
FINALS

THE TWENTY- SECOND ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



MOOT COURT ROOM

SYDNEY LEWIS HALL

NOVEMBER 1, 2001

4:30 P.M.

THE TWENTY-SECOND 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 Washington and Lee University School of Law hosts the John W. Davis Moot Court Competition every fall. Law students and faculty developed the competition to provide participating students the opportunity to practice their oral advocacy and brief writing skills. In recent years, Washington and Lee University School of Law alumni and brothers Philip and Benjamin Gardner of Martinsville, Virginia have enabled the program to continue through their kind contributions. At the banquet for participants, professors and judges following the final round, the Gardner brothers will present the Gardner Moot Court Awards to those students who excel in the competition.

All second- and third-year students, except members of the Moot Court Executive Board, are invited to participate. Each participant competes as Respondent or Petitioner's counsel in a mock case before the United States Supreme Court. Before a participant presents his/her first oral argument to the Court, the participant first submits a written brief. In the preliminary rounds and thereafter, a participant advances in the competition based on the combined score for his/her brief and his/her score for that round's oral argument.

This year, Anne Musgrove and Joseph H. Carpenter, IV, the 2001 Davis Moot Court Administrators, supervised the competition. In addition,

they served as judges during the preliminary and quarterfinal rounds with quarterfinalists from the 2000 Davis Competition.

Members of the Moot Court Executive Board judged all briefs submitted by the participants for content, grammar and blue booking. Three faculty members judged oral arguments in the semifinals. This year's faculty bench consisted of Professor Roger D. Groot, Visiting Professor Richard H. Seamon, and Professor Joan M. Shaughnessy. Members of the Moot Court Executive Board selected those briefs with the five highest scores as Best Brief nominees. Assistant Professor C. Quince Hopkins, Associate Professor Ronald J. Krotoszynski, and Professor Ann M. Massie selected the Best Brief winner from among the Best Brief nominees.

Those students who excel in the competition may be selected to represent Washington and Lee at different extramural competitions such as the J. Braxton Craven, Jr. Memorial Competition or the ABA National Appellate Advocacy Competition.

The 2001 John W. Davis Moot Court Competition culminates today with the announcement of the Best Oral Advocate and winner of the Best Brief Award following the presentation of oral arguments.

THE PARTICIPANTS

Counsel for the Petitioner
Sondra Binotto Frank Ulmer

Counsel for the Respondent
Lindsay Roberts Damien DeLaney

THE COURT

THE HONORABLE ROGER L. GREGORY
(Judge of the United States Court of Appeals, Fourth Circuit)

THE HONORABLE STEPHANIE K. SEYMOUR
(Judge of the United States Court of Appeals, Tenth Circuit)

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

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Chairman

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Professor Joan M. Shaughnessy,
Moot Court Executive Board Advisor

IN THE SUPREME COURT OF THE UNITED STATES

State of Davis,
PETITIONER

v.

Brian Summo,
RESPONDENT

Competitors in the 2001 John W. Davis Moot Court Competition argue based on the following fact pattern:

Brian Summo lives in the city of Competition in the state of Davis. Davis has a very large Native American population that has been repeatedly victimized by racially motivated attacks. The Davis legislature has responded to this situation by creating the criminal offense of "intimidation." "Intimidation" is the committing of harassment, trespass, or a violent offense against an individual on the basis of the victim's race, color, religion, national origin, or sexual orientation. "Intimidation" carries a punishment of two to four years imprisonment. "Intimidation" against a Native American carries a punishment of six years imprisonment.

Summo's wife worked in a casino on a reservation next to Competition. She became addicted to gambling and lost the couple's life savings and house playing cards one night at the casino. She then committed suicide. Brian Summo was forced to leave his house and live in a local mission. The following week, he went to pawn a toolbox and on seeing the Native American cashier, Summo became very upset and stabbed the cashier several times with a screwdriver while shouting, "You killed my wife you Indian scum!" The cashier was in a coma for a week due to blood loss.

At trial, Summo pleaded guilty to aggravated assault and not guilty to intimidation against a Native American. Summo challenged the latter charge on the basis that the statute violates the Equal Protection Clause. During part of the trial, Summo's attorney fell asleep and was admonished by the trial judge. The attorney, Ms. Shreve, was taking pain medication that made her drowsy. The trial court found Summo guilty on both charges. He appealed the intimidation charge on the grounds that the statute is unconstitutional and that he received the ineffective assistance of counsel because his attorney fell asleep.

The State Circuit Court of Appeals affirmed the conviction and denial of a new trial, holding that the statute was constitutional and that

Summo had not demonstrated prejudice according to the second prong of *Strickland v. Washington*, 466 U.S. 668 (1984). The Supreme Court of Davis reversed. A majority of the justices concluded that a sleeping attorney is per se prejudicial and that Summo had demonstrated the ineffective assistance of counsel. The concurrence felt that there should not be a per se exception to the prejudice prong for a sleeping attorney. The concurrence did, however, find that the Davis statute violated the Equal Protection Clause.

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

(1) Whether a statute that enhances the penalty for racially motivated unlawful conduct, when that conduct is directed toward a particular race, violates the Equal Protection Clause of the Fourteenth Amendment.

(2) Whether a defendant whose attorney is sleeping during trial must demonstrate prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984).

RESULTS OF THE 2001 JOHN W. DAVIS MOOT COURT COMPETITION

FINALISTS

Sondra Binotto

Damien DeLaney

Lindsay Roberts

Frank Ulmer

SEMIFINALISTS

Dean Barclay

John Eisinger

Lee Goebes

Tyler Stone

QUARTERFINALISTS

Emily Belcher

Meredith Galto

Austin Jowers

Stuart McCluer

Chip Muir

Randy Price

Brian Samuels

Sean Storrud

BEST BRIEF NOMINEES

Dean Barclay

John Eisinger

Meredith Galto

Austin Jowers

Frank Ulmer

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.

THE HONORABLE ROGER L. GREGORY

Judge Gregory was appointed to the United States Court of Appeals for the Fourth Circuit by a recess appointment of President Clinton in 2000 and re-nominated by President Bush and confirmed by the Senate in 2001. He is the first African-American to serve on the Fourth Circuit Court of Appeals.

Judge Gregory graduated *summa cum laude* from Virginia State University in 1975 and received his juris doctor degree from the University of Michigan Law School in 1978. Prior to his federal appointment, Judge Gregory enjoyed a distinguished private practice. He was a litigation associate at Hunton & Williams, and later formed the law firm of Wilder & Gregory, handling criminal and civil matters in state and federal court.

Judge Gregory has served in leadership positions of numerous civic and legal organizations, including the presidency of the Old Dominion Bar Association, the Board of Directors of the Richmond Bar Association, and the Board of Visitors of Virginia State University. He also served on the Board of Directors of Richfood Holdings, Inc. He is currently First Vice-Chair of the Christian Children's Fund.

THE HONORABLE STEPHANIE K. SEYMOUR

Judge Seymour was appointed to the United States Court of Appeals for the Tenth Circuit by President Carter in 1979. From 1994 to 2000, she served as Chief Judge of the Tenth Circuit. Judge Seymour graduated *summa cum laude* from Smith College in 1962, where she was also elected to Phi Beta Kappa. She received her juris doctor degree from Harvard in 1965. After graduation, she enjoyed a distinguished private practice, including positions with the Boston firm of Goodwin, Proctor & Hoar, the Tulsa firm of Lupardus, Holliman and Huffman, and the law firm of Baker & Botts in Houston. Immediately prior to her federal appointment, she was a partner with the Tulsa firm of Doerner, Stuart, Saunders, Daniel & Anderson.

In addition to her duties on the bench, Judge Seymour has been and is active in several judicial and civic organizations. She served as a member of the Judicial Conference of the United States (1994-2000), and was Chair of the Conference's Committee on Defender Services (1987-1990). She has been active in several judicial organizations involving Native American affairs, including the Joint Federal-Tribal Relations Committee for the Ninth and Tenth Circuits (1993-1994), and the Oklahoma State-Federal-Tribal Judicial Council (1993-present). Her civic involvement includes work with the Tulsa Human Rights Commission and the Tulsa Task Force for Battered Women. Judge Seymour has also been a guest lecturer at the University of Tulsa College of Law.

THE HONORABLE H. EMORY WIDENER, JR.

Judge Widener was appointed to the United States Court of Appeals for the Fourth Circuit by President Nixon in 1972, following a tenure as Chief Judge of the U.S. District Court for the Western District of Virginia. Prior to this federal appointment, he was a partner with the law firm of Widener and Widener.

Judge Widener graduated from the U.S. Naval Academy in 1944, and served in the Navy in both World War II and the Korean War. His military decorations include a Bronze Star. He received his law degree from Washington and Lee in 1953, having been selected for Law Review and the Order of the Coif. He has been a visiting professor at the law schools of Washington and Lee and William and Mary, and has made numerous invaluable contributions to our moot court program.

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.

Quarterfinalists

Emily Belcher
Meredith Galto
Austin Jowers
Stuart McCluer
Lawrence Muir
Randy Price
Brian Samuels
Sean Storrud

Semifinalists

Dean Barclay
John Eisinger
Lee Goebes
Tyler Stone

Finalists:

Sondra Binotto
Damien Delaney
Lindsay Roberts
Frank Ulmer

Best Brief Nominees

Meredith Galto
Dean Barclay
John Eisinger

Best Brief Runner-Up

Austin Jowers

Best Brief

Frank Ulmer