



---

Volume 70 | Issue 1

Article 5

---

December 1967

## The Moot Court Program at West Virginia University College of Law

Thomas C. Cady  
*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Legal Education Commons](#)

---

### Recommended Citation

Thomas C. Cady, *The Moot Court Program at West Virginia University College of Law*, 70 W. Va. L. Rev. (1967).

Available at: <https://researchrepository.wvu.edu/wvlr/vol70/iss1/5>

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

## The Moot Court Program at West Virginia University College of Law

THOMAS C. CADY\*

The recent introduction of the Moot Court Competition into a thorough-going moot court program at the College of Law has prompted this article. The purpose of this article is to inform the bench and the bar of this significant new program to outline its mechanics, values, and objectives and quite candidly to ask for support in making The Moot Court Competition of significant value to the College of Law and its students and to the West Virginia bench and bar. Coincidentally, The Moot Court Competition may in small part contribute to a more adequate legal education at the College of Law as advocated by the late Arch M. Cantrall of Clarksburg.<sup>1</sup>

Most law schools, seeking to provide the law student with appellate advocacy skills, have developed a moot court program. In these programs, competition is the means most often used, although a few law schools (including the College of Law) have used the course form of teaching moot court. Furthermore, some law schools limit their moot court program to an intra-law school competition. One such intra-law school competition is Harvard's Ames Competition.<sup>2</sup> Harvard so firmly believes in the superiority of the Ames Competition that it does not enter any of the recognized nationwide inter-law school moot court competitions. The great majority of law schools, however, actively participate in inter-law school moot court competitions as well as supporting their own intra-law school moot court competitions. The moot court program at the College of Law has two competitive aspects—an inter-law school and an intra-law school competition.

Although law review participation by students is a well known and valuable adjunct to legal education, the value of a moot court program is not as well known. From the more than 170 accredited

---

\* Assistant Professor of Law, West Virginia University; Faculty Advisor, Moot Court Program; B.A., Rice University; LL.B., University of Texas; LL.M., Georgetown University.

<sup>1</sup> See Cantrall, *Law Schools And The Layman: Is Legal Education Doing Its Job*, 38 A.B.A.J. 907 (1952).

<sup>2</sup> Harvard's archives has student records of moots argued as early as February 1820. Bickel, Book Review, N.Y. Times, June 25, 1967, § 7 (Book Reviews) at 6.

and unaccredited law schools in the United States, select students pour out over 120 separate law reviews ranging from semi-annual to monthly publication during the academic year. These student-edited publications provide highly prized experience in research, analysis and writing for the top students in law schools. The College of Law, established in 1878 and the oldest professional school in the University, began publication of its *Law Review* in 1894.<sup>3</sup> With this long history of publication it is not surprising that the *Law Review* is a well known and highly respected service by the College of Law to the West Virginia bench and bar.<sup>4</sup>

On the other hand the value and the mechanics of a moot court program are not as well known to the bench and bar of West Virginia. This is quite understandable in that moot court is in most law schools a recent innovation.<sup>5</sup> Indeed, the prestigious<sup>6</sup> National Moot Court Competition is now only in its eighteenth year, having begun in 1949. The National Moot Court Competition has been integrated into the moot court program as the inter-law school aspect of the program.

The National Moot Court Competition is the only nationwide moot court competition open to all accredited American law schools. One would assume that a competition of such scope would be sponsored by a national organization such as The American Bar Association or the Association of American Law Schools. Quite the contrary: rather, the competition is sponsored by the Young Lawyer's Committee of the Association of the Bar of The City of New York. Not surprisingly, neither the A.B.A. nor the A.A.L.S. supports the competition in the least. This nonsupport by the two national organizations which should be supporting such a competition in part reflects the unawareness of the bench and bar as well as the law schools of the value of moot court.

The National Moot Court Competition is an annual inter-law school appellate moot court competition held in the fall of the year. Students begin work on their briefs in mid-August when the

---

<sup>3</sup> This date marks the WEST VIRGINIA LAW REVIEW as the fourth oldest in the United States. Older law reviews are THE UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 1852; HARVARD LAW REVIEW, 1887; YALE LAW JOURNAL, 1891.

<sup>4</sup> Mueller & Skolnik, *Bar Reactions To Legal Periodicals: The West Virginia Survey*, 11 J. LEGAL ED. 197 (1958).

<sup>5</sup> Clements, *Moot Court Comes of Age*, 30 TEXAS B. J. 271 (1967).

<sup>6</sup> The prestige of The National Moot Court Competition is attested to by the fact that last year one hundred law schools participated.

record is distributed. Since the briefs are usually due in to the regional sponsor in mid-November, work on the brief must end in early November to allow time for typing, proofreading, and mailing. Two to three weeks are thus available for five times a week rehearsals of the oral argument. Few, if any, practitioners spend so much time and are so knowledgeable of their case as are the law students who participate in the National Moot Court Competition. By the time of the regional rounds the students are so primed on the law and facts that the level of performance is quite professional. For purposes of the Competition, the country is divided into fifteen regions. Each year the Committee designates on a rotating basis a regional sponsor from among the law schools located within the region.<sup>7</sup> The regional sponsor is responsible for providing facilities and judges and for establishing local rules for the orderly conduct of the regional rounds. Single elimination rounds are held in the regions, usually during the third week in November. Two qualifiers from each region are eligible to enter the final rounds held in New York City in mid-December.

Although the National Moot Court Competition has been in existence since 1949, the College of Law has participated only for the last eight years or since 1959.<sup>8</sup> The record has not been good. While the College of Law team has won best brief awards in 1960, 1961, and 1965, it has never advanced beyond the second round of regional arguments and hence has never gone to New York City for the final rounds. Last year's team had the misfortune to meet the University of Virginia team in the first round. The College of Law lost while the Virginia team went on to finish as national runner-up, one member of that team winning the best

---

<sup>7</sup> West Virginia competes in Region number six which includes the law schools of the Virginias and the Carolinas. They are: West Virginia, West Virginia University College of Law; Virginia, University of Virginia Law School, College of William & Mary Marshall-Wythe School of Law, Washington & Lee University School of Law, University of Richmond, T. C. Williams School of Law; North Carolina, University of North Carolina School of Law, North Carolina College Law School, Duke University School of Law, Wake Forest College School of Law; South Carolina, University of South Carolina School of Law.

<sup>8</sup> The members of The West Virginia College of Law National Moot Court teams since 1959 are: 1959, Larrick B. Stapleton and Frank L. Taylor, Jr.; 1960, Lee O. Hill, Orton A. Jones, and Ronald L. Love; 1961, Peter U. Hook, Philip W. Parkinson, and Keith R. Whitten; 1962, Robert E. Haden, Lee Ames Luce, and David M. Katz; 1963, Lee Ames Luce, Harold Stanford Yost, and Jack Lee Hickok; 1964, John C. Skinner, Jr., Stephen A. Weber, and Robin Wiseman; 1965, John C. Skinner, Jr., Stephen A. Weber, and Robin Wiseman; 1966, Arthur A. Jones, John J. Nesius, and Donald D. Saxton, Jr.

oralist award. This year's team of third year law students, Joseph Laurita, John Nesius, and Donald Saxton (the last two returning members from last year's team) hope to break through to New York City for the first time. While the costs of competing in The National Moot Court Competition are not insubstantial,<sup>9</sup> the College of Law is firmly committed to whole-hearted participation in it in the future as the inter-law school competition aspect of the moot court program.

The only other nationwide moot court competition is the Philip C. Jessup International Law Moot Tribunal Competition. As its name indicates, this competition is devoted exclusively to international law subjects and hence has a limited appeal.<sup>10</sup> This competition is an annual inter-law school appellate moot tribunal competition sponsored by the Association of Student International Law Societies (A.S.I.L.S.) for its members and other invited law schools. It is held in the spring of the year. The competition consists of three rounds of arguments: regional rounds, semi-final rounds, and a final round. For purposes of the competition the United States is divided into five regions. Within each region a regional sponsor is designated to administer and sponsor the regional rounds. A qualifying team from each region is eligible to enter the semi-final rounds and thence to the final round held in April in Washington in conjunction with the Annual Meeting of the American Society of International Law. Although invited for the last two years, scheduling conflicts have prevented the College of Law from participating in the International Law Moot Tribunal Competition.

In some states having more than one law school, statewide moot court competitions are held; the College of Law being the only law school in the state has had, of course, no such opportunity. Plans are being made, however, to establish such an inter-law school competition with the University of Pittsburgh. The plan envisioned would match the two best advocates on the basis of their performance in the intra-law school competitions at each school. The intra-mural competitions would be run according to the individual

---

<sup>9</sup> 1966's expenses for transportation, lodging, meals, typing the brief and miscellaneous items totaled over \$300.00 even though the regional competition was in Charleston.

<sup>10</sup> While the National Moot Court Competition attracts one hundred participants, the International Law Moot Tribunal Competition attracts on the average less than twenty.

ference of the College of Law and the University of Pittsburgh Law School using, however, a common fact statement (record) prepared by faculty representatives from each school.

Having surveyed the inter-law school aspect of the College of Law's moot court program, we now turn our attention to its intra-law school aspect. Student club courts made their first appearance in the law school curriculum in 1924.<sup>11</sup> Prior to that time, the closest exposure to moot court that law students got was two required courses in argumentation and debate. In 1925, George Coleman Baker gave the Law School a handsome loving cup for the encouragement of these clubs. The cup was awarded in the next two years—1926<sup>12</sup> and 1927.<sup>13</sup> Apparently because the club program folded after 1927, the cup was not again awarded for moot court competition until the spring of 1967.<sup>14</sup>

Little else is known about a moot court program at the College of Law. The oldest member of the faculty in point of time of service, Professor Marlyn Lugar, cannot recall a moot court program since his association with the College of Law in 1934. Thus, here is the record: There was no moot court program at all during the years 1927 through 1959, and participation only in the National Moot Court Competition during the years 1959 through 1967.

Recognizing the need for a coherent and adequately supported moot court program, the faculty last spring established an intramural moot court competition for the College of Law. The Moot Court Competition, held in the spring semester of the school year, is an intra-law school appellate moot court competition open to all students in good standing at the College of Law. A record of the proceedings below is prepared by a faculty member based on a topical legal issue or issues of importance to West Virginia.

---

<sup>11</sup> The 1924-1925 West Virginia University Catalogue and Announcements introduced the club courts as follows at page 284:

A system of Club Courts, for the argument of law points arising out of statements of facts submitted by the members of the faculty and others, is in operation in the College of Law. Membership in these clubs is voluntary, but an opportunity to join one of them is open to every student in the College of Law. The arguments are presided over by members of the faculty, members of the bar in active practice, and senior law students.

<sup>12</sup> The cup was awarded to R. W. Morris and J. E. Wood of the Poffenbarger Club in 1926.

<sup>13</sup> The cup was awarded to H. Caplan and C. E. Galbraith also of the Poffenbarger Club in 1927.

<sup>14</sup> Arthur A. Jones, the winner of the 1967 Moot Court Competition was awarded the Baker Cup by Judge Baker, the son of George Coleman Baker.

Special effort is made to insure that the record resembles an actual record as nearly as possible. The 1967 Moot Court Competition's record raised the issue of the constitutionality of the 1967 Private Club Liquor Act<sup>15</sup> which proved to be most interesting to the students and the legal community.

Students desiring to enter the competition must sign up prior to the distribution of the record in the last week of February. Upon distribution of the record, sides are designated for the students to brief. The students are then allowed thirty days in which time they individually must research, organize and write a brief. One artificiality in the Moot Court Competition is necessitated by time limitations: since all briefs must be turned in at the same time, students writing briefs for respondent/appellee are denied the opportunity to write truly responsive briefs. Attorneys and judges invited to judge arguments should take cognizance of this fact in reading the briefs prior to judging arguments. Since printing of the briefs would be prohibitively expensive, students are provided ditto mats by the office on which they are required to have their briefs typed. The typed ditto mats are then turned into the College office for reproduction in sufficient quantities to insure adequate distribution to all potential opponents and the moot court judges.

As soon as the briefs are ready for distribution, pairings for the first round of arguments are made, and briefs are distributed to the respective opponents. The student then returns to the library to research his opponent's brief and prepare his argument. In the 1967 competition, since only nine students turned in briefs, there was only one set of arguments in the first round. Following the preliminary round, a full quarter finals round was held three days later. Re-pairings were then made after the quarter finals for the semifinals held five days later.<sup>16</sup> The final round was a featured presentation at the College of Law's observation of Law Day on April 15.

The Moot Court Competition is administered by a Moot Court Board composed of students seasoned in Moot Court activities.<sup>17</sup>

---

<sup>15</sup> W. VA. CODE ch. 60, art. 6, §§ 1-17 (Michie 1967).

<sup>16</sup> A second artificiality inherent in the Moot Court Competition is that students are from time to time required to switch sides in order to achieve balanced presentations in each round.

<sup>17</sup> John J. Nesijs and Donald D. Saxton, Jr. are the Moot Court Board members for the 1967-1968 school year. Both were members of the 1966 National Moot Court Team and participated in the 1967 Moot Court Competition.

Their job is to handle the administrative details of running a competition such as distributing the record to entrants, selecting pairings, contacting judges and attorneys to serve as moot court judges, distributing judging packets, and setting up classrooms as courtrooms. Other law students serve as clerks; their job is to meet judges, call the court to order, keep time and generally assist the moot court judges.

The Moot Court Competition seeks to achieve several objectives. The most obvious, of course, is to provide a program by which students can develop skills in appellate advocacy. The competition form (in contrast to a course form) duplicates far better the actual rough and tumble of appellate litigation. Requiring the students to sift through a raw record, research, analyze, shape and then write and argue a brief all in a competitive framework is as close as any law school can come to actual appellate practice.

Another objective of the Moot Court Competition is to provide a co-curricular enrichment activity for all law students but especially for those in their second and third years of study. While the first year of law school is an exciting challenge for most students, the second and third years often become two frustrating years of waiting for actual practice.<sup>18</sup> There are few co-curricular activities open for second and third year law students in which they can learn legal skills and still have a good time. Legal fraternities and the Student Bar Association are by and large social organizations. The *Law Review* is a superb co-curricular pedagogical device for teaching legal skills but too often is just plain hard work. Furthermore, the selectivity of the *Law Review* narrowing its availability to the top ten percent or so of the students severely limits its impact. The Moot Court Competition, open to all students, is thus a program of wide impact and provides each student (even the lowest in his class) with a chance to compete for recognition, honors and cash prizes and at the same time to develop legal skills.

Another objective of the Moot Court Competition is quite frankly to get the West Virginia bench and bar and the College of Law more involved for their mutual benefit. Except for an occasional visiting lecturer or a once a year reunion, members of the bar have had little opportunity to visit the College of Law. The College

---

<sup>18</sup> Professor Walter Gellhorn of Columbia has recently described the third year of law school as "the year the faculty lost the pennant." Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL ED. 1 (1964).



of Law can and should play a greater role in the West Virginia legal structure and vice versa. By inviting members of the bench and bar to sit as moot court judges,<sup>19</sup> the College of Law can display its facilities, students and at least a part of its curriculum. There is no better way for the bench and bar to evaluate the College of Law and its students than by serving as judges in the Moot Court Competition. Accordingly, useful exchanges of suggestions may develop. Furthermore, attorneys or judges serving as moot court judges may spot a promising student whom they would like to interview as a potential employee.

There are some obvious gains from the moot court program for the students and bar alike. Students gain valuable experience in appellate advocacy at a time when nothing more than feelings will be hurt. Students are also provided with an opportunity to compete for honors, awards and cash prizes. Lastly the students have an opportunity to meet and show potential future employers real lawyer-like ability in as actual a practice setting as the College of Law can duplicate. The student, even though defeated in the first round, is far ahead of his fellow law students who have not entered. He has written at least one appellate brief, which incidentally makes an excellent item to show prospective employers. The student has made at least one appellate argument. The College of Law can offer few opportunities for the student to gain this kind of practical experience in the rigors of actual practice. A program which puts the student on his feet, all alone behind the lectern and faced with three or more tough lawyers or judges, challenging, probing, and questioning each statement, is invaluable. Such effort in legal analysis, research, writing, argumentative debate, and problem solving of concrete issues is a rare experience for the student in the theoretical atmosphere of doctrine and principle which dominates the curriculum. Combined into the Moot Court Competition are all the values of specificity demanded of the case orientation of practicing lawyers. The whole spectrum of the practicing lawyer's efforts, from analysis through research,

---

<sup>19</sup> The Moot Court Board follows a policy of avoiding use of faculty members as moot court judges to insure the maximum feasible participation of the West Virginia bench and bar in the Moot Court Competition. The West Virginia Supreme Court of Appeals was invited to sit *en banc* as the moot court judges for the 1967 competition finals. Because the constitutionality of the Private Club Liquor Act of 1967 had not yet been settled, the Court felt that it had to decline. It is hoped that in the future the Court will honor the College of Law with its presence as the moot court judges for the final arguments on Law Day each year.

writing, problem solving and oral and written argumentation are all combined into a competitive structure.

The gains for the bench and bar of West Virginia are likewise manifold and obvious. From this program the bench and bar are blessed with young attorneys already trained to handle a case or appeal. This training is placed where it should be—in the law school and not in practice on the pocketbook of a client. Furthermore, even if a student has lost in the first round of every competition he has entered, he has demonstrated a certain interest and enthusiasm for the practice of law beyond that of his non-competitive fellow law students. This kind of interest, enthusiasm, and experience should prove to be a valuable gains for the bench and bar alike.

Since the Moot Court Competition is a voluntary co-curricular program, the faculty has established a rich prize structure to support the competition and to attract and reward the best student advocates. The Baker Cup which had not been awarded for forty years was reactivated (providing a touch of history) and will be awarded each year to the winner of the competition. Appropriately labeled certificates are also awarded for outstanding achievement. In addition, the top three returning finalists are designated members of The National Moot Court Team for the next school year. The \$525 established as cash prizes makes The Moot Court Competition one of the richest in the country.<sup>20</sup> The cash prizes are:

Winner's Cash Prize .....	\$100.
Best Brief Cash Prize .....	\$100.
Best Advocate Cash Prize .....	\$100.
Runner-Up Cash Prize .....	\$ 75.
Semi-Finalist Cash Prize .....	\$ 50.
Semi-Finalist Cash Prize .....	\$ 50.
First Year Student Best Brief Cash Prize.....	\$ 25.
First Year Student Best Advocate Cash Prize	\$ 25.

These cash prizes are available for sponsorship. Presented here is a rare opportunity for any organization, law firm, or individual

---

<sup>20</sup> There may be some who are startled by the fact that the College of Law is monetarily rewarding law students for law school work. They should not be for there are two obvious answers: First, the program is voluntary, and the student spends hundreds of hours in research, writing and preparation—all away from their required subjects. Second, students go to considerable expense to have their briefs typed, and the prizes help to defray this expense not otherwise reimbursed.

attorney to support the College of Law in a most appropriate fashion. Sponsorship of any one or more of these cash prizes will entitle the sponsor to have its or his name appreciated in the Bulletin of the College of Law and the prize appropriately named for the sponsor. Those wishing to so support the College of Law and the moot court program should contact the Dean of the College of Law.

With the establishment of the Moot Court competition, the College of Law has, for the first time in its history, established a thorough-going moot court program. A previously *ad hoc* spring elimination to select the next fall's National Moot Court Team has been elevated into the Moot Court Competition with an independent value of its own. The National Moot Court Competition, as the inter-law school competitive aspect, and the Moot Court Competition, as the intra-law school competitive aspect, form a single integrated Moot Court program. We have now come to where we began.<sup>21</sup> As questioned by the late Arch M. Cantrall, The College of Law is now doing its job. The question now is: Will the West Virginia bench and bar help the College of Law do its job?

---

<sup>21</sup> Cantrall, *supra* note 1.