

by Adine S. Momoh



Younger Lawyers Division's Moot Court Competition Addresses Issue of First Impression

Is the Odor of Legal Medicinal Marijuana Sufficient To Establish Probable Cause?

A search warrant may be authorized under the Fourth Amendment to the U.S. Constitution upon a finding of probable cause that a crime has been (or is being) committed and that evidence of the crime will be discovered during the search. The odor of an illegal substance may be sufficient to establish probable cause. But what about the odor of legal medicinal marijuana—that is, marijuana obtained pursuant to a valid drug prescription? Can that odor give rise to probable cause to search an individual's place of solitude? The FBA Younger Lawyers Division (YLD) shed light on this issue of first impression by making it the subject its problem for the 18th Annual Thurgood A. Marshall Memorial Moot Court Competition, which started in 1997. The competition took place this year in Washington, D.C., on March 26 and 27.

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.,¹ 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, 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 Midyear Meeting. Finally, each law student participant in the competition receives a free, one-year FBA membership.

This year's problem presented two constitutional issues arising from a hypothetical federal criminal case: improper search and seizure under the Fourth Amendment and a defendant's due process

right to present a complete defense at trial. With regard to the first issue, defendant Kenny Bearson was convicted of two counts of first-degree murder. Evidence at trial included a pawn shop receipt that the police had seized from the defendant's home. The pawn shop receipt, which was seen in plain view, indicated that the defendant had pawned several rifles (some capable of shooting bullets that were found at the scene of the crime) weeks after the murders. Before going into the defendant's home, the police met at the front door where the defendant's sister, who apparently had been smoking medicinal marijuana and, after questioning from the police, consented to let them enter. Eventually, those issues found their way to the U.S. Supreme Court.

Hon. Michelle H. Burns, U.S. magistrate judge for the District of Arizona, drafted the problem. Judge Burns had previously worked in the white collar/public corruption crime unit of the U.S. Attorney's Office.

Having briefed their respective positions on the two issues certified to the Supreme Court, the law students presented their oral arguments. Thirty-eight teams competed. Teams were eliminated over the course of two days: first from a cut of 38 to 16 on Thursday, then from a cut of 16 to eight, eight to four, and four to two on Friday.

This year (in rare fashion) the top two teams presenting to the final-round panel were from the same school: St. Mary's University School of Law. Despite the students' familiarity with each other, the final round was no less competitive or intense. Indeed, per the competition rules, the final-round panel was not made aware of the students' law school affiliation until the oral arguments and deliberation among the judges had concluded. The final-round panel consisted of Hon. Scott W. Stucky, U.S. judge of the U.S. Court of Appeals for the Armed Forces; Matthew B. Moreland, FBA president and attorney at the Becnel Law Firm; Ashley Bellau, past FBA president and partner at Montgomery, Barnett LLP; Hon. Michael J. Newman, U.S. magis-

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trate judge for the Southern District of Ohio; and Adine Momoh, an Eighth Circuit vice president and trial attorney at Stinson Leonard Street LLP.

Bianca Frisaura and Stephen Bachran came out on top as the overall champions of the competition. Dylan Percy and Olivero Flores finished second. The remaining winners of the competition were:

2015 Moot Court Winners	
First-place Brief:	Duquesne University (Team 24)
Second-place Brief:	St. Mary's University (Team 4) University of Kansas (Team 17)
First-place Oralist:	Katelin Montgomery — Duquesne University
Second-place Oralist:	Johelys Cecala — Widener University
Third-place Oralist:	Stephen Bachran — St. Mary's University
Best Final-Round Oralist:	Dylan Percy — St. Mary's University
Overall Champion:	St. Mary's University School of Law (Team 26)
Second Place:	St. Mary's University School of Law (Team 12)
Third Place:	William Mitchell College of Law (Team 11) — Andrew Wilson and Robert Yount

The directors of the competition, Adine Momoh (YLD 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; the Moot Court Committee; DLA Piper for sponsoring the competition; the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Armed Forces for hosting



Final round judges: Competition Co-Director Adine S. Momoh; Past FBA National President Ashley L. Belleau; Hon. Scott W. Stucky, U.S. Court of Appeals for the Armed Forces; Hon. Michael J. Newman, Northern District of Ohio; and FBA President Matthew B. Moreland.

this year's competition; Hogan Lovells for hosting the competition welcome reception; Lt. Col. Steve Ranieri of the U.S. Army JAG, who was the FBA keynote speaker during the competition welcome reception; the FBA Foundation; U.S. Army JAG; U.S. Air Force JAG; 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.

If you know of any law students eager to learn about federal practice, please encourage them to participate in the Thurgood A. Marshall Memorial Moot Court Competition. The YLD looks forward to 2016! ☺

Endnotes

¹This year, because of unforeseen circumstances, the first round of the competition was held at DLA Piper's Washington, D.C., office. Despite the change in venue, the students experienced the same caliber of competition that students had experienced in years past.

The Federal Bar Association Thanks the Sponsors of the Thurgood A. Marshall Moot Court Competition

