
FINALS

THE TWENTY-THIRD ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



MOOT COURT ROOM

SYDNEY LEWIS HALL

OCTOBER 24, 2002

4:00 P.M.

THE TWENTY-THIRD 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 & Lee 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 oral argument round. As the competition continues, the brief score counts less and the argument score counts more. During this final round, competitors will be judged only by their oral argument score.

This year, Sondra Binotto and Lindsay Roberts, the 2002 Davis Moot Court Administrators, created and wrote the problem and supervised the competition. In addition, both served as judges for the preliminary and quarterfinal rounds with last year's Quarterfinalists, Damien Delaney, Meredith Galto, and Austin Jowers, and Semifinalist, Lee Goebes. Sondra and Lindsay as Davis Administrators also judged all of the participants' briefs for substance and content, and members of the Moot Court Board judged blue-booking and grammar. Faculty members judged the semifinal rounds. The faculty bench consisted of Joan Shaughnessy, Mark Drumbl, and Scott Sundby. The Davis Administrators also selected the six top scoring briefs as best brief nominees. Four faculty members judged and nominated the best brief. The faculty brief judges were Professors Ronald Krotoszynski, Ann Massie, Bradley Wendel, and Brian Murchison.

Those students who excel in the competition may be selected to represent Washington and Lee at different extramural competitions across the country this coming spring.

The Moot Court Board would like to thank Professor Scott Sundby for his help in choosing this year's topic, Professors Joan Shaughnessy, Roger Groot, and Scott Sundby for all of their assistance with this year's competition, and they wish to especially thank Arthur Perry for his gracious assistance in videotaping the oral argument rounds this fall.

The 2002 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 two oral arguments.

THE PARTICIPANTS

Counsel for the Petitioner
Michael Adamson David Edelstein

Counsel for the Respondent
Kevin Georgerian Amir Sadeghy

THE COURT

THE HONORABLE RUDOLPH BUMGARDNER, III, '66L
(Judge of the Virginia State Court of Appeals)

THE HONORABLE WILLIAM P. JOHNSON, '85L
(Judge of the United States District Court for the District of New Mexico)

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

WASHINGTON AND LEE MOOT COURT EXECUTIVE BOARD

Brian P. Hudak Krista L. Willim
Chairman Executive Officer

Sondra L. Binotto Lindsey M. Roberts
Davis Moot Court Davis Moot Court
Co-Administrator Co-Administrator

Courtney C. Atkinson Adam F. Packer
Mock Trial Co-Administrator Mock Trial Co-Administrator

Brian E. Crain Ebony L. Miller
Client Counseling/Mediation Negotiations/Mediation
Competitions Administrator Competitions Administrator

Stuart H. McCluer
External Moot Court
Competitions Administrator

Professor Joan M. Shaughnessy,
Moot Court Executive Board Advisor

IN THE SUPREME COURT OF THE UNITED STATES

Charles Dorsey,
PETITIONER

State of Davis
RESPONDENT

Competitors in the 2002 John W. Davis Moot Court Competition argue based on the following fact pattern:

Charles Dorsey lives in Lee County, State of Davis. In the past decade, assault crimes in the State of Davis have increased dramatically. In 1998, the two Davis International Airports reported an increase in assault crimes involving non-conventional objects and items that airport security typically did not confiscate because of their innocuous character. Items that were being used in the crimes included Swiss Army Knives, ice-picks, nail files, and wine corkscrew openers, to name a few. The Davis Legislature responded to this situation by enacting Davis Code § 11.6, which punishes Davis citizens for possession of an object capable of inflicting harm or injury to a person that is being carried in their airport luggage, carry-on, or on their person. The statute did not require a showing of intent by the person carrying the object to commit any harm, so the state made the enactment of the statute widely publicized on local and even national news and in local and major newspapers, and encouraged Davis citizens to rely on their 'good common sense' when entering Davis airports.

Charles Dorsey was a 29 year-old landscaper by trade when he entered the Davis airport in 1999 and security stopped him for possession of a Swiss army knife in his back pocket. Security found the object serious enough to call the cops, and the prosecution found the object serious enough to seek a conviction. At trial, the judge, based on the character and nature of the object, sentenced Mr. Dorsey to nine months in the Davis State Penitentiary.

Davis Code § 11.6 gives the judge discretion to punish this misdemeanor offense with either a fine or a jail sentence. If a person is only fined for a violation, upon a second violation of the statute he/she will only receive a misdemeanor fine or sentence. However, if a person is sentenced to jail time for a misdemeanor violation, another violation of the statute will mandate a felony charge and a sentence of between 2-6 years in jail.

After serving his sentence, Mr. Dorsey again entered the Davis airport and triggered the airport security alarm on November 6, 2000. He possessed a pencil compass in his back pocket. He was prosecuted for possession of the item, and the judge was forced to sentence him to a felony pursuant to the statute.

In Davis, recidivist felons are punished under Davis Code §12.7 when they commit a third felony after previously committing two 'serious' felonies. Unfortunately, over 15 years ago Mr. Dorsey had been convicted for selling heroin to a minor and first-degree burglary, both labeled 'serious' felonies in the state of Davis. The trial judge was forced to sentence Mr. Dorsey not for a violation of §11.6 (under which the judge admitted he would have given only the minimal sentence), but under the Davis recidivist statute, § 12.7, which punishes a repeat offender with a life sentence in prison and no possibility of parole for twenty years.

Mr. Dorsey appealed his conviction on two constitutional grounds: that his § 11.6 conviction violated his Due Process rights because the statute lacked any element of intent and was not a public welfare offense to justify the absence of *mens rea*, and that his life sentence violated the Eighth Amendment prohibition against cruel and unusual punishment. The Davis Court of Appeals overturned Mr. Dorsey's conviction by declaring that a minimal level of *mens rea* was required before a person could be convicted under Davis Code § 11.6. The state of Davis appealed the verdict, and the Supreme Court of Davis reversed the Court of Appeals decision, interpreting Davis Code § 11.6 as a public welfare statute that could exclude any showing of intent as an element of the crime. The Court then addressed Mr. Dorsey's 8th Amendment claim and declared that the punishment was not cruel and unusual as applied to Mr. Dorsey.

Mr. Dorsey appealed to the United States Supreme Court, and certiorari was granted to the Petitioner on the following questions:

- (1) Whether Davis Code § 11.6 violates the Fourteenth Amendment Due Process Clause of the United States Constitution because it does not contain a minimal level of *mens rea*;
- (2) Whether the Eighth Amendment of the United States Constitution is violated as applied to Mr. Dorsey.

RESULTS OF THE 2002 JOHN W. DAVIS MOOT COURT COMPETITION

FINALISTS

Michael Adamson

David Edelstein

Kevin Georgerian

Amir Sadeghy

SEMIFINALISTS

Ross Barton

Emily Cartwright

Kori Hubert

Evan Sauda

QUARTERFINALISTS

Dan Atkinson

Zachary Desmond

John Eisinger

Angela Hepler

Brianne Hoffler

David Jordan

Pauline Pauley

Jameson Whitney

Thomas Wilson

Tyler Wood

BEST BRIEF NOMINEES

Michael Adamson

Ross Barton

Kori Hubert

David Jordan

Pauline Pauley

Clark Williams

The members of the Moot Court Executive Board would like to extend their appreciation to all student competitors and faculty members who participated in this year's competition.

THE HONORABLE RUDOLPH BUMGARDNER, III

Judge Bumgardner was appointed to the Virginia Court of Appeals in 1997. Prior to this he served on the Twenty-Fifth Judicial Circuit of Virginia. For the last 14 years of his tenure on the bench, he served as Chief Judge. Prior to his 1978 appointment to the circuit court he was a partner with the law firm of Bumgardner, Bumgardner, Miller & Rhea.

Judge Bumgardner graduated from Davidson College in 1963 with an A.B., *cum laude*, in History. He was also elected Phi Beta Kappa. He received his J.D. from Washington and Lee in 1966, having served as the editor-in-chief of the law review and president of Phi Alpha Delta. He also was selected to the Order of the Coif and Omicron Delta Kappa. Judge Bumgardner has served active and reserve roles in the U.S. Army and the Virginia National Guard. Additionally, he has served on numerous councils and committees involving his duties as a judge and as a member of the Virginia legal community.

Judge Bumgardner is married to Dorothy R. Holden and has two children, both of which also graduated from W&L School of Law (Rudolph IV in 1993 and Anne B. Wood in 1997).

THE HONORABLE WILLIAM P. JOHNSON

Judge Johnson was appointed to the United States District Court for the District of New Mexico on December 28, 2001, by President George W. Bush. Prior to his federal appointment he served six years as a state district judge for the Fifth Judicial District of New Mexico. He formerly practiced law at the law firm of Hinkle, Cox, Eaton, Coffield and Hensley in Roswell, New Mexico, and the law firm of Bracewell and Patterson in Houston, Texas.

Judge Johnson was born and raised in Roanoke, Virginia. He graduated from Virginia Military Institute in 1981 with a B.A. in Economics. After completing the Army Officers' Basic Course, he received his J.D. from Washington and Lee in 1985. During his second year at Washington and Lee, Judge Johnson won the John W. Davis Moot Court competition.

In addition to his professional responsibilities, Judge Johnson remained an active member of the United States Army Reserve until 1990. He has also been actively involved in numerous non-profit organizations that seek to help at risk youth. Additionally, he is involved in various councils and committees relating to his work in the legal community.

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.