



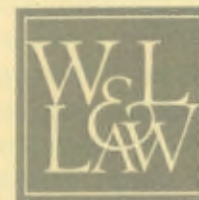
WASHINGTON AND LEE
UNIVERSITY

SCHOOL OF LAW

Lexington, Virginia 24450-2116

FINALS

THE TWENTY-EIGHTH ANNUAL JOHN W. DAVIS APPELLATE ADVOCACY MOOT COURT COMPETITION



MILLHISER MOOT COURT ROOM
SYDNEY LEWIS HALL
OCTOBER 26, 2007
4:00 P.M.

*This competition is dedicated to the memory of
Benjamin R. Gardner, a member of the Law Class of 1967
and dedicated supporter of Washington and Lee's Moot Court program.*

**THE TWENTY-EIGHTH ANNUAL
JOHN W. DAVIS APPELLATE ADVOCACY
MOOT COURT COMPETITION**

"I may be frank 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 Henry St. George 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.

All second and third-year students, except members of the Moot Court Executive Board, are invited to participate. The competition is designed to showcase participants' written and oral advocacy. Each participant submits a written brief prior to presenting both Petitioner and Respondent oral arguments in the first two rounds of the competition. Participants advance in the competition based on the combined score of their brief and oral argument. As the competition progresses, emphasis shifts to participants' oral argument skills. In this final round, competitors are judged on their oral arguments alone.

This year, Joshua Autry and Patrick Garry, the 2007 Davis Moot Court Administrators, created and wrote the problem and supervised the competition. In addition, Mr. Autry and Mr. Garry served as judges during the preliminary and quarterfinal rounds. Moot Court Executive Board member Kristina Longo and past competitors Joshua Payne, Meredith Stow and Chaitra Gokul also served as judges in these preliminary rounds. Three members of our distinguished faculty members—Professor Ann MacLean Massie, Professor Brian C. Murchison and Professor Caprice L. Roberts—judged oral arguments in the semifinals.

The Competition Administrators judged all briefs submitted by the participants for content, grammar and proper citation. They then selected those briefs with the four highest scores as Best Brief nominees. Professor Brian C. Murchison, Professor Joan M. Shaughnessy and Professor A. Benjamin Spencer selected the Best Brief winner from among the Best Brief nominees.

The 2007 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. 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.

In recent years, Washington and Lee School of Law alumni and brothers, Benjamin R. Gardner (Class of 1967) and Philip G. Gardner (Class of 1972), have enthusiastically supported this competition. At the banquet for competitors, professors and judges following the final round, the Gardner brothers traditionally present their own awards to the winners of this competition. Sadly, Benjamin Gardner passed away last month. Thus, the Moot Court Executive Board is proud to dedicate tonight's competition to his memory and honor him for the tremendous support he and his brother have shown this program.

The Board would also like to extend its thanks and appreciation to all of the professors and student participants who helped make the 2007 John W. Davis Moot Court Competition a success.

RESULTS OF THE 2007 JOHN W. DAVIS APPELLATE ADVOCACY MOOT COURT COMPETITION

FINALISTS

Jessica R. Berenyi	Rachel M. Marriner
Arif S. Noorani	Sean J. Whittington

SEMIFINALISTS

Crystal L. Doyle	Kate M. Loudenslagel
John M. Power	Megan L. Williams

QUARTERFINALISTS

Edward V. Arnold	John B.F. Martin
Andrea E. Dunuwila	Roger H. Miksad
Michael P. Gaffney	David G. Parker
Andrew P. Hynes	Laura E. Strick

BEST BRIEF NOMINEES

Jessica R. Berenyi & Anna Ku
Michael J. Chiusano & Christine N. Kidwell
Kristen A. Hutchens & Megan L. Williams
William F. McLean & Jeanette S.J. Wei

TODAY'S PROGRAM

— ROUND 1 —

Counsel for the Petitioner: Rachel M. Marriner
Counsel for the Respondent: Sean J. Whittington

— ROUND 2 —

Counsel for the Petitioner: Arif S. Noorani
Counsel for the Respondent: Jessica R. Berenyi

THE COURT

THE HONORABLE JAMES O. BROWNING

*Judge of the United States District Court
in the District of New Mexico*

THE HONORABLE DAVID A. FABER

*Chief Judge of the United States District Court
in the Southern District of West Virginia*

THE HONORABLE WALTER D. KELLEY, JR.

*Judge of the United States District Court
in the Eastern District of Virginia*

IN THE SUPREME COURT OF THE UNITED STATES

JOSH HULL,

Petitioner,

v.

ADAM HUMPHRIES,

ATTORNEY GENERAL FOR THE STATE OF FLORABAMA

Respondent.

Competitors in the 2007 John W. Davis Moot Court Competition argue based on the following fact pattern:

The state of Florabama has encountered a large shift in population density over the last three decades. Once a quiet farm state, Florabama is now comprised primarily of three large metropolitan areas, each centered around one of the now heavily populated cities of Tallaloosa, Birlando, and Browning. What little rural area still exists in Florabama has been deserted for the most part out of fears related to the urban gangs.

Metropolitan Tallaloosa, the southern-most city, encountered a significant rise in gun violence, primarily related to handguns, about twenty years ago. Ten years ago, gun violence reached similar high levels in metropolitan Birlardo, located just north of Tallaloosa. Out of both concern for the state's rising level of violence and fear that the state's gangs, a significant force in the state's violence, would continue to move north towards Browning, Florabama enacted FLORABAMA CODE § 9-19.02, which generally bars the registration of handguns (with an exception for retired police officers).

Josh Hull is a resident of the city of Browning, in the State of Florabama. He wishes to keep a handgun in his home for self-defense; however, if he possesses a handgun, he will be in violation of Florabama state law, which prohibits their possession. Hull recently moved to Florabama from the state of Virginia, where he owned a Glock Model 22 .40 Caliber handgun, which was registered and permitted under Virginia's laws regulating the possession of firearms.

Upon moving to the state of Florabama, he inquired with the office of Florabama's Attorney General regarding a permit to bring his handgun from Virginia and was informed that no procedure existed to bring his handgun to Florabama because their possession was illegal. Defendant therefore left his firearm at his parents' residence in Virginia. In refusing his request, Adam Humphries, Florabama's Attorney General, explicitly relied on FLORABAMA CODE § 9-19.02.

Hull's apartment was burglarized twice in the year after he moved to Browning. Accordingly, he seeks to retrieve his Glock 22 .40 Cal. handgun from Virginia and bring it to Browning for the stated purpose of defending himself and his family. He raised a Second Amendment challenge to FLORABAMA CODE § 9-19.02 in the Federal District Court for the Northern District of Florabama at Browning. The State of Florabama does not have any state constitutional provision similar to the Second Amendment under the Federal Constitution.

Proceedings in the Courts Below

Hull filed suit under 42 U.S.C. § 1983 against Adam Humphries, Florabama's Attorney General, asking the district court to both declare the statute unconstitutional and enjoin Humphries from applying § 9-19.02 (a)(6) against him. Essentially, Hull claims a right to possess what he describes as "functional firearms," by which he means ones that could be "readily accessible to be used effectively when necessary" for self-defense in the home. He is not asserting a right to carry such weapons outside his home. Nor is he challenging Florabama's authority per se to require the registration of firearms.

Judge Smithenwesson, agreeing with Hull's reasoning and analysis, granted both the requested declaratory and injunctive relief. The Court rejected Humphries' argument that the Second Amendment ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed") does not bestow any rights on individuals except, perhaps, when an individual serves in an organized militia such as today's National Guard.

Attorney General Humphries appealed the decision of the district court to the Court of Appeals for the Twelfth Circuit. A three-judge panel of Chief Judge Price and Judges Kaur and Morrison, in a 3-0 opinion by C.J. Price, held that the district court had erred in finding that the Second Amendment guaranteed an individual right to bear arms. The Twelfth Circuit instead cited the abundance of case law from the other circuits denying any right to bear arms absent a connection to militia service, and

accordingly denied the relief requested by Hull. The circuit court also disagreed with the district court over whether the state of Florabama's regulations of the possession of firearms was a reasonable restriction permissible under the Second Amendment regardless of the nature of the right protected by the Second Amendment.

The United States Supreme Court has granted certiorari in this case and oral argument is set for the October 2007 term. Two issues are to be decided: Whether the right to bear arms protected by the Second Amendment endows an individual with a constitutional right to bear a handgun for personal defense and, once the nature of this right is decided, whether FLORABAMA CODE § 9-19.02 infringes upon such right.

BIOGRAPHIES OF JUDGES

THE HONORABLE JAMES O. BROWNING

*United States District Judge
District of New Mexico*

James O. Browning is a judge of the United States District Court for the District of New Mexico. President George W. Bush appointed Judge Browning to the bench in August of 2003.

Judge Browning graduated magna cum laude from Yale University in 1978, where he was an intensive political science major. He earned honors in his field and won the Frank M. Patterson award for best senior essay on domestic political affairs. He also earned three varsity football letters, winning the Ivy League Championship his junior and senior years. Judge Browning received his Juris Doctorate degree from the University of Virginia School of Law in 1981, where he was Editor-in-Chief of the Virginia Law Review and a member of the Order of the Coif. Following law school, Mr. Browning served as law clerk to the late Collins J. Seitz, Chief Judge of the United States Court of Appeals for the Third Circuit, and to esteemed Washington and Lee alum and United States Supreme Court Justice, the late Lewis F. Powell, Junior.

After his clerkships, Judge Browning joined New Mexico's oldest and largest law firm, where he served as a shareholder and director. He served as Deputy Attorney General of the State of New Mexico from 1987-1988. In 1990, Judge Browning started his own firm in New Mexico, where he worked until taking the bench in 2003.

Law Dragon recently selected Judge Browning as one of the 500 leading judges in America, and Chief Justice Roberts recently appointed Judge Browning to the Judicial Conference Committee on the Administration of the Bankruptcy System. Judge Browning and his wife of twenty-nine years, Jan, have three children and currently reside in New Mexico.

THE HONORABLE DAVID A. FABER

*United States District Judge
Southern District of West Virginia*

David A. Faber was appointed United States District Judge for the Southern District of West Virginia by President George H.W. Bush in November 1991 and entered duty in December 1991. He became Chief Judge on December 20, 2002, and served in that capacity until August 1, 2007.

Judge Faber, a native West Virginian, graduated Phi Beta Kappa from West Virginia University in 1964. He then attended Yale Law School, from which he graduated in 1967. In 1998, Judge Faber obtained a LLM from the University of Virginia.

Upon graduation from law school, Judge Faber joined the law firm of Dayton, Campbell & Love as an associate, before entering the United States Air Force the following year. Judge Faber served on active duty until 1972, and remained in the Air National Guard and Air Force Reserve until 1998, retiring with the rank of Colonel in the J.A.G. Corps. Judge Faber then rejoined the law firm of Love, Wise, Robinson & Woodroe where he served as partner until 1981. From 1973-1976, Judge Faber also worked part-time for the West Virginia Bar as the Appointed Counsel to the Committee of Legal Ethics. In 1981, President Reagan appointed him United States Attorney for the Southern District of West Virginia, a position he served in until 1986. In 1987, Judge Faber joined the Charleston, West Virginia law firm of Spilman, Thomas, Battle & Klostermeyer as a partner, where he practiced until his appointment to the bench in 1991.

Judge Faber is a Fellow of the American Bar Foundation, a Fellow of the West Virginia Bar Foundation, and a Paul Harris Fellow of Rotary International. He received the Fred H. Caplan Civil Justice Award presented by the West Virginia Trial Lawyers Association in 2000 and the Outstanding Alumnus Award from the Eberly College of Arts and Sciences, West Virginia University in 2007.

THE HONORABLE WALTER D. KELLEY, JR.

*United States District Judge
Eastern District of Virginia*

Walter DeKalb Kelley, Jr. is a judge of the United States District Court for the Eastern District of Virginia. Judge Kelley was nominated by President Bush in 2003 and thereafter was confirmed unanimously by the United States Senate. He took office in September 2004.

Judge Kelley is a "Seven Year General," having received degrees from both the college and law school at Washington and Lee. He graduated, cum laude, from Washington and Lee University in 1977 with a Bachelor of Arts degree. He graduated in 1981, magna cum laude, from the University's School of Law. Upon graduation, Judge Kelley clerked for Judge Ellsworth Van Graafeiland of the United States Court of Appeals for the Second Circuit in New York City.

Judge Kelley then practiced business litigation for 23 years in Hampton Roads area of Virginia, first with Willcox and Savage, PC and then with Troutman Sanders, LLP. He handled cases in courts located throughout the United States and has tried more than twenty-five jury cases to verdict. While in practice, Judge Kelley was elected to Best Lawyers in America and the Legal Elite of Virginia and held a number of Bar positions, including chairing the Virginia State Bar's Young Lawyers Conference and its Section of Antitrust Law.

Washington and Lee University presented Judge Kelley with its prestigious Distinguished Alumnus Award in 2006. In his spare time from the bench, the judge teaches antitrust law and federal courts at Regent University where he serves as adjunct professor of law.

JOHN W. DAVIS (1892, 1895L)

The annual Moot Court Competition at Washington and Lee is named in honor of John W. Davis. 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 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 Solicitor General of the United States, 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 law firm of Davis, Polk and Wardwell. He rejected an appointment to the Supreme Court in 1922, choosing instead to continue practicing 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 Co. v. Sawyer* and for unsuccessfully defending segregation of public schools in *Brown v. Board of Education*. 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.

2007-2008
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