

## OU'S MOOT COURT TEAM:

*The Winner and  
New Champion!*

**TO BE JUDGED THE BEST  
EVOKES A FEELING OF PRIDE  
THAT LASTS A LIFETIME**

A team of future attorneys from the University of Oklahoma College of Law brought the National Moot Court Competition championship — the most prestigious title available to law students — home to Norman for only the second time in OU history.

Third-year law students Teresa Collett, Norman; Bill Bernhardt, Midwest City; and C. Kevin Morrison, Owasso, won the 36th annual competition in New York City in January. The three were hand-picked for the team last spring from a field of 30 eager volunteers by OU's husband-and-wife coaching team, professors of law Teree Foster and Robert Spector.

Foster, a faculty member since 1977 and team coach since 1978, was herself a moot court team member while in law school at Loyola of Chicago. An 18-year coaching veteran, Spector also came to OU from Loyola, joining the

faculty and the coaching team in 1981.

"Moot court" is the appellate advocacy process, Foster explains, in which the participants argue hypothetical cases that are theoretically on appeal from a lower court trial verdict, or in which an appeal verdict is being appealed to a higher court.

The competition process begins each April, when Foster and Spector put out the word that they are formulating the team to represent OU in the regional and national competitions, which draw entries from approximately 160 law schools throughout the country. Thirty students auditioned with oral arguments for a spot on the 1985-86 OU team.

"That is not bad," Foster says, "especially when you consider the time com-

mitment involved. Thirty students out of a student body of under 600 were willing to put in 40 to 60 hours a week besides family and law school, which takes more than a little bit of time as well."

Foster anticipates double or triple the applicants for next year's team. "Everybody likes to be a winner," she laughs.

From the original group, Foster and Spector ask back 10 to 12 students for repeat presentations, then they name the final three. In the past, all three team members were selected to argue orally in competition and participate in the production of the brief, a written research product, or summation, of the hypothetical case. This year, the coaches chose Bernhardt and Collett for their extraordinary abilities in oral argument, while Morrison was selected for his exemplary writing

**by MARGARET FRENCH**



A winning team — Coach Robert Spector, Kevin Morrison, Bill Bernhardt, Coach Tere Foster and Teresa Collett — poses



at left with trophies from the 1985-86 moot court season, then joins Law Dean David Swank, above, at the state legislature.

skills in preparation of the brief.

"During the summer, we send them off with briefs from previous teams — not only from this school, but from others — three examples of highly ranked briefs and three that were at the bottom," Foster explains. "We tell them to analyze the briefs to see why they were ranked as they were. We also give them books on the briefing and arguing of oral appeals and other reading assignments. The students are fairly conscientious about it, even during the summer."

In August, the actual case to be argued is circulated to the participating schools, and the students begin work on the brief, which is submitted in October, one month before oral arguments at the regional level in November.

"I can't even estimate how many hours go into the preparation of this product," Foster says of the students' nights and weekends spent formulating the brief. "It would be in the thousands."

While the case itself may be hypothetical, Foster insists that the issues involved are always right at the "cutting edge of the law. The students are engaged not only in extensive research in order to illuminate the various aspects of the questions presented, but also in creative analysis. There is no one source, no one case decision, no one article or book that gives them an answer.

"In actuality, it's what law is all about. Law is about testing the boundaries, testing the limits — developmental processes that result in, hopefully, beneficial societal change."

This year's case addressed a complex and timely issue, based in part on two actual cases argued in the U.S. Court of Appeals, one of which will go before the U.S. Supreme Court next term. The moot court participants argued the right of a municipality to regulate cable television franchising within its borders.

The case involved a hypothetical city, size unknown, which had decided to award only one cable television franchise, to be selected by an auction. However, eight cable television operators were able to provide service, and existing utility equipment could have accommodated a total of three franchises.

In addition, the chosen franchise would be subjected to certain restrictions. Included were donation of 10 percent of available channels for open access and allocation of another six channels, two each for public, educational and governmental broadcasting, with the franchisee picking up all operating costs. One of the eight cable operators brought suit.

Three issues central to the case were up for debate. First, the plaintiffs contended that competition could not be restricted to only one operator, at least not at the initial stage of the proceed-

ings, since the judge had thrown out the complaint without a trial. The plaintiffs contended a trial should be held to prove the city could support only one franchise.

Second, the plaintiffs claimed the city could not refuse access to three firms since the utilities were so designated by the city as a forum amenable to all public speech. Finally, the plaintiffs believed mandates to provide free air time to any group requesting it violated the first amendment. A cable television-newspaper parallel was drawn to illustrate that point.

The oral moot court competition began at the regional level in San Antonio in November. Members of all 14 participating teams — from each law school in Texas, Arkansas and Oklahoma — addressed both sides of the issue, arguing for the plaintiff in the first round and the defendant in the second, or vice versa.

Foster believes requiring the law students to argue both sides is a benefit in preparing them for circumstances they might encounter in the professional careers which they are about to begin. Collett will practice with the law firm Crowe and Dunlevy in Oklahoma City, and both Bernhardt and Morrison will join Hall, Estell, Hardwick, Gable, Collingsworth and Nelson of Tulsa.

"The competition cases, which again, always are structured so that they are on the cutting edge of the law

just don't have clear answers," Foster says. "To be able to think through all the ramifications of what the problem entails, what the arguments are, you really have to know both sides."

The regional competition is divided into winner and loser brackets, where double elimination guarantees every team an opportunity to argue at least two rounds, until only one team remains. The Sooners won the final round and advanced, along with the second-place team from this region, to the 28-team national competition, sponsored by the Young Lawyers Committee of the Association of the Bar of the City of New York.

OU subsidizes travel to the event as far as the law school budget will allow, and the competitors obtain the least expensive air fares and hotel accommodations, Foster notes.

"Also, we are fortunate in that an Oklahoma City law firm, Andrews-Davis, began supporting our participation in this competition about four years ago. An attorney there, John Breathwit, is one of our alumni; he was on the moot court team and valued his experience very much. He talked his senior partners into giving the law school \$2,500 a year for this competition."

The Andrews-Davis contribution enables the law school to give each team member a \$700 stipend to help lighten the load for the semester. The remainder goes to the travel kitty.

The six-round nationals begin on a Monday with the first two rounds devoted to arguing both for the defense and for the plaintiff. By Tuesday, 16 teams have been eliminated, and the competition becomes a sudden-death affair on Wednesday and Thursday.

The OU team always stays a week in the Big Apple. "We feel that it's kind of bad luck to make reservations only through a certain day," Foster says. "We always assume that we will have to be there through Thursday night."

As it turned out, of course, the Sooners' presence was required. By Thursday night they had won all the marbles. In addition, Morrison's brief, which had won first in the regionals, placed second nationally, and Bernhard was named the nation's outstanding moot court speaker.

"The competition and pressure get to be tremendous," Foster explains, "because every team there has prevailed in its own region, either as a first or second place team. Everyone there is superb, so it inspires people to pull out that extra that sometimes they didn't even know they had — to be a little bit better than the opponents."

In the semifinals and finals the Sooners triumphed over teams from Brigham Young University and the University of Alabama, already having disposed of teams from Tulane University, Emory University, McGeorge School of Law in Sacramento and Cleveland-Marshall College of Law.

Judging the competition are practicing attorneys and sitting judges, who concentrate not on the merits of the case, but on the contestants' abilities to represent their side persuasively and field questions, as they would in any court case.

As coaches preparing for the competition, Foster and Spector play the role of judges and critique the students' performances in practice sessions.

"We each spend 150-200 hours in a semester with these people," she says, noting that the process understandably produces lifelong friends.

After observing arguments in experimental rounds, they call in practicing attorneys, judges and other law faculty to attend the sessions and offer more comments. Sometimes the coaches must reshape a student's delivery methods.

"Oklahoma has a very strong and successful debate system at the high school and undergraduate levels," Foster says, "but debating is a much different style from legal argument. We tease the students about it when they try out. We say, 'You have potential, but you're an old debater, and we're going to have to make you forget all that debate stuff.' The style of delivery is very, very different. So we work on style, in terms of what detracts from the argument being given and what enhances it. We try to further develop the student's own talents."

"We always have taken the position that there are twin goals in the competition process; winning is the secondary goal. The primary goal is the de-

velopment of the individual student; that once the coaching and preparation phase is complete, the student does his or her very best in the competition process."

That philosophy and a once-in-a-lifetime chance for a unique honor, Foster maintains, justify the existence of the competition.

For the school, the championship evokes a tremendous sense of pride and an "esprit de corps," Foster says, among the student body, which tracks the progress of the competition away from the campus. The only other time an OU team won the elite national title was in 1957, under the coaching of Dale Vliet, David Ross Boyd professor emeritus of law.

Foster feels that winning sends an important signal. "I always have said, on a person-by-person basis, our students could compete with any students in the country. Now not every student, of course, but the best students in our classes are as good as the best students at Stanford, Harvard, Yale or Columbia."

The team members, meanwhile, have gained something intangible.

"It's something that doesn't always happen in real life. It's acclaim — recognition that cannot be doubted — of one's extraordinary abilities and talents. In real life, the best lawyer doesn't always win, because it depends on the case, judge and jury. You may be the best lawyer in town, but if you're representing three child molesters, you're not likely to win. It depends on so many factors beyond the attorney's control."

"In this competition, the situation is more artificial, more structured, because the merits of the case aren't taken into account. Critical are the manners of analysis presentation. All that counts are the student's abilities, talents and preparation."

"Winning a national competition is a very strong statement. In this year, out of all the hundreds and hundreds of law students — probably 450 to 500 participated — these three are the demonstrated best. That's very strong stuff. It's something that they will be able to point to with pride for the rest of their lives — to be able to say, 'I was the national champion.'"