

*LAW OF THE CASE, WAIVER OF SOL AND UNJUST TRIAL:  
FBA YOUNGER LAWYERS DIVISION CELEBRATES NINETEENTH  
ANNIVERSARY OF THURGOOD MARSHALL MEMORIAL  
MOOT COURT COMPETITION*



BY ADINE S. MOMOH



This year's Problem for the Nineteenth Annual Thurgood Marshall Memorial Moot Court Competition raised some of the same legal issues presented to the Supreme Court of the United States this term in *Musacchio v. United States*, namely: (1) whether the sufficiency of

the evidence in a criminal case should be measured on appeal against the elements mistakenly expressed in jury instructions, or only against the elements actually set forth in the statute and the indictment; and (2) whether a statute of limitations violation may be raised for the first time on appeal or is instead waived if not raised below. Both were undecided issues at the time of the Problem's writing. The Supreme Court issued a decision in *Musacchio* on January 25, 2016. For purposes of this year's Problem, and to maintain the pre-decided *Musacchio*'s open-endedness, teams were to assume that the issues decided in *Musacchio* remained undecided throughout the competition, and neither the teams nor the judges were to rely on or refer to the since-decided Supreme Court decision or any case law or other legal authorities decided or issued after January 24, 2016. Additionally, unlike *Musacchio*, the Problem presented a third issue for consideration in the context of a Computer Fraud and Abuse Act conviction: whether the trial judge's alleged demeanor and actions constituted error such as to render the appellant's trial constitutionally invalid.

James W. Satola drafted this year's Problem. Satola is an attorney practicing in Cleveland, Ohio, and a FBA Sixth Circuit Vice President, a position he has held since October 2010. He was the President of the FBA's Northern District of Ohio Chapter from 2002 to 2003. Satola is no stranger to the competition, as he has served as a judge for over five years during the rounds

leading to the Final Round. After drafting the Problem, Satola actually attended the *Musacchio* oral argument before the Supreme Court in Washington, D.C. on November 30, 2015. Although it became apparent after the oral argument that *Musacchio* would not be as groundbreaking or controversial as initially anticipated (SCOTUS affirmed the lower court 9-0, with an opinion by Justice Clarence Thomas), *Musacchio* provides some useful clarification on procedural issues that arise with some frequency in the lower federal courts, and hence, these are issues that were worth presenting to future federal practitioners and legal scholars through the competition.

The competition took place in Washington, D.C. over the course of two days, from March 31, 2016, to April 1, 2016. As background, the competition started in 1997 and has been an annual event organized by the YLD. Several aspects of the competition make it one of the premier moot court competitions in the nation. First, every round of the competition is held at a courthouse in Washington, D.C. over the course of two days (from the Superior Court of D.C., to the U.S. Court of Federal Claims, and concluding at the U.S. Court of Appeals for the Armed Forces), as opposed to a law school or office setting. The opportunity for law students to present oral arguments in actual courtrooms is an invaluable experience. Second, all of the volunteers who serve as judges in the competition are actual state or federal judges, practitioners or scholars, thereby reinforcing the "real world" experience for the law students. Third, law students have an opportunity at the awards reception that immediately follows the competition to network with federal court practitioners and judges who travel from around the country to attend the FBA's Mid-Year Meeting. Finally, each law student participant in the competition receives a free one-year FBA membership.

Having briefed their respective positions on the two issues certified to the Supreme Court, the law students presented their oral arguments. 39 teams competed

(although about two hours before the Preliminary Rounds began on Thursday, one team unfortunately withdrew due to illness). Teams were eliminated over the course of two days: first from a cut of the then-38 to 16 on Thursday; then from a cut of 16 to 8, 8 to 4, and 4 to 2 on Friday.

The two teams that made it to the Final Round were able to present their case to the Final Round panel. Joined by Satola, the remaining Final Round panel consisted of the Honorable Scott W. Stucky, U.S. Judge of the U.S. Court of Appeals for the Armed Forces; Mark Vincent, FBA President and Assistant United States Attorney of U.S. Attorney's Office for the District of Utah; the Honorable Michael J. Newman, FBA President-Elect and U.S. Magistrate Judge for the Southern District of Ohio; and the Honorable Paul M. Warner, U.S. Magistrate Judge for the U.S. District Court for the District of Utah. Stephanie DeSola and William Calve from St. Mary's University came out on top as the Overall Champion of the competition. Katherine Buckley and Jordan Block from the University of California, Berkley finished second. The remaining winners of the competition are as follows:

**2016 Moot Court Winners**

- 1st Place Brief:** St. Mary's University (Team 4)
- 2nd Place Brief:** University of California, Berkeley (Team 1)
- 3rd Place Brief:** Penn State (Team 9)
  
- 1st Place Oralist:** Luke Watterson - Duquesne University
- 2nd Place Oralist:** Mark Kovalcin - Widener University
- 3rd Place Oralist:** Tanner Russo - University of Virginia
  
- Best Final Round Oralist:** Stephanie DeSola, St. Mary's University
  
- Overall Champion:** St. Mary's University (Team 4)
- 2nd Place:** University of California, Berkley (Team 1)

**3rd Place:** Duquesne University (Team 26)

The Directors of the competition, Adine Momoh (YLD Secretary, Board Member and Chair of the Thurgood Marshall Moot Court Committee) and Joey Bowers (YLD Board Member) thank all who volunteered their time to serve as judges and bailiffs during the two-day competition; the Final Round judges; the YLD Board; DLA Piper for hosting the competition welcome reception and Lt. Colonel Steve Ranieri of the U.S. Army JAG, the welcome reception keynote speaker; the Superior Court of DC, the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Armed Forces for hosting this year's competition; the competition sponsors, the FBA Foundation, U.S. Army Judge Advocate General's Corps and DLA Piper; the participants and their coaches, who continue to impress us all with their oral advocacy skills, careful preparation and ability to make this competition a rewarding experience for everyone involved; and the dedicated FBA staff, for without their efforts, the competition could not continue to be a success year after year. Momoh and Bowers also thank their Moot Court Committee, especially the following:

**Problem/Bench Brief Subcommittee**

- Nadia Dahab
- Kristin Kimmelman
- Sean Burke
- Katherine Gregory

**Brief Grading Subcommittee**

- Sharan Lieberman
- Serge Subach
- Kymberly Cravatt

If you know of any law students eager to learn about federal practice, please encourage them to participate in the Thurgood Marshall Memorial Moot Court Competition. The YLD looks forward to 2017, which will be the 20th anniversary of the competition!