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# FINALS

THE TWENTY- FIRST ANNUAL JOHN W. DAVIS

MOOT COURT COMPETITION



MOOT COURT ROOM

SYDNEY LEWIS HALL

NOVEMBER 9, 2000

4:00 P.M.

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*"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 John W. Davis Moot Court Competition is held annually in the fall semester at the Washington and Lee University School of Law. All second and third year students, except members of the Washington and Lee Moot Court Teams and Executive 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 writing skills of the participants are also evaluated with the submission of a brief on the merits of the issues dealt with in oral argument.

Students wishing to represent Washington and Lee in the National Moot Court Competitions, J. Braxton Craven, Jr. Memorial Competition or the ABA National Appellate Advocacy 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 the petitioner or respondent in a mock case before the United States Supreme Court. 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 the participant's advancement through the competition.

The Davis Competition is administered by third year students serving on the Moot Court Executive Board. The two Davis Administrators structure the fictional problem, and along with Quarterfinalists from the 1999 Davis Competition, judge both the preliminary and quarterfinal rounds. The entire Executive Board grades the briefs submitted by all participants. Three faculty members then judge the semifinal rounds. This year's faculty bench included law professors Lewis H. LaRue, Joan Shaughnessy and W. Bradley Wendel. The Best Brief Nominees are selected by the Moot Court Executive Board, with the Best Brief Award selected by faculty members. Professors C. Quince Hopkins, Ronald J. Krotoszynski and Ann M. Massie selected the Best Brief Award from among this year's Best Brief Nominees.

The 2000 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.



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## THE PARTICIPANTS

### COUNSEL FOR THE PETITIONERS

Joseph Carpenter      Kathryn Johnston

### COUNSEL FOR THE RESPONDENT

Amara Chaudhry      Lindsay Peed

## THE COURT

THE HONORABLE CAROLYN DINEEN KING  
(Chief Judge of the United States Court of Appeals, Fifth Circuit)

THE HONORABLE M. BLANE MICHAEL  
(Judge of the United States Court of Appeals, Fourth Circuit)

THE HONORABLE ELLSWORTH A. VAN GRAAFEILAND  
(Senior Judge of the United States Court of Appeals, Second Circuit)

## WASHINGTON AND LEE MOOT COURT EXECUTIVE BOARD

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## IN THE SUPREME COURT OF THE UNITED STATES

City of Davis,  
PETITIONER

v.

Andrew and Amy Sparks,  
RESPONDENTS

Competitors in the 2000 John W. Davis Moot Court Competition argue based on the following fact pattern:

Along with their two children, Kirsten and Tate, Amy and Andrew Sparks reside in the City of Davis. On September 19, 1998, Amy Sparks' sister, Felicia Ferguson was released from a mental hospital after eight months of treatment for multiple personality disorder. The Sparks' severed their relationship with Ferguson shortly before her hospitalization when Ferguson reported to Davis Child Protective Services (DCPS) that Andrew was sexually molesting Kirsten. DCPS investigated but did not find enough evidence to substantiate Ferguson's allegations.

On September 20, 1998, Ferguson went to the Sparks home in an attempt to reconcile with her sister. She found Tate Sparks alone in the house. He had bruises on his face and one arm in a cast. Ferguson observed the Sparks arguing in the backyard. Ferguson left the home and related the story to her therapist, Dr. Mario Pistone. She also feared that Andrew Sparks was involved in Satanic cult worship and may have planned to ritually murder Tate. Dr. Pistone, as a marriage and family counselor, was under a legal obligation to report any instances of possible child abuse. He related Ferguson's story to Lena Rozas at DCPS, and stated that in his professional opinion, Ferguson appeared to be credible. Rozas contacted the Davis Police Department (DPD) where the case was assigned to Officer R. P. Coltrane.

On September 22, 1998, district attorney Gary Ransdall told Rozas they had enough to pick up the children. Rozas, in turn, told Coltrane that Ransdall had a pick-up order for the Sparks children. Coltrane then consulted his supervising sergeant on how to proceed. A recent transfer to DPD, the sergeant contacted two officers, both of whom indicated that DPD usually accepted DCPS's representations of a pick-up order. These officers were considered the most knowledgeable about departmental customs.

In fact, no written order ever existed. The district attorney had not yet petitioned the court for permission to remove the children. Nevertheless,



Coltrane took the children into protective custody. The next afternoon, the children were taken to a hospital where invasive medical examinations were performed to detect signs of sexual abuse. The Sparks were not given any advanced notification of these procedures, and had no opportunity to object or to be with their children during the examinations. The initial results were reviewed by a sexual abuse specialist, who agreed there was conclusive evidence of sexual abuse. In light of this evidence, the Juvenile Court judge ordered that the children be kept in protective custody. The Sparks were granted one supervised visit per week.

Two months later, the specialist reviewed the results with another doctor from the Sexual Abuse Unit. In light of the children's complete medical records, the doctors found that the exam results were inconclusive. Rozas was notified of this result, and the children were soon released to the custody of their maternal grandmother. Several weeks later the Juvenile Court dismissed the case and the children were returned to their parents.

Respondents, Andrew and Amy Sparks, initiated a § 1983 action against the Petitioner, City of Davis, in the District Court for the Western District of Davis, alleging a deprivation of their right to family association. Petitioners were granted a directed verdict under FED.R. CIV.P 50 on the grounds that the right of family association did not include a guarantee of parental presence during medical examinations of suspected child abuse victims. The court further found that even if the right existed, the City could not be held liable because the deprivation was not pursuant to a municipal policy or practice. The Court of Appeals for the Sixteenth Circuit reversed the decision, holding that the right to family association included parental presence at such investigative examinations, and that the City could be held liable for deprivations arising from municipal customs.

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

(1) Whether the Fourteenth Amendment Due Process right to family association includes a parent's right to accompany and comfort his/her children during invasive medical examinations even in cases of suspected child abuse.

(2) Whether custom remains a valid ground for municipal liability under 42 U.S.C. § 1983 in light of Supreme Court decisions subsequent to *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

## RESULTS OF THE 2000 JOHN W. DAVIS MOOT COURT COMPETITION

### FINALISTS

Joseph Carpenter	Amara Chaudhry
Kathryn Johnston	Lindsay Peed

### SEMIFINALISTS

Ryan Becker	Meitra Farhadi
Anne Musgrove	Tyler Stone

### QUARTERFINALISTS

Malcolm Burke	Andrew Carpenter
Joseph Cohen	Jeff Dickey
Chris Harris	Anne Jorgensen
Justin Ward	Elizabeth Yusi

### BEST BRIEF NOMINEES

Ryan Becker	Wade Jensen	Kathryn Johnston
Anne Musgrove	Tyler Stone	

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.



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## JUDGE CAROLYN DINEEN KING

Judge King is a 1959 graduate Smith College, where she received a B.A. in Philosophy, *summa cum laude*. She was also elected to Phi Beta Kappa. In 1962 she was awarded an L.L.B. from Yale University. After ten years (1962-1972), with the Houston, Texas firm of Fulbright & Jaworski, Judge King went on to become a partner at another Houston firm, Childs, Fortenbach, Beck & Guyton (1972-1978). Then she spent the year prior to her appointment as a partner at Sullivan, Bailey, King, Randall & Sabom, also in Houston. In 1979, Judge King was appointed to the United States Court of Appeals for the Fifth Circuit by President Carter. Since 1999, she has served as the Chief Judge of the Fifth Circuit.

In addition to her duties on the bench, Judge King has been and is active in several judicial, philanthropical, and educational organizations. Her past legal involvement includes membership in the Judicial Ethics Commission of the Judicial Conference of the United States (1984-1991), and the Executive Committee of the American Law Institute (1997-1999). In her work with the ALI, she has served as an advisor to the *RESTATEMENT OF THE LAW THIRD - TORTS; PRODUCTS LIABILITY* and the Transnational Insolvency Project. Judge King was also a member of the Visiting Committees of both the University of Chicago Law School (1984-1986), and Southern Methodist University Law School (1984-1987). Currently, Judge King serves on the Executive Committee of the Judicial Conference of the United States, and a Member of Council for the American Law Institute.

As for Judge King's philanthropical and educational service, she has been a member of the Houston Ballet Foundation's Board of Trustees (1967- 1970), the President's Commission on White House Fellowships (1973- 1976), and the Board of Trustees for United Way of the Texas Gulf Coast, (1979-1985). She was also on the Board of Trustees for the University of St. Thomas (1988-1998), and currently sits on the Advisory Board of the University's Center for Thomistic Studies. Finally, Judge King has maintained membership in the Philosophical Society of Texas since 1995, and is a Research Fellow for the Southwestern Legal Foundation. In 1997 she received the Smith College Medal from her *alma mater*. In 1998, she was honored with the Phi Beta Kappa Alumni of Greater Houston Outstanding Alumnus Award.

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## JUDGE M. BLANE MICHAEL

Judge Michael graduated from West Virginia University in 1965 with an A.B., *magna cum laude*, in Political Science. He was also elected to Phi Beta Kappa. He received his J.D. in 1968 from New York University School of Law. Judge Michael began practicing law with Sullivan & Cromwell in New York City in 1968. Thereafter, in 1971-72, he served as an Assistant U.S. Attorney (Criminal Division) in the Southern District of New York. He was Special Assistant U.S. Attorney in the Northern District of West Virginia for several months at the end of 1972, and for the next two years he practiced law in a rural West Virginia town. Judge Michael was counsel to Gov. John D. Rockefeller IV from 1977-80, and he served as law clerk to Hon. Robert E. Maxwell in the Northern District of West Virginia from 1975-76. For the next thirteen years, he worked as a litigator, doing both trial and appellate work, with Jackson & Kelly in Charleston, West Virginia.

Judge Michael was appointed to the United States Court of Appeals for the Fourth Circuit in 1993 by President Clinton. He is a member of the United States Judicial Conference's Committee on the Budget.



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## JUDGE ELLSWORTH A. VAN GRAAFEILAND

Judge Van Graafeiland is a 1937 graduate of the University of Rochester (A.B.), and received his L.L. B. from Cornell University in 1940. After nearly 35 years of general practice in Rochester, New York, he was appointed to the United States Court of Appeals for the Second Circuit in 1974 by President Ford.

Judge Van Graafeiland is a Fellow of the American Bar Foundation, as well as a member of the American Bar Association (House of Delegates, 1973), the New York Bar Foundation and the American College of Trial Lawyers. In addition, he has served in several leadership positions in the New York State Bar Association: Executive Committee (1961-67), Vice President (1967-72), Chairman of the Insurance, Negligence and Compensation Law Section (1968-69), and President (1973-74). He was also President of the Monroe County Bar Association (1960-61). Judge Van Graafeiland has authored several articles for university law reviews such as *St. John's*, *Brooklyn*, *Villanova* and *Illinois*.

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## 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.