

FINAL ROUND

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



MILLHISER MOOT COURT ROOM
SYDNEY LEWIS HALL
OCTOBER 17, 2008
5:30 P.M.

TODAY'S PROGRAM

Opening Remarks

Welcome and Introductions

Rachel M. Flynn
Chair, Moot Court Board

Competition Overview

Arif S. Noorani
Davis Competition Administrator

First Round

Counsel for the Petitioner

Andrew J. Fadale

Counsel for the Respondent

Kate M. Loudenslagel

Second Round

Counsel for the Petitioner

Victoria V. Corder

Counsel for the Respondent

Andrew D. Finnicum

Break for Deliberations

Results

Best Brief Awards

Professor Brian C. Murchison
*Charles S. Rowe Professor of Law
and Fellow in Teaching Excellence*

Oralist Awards

The Bench

Concluding Remarks

Rachel M. Flynn
Chair, Moot Court Board

THE TWENTY-NINTH 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, Crystal Doyle and Arif Noorani, the 2008 Davis Moot Court Administrators, created and wrote the Problem and supervised the Competition. In addition, Ms. Doyle and Mr. Noorani served as judges during the preliminary and Quarterfinal Rounds. Moot Court Executive Board members also served as judges in these preliminary rounds. Three members of our distinguished faculty— Professor Ann MacLean Massie, Professor Russell A. Miller and Professor John D. King— judged oral arguments in the Semifinal Round.

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 2008 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 external competitions across the country this spring.

This Competition would not be possible without the generous attention and support of several individuals. First, the John W. Davis Appellate Advocacy Competition owes its success in large part to the enthusiastic support of Washington and Lee School of Law alumnus, Philip G. Gardner (Class of 1972) and the late Benjamin R. Gardner (Class of 1967). After earning their Juris Doctor degrees from Washington and Lee Law, the Gardner brothers founded the Martinsville firm of Gardner, Barrow, Sharpe & Reynolds in 1975. The Board is grateful for Mr. Philip Gardner's attendance at tonight's Final Round, and for his continued support of the Moot Court Program at Washington and Lee.

In addition, the Board thanks Dean Rodney A. Smolla for leading this year's Davis Primer, in which Dean Smolla provided competitors excellent instruction on writing an appellate brief and presenting oral argument. Further, the Board thanks Moot Court Executive Board Advisors, Dean Sidney S. Evans and Dean Robert T. Danforth. The Deans provide a tremendous service to the Moot Court Program and Davis Competition each year. Finally, we owe much appreciation to the professors and student participants who made the 2008 John W. Davis Moot Court Competition a success.

**RESULTS OF THE 2008 JOHN W. DAVIS
APPELLATE ADVOCACY
MOOT COURT COMPETITION**

FINALISTS

Victoria V. Corder	Andrew D. Finnicum
Andrew J. Fadale	Kate M. Loudenslagel

SEMIFINALISTS

Berit L. Everhart	Christopher W. Henry
Oleg V. Nudelman	Ketan V. Patel

QUARTERFINALISTS

Kiyomi D. Bolick	Rebecca K. Clinton
Nicole C. Bright	E. Benton Keatley
Joseph S. Camden	Garrett S. Ledgerwood
Elizabeth E. Clarke	Caitlin V. O'Donnell

BEST BRIEF NOMINEES

Nicole C. Bright & Christopher W. Henry
Elizabeth E. Clarke & Stephanie Hager
Berit L. Everhart & Garrett S. Ledgerwood
Andrew D. Finnicum & E. Benton Keatley
Oleg V. Nudelman

**IN THE SUPREME COURT
OF THE UNITED STATES**

UNITED STATES OF AMERICA,

Petitioner,

V.

GARRY AUTRY,

Respondent.

General Fact Pattern

The case focuses on one Garry Autry. This individual was arrested pursuant to an outstanding warrant for failure to pay child support under the Deadbeat Parents Punishment Act. 18 U.S.C. § 228. He was arrested after he had exited his personal vehicle and walked eight to twelve feet away from it toward police. He was then secured and locked in a patrol car while two officers searched the passenger compartment of his car and found a handgun and a plastic baggie containing cocaine. Later, Autry underwent a voluntary drug test, and traces of marijuana were found in his system. Autry was charged with one count of possession of a narcotic drug with intent to distribute, under 21 U.S.C. § 841(a), and one count of unlawful possession of a gun by an unlawful user of controlled substance, under 18 U.S.C. § 922(g).

Autry filed a motion to suppress the evidence seized from his car with the United States District Court. Autry claimed that the warrantless search of his car violated his Fourth Amendment rights because the search was not incident to his arrest as he was not a recent occupant of the vehicle. United States District Court Judge Adams denied the motion to suppress on the grounds that Autry was a recent occupant of the vehicle, and therefore the search of his car was justified as incident to his arrest. Autry was subsequently tried and convicted.

He then appealed the decision of the District Court to the Court of Appeals for the Twelfth Circuit. The Twelfth Circuit overturned the District Court's decision, distinguishing the case from *New York v. Belton*, 453 U.S. 454, 455 (1981), the case the District Court had relied upon in denying Autry's motion to suppress. Instead, the Court of Appeals focused on the twin rationales— officer safety and the preservation of evidence— for warrantless searches incident to arrest put forth by the Supreme Court in *Chimel v. California*, 395 U.S. 752 (1969).

Issue

This Court, the Supreme Court of the United States, has granted certiorari to resolve a singular issue:

Whether the Fourth Amendment of the United States Constitution requires law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured.

THE BENCH

THE HONORABLE GLEN E. CONRAD

*United States District Court Judge
Western District of Virginia*

Judge Glen E. Conrad serves as a United States District Judge for the Western District of Virginia. Born in Radford, Virginia, Judge Conrad graduated from the College of William and Mary, earning his Bachelor of Arts degree in Government in 1971, and his Juris Doctor degree in 1974. Upon graduation from Law School at William and Mary, Judge Conrad served as a United States Probation Officer and Law Clerk. In May of 1976, Judge Conrad accepted his nomination to the federal bench as a United States Magistrate Judge for the Western District of Virginia. In October 2003, he was appointed as a United States District Judge for the Western District of Virginia.

Judge Conrad serves as President of the Ted Dalton American Inn of Court, and is also involved in the Virginia Bar Association, the Virginia State Bar, the American Bar Association, Federal Bar Association, Roanoke City Bar Association, National Council of United States Magistrate Judges, Virginia Trial Lawyers Association, and Phi Alpha Delta Legal Fraternity.

From 1976-1992, Judge Conrad served as the Chief Instructional Counsel and Program Director for the American Legion Boys State of Virginia, for which he was inducted into the Boys State Hall of Fame in June, 1995. In 1992, he served as an Instructor for the United States Probation Office Training Session for Implementation of Bail Reform Act. From 1992-1994, Judge Conrad served on the Civil Justice Reform Act Advisory Committee for the Western District of Virginia. He has conducted training sessions for Forest Service and Park Service Law Enforcement Officers, and served as a lecturer in continuing legal education seminars.

Judge Conrad has also attended the Harvard University National Mediation Workshop, participated on the Virginia Bar Association Committee for Prison Reform, and served as a Representative to the Federal Bureau of Investigation Seminar on Judicial Use of DNA Data. He continues to serve on the Western District of Virginia Court Security Committee. Judge Conrad is also a life member of the Radford, Virginia Christian Church.

THE HONORABLE WILLIAM P. JOHNSON

*United States District Court Judge
District of New Mexico*

Judge William P. Johnson serves as a United States District Judge for the District of New Mexico. Judge Johnson was born and raised in Roanoke, Virginia. He attended college at the Virginia Military Institute where he earned his Bachelor of Arts degree in 1981. Upon graduation, he accepted a reserve commission in the United States Army Reserve. At that time, Judge Johnson attended law school at Washington and Lee University School of Law, where he earned his Juris Doctor degree in 1985.

Judge Johnson began his practice of law in Houston, Texas with the firm of Bracewell & Patterson. In 1986, he moved to Roswell, New Mexico and joined the firm of Hinkle, Cox, Eaton, Coffield & Hensley, where he practiced primarily in the areas of commercial, oil and gas, and bankruptcy litigation.

In 1995, Judge Johnson became a New Mexico State District Judge in the 5th Judicial District where he presided over a general jurisdiction docket of criminal, civil, domestic relations, and children's court cases. In August of 2001, President George W. Bush nominated Judge Johnson to a vacancy on the United States District Court for the District of New Mexico. Later that year, in December of 2001, the United States Senate confirmed Judge Johnson's nomination to the federal bench.

Judge Johnson and his wife, Loretta, live in Albuquerque with their four children.

THE HONORABLE HENRY COKE MORGAN, JR.

*United States District Court Judge
Eastern District of Virginia*

Born in Norfolk, Virginia, Judge Henry Coke Morgan, Jr. serves as a United States District Judge for the Eastern District of Virginia. Judge Morgan is a "Seven-Year General," having earned his Bachelor of Science degree from Washington and Lee University in 1957 and his Juris Doctor degree from Washington and Lee University School of Law in 1960. Judge Morgan excelled in Moot Court competitions during his time at Washington and Lee Law. As an upper level student, Judge Morgan won Second Place in the Appellate Advocacy Competition.

Upon graduation, Judge Morgan served as a United States Army Reserve Lieutenant from 1958-1959. Judge Morgan went on to serve as an Assistant City Attorney in Norfolk, Virginia from 1960-1963. Following his public service, he worked in private practice in Virginia Beach, Virginia, specializing in civil trials, from 1963-1992. While in private practice, Judge Morgan served five terms as Chairman of the State Committee on Continuing Legal Education and has been a frequent lecturer and writer in continuing legal education programs.

Judge Morgan was nominated by George H.W. Bush in 1991 to a new seat in the Eastern District. The Senate confirmed Judge Morgan's nomination, and he received his commission on April 13, 1992. Additionally, Judge Morgan has served as a host for delegations of international judges visiting the United States from Ukraine, Japan, Russia and South Korea. Judge Morgan continues to serve as a United States District Judge in Senior Status.

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 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 twentieth 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 the Law School. 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.

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