
FINALS

THE EIGHTEENTH ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



Lee Chapel

November 13, 1997

4:00 p.m.

**THE EIGHTEENTH 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 participants with both a competitive and 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, Rabbi Seymour Siegel Memorial Moot Court Competition, Jessup International Moot Court Competition, William B. Spong, Jr. Moot Court Competition or the J. Braxton Cravens, Jr. Memorial 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 L. Fitzgerald, S. Gilles and J. Minear. The Best Brief Nominees are selected by the Moot Court Executive Board, with the Best Brief Award selected by faculty members. Professors S. Gilles, R. Groot and A. Scales selected the Best Brief Award from among the Best Brief Nominees.

The 1997 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

Jeff Rhodes

Gary Seligman

Counsel for the Respondent

Stacey Black

Kelly Horan

THE COURT

THE HONORABLE THOMAS A. CLARK

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

THE HONORABLE HARRY W. WELLFORD

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

THE HONORABLE DIANE P. WOOD

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

WASHINGTON AND LEE MOOT COURT EXECUTIVE BOARD

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Katie Amelotte
Negotiations/Client Counseling

Jennifer Stringer
Regional Negotiation

Roger Groot, Davis Moot Court Advisor

IN THE SUPREME COURT OF THE UNITED STATES

Franklin D. Raines,
Office of Management and Budget
PETITIONER,
v.
Austin Reed,
RESPONDENT.

The 1997 John W. Davis Moot Court Competition involves the following factual scenario:

As the end of the 20th Century approaches, the United States government finds itself confronted with a federal budget that continues to grow annually. But more importantly, this growing federal budget is accompanied by an ever-increasing federal budget deficit. In recent times, the President and Congress have sought to constrain government spending. Since the outset of the 19th Century, American presidents have struggled to influence congressional spending habits and many recent presidents have lobbied Congress for the authority to veto selected provisions of appropriations bills presented for their signature. In early 1996, Congress passed the Line Item Veto Act and provided presidents with the power they have long sought.

The Line Item Veto Act allows the President to cancel certain items in full from appropriations bills. However, in order to wield the cancellation power provided, the President must comply with the procedures Congress has specified in the Act. Most importantly, when presented with an appropriations bill from Congress, the President must sign the bill into law before exercising the cancellation power. After signing the bill, the President has five days within which to cancel select provisions. In selecting provisions for cancellation, the President must determine that the cancellation will reduce the federal budget deficit, not impair any essential government function, and not harm the national interest.

On September 30, 1996, the President signed the Omnibus Consolidated Appropriations Act of 1997 into law. After signing, the President used the power granted under the Line Item Veto Act to cancel two spending provisions. The first provision provided \$8.5 million to the University of Davis for

the construction of an environmental technology facility. The other provided \$1.5 million to the Davis Mountain Wildlife Refuge for the maintenance of a herd of long-horned cattle.

Austin Reed, as representative of the University of Davis, sought declaratory relief in the United States District Court for the Western District of Davis against Franklin D. Raines, Director of the Office of Management and Budget. Similarly, Alice Horton, as representative of Davis Wildlife Refuge, sought declaratory relief against Raines in the United States District Court for the Eastern District of Davis. Both plaintiffs argued that the Act violated the Presentment Clause of the United States Constitution by granting the President the authority to unilaterally repeal a duly enacted provision of law. Reed and Horton also argued that the Act represented an impermissible delegation by Congress of its legislative power. Raines responded in both actions by arguing that the Act was a permissible delegation of discretion to the President to execute a duly enacted law. The Western District held that the Act was unconstitutional, but the Eastern District reached the opposite conclusion.

According to the special provisions of the Act, the two losing parties at the district court level appealed directly to the Supreme Court. The United States Supreme Court granted certiorari to the petitioners in both cases and on its own motion consolidated the two actions for oral argument. Today the court will consider the following questions:

- (1) DOES THE LINE ITEM VETO ACT VIOLATE THE PRESENTMENT CLAUSE OF THE UNITED STATES CONSTITUTION BY EMPOWERING THE PRESIDENT TO UNILATERALLY REPEAL A DULY ENACTED LAW?
- (2) DOES THE LINE ITEM VETO ACT VIOLATE THE NON-DELEGATION DOCTRINE BY CONFERRING AN UNDELEGABLE LAWMAKING AUTHORITY TO THE PRESIDENT?

**RESULTS OF THE
1997 JOHN W. DAVIS COMPETITION**

FINALISTS

Stacey Black
Kelly Horan

Jeff Rhodes
Gary Seligman

SEMIFINALISTS

Ken Lammers
William Sharp

Jeff Weaver
Steve White

QUARTERFINALISTS

Jamie Alley
Ellis Bennett
Bill Donnelly
Allison Driver

Charles Kemp
Jason Poling
Brian Price
Chris Weaver

BEST BRIEF NOMINEES

Kelly Horan Gary Seligman Jeff Weaver

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 THOMAS A. CLARK

Judge Clark was appointed United States Circuit Judge by President Jimmy Carter on November 2, 1979 and entered on duty November 16, 1979. Originally appointed to the Fifth Circuit, he was assigned to the Eleventh Circuit when it was organized on October 1, 1981. Judge Clark took senior status on August 31, 1991.

Judge Clark was born in Atlanta, Georgia on December 20, 1920. He graduated from Washington and Lee University, receiving a B.S. degree in 1942, and from the University of Georgia Law School, receiving an LL.B. degree in 1949. During World War II, he entered active duty in the United States Navy in 1942, and was released as Lieutenant Commander in 1946 after duty in the Southwest Pacific.

Judge Clark served as a member of the Georgia House of Representatives from 1951 to 1952, and as County Solicitor of Decatur County, Georgia from 1953 to 1955. He practiced law in Bainbridge, Georgia as a sole practitioner until 1955. Judge Clark was a partner with the firm of Dykes, Dykes & Marshall in Americus, Georgia from 1955 to 1957. He practiced law as a partner with Fowler, White, Gillen, Humkey & Trenam in Tampa, Florida from 1957 to 1961. Judge Clark was a senior attorney with the Tampa firm of Carlton, Fields, Ward, Emmanuel, Smith and Cutler from 1961 until his appointment to the Court of Appeals in 1979.

Judge Clark is married to the former Betty Medlock and has three children; Thomas A. Clark, Jr., Christopher S. Clark, and Julia M. Clark, and two stepchildren, Allen L. Carter and Rosalyn Lackey Howell. He is a member of the American Bar Association, the Florida Bar Association, the Georgia Bar Association, and the American College of Trial Lawyers.

JUDGE HARRY W. WELLFORD

Born in Memphis, Tennessee to Harry Alexander and Roberta Thompson Wellford, Judge Wellford has led a distinguished life. Judge Wellford attended Washington and Lee University from 1941 to 1943. In 1943, Judge Wellford entered the United States Navy and was released in 1945 after World War II service in the Pacific Theatre. Judge Wellford completed his studies at Washington and Lee in 1947, earning a bachelor of arts. Judge Wellford attended the University of Michigan Law School from 1947 to 1948. He attended Vanderbilt University from 1948 to 1950 where he received an LL.B.

Judge Wellford was appointed to the Sixth Circuit on March 27, 1982 by President Reagan. He took Senior Status on January 21, 1991. Prior to his appointment to the Sixth Circuit, Judge Wellford served on the United States District Court for the Western District of Tennessee for eleven years. From 1960 to 1970, Judge Wellford was a partner at McCloy, Wellford & Clark.

Judge Wellford and his wife, Katherine, have five children.

JUDGE DIANE P. WOOD

Diane P. Wood is a Circuit Judge on the United States Court of Appeals for the Seventh Circuit. She was nominated by President William Clinton on March 31, 1995, and was confirmed by the Senate on June 30, 1995. On July 24, 1995, Retired Associate Justice Harry A. Blackmun swore her in.

Upon graduation with high honors from the University of Texas Law School, Judge Wood clerked for Judge Irving Goldberg of the U.S. Court of Appeals for the Fifth Circuit, and for Justice Harry A. Blackmun of the United States Supreme Court, 1976 Term. After a brief period at the Office of the Legal Adviser of the U.S. State Department, she practiced at Covington & Burling from 1978 to 1980. In 1981, she was appointed to the University of Chicago Law School faculty. In 1990, she was named the Harold J. and Marion F. Green Chair in International Legal Studies, becoming the first woman at the Law School to be honored with a named chair. She also served as Associate Dean of the Law School from 1989 through 1992. Immediately prior to joining the Court, Judge Wood was Deputy Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice from September 1993 through July 1995.

Judge Wood and her husband, Professor Dennis J. Hutchinson, have three children, Kathryn, David and Jane, and live in Hinsdale, Illinois.
