motivated by gender a civil remedy in federal courts. Congress expressly relied on its powers under the Commerce Clause of the United States Constitution and Section Five of the Fourteenth Amendment to justify the enactment of the statute.

The District Court dismissed the state law claims on various grounds before examining the VAWA claim. Petitioners alleged the VAWA exceeded congressional authority for the enactment of statutes under both the Commerce Clause and Section Five. The District Court agreed, found the statute unconstitutional, and dismissed Harlan's claims. On appeal, the United States Court of Appeals for the Sixteenth Circuit reversed. It found the enactment of the VAWA to lie squarely within congressional power under the Constitution.

The United States Supreme Court granted certiorari to the Petitioners on the following questions:

- (1) Whether the Violence Against Women Act, 42 U.S.C. § 13981, constitutes a valid legislative enactment under the Commerce Clause of the United States Constitution;
 - (2) Whether the Violence Against Women Act, 42 U.S.C. § 13981, constitutes a valid exercise of congressional powers under Section 5 of the Fourteenth Amendment to the United States Constitution.
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**RESULTS OF THE
1999 JOHN W. DAVIS
MOOT COURT COMPETITION**

FINALISTS

David DuBose
Matthew Engle
Anne Guillory
Meredith Guthrie

SEMIFINALISTS

Sabrina Ciccarello
Stephanie Daly
Malloy Evans
Scott Sina

QUARTERFINALISTS

Jonathan Gould	Howard Manheimer
Adam Neil	Jill Sinatra
Ryan Snow	Peter Timler
Camille Turner	Grant Waterkotte

BEST BRIEF NOMINEES

Kent Basson	Malloy Evans	Anne Guillory
Ryan Snow	Camille Turner	

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 RICHARD S. ARNOLD

Born, Texarkana, Texas, March 26, 1936. Graduate Phillips Exter Academy, 1953. Classical diploma, Cum Laude Society. B.A. Yale, summa cum laude, 1957, with majors in Latin and Greek. Phi Beta Kappa and President of the Yale Debating Association. LL. B. Harvard, magna cum laude, 1960. Case Editor, *Harvard Law Review*; Fay Diploma. Member of the Arkansas (since 1960) and District of Columbia (since 1961) bars. Law Clerk to Mr. Justice William J. Brennan, Jr., Supreme Court of the United States, 1960-61. Associate, Covington & Burling, Washington D.C., 1961-64. Partner, Arnold & Arnold, Texarkana, Arkansas, 1964-74. Delegate, Democratic National Convention, 1968. Delegate, Seventh Arkansas Constitutional Convention, 1969-70. Member, Arkansas Democratic State Committee, 1971-74. Member, Board of Trustees of the University of Arkansas, 1973-74. Legislative Assistant to Senator Dale Bumpers of Arkansas, 1975-78. Overseers' Committee to Visit the Harvard Law School, 1973-79. Visiting Committee, University of Chicago Law School, 1983-86, 1994-97.

United States District Judge for the Eastern and Western Districts of Arkansas, 1979-80. United States Circuit Judge for the Eighth Circuit, since 1980; Chief Judge, United States Court of Appeal for the Eighth Circuit, 1992-98. Member of the Council, American Law Institute, since 1986. Fellow, American Bar Foundation, since 1986. Author of articles in various law reviews, including *Harvard*, *Yale*, *Virginia* and *Arkansas*. By appointment of the Chief Justice, Chairman, Committee on the Budget, Judicial Conference of the United States, 1987-1996, and member, Executive Committee of the Judicial Conference of the United States, 1992-98. LL.D., University of Arkansas at Fayetteville, 1992; University of Richmond, 1998; University of Arkansas at Little Rock, 1999. Member, International Council of Arbitration for Sport, since 1994. Received the 1996 Environmental Law Institute Award. Madison Lecturer, New York University Law School, 1996. Received the Edward J. Devitt Distinguished Service to Justice Award, 1999. Received the Meador-Rosenberg Award from the Standing Committee on Federal Judicial Improvements of the American Bar Association, 1999.

JUDGE DOLORES K. SLOVITER

Judge Sloviter was appointed to the United States Court of Appeals for the Third Circuit on June 21, 1979, the first woman ever appointed to that court; elevated to Chief Judge on February 1, 1991 and served in that position for the statutory seven year period, and continues to serve as an active circuit judge. She is a graduate of Temple University, A.B., 1953, with distinction in economics, and has been elected to Phi Beta Kappa. She graduated from the University of Pennsylvania School of Law, LL.B. 1956, magna cum laude, where she was Note Editor of the Law Review and where she was elected to Order of the Coif. She practiced law in Philadelphia for 16 years and in 1972 joined the faculty of law at Temple University where, as a Professor of Law until 1979, she taught Antitrust Law, Civil Procedure and Law and the Elderly.

She holds the honorary degree of Doctor of Laws from Widener University School of Law, the University of Richmond, and The Dickinson School of Law, and the honorary degree of Doctor of Humane Letters from Temple University. She was the recipient of the Philadelphia Bar Association's Sandra Day O'Connor Award in 1997 and was awarded the James Wilson Award for Service to the Profession by the University of Pennsylvania Law School Alumni Society in April 1996 and the Certificate of Honor Award by Temple University in April 1996. She was the first federal judge to receive the Pennsylvania Bar Association's Judicial Award, presented in 1994.

JUDGE H. EMORY WIDENER, JR., '53 L

Judge Widener was appointed to the United States Court of Appeals for the Fourth Circuit on September 27, 1972, while serving as the Chief Judge for the Western District of Virginia. He is a graduate of the United States Naval Academy, B.S. 1944, after which he served with distinction in World War II, the Korean Conflict and the Middle East. He earned numerous military awards and decorations, including the Bronze Star with Combat "V" Device. He graduated from The Washington and Lee University School of Law in 1953 LL. B., where he served on the Law Review and was elected to Order of the Coif. He practiced law in Abingdon, Virginia, for 16 years prior to being appointed to the Western District of Virginia. While in private practice, Judge Widener served as the United States Commissioner for the Western District of Virginia from 1963-66. After being appointed to the Fourth Circuit, he also served as a professor at the University of Texas Law School during the summer of 1974.

Judge Widener holds honorary degrees from Washington and Lee University, the University of Texas Law School, and the College of William and Mary. He has authored many publications, and has served on numerous commissions regarding the status of the law in Virginia. He is the longest-serving active circuit judge in the Fourth Circuit today.
