



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 73

Number 2 *The University of North Carolina School of
Law: A Sesquicentennial History*

Article 25

1-1-1995

(Sesquicentennial) The Holderness Moot Court Bench

Tracy Hamrick Davis

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Tracy H. Davis, *(Sesquicentennial) The Holderness Moot Court Bench*, 73 N.C. L. REV. 817 (1995).
Available at: <http://scholarship.law.unc.edu/nclr/vol73/iss2/25>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

THE HOLDERNESS MOOT COURT BENCH

TRACY HAMRICK DAVIS

Tracy Hamrick Davis holds both a bachelor of arts degree and a J.D. from the University of North Carolina at Chapel Hill. While a law student, she was a member of both the North Carolina Law Review Board of Editors and the Holderness Moot Court Bench. She is now an associate with the Raleigh, N.C. firm, of Smith Helms Mulliss & Moore, LLP.

Through a series of changes driven both by personality and practical considerations, the moot court program at the University of North Carolina School of Law has matured from a sporadic extracurricular activity into an institutional asset of which the law school is justly proud. This essay recounts the history of the Holderness Moot Court Bench and its development within the law school.

THE EARLY YEARS

In his comprehensive article *A Century of Legal Education*,¹ Professor Albert Coates chronicled the early years of the law school, often mentioning the school's moot court program in its various incarnations. The first professor of law at the University of North Carolina, Judge William Horn Battle, was named to the law professorship in 1845 and personally conducted moot courts to further the instruction of the school's first ten students. The University catalogue for 1845-46 provided:

A Moot Court will be held occasionally by the Professor, for the discussion by the Students, of such legal questions as he may propose. The Students will also be required from time to time to draw pleadings and other legal instruments, and be instructed in the practice of the Courts.²

1. Albert Coates, *A Century of Legal Education*, 24 N.C. L. REV. 307 (1946).
2. *Id.* at 330 (quoting N.C. U. CATALOGUE, 1845-46, at 16).

According to Professor Coates, these moot court activities were listed consistently in the university catalogue from the law school's inception in 1845 to its closure during Reconstruction.³

After Judge Battle's initial professorship, teaching responsibilities in the law school briefly devolved upon his son, Kemp Plummer Battle, and then shifted to Professor John Manning in 1881.⁴ Professor Coates reported that under Manning, the "Moot Court was . . . carried forward and expanded. Regular sessions lasting three hours were held every Saturday night and 'every student in the Law School ha[d] frequent opportunity for practice[.]' "⁵ Professor Manning's successor was the law school's first dean, Professor James Cameron MacRae, and under his leadership the moot court again was expanded. The 1907-08 edition of the university catalogue announced:

[T]he Moot Court has become an important factor in legal educational methods, in familiarizing the student with the practical side of law. It is the purpose of the University Court to acquaint the student with the legal details so necessary to be acquired, yet so difficult of access; and, in order to facilitate this work, the Court has been divided into two divisions, Civil and Criminal, each with its own judge and other officers. Sessions of both courts are held weekly, and, through regular assignments of cases, every student of the School has frequent opportunities for practice. The work embraces preparation of cases for trial, drawing of pleadings, selection of jurors, examination of witnesses, arguments on law and facts to judge and jury, and preparation and argument of appeal,—all according to the forms of practice in the North Carolina Courts.⁶

Under the school's second dean, Lucius Polk McGehee, the moot court was reorganized and given new direction. Dean McGehee reported in 1918 that "[t]he moot court has never afforded an adequate outlet for the interest and energy of the students outside the class room."⁷ The program was committed to the able hands of Assistant Professor Oscar Ogburn Efrd, who, along with Professor Maurice Taylor Van Hecke, was one of the first professors to come

3. *Id.*

4. *Id.* at 332-33.

5. *Id.* at 334 (quoting N.C. U. CATALOGUE, 1894-95, at 74).

6. *Id.* at 343 (quoting N.C. U. CATALOGUE, 1907-08, at 106).

7. *Id.* at 358 (quoting N.C. U. RECORD, 1918-19 (Dec.), at 56).

to the law school with "modern law school training."⁸ Professor Efirm was charged with the task of reorganizing the moot court into "law clubs."⁹ In fact, Professor Efirm reportedly "turned the more or less spasmodic moot courts, with their mock trials too often degenerating into a mockery, into law clubs, organized in the form of appellate courts for the investigation of authorities, the preparation of briefs, and the argument of cases on appeal."¹⁰ Professor Coates suggested that this lack of cohesion was due in large part to the fragmented nature of the student body—many of the students then enrolled would try to "cram a two-year course into one year or less, [or would attend] one term only, or a summer term, in the effort to learn enough to pass the bar examination, and with a short-lived and floating student body cramped for time and space."¹¹ Still, the atmosphere was more than conducive to lively moots and engendered a fraternal camaraderie among students interested in either grandstanding or debate.

The 1920s brought more change. Professor Atwell Campbell McIntosh reported in 1923 that

[t]wo or three years ago, as a substitute for the Moot Court system, the students were organized into groups, known as Law Clubs, for practice in the investigation and management of legal problems. These have been reorganized this year under the direction of Mr. Coates, and they are proving a valuable opportunity for individual work and research on the part of the students. There are seven of these clubs, each named for some prominent lawyer in the history of the state, Iredell, Ruffin, Gaston, Pearson, Manning, MacRae, and McGehee.¹²

With the law school's progress toward more stringent entrance requirements and a more regulated curriculum, the moots gained structure and began to factor more prominently in the curriculum. By the late 1920s the Law Clubs operated as follows:

[F]irst year students investigate authorities, prepare briefs and argue cases involving questions of law arising in their courses of study. These cases are framed by members of the faculty and the arguments are presided over by a court consisting of one faculty member acting as Chief Justice and

8. *Id.* at 381.

9. *Id.*

10. *Id.* (citing N.C. U. RECORD, 1919 (Dec.), at 56).

11. *Id.* at 383.

12. Atwell C. McIntosh, *Editorial Notes*, 2 N.C. L. REV. 30, 35-36 (1923).

two third-year students acting as Associate Justices. At the end of each year the winners of these preliminary arguments argue the final case of the year before members of the Bar. Membership in these Clubs is voluntary. Last year fifty-four students out of sixty joined the clubs, filed briefs, and made arguments.¹³

The newly instituted clubs operated under the umbrella of the Law School Association, which also was a new organization, then under the leadership of the "newest and youngest member of the Law Faculty,"¹⁴ Professor Albert Coates. With typical understatement, Professor Coates recalled that it was "perhaps natural" that he should

f[a]ll heir to the law clubs in 1923, with less practical experience than any of his colleagues, [and that he should] feel a poignant need of bridging "the gap between the classroom and the courtroom, the law school and the law office, the law teacher and the lawyer"—words of eloquence or grandiloquence according to the point of view, and that he should organize the students into a Law Student Association in the effort to achieve these objectives.¹⁵

The Law School Association, whose membership included every law student, sponsored a highly successful lecture series that frequently brought prominent lawyers, judges, and scholars to the law school and served as the infrastructure for moots. The lecture series most often addressed topics related to trial preparation or the presentation of appellate arguments, and speakers included North Carolina Supreme Court justices and North Carolina lawyers. Because the single lecture series soon was deemed inadequate, it was expanded to include presentations lasting two or three days in order to "present a thorough analysis of current types of law practice with illustrative problems."¹⁶ This series was in turn itself modified to become a "series of clinics conducted through a law office, a trial court and an appellate court organized and operated in the law school."¹⁷ These law clubs "federated in the Supreme Court of the Law School Association,"¹⁸ at which stage the top students prepared briefs and

13. Coates, *supra* note 1, at 381-82 (quoting N.C. U. CATALOGUE, 1927-28, at 263).

14. *Id.* at 382.

15. *Id.* (referencing N.C. U. CATALOGUE, 1927-28, at 263).

16. *Id.*

17. *Id.* at 382-83.

18. *Id.* at 383.

argued cases on appeal before justices of the state supreme court, judges from the state trial courts, and members of the state bar.¹⁹

TRANSITIONAL YEARS—1950-65

As the reputation of the law school began to reach further beyond the borders of the state, the moot court program came to serve as an additional means for carrying the North Carolina banner to other legal centers. Dean Brandis reported in his review of the 1951-52 academic year: "For the first time, in 1951, this law school entered the moot court competition sponsored nationally by the Association of the Bar of the City of New York and sponsored in this region by the Bar Association of the District of Columbia."²⁰ That first national team was assembled on the spur of the moment and consisted of the editor-in-chief and two associate editors of the *North Carolina Law Review*.

Professor William B. Aycock recalls the day in 1951 when Dean Brandis walked into his office and, after commenting that it would be nice for the law school to field a team in the upcoming National Moot Court Competition, asked Professor Aycock if he could pull such a team together.²¹ The competition had been instituted a few years before, but the law school had yet to participate. Professor Aycock went down to the *Law Review* office and spoke to Paul Johnston, the editor-in-chief, and to the two associate editors, Ernest DeLaney and Robert Giles, to tell them first that a team had been requested and then to ask if they would join the team. Despite the short notice, the editors proved game and quickly prepared their brief and arguments. The 1951 appearance and the team's excellent performance would be the first of many for the law school. Dean Brandis reported:

Our team . . . proved to be exceptionally able in presenting an appellate argument. In winning the regional competition they successively defeated the University of South Carolina, Wake Forest, and the University of Virginia. Moving on to New York, they defeated Notre Dame and St. John's University before losing to Georgetown in the semi-final round.²²

19. *Id.*

20. Henry Brandis, Jr., *The Law School (From September 1951 to December 1952)*, 31 N.C. L. REV. 81, 91 (1952).

21. Telephone Interview with William B. Aycock, Kenan Professor of Law Emeritus, University of North Carolina School of Law (Aug. 11, 1994).

22. Brandis, *supra* note 20, at 91.

Professor Aycock served as an advisor to this first final-four team and to several of the teams that followed.

Competition with other schools aside, the law school frequently experimented with the best means by which to impart practical skills in appellate advocacy to students, and the moot court activities appeared in a number of different incarnations. After being conducted through the Law School Association, the moot court came sometimes to be listed as a class, which at various times was offered only to second-year students, or to the two upper classes, or only to first-year students. At other times it was a purely extracurricular activity, and the intraschool competitions had the qualities of an intramural event. Not until the complete reorganization of the program in 1966 did it take the form it has today.

REINVIGORATION—INCEPTION OF THE HOLDERNESS MOOT COURT BENCH

In the spring of 1966, the moot court program was reborn. A generous and permanent endowment was given to the law school by the Acre Foundation in memory of Mr. William H. Holderness of Greensboro. The Holderness family left to the law school the decision where best to direct the funds, requesting only that they be used to further some useful and important purpose. The decision to institute a significant moot court program was reached by Dean Dickson Phillips, Jr., and the law school faculty. As Dean Phillips stated in the annual report, the gift would be

used by the school to provide continuing financial support for a comprehensive three-year appellate moot court program known as the Holderness Competition. The purpose of this program is to make a concerted attempt at substantial development among our students of the critical lawyer skills of oral advocacy and argumentative legal writing.²³

The law school's decision indicated a notable modification of its approach to legal education because, while the curriculum then included moot court as a class, the new program offered students a greatly expanded opportunity to develop more basic and practical skills while still in law school. This expansion of the breadth of students' education represented, to many, a shift in focus away from

23. J. Dickson Phillips, Jr., *The Law School*, 45 N.C. L. REV. 152, 165 (1966).

theory and what might be termed "pure law" toward an approach more conducive to students' early development of practical skills.

Raleigh attorney Roger Smith, then a third-year student, recalls the day he was invited to Dean Phillips's office and asked to spearhead the creation of a new moot court program.²⁴ After Smith brainstormed with other third-year students, the concept of the Holderness Moot Court Bench was born and subsequently approved by the law school. The *Tar Heel Barrister* reported that

[p]lans recently formulated by a group of interested students under the guidance of Prof. Richard H. Robinson call for the creation of a Moot Court Bench which will direct the entire advocacy competition program. It will consist of students who have manifested an interest in the program and whose academic performance indicates intellectual ability and leadership potential.²⁵

Serving along with Smith, the Bench's first chief justice, were Phil Baddour, R.W. Harrison, Jr., Arthur Hays, Frank Martin, John McMillan, Tim Nichols, Fred Riley, Charles Shaffer, Jerry Spivey, Gerald Thornton, Ben Warrick, and Hill Welford.²⁶ The *Tar Heel Barrister* went on to note that "[t]he basic revampment and expansion of the program will include vesting of all administration and supervision of the program in the students, the creation of a variety of types of competition, and the general elevation of the quality of the program."²⁷ The Bench undertook to sponsor its first competitions that year and, as Smith remembers, the effort proved most interesting.²⁸

The first Holderness Competition, which was designed to select the next year's Bench from among the second-year students, sparked heated controversy. Smith recalls that he and his fellow Bench members wanted to draw on the emerging issues of the day while drafting the problem and record.²⁹ To focus on the debate concerning free speech and pornography and to attract students' interest, the Bench drafted a pornography case that offered the no-fail combina-

24. Interview with Roger W. Smith, partner with Tharrington, Smith & Hargrove, in Raleigh, N.C. (Aug. 10, 1994) [hereinafter Smith Interview].

25. *Endowment to Provide New Moot Court Program*, TAR HEEL BARRISTER (Chapel Hill, N.C.), Oct. 1966, at 1.

26. *Id.* at 1, 3.

27. *Id.* at 1.

28. Smith Interview, *supra* note 24.

29. *Id.*

tion of "steamy sex and the First Amendment."³⁰ The problem addressed the constitutionality of a statute punishing publication of obscenity in connection with the French novel *Story of O*.³¹ The problem, which included quotations from the novel's most graphic scenes, was distributed by the Bench to students and the competition began.³²

Word of the competition's subject matter soon reached the faculty. Professor Frank R. Strong challenged Smith's and the Bench's choice of problem as indecent, argued that the problem's selection represented bad judgment on the part of the Bench, and suggested, but did not insist, that the Bench rework the problem. The Bench was surprised by the opposition and saw great irony in what they perceived as a burgeoning movement to censor their censorship problem. Smith remembers that the Bench felt "challenged rather than cowed" as they convened an emergency meeting to determine what to do, before finally electing to let the competition proceed.³³ Shortly thereafter, Smith was summoned to Dean Phillips's office and informed that the law school had concerns about the problem, especially because representatives of the Holderness family would be invited to attend the first rounds of arguments as special guests. Dean Phillips suggested that the Bench reconsider its choice of topic and select a somewhat milder issue for the inaugural arguments. The Bench again revisited the issue in light of this new information, and although members were concerned about possibly offending a family to which all were grateful, they reaffirmed their choice. The competition was completed, and a new Holderness Moot Court Bench selected. The first competition for first-year students also was conducted that year, involving more than 200 participants, and was successfully completed without reported incident.³⁴

THE HOLDERNESS MOOT COURT BENCH TODAY

Membership on the Bench is a high honor. Thirty-five students earned membership on the Bench in 1993-94, though the number

30. *Id.*

31. PAULINE RÉAGE, *STORY OF O* (Sabine d'Estrée trans., Ballantine Books paperback 1973) (1954). Though it received acclaim from varied and respected commentators, the novel juxtaposes raw and unusual sexual scenarios with unsettling psychological glimpses into the minds of "O" and her lovers which could prove unnerving to the sensitive or unwary reader.

32. Smith Interview, *supra* note 24.

33. *Id.*

34. *Id.*

fluctuates from year to year. In light of the intensive research and preparation required to compete for membership and then as a team member, members of the Craven Bench or any other team receive one hour of academic credit for their efforts. Students compete to gain membership on the Bench in their second year of law school and can seek places on any of the six teams presently fielded by the law school.

The National Team

The National Team is the oldest of the law school's moot court teams, having first officially represented the law school in 1951. It focuses exclusively on issues of constitutional law that are framed in the form of an appellate record by the Young Lawyer's Committee of the Association of the Bar of the City of New York and the American College of Trial Lawyers. Recent topics ranged from the First Amendment and forced AIDS testing to intellectual property and the copyright doctrine of "fair use." The National Moot Court Competition was first sponsored by the Association in the late 1940s.

The National Team competes in two teams of three members. Each team operates independently of the other to the extent required by the rules and prepares briefs and arguments unaided by professors or fellow students. The teams do, however, have the benefit of insight and guidance from their faculty sponsors and the patience and interest of faculty members willing to act as judges for practice moots. The team practices rigorously in the fall semester and competes at the regional level at the courthouse of the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. The final two teams progressing through the regional round win places to compete in the National Competition in New York City. To determine the winner in the regional competition, the final teams argue to an en banc panel of judges from the Court of Appeals and the Eastern District of Virginia, and from the Virginia state appellate and trial courts. After having undergone this round, few third-year law students forget the experience. The outgoing National Team selects its new members in the Spring Constitutional Competition and also names the eight runners-up to the Craven Bench.

The Invitational Team

Like the National Team, the Invitational Team also fields two teams of three members. These students are selected in the fall of their second year by the outgoing Invitational Team and, in the spring

semester, attend the invitational competition of their choice. Like the National Moot Court Competition, the competitions follow the traditional appellate advocacy format in which competitors submit briefs and then argue to panels of judges. The teams regularly participate in the Jerome Prince Evidence Competition sponsored by the Brooklyn School of Law and also compete in other competitions that focus on such diverse topics as family law, securities law, intellectual property, environmental law, labor law, antitrust, torts, and contracts.

The International Team

Known as the Jessup Cup International Moot Court Team, this team of four students is selected in the fall. The team competes in the Phillip C. Jessup International Law Moot Court Competition held during the spring in Washington, D.C. The Jessup Cup is an old and prestigious competition sponsored annually by the American Society of International Law and the International Law Students' Association. Like the National Moot Court Competition, the Jessup Cup uses a traditional appellate format.

The Client Counseling Team

The three-member Client Counseling Team also is selected in the fall of students' second year in a competition organized by the outgoing team. Team members must become adept at quickly assessing legal issues and communicating their advice to clients. Prior to the competition, the team is informed of the general topic to be addressed, which can be as broad as "criminal law" or "employment." With only this information in hand, team members are introduced to their client and must, within thirty minutes, encourage the client to relate his story while drawing out and developing the relevant facts. On the basis of this information, the team members assess the issues and give the client appropriate legal advice. In addition to competing, the Client Counseling Team often participates in the law school's annual Family Law Day by offering a counseling demonstration to fellow law students and their families.

The Negotiation Team

The four-student Negotiation Team is selected in the fall of students' second year and competes, as third-year students, in the following fall semester. Competing in two teams of two students each, members of the Negotiation Team develop their abilities to

select and control information, to perceive their opponents' limitations and motivations, and to create convincing reasons for promoting their solutions. Unlike the appellate competitions, the judges do not interact with the competitors. Past topics have included corporations, employment discrimination, and family law.

The Environmental Negotiation Team

In keeping with the law school's expanding environmental law curriculum, the Holderness Moot Court recently formed an Environmental Negotiation Team to take part in a national competition. In the spring of 1994, the four-member team reached the semi-finals in its first appearance in the national competition. The Environmental Negotiation Team's competition format is similar to that of the Negotiation Team, but also emphasizes the unique emotional and economic positions of the parties as well as the applicable (and oft-changing) regulations involved in environmental disputes. The most recent topics have focused on issues of public land use and environmental racism.

The Craven Bench

The members of the Craven Bench are selected in the Spring Constitutional Competition, which is conducted by the outgoing National Team. From a large field the team selects the top six competitors to join the National Team and names the next eight to the Craven Bench. These members shoulder much of the responsibility for the prestigious J. Braxton Craven, Jr., Invitational Moot Court Competition.

The Craven Competition was first instituted in 1977 and named in honor of Judge J. Braxton Craven, Jr., of the United States Court of Appeals for the Fourth Circuit. A longtime friend of the law school, Judge Craven died in 1977 after long service on the bench. Judge Craven frequently lectured at the law school, and students appreciated his classroom style. One student interviewed for the December 1967 edition of the *Tar Heel Barrister* remarked that Judge Craven's " 'real life illustrations' of cases he had decided made the student realize the importance of some seemingly insignificant details." Another student "commented on Judge Craven's sense of

humor," noting, " 'Even when he joked, there was an important point to be made.' " ³⁵

The Craven Competition sends invitations to present arguments on issues of constitutional law to all accredited law schools and consistently fills the available thirty-two slots with participants from many of the most respected law schools in the country. The student-run competition requires extensive preparation to draft a challenging problem and appellate record. The competition is at present overseen by Judge Craven's former law clerk, Burton Craige Professor of Law Elizabeth Gibson, and other professors at the law school also offer their insight and advice as the problem and record take shape.

The competing teams converge on the school in the early spring to compete before three-person panels of judges from both state and federal courts and attorneys practicing in the Triangle area. The Bench relies on UNC law alumni to participate in the judging, and the competition is for many graduates an opportunity to revisit old stomping grounds and to renew acquaintances with former classmates and professors. For the competing students, the Craven Competition offers not only the opportunity to test their mettle against other worthy teams but also the chance to visit one of most heralded college towns in the country. Competitors generally arrange to have sufficient extra time in Chapel Hill to make side trips to the shops and watering holes of Franklin Street. In addition to the Craven Competition, the Bench sponsors a banquet at the end of the year to report the progress of the teams, to announce members selected to the Order of the Barristers, and to offer a final thanks to the professors who have advised the teams throughout the year.

CONCLUSION

In light of its past, the present success of the Holderness Moot Court Bench should surprise no one. That it figured prominently in the early days of the law school is clear. As Professor Coates noted in 1946,

[the] story of the present office, trial and appellate practice work reaches back through various phraseologies to the Blackstone Law Club of 1893, and the catalogue announcement in 1845 of a "Moot Court . . . held occasionally by the

35. *Judge Craven Teaches Con Law*, TAR HEEL BARRISTER (Chapel Hill, N.C.), Dec. 1967, at 1, 4.

Professor" and of "pleadings and other legal instruments" to be drawn "from time to time" by the Students.³⁶

As Moot Court Chief Justice Roger Smith predicted when the Holderness Moot Court Bench first was christened, the Bench has become a "student-run moot court competition in which students . . . compete enthusiastically while they improve their skills in brief writing, legal research, and oral advocacy."³⁷

Predictions and histories aside, the changing nature of the Holderness Moot Court gives it vitality. The competitions give life to problems otherwise committed only to paper and offer students the chance to speak, challenge, defend, and persuade. The subject matter of the competitions always is timely, and the periodic restructuring of team formats and selection procedures facilitates keen competition. Moreover, the Bench, unlike the highly individualized performances more often demanded and rewarded in the law school, requires teamwork. It immerses its members in situations demanding both democracy and diplomacy as competitors learn to abide by the rules and move through the procedures of the most elevated courts in the nation. The program also enables its members to develop the skills to deal effectively with the most fundamental face-to-face lawyer-client interactions. This combination of a stable foundation and the yearly influx of energy and ability brought by new Bench members makes the Bench strong and the program useful. All indications are that the Holderness Moot Court Bench will carry on in a manner befitting its impressive history.

36. Coates, *supra* note 1, at 393.

37. *Holderness Competition Success as Moot Court Grows, Improves*, TAR HEEL BARRISTER (Chapel Hill, N.C.), May 1967, at 2.