

MOOT COURT HONORARY - ROUND - April 22, 2021 5pm CST



ABOUT TULANE MOOT COURT

The Tulane Moot Court Program is one of the largest and oldest student-run organizations at Tulane Law School. The program is comprised of over fifty student members who train and compete in four separate disciplines: Appellate, Trial, Alternative Dispute Resolution, and International Commercial Arbitration.

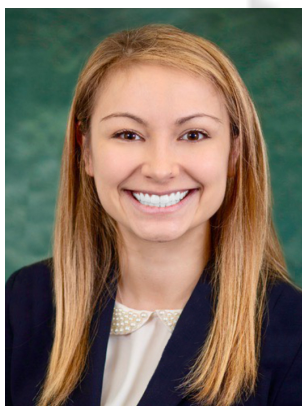
In the Spring of their 1L or 2L year, students may “argue on” to the discipline of their choosing. This year the Moot Court Program has set a school record for the most competitions in a single year, achieving great success in the vast majority for national recognition.

In addition to providing an opportunity for its members to train and compete in oral advocacy, Tulane Moot Court holds an Intraschool competition, open to all Tulane Law students, and hosts the Mardi Gras Invitational, a national sports law appellate competition run with the support of the Sports Law Journal. The Moot Court program provides a unique opportunity for students to develop and hone oral and written advocacy skills. Our alumni have gone on to be state and federal judges, members of state and national legislatures, and accomplished and recognized litigators.

We are honored to have you join us for the Annual Moot Court Honorary Round.

Sam Sands, Administrative Justice for Intraschool Competitions

COMPETITORS



- Appellee

Lucille Dieckhaus is a third-year law student at Tulane University Law School. While she was born in Hawaii, Lucy primarily grew up in northern Illinois. She completed her undergraduate studies from Loyola University New Orleans with a double major in Political Science and Mass Communication with a concentration in Journalism. Prior to attending Tulane, Lucy worked as a television journalist.

Lucy has the honor of serving in several leadership positions in the Tulane University Law School Moot Court Program, including: Associate Justice for Academic Affairs and Alumni Relations, Head Coach of the Judge John R. Brown Admiralty Moot Court Competition team, and as an oralist on The National Moot Court Competition team.

Lucy is also a Managing Editor on the *Tulane Maritime Law Journal*, which published her Comment about unreasonable deviation in the maritime industry. Lucy also serves as a student attorney with the Tulane University Law School First Amendment Clinic, and she was a research assistant for both Professor Amy Gajda and Professor Catherine Hancock.

During her second year, Lucy competed in the Judge John R. Brown Admiralty Moot Court Competition, and she was awarded the Fourth Overall Best Oral Advocate award. She also received the Top Ten Percent designation for her performance in the Trial Advocacy Program.

Outside of the classroom, Lucy enjoys photography and spending time with her dog, Josie Mae. She is deeply grateful for the opportunities to learn alongside many talented and thoughtful professors, mentors, and colleagues.



- Appellant

Zachary A. Creel is a third-year law student at Tulane University Law School. He was born and raised in New Orleans, Louisiana, where he attended Jesuit High School. In 2017, he graduated from the University of Mississippi as a double major in Classics and Art History.

Between undergraduate and law school, Zachary spent a year teaching English and Latin at Jesuit High School as a member of the Alumni Service Corps. During his time at Tulane Law, Zachary has served as the Chairman for the Moot Court's Appellate team as well as the vice-president of the Civil Law Society. In second-year, Zachary took first place in the 2L Intraschool Appellate competition. He also finished in the top 10% of his Trial Advocacy class and received the Top Oralist award in his Advanced Appellate Advocacy class. This year, Zachary has spent much of his time serving as a member of the Tulane Criminal Justice Clinic, where he has represented indigent clients in parole, clemency, post-conviction, and pre-trial settings.

Before he joined the Clinic, Zachary served as an intern in the Trial Division at the Orleans Parish District Attorney's Office and as an extern at the Louisiana Supreme Court in the chambers of Justice Marcus Clark. Following graduation, Zachary intends to stay in New Orleans and pursue a career as a litigator.

Outside of law school, Zachary is an avid chess player, a heavyweight wrestling coach, and an aspiring singer-songwriter. He is grateful for this opportunity to compete in this Honorary Round, and to argue before this panel of esteemed judges.

PANEL OF DISTINGUISHED JUDGES

JUDGE CARL E. STEWART

Judge Carl E. Stewart received his Juris Doctor of Law Degree from Loyola University College of Law, New Orleans, Louisiana in 1974. Immediately following admission to the Louisiana State Bar Association, he served as a military lawyer, followed by other government service and as a private practitioner.

Judge Stewart began his judicial service as a District Judge for the First Judicial District Court of Caddo Parish, and later as a judge on the Louisiana Second Circuit Court of Appeal in Shreveport prior to his appointment to the United States Court of Appeals for the Fifth Circuit which has appellate jurisdiction over all federal courts in Louisiana, Texas, and Mississippi and is based in New Orleans, Louisiana. Judge Stewart was the first African American to serve on the three-state Fifth Circuit and became the court's first African American Chief Judge. His seven-year term ended on September 30, 2019. Judge Stewart's resident chambers is located in Shreveport.

Throughout his judicial career, Judge Stewart has always exhibited an unwavering commitment to enhancing diversity and inclusion in the legal profession. He is a charter member of the Harry V. Booth and Judge Henry A. Politz Chapter of American Inns of Court in Shreveport. He is a past President of the American Inns of Court Foundation Board of Trustees and currently serves as Chair of the Awards Committee. He is a member of the American, National, Federal, Louisiana and Shreveport bar associations, and the Federal Judges Association. Judge Stewart is a member of the American Law Institute, the Fellows of the American Bar Foundation, the Louisiana Bar Foundation, the National Bar Association Judicial Council, and the Just the Beginning Foundation of African American Federal Judges. He is a member of the Judicial Conference Committee on Judicial Conduct and Disability. He served as a member of the Executive Committee of the Judicial Conference of the United States including serving as its Strategic Planning Coordinator. He is a past chairman of the Advisory Committee on the Federal Rules of Appellate Procedure of the Judicial Conference of the United States. He served as a Jurist-in-Residence at American University Washington College of Law in 2014. He presented the 2014 Alvin B. and Janice G. Rubin Visiting Professor Lecture at the Paul M. Hebert Law Center, Louisiana State University.

Judge Stewart serves on the Dillard University New Orleans, Louisiana Board of Trustees. He is a past President of the Community Foundation of Shreveport-Bossier, and past board of trustee member of Centenary College of Louisiana, Shreveport. He is the recipient of numerous professional awards including four honorary Doctor of Laws degrees. He is an Honorary Master of the Bench, Middle Temple Inn of Court, London, England. The Dwight D. Opperman Foundation presented Judge Stewart with the 35th Annual Edward J. Devitt Distinguished Service to Justice Award in 2019, our nation's highest honor bestowed upon an Article III federal judge.

Publications authored by Chief Judge Stewart include: "Diversity Jurisdiction: A Storied Past, A Flexible Future," 2017 Ainsworth Memorial Lecture, LOYOLA LAW REVIEW, Loyola University New Orleans College of Law, 63 Loy. L. Rev. 207 (2017); "Abuse of Power & Judicial Misconduct: A Reflection on Contemporary Ethical Issues Facing Judges," THE UNIVERSITY OF ST. THOMAS LAW JOURNAL, The University of St. Thomas School of Law, 2003; "Balancing Professionalism, Ethics, Quality of Life and the Successful Practice of Law," THE SOUTHWESTERN LEGAL FOUNDATION, PROCEEDINGS OF THE

FORTY-FIFTH ANNUAL INSTITUTE ON LABOR LAW DEVELOPMENTS, 1999; and "Contemporary Challenges to Judicial Independence," LOYOLA LAW REVIEW, Loyola University School of Law, 1997.

CHIEF JUDGE NANNETTE JOLIVETTE BROWN

Chief Judge Nannette Jolivet Brown was nominated to the United States District Court for the Eastern District of Louisiana by President Barack Obama and after the United States Senate confirmed her nomination by unanimous consent, she began active service on October 5, 2011. She was elevated to Chief Judge on May 25, 2018. Just prior to her appointment to the United States District Court, Judge Brown was Deputy Mayor and City Attorney for the City of New Orleans. Prior to that, she was a Partner with the firm of Chaffe McCall, LLP, where she had a varied practice in commercial and environmental litigation, as well as in real estate law and other transactional matters.

Judge Brown graduated from Tulane Law School with a Juris Doctor. She later served as a teaching fellow at Tulane Law School's Environmental Law Clinic while pursuing an LLM in Energy and Environment. She also served as associate professor at Southern University Law Center and clinical professor at Loyola Law School, where she helped establish the Mediation Section of the Loyola College of Law Clinic & Center for Social Justice. She is currently a member of the Executive Committee of the ABA National Conference of Federal Trial Judges, ABA Ethics Committee Judicial Advisory Committee, the Executive Committee of the Federal Judges Association and the Immediate Past President of the New Orleans Chapter of the Federal Bar Association. She serves on the FBA Diversity & Inclusion Committee and the Sarah T. Hughes Awards Committee and FBA Foundation. She is also a member of the National Bar Association, Louis A. Martinet Society, Tulane Inn of Court and A.P. Toureau Inn of Court.

Judge Brown has been honored with the Sarah T. Hughes Civil Rights Award by the National Federal Bar Association and the Ernest Morial Award by the Louis A. Martinet Legal Society. She has also been honored with the National Bar Association's Women Lawyers Division Excellence in the Judiciary Award.

JUDGE ELENİ M. ROUMEL

Judge Roumel was appointed Judge of the United States Court of Federal Claims in 2020, and served as Chief Judge from 2020-2021. She previously served as the Deputy Counsel to Vice President Mike Pence from 2018-2020. Prior to her tenure at the White House, she served from 2012-2018 as Assistant General Counsel in the U.S. House of Representatives Office of General Counsel. While serving in the House Office of General Counsel she advised and represented the U.S. House of Representatives, Members of Congress, and congressional staff in federal trial and appellate courts across the country.

Judge Roumel previously was a partner with Nelson Mullins Riley & Scarborough, LLP, in Charleston, South Carolina, and before that practiced at Wilmer Cutler Pickering Hale and Dorr, LLP and Skadden Arps Slate Meagher & Flom, LLP in New York City. She also was an adjunct professor at the Charleston School of Law, where she taught intellectual property law. Judge Roumel served as a law clerk to the Honorable William H. Pauley III, United States District Judge for the Southern District of New York, from 2002-2004.

Judge Roumel received her J.D., magna cum laude, in 2000 from Tulane Law School, where she graduated Order of the Coif and was an editor of the Tulane Law Review. Judge Roumel also received her M.B.A. from Tulane University's A.B. Freeman School of Business in 2000. She earned her bachelor of arts degree, cum laude, from Wake Forest University in 1996.

Cohn v. Placerado Unified School District

Statement of Facts

Hannah Cohn (Ms. Cohn), a sophomore at Placerado High School in Auburnville, California, was on a school soccer trip to Arizona when the Covid-19 pandemic first hit the United States. (R. at 1.) The team rushed home due to concerns over the pandemic, and within a few days of their return Ms. Cohn started experiencing common Covid-19 symptoms including a fever, dry cough, and difficulty breathing. (R. at 1.) Ms. Cohn's parents took her to Mercia Hospital where the doctors confirmed she had symptoms of Covid-19 but were unable to test her. (R. at 2.) The doctors sent her home with instructions to self-quarantine. (R. at 2.) A few days later her symptoms became more serious. (R. at 2.) Her parents took her to the hospital, where she tested negative for Covid-19. (R. at 2.) Despite her negative test, the doctors told her she might nevertheless be positive because she could have missed the window for testing. (R. at 2.) Ms. Cohn was sent back home and asked to continue quarantining. (R. at 2.) That evening, she started feeling better and posted to her 200 Instagram followers that she had "beaten COVID-19." (R. at 2.)

The next day, the Placerado County health department received numerous calls from parents of students and other citizens of Auburnville concerned about the Instagram post. (R. at 2.) In response, the Health Department contacted the Placerado County Sheriff's Department to request they contact the Cohn family about Hannah removing the post. (R. at 2-3.) The Sheriff assigned this task to Deputy Krupke, who asked what he should do if Hannah refused to remove the post voluntarily. (R. at 3.) The Sheriff advised him there were many alternative options, including potentially citing her for disorderly conduct under a Placerado County Ordinance. (R. at 3.)

The next day, Deputy Krupke paid a visit to the Cohn family home, meeting with Hannah's parents outside the house. (R. at 3.) Deputy Krupke explained Hannah's Instagram post purporting she "beat COVID-19," despite her testing negative was causing many issues with students and parents within the school district. (R. at 3.) He explained that the Health Department had requested the police department reach out to the Cohns and ask for the deletion of the post. (R. at 3.)

The Cohns resisted this request, with Hannah's father defending his daughter's post by explaining that she experienced symptoms of Covid-19 and that the hospital said the negative test was inconclusive. (R. at 3.) While Deputy Krupke and Hannah's father argued, Hannah's mother said "okay" and went inside the house. (R. at 4.)

A minute later Hannah came outside. (R. at 4.) Deputy Krupke showed Hannah her post and requested she delete it. (R. at 4.) He explained to her that if she refused to take it down, she could be cited for violating a Placerado County ordinance prohibiting disorderly conduct. (R. at 4.) When Hannah hesitated, the deputy retrieved his citation book from his pocket and began to write in it. (R. at 4.)

Hannah then agreed to delete her post, and went back inside. (R. at 4.) Mr. Cohn repeated to the deputy that Hannah did have Covid-19 symptoms and objected that the county had no right to tell his daughter what she can or cannot post to her social media. (R. at 4.) Deputy Krupke responded, “Robert, I don’t want it to go any farther. It’s as simple as me coming out here and just getting the post taken down and walking away.” (R. at 4.) Hannah reemerged from her home and showed the deputy that her post was deleted. (R. at 4.) The deputy then put his citation book back in his pocket without issuing a citation and left. (R. at 4.)

The next week, the school switched to remote learning for the remainder of the year due to the pandemic. (R. at 4.) In September the school reopened for in person learning. (R. at 4.) Hannah hoped to continue her role as the sophomore class representative, pending the student elections taking place later that month. (R. at 4-5.) Hannah’s high school established Covid-19 protocols to ensure students remain safe, including mandating mask wearing and physical distancing when practicable. (R. at 5.) The first week back students followed the protocols, but by the third week many students were not wearing face masks and were crowding together in the hallways in between classes. (R. at 5.)

On October 2, 2020, Hannah took a photo during school of students walking in front of her in the hallway, many of whom appeared to be maskless. (R. at 5.) The students were crowded, walking shoulder to shoulder. (R. at 5.) It was clear from the lack of straps behind their ears or on the backs of their heads that at least a dozen students were not wearing masks. (R. at 5.) Hannah knew that the school prohibited the use of cellphones during school hours. (R. at 5.)

After school, Hannah showed the photo to her friends, who encouraged her to post it to Instagram. (R. at 5.) Hannah was worried this was a bad idea given her recent run-in with Deputy Krupke. (R. at 5.) Her friends, however, were very persuasive, and eventually Hannah did post the photo, captioning it “No one at Placerado High is wearing masks!” (R. at 5-6.)

Two days later Hannah was called to the principal, Mr. Headley’s, office, where he showed Hannah her Instagram post which had gone viral around the school campus. (R. at 6.) Hannah admitted she posted the photo. (R. at 6.) Mr. Headley said he had spent the past 24 hours responding to numerous phone calls from irate parents (R. at 6.). Among these parents some were angry because they thought the photo showed their child not wearing a mask, which they said violated their child’s right to privacy, although Mr. Headley conceded that the photo only showed the backs of students’ heads and that he couldn’t identify any of the students in the photo. (R. at 6.) He also said he received complaints from many students and teachers who were angry that Hannah violated the school rule against using cellphones during school hours, and that several teachers reported they were having trouble getting students to focus on the lesson plan because students wanted to talk about and debate the photo. (R. at 6.) Mr. Headly also said he thought the caption was misleading because it suggested no one at the high school was wearing a mask, and Hannah conceded that she knew many students around campus were wearing masks. (R. at 6.) According to the student government Code of Conduct student government members should bring problems to the attention of school officials. (R. at 6-7.)

Mr. Headly suspended Hannah for five days for violating the rule against cellphone use during school hours and the student government Code of Conduct. (R. at 7.) He told her she was banned from student government during the 2020-2021 school year. (R. at 7.)

Hannah, through her parents as guardians ad litem, filed a civil complaint in the United States District for the Eastern District of California, against the Placerado Unified School District and the County of Placerado. (R. at 7.) Her complaint alleges that 1) the school district violated her rights under the First Amendment by disciplining her for posting the photo on Instagram and 2) the county retaliated against her in violation of the First Amendment by Deputy Krupke’s threat to cite her for disorderly conduct if she did not remove the Instagram post that she had “beat COVID-19.” (R. at 7.)

Issues Presented

After an expedited summary judgment proceeding, the District Court for the Green Wave District granted summary judgement in favor of the school district and county. Ms. Cohn, through her parents, brings three issues on appeal.

Issue 1 – Failure to Show First Amendment Chilling Effect

Did the District Court err in finding that Deputy Krupke’s threat of citation for disorderly conduct did not rise to the level of a First Amendment violation for § 1983 purposes because the act was unlikely to deter future First Amendment activity?

Issue 2 - Probable Cause Forecloses a Finding of Retaliation

Did the District Court err in finding that Deputy Krupke had probable cause to issue the disorderly conduct citation to Ms. Cohn, which precludes a finding of First Amendment retaliation under *Nieves v. Bartlett*?

Issue 3 - Placerado Unified School District’s Punishments Did Not Violate the First Amendment

Did the District Court err in finding that Ms. Cohn’s suspension and prohibition from participating in student government by Placerado Unified School District did not have First Amendment implications?