

THE MAURICE A. DEANE SCHOOL OF LAW AT HOFSTRA UNIVERSITY
MOOT COURT BOARD

presents

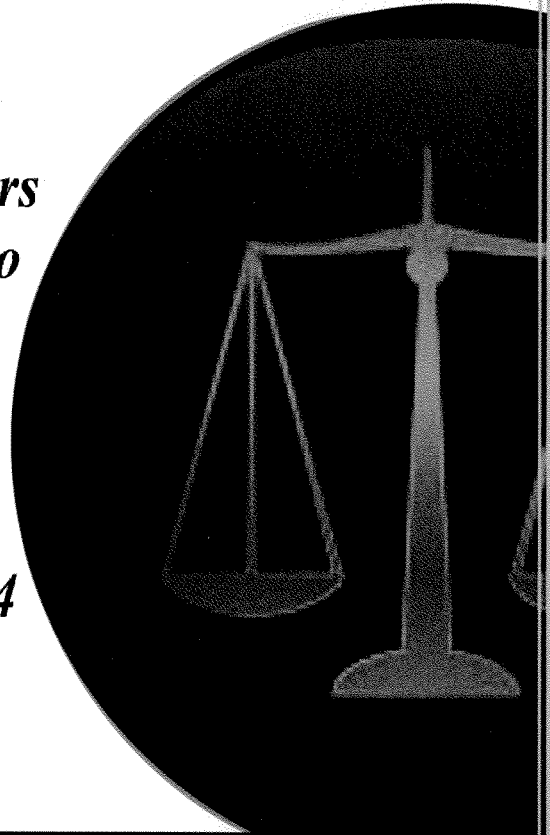
1L Intramural Competition
FINAL ROUND

FINALISTS:

Michael Senders
Craig Marinaro

DATE:

Thursday,
March 13, 2014



MAURICE A. DEANE SCHOOL OF LAW

HOFSTRA  LAW

"Speak clearly, if you speak at all; carve every word before you let it fall" ~ Olivia Wendell Holmes



HOFSTRA MOOT COURT BOARD
2013-2014

PRESIDENT & EDITOR-IN-CHIEF
MELISSA CEFALU

DIRECTOR OF COMPETITIONS
SHANTAE JOHNSON

VICE PRESIDENT
KELLY A. MCGOWEN

CO-MANAGING EDITORS
DAMIAN RACANELLI
STEPHEN ATWELL

**DIRECTOR OF STAFF
& BUSINESS AFFAIRS**
BRITTANY JOHNSON

**DIRECTOR OF
ALUMNI AFFAIRS**
HANAIYA GHOLSON

**DIRECTOR OF TECHNOLOGY
& SOCIAL MEDIA**
CASS SANFORD

ASSOCIATE EDITORS
BRENDAN FRIEDMAN
MATTHEW D. LAVOIE

SENIOR STAFF

PETER BARBIERI
BRIAN BOXLER
JACOB DAVIDSON
MATHEW FELDMAN

GABRIELLE GUTZMAN
WILLIAM THOMAS HUGHES
TINGTING LIU
PAUL LIGGIERI

PETER REITANO
MICHAEL SMITH
MAX SULLIVAN
APRIL WHITE-SMALL

JUNIOR STAFF

IVORY L. BISHOP JR.
ANNA BLAISE
CASSANDRA BRANCH
MICHAEL CALLAN
SASHA CHEGINI
BRIAN CIMALA
ANTHONY DE INGENIIS
ANNA DREPAUL

ANDREW DRESSLER
CLAUNICK DURONVILLE
JAMES FARRIS
AILEEN E. IORIO
ADDIE KATZ
MEGAN KEARNS
SUSANNA LARUCCIA

THOMAS J. MCGOWAN
RAJENDRA PERSAUD
JULIA ELMALEH-SACHS
DENISHA STEWART
MARNI WEINER
JENNIFER WEISSER
WA YANG
AARON ZUCKER

HONORABLE MICHELE M. WOODARD

Michele M. Woodard is a Justice of the Nassau County Supreme Court in the Tenth Judicial District of New York, and the first black woman elected to this position. Justice Woodard was elected on November 7, 2001. Justice Woodard graduated Magna Cum Laude from Syracuse University in 1976. She received her J.D. from the Ohio State University School of Law in 1979.

Justice Woodard began her legal career in 1979 as a Howard University Law Fellow and staff attorney for Queens Legal Services. She served as a housing and consumer rights advocate. During this time she also established legal education programs in Queens County. In 1982, Justice Woodard became an Assistant Attorney General. During this time she prosecuted labor violators and represented numerous state agencies including the Department of Taxation & Finance, Transportation, Social Services and Education. Then in 1995, she worked as a supervising attorney of Mirkin & Gordan, P.C. until 2000 when she was elected to the Supreme Court of Nassau County.

Justice Woodard remains actively involved in the community in a variety of ways, including mentoring law students and young lawyers. Justice Woodard also serves as the Chair of the Black History Month Committee for her district.

Justice Woodard is a member of National Bar Association, the Nassau County Bar Association, the Nassau County Women's Bar Association, the Association for Black Women Attorneys, the National Association of Women Judges, Central Long Island Branch of the NAACP, The Amistad Long Island Black Bar Association, the Judicial Friends, and the NYS Association of Women Judges.

Justice Woodard is also the recipient of the Syracuse University Alumni Club of Long Island's Outstanding Alumnus Award, the Long Beach Democratic Committee Award, the National Council of Negro Women's "Women of Excellence" Award, the Alpha Kappa Alpha Sorority's Blacks in Action Award, and Black Achiever's Award for her contribution to Black History in 2001 at Bethel Day Care Center.

DOUGLAS GOOD, ESQ.

Douglas Good is a partner at Ruskin Moscou Faltischek, where he is Chairman Emeritus of the firm's Litigation Department and member of the Employment Law and Corporate Governance Practice Groups. Mr. Good is also the Chair of the firm's Practice Management Committee.

Mr. Good has extensive experience in trial and appellate advocacy, as well as substantial experience in alternative dispute resolution. Previously Chair of the firm's Employment Law Group, Mr. Good has handled many cases involving restrictive covenants, unfair competition and theft of trade secrets, in both trial and appellate courts, as well as employment discrimination matters. He has handled a diverse assortment of cases – again, both in trial and appellate courts – prominent among which are shareholder and partnership disputes, creditors' rights matters (including defense of lender liability claims), health law, RICO, real property, and civil rights disputes, among others.

Mr. Good is certified as a mediator in the Commercial Division of the Supreme Court of Nassau County, and leads the firm's Mediation Services Group.

Mr. Good is a past president of the Nassau County Bar Association, a fellow of both the American Bar Foundation and the New York Bar Foundation, as well as a member of the Federal Bar Council. He has served as a member of the House of Delegates of the New York State Bar Association, and is a member of the State Bar's Nominating Committee and President's Committee on Access to Justice. He has lectured before the American, New York State and Nassau County Bar Associations on topics including professional ethics, corporate and not-for-profit governance and a variety of litigation topics and has been published in various legal and business journals.

Mr. Good has served as Chairperson of the Board of Directors of Nassau/Suffolk Law Services Committee, Inc. for many years. While at the firm, he has been an Assistant Adjunct Professor at the New York University Institute of Paralegal Studies. Prior to joining Ruskin Moscou Faltischek, P.C., Mr. Good was the Executive Director of the Legal Aid Society of Rockland County, Inc.

KEVIN SCHLOSSER, ESQ.

Kevin Schlosser is a Member and the Chair of the Litigation and Dispute Resolution Department at Meyer, Suozzi, English & Klein, P.C. located in Garden City, Long Island, N.Y. Mr. Schlosser has been involved in all aspects of state and federal litigation since starting his legal career in 1984. An experienced civil litigator, Mr. Schlosser has engineered the legal strategy for a broad range of cases and arbitrations. His clients consist of some of the largest companies in the world, as well as local businesses and individuals, including senior law partners, accountants, doctors and others in the professions. A proven appellate lawyer, he is also an accomplished trial attorney, whose victories include million-dollar recoveries and a record-breaking jury verdict. Mr. Schlosser also acts as general outside corporate counsel, advising corporate clients on the full spectrum of legal affairs.

Mr. Schlosser is a graduate of Hofstra University School of Law. During law school, Mr. Schlosser was a Member and then Articles Editor of the Hofstra Law Review. Mr. Schlosser graduated law school with the highest honors. Additionally, he was a founding officer of a national criminal justice honor society at John Jay College of Criminal Justice of the City University of New York.

At the outset of his career, Mr. Schlosser acquired intensive litigation experience, having been trained at two, prominent firms based in New York City: Patterson, Belknap, Webb & Tyler, and Chadbourne & Parke. In 1990, he became an associate of one of Long Island's largest law firms, where he rose to the level of a managing partner and head of its litigation department. After joining Meyer, Suozzi and becoming a Member in 2002, Mr. Schlosser was appointed Co-Chair of the firm's litigation department in November 2002. In 2006, Mr. Schlosser became Chair of the litigation department. He is also a member of the firm's Management Committee.

Mr. Schlosser is rated "AV Preeminent" by Martindale-Hubbell, the highest level in professional excellence. Mr. Schlosser was recognized by *Long Island Pulse Magazine* in 2010 and 2011 as the region's "Top Legal Eagle for Litigation."

THE PROBLEM

January 31, 2013 the State of Astonia became the first state to legalize the sale and use of marijuana. Two hours after Astonia's "pot legislation" was passed, the senators responsible for voting on the legislation were all found napping in the park 1,000 feet from the capitol building. The law made it legal for a resident of Astonia over the age of 18 to purchase marijuana from a state-licensed retailer.

In anticipation of the legalization of marijuana in Astonia, several companies began to heavily advertise in print. Generally, in the advertisements, the companies boasted that their marijuana would be "the best grass a person can get their hands on," but provided little or no information about the potential harmful effects of marijuana consumption.

After witnessing the first state legalize marijuana, Congress called an emergency session to address the potential abuse in advertising. In a rare showing of bipartisanship, members of Congress unanimously agreed that there should be uniform regulation. Among other things, Congress was concerned that newly licensed distributors and retailers of marijuana would use aggressive marketing strategies to entice the uneducated public, while skirting the potential harms and negative effects of the drug.

To that end, Congress passed the Marijuana Advertising Act (the "Act"). The Act gave the Food and Drug Administration ("FDA") the authority to regulate the manufacturing, distribution, sale, and advertising of marijuana. Particularly, the Act authorized the FDA to regulate marijuana advertising, pending the results of studies to determine the public's awareness of the harmful effects of continuous marijuana usage and the potential for licensed marijuana retailers to exploit the public's lack of information. The FDA conducted several surveys and enlisted the aid of medical professionals and various pro/anti-marijuana advocacy groups.

One particular outspoken group, Mothers Against Lazy Potheads ("MALP"), had launched a national campaign against the legalization of the drug and was among the most vocal and well-known dissenters. The group proffered that the legalization of marijuana would lead to a general "cloud" of malaise, which would settle over the nation's youth and only lead to lethargy and lack of motivation. MALP

initiated several outreach programs and gave speeches at town meetings and university campuses. The group created a logo on all of its handouts that contained a unique blood red colored marijuana leaf that rested over the intersection of a skull and crossbones.

The FDA was concerned that the elaborate packaging used by marijuana companies would be misleading to young people. The packaging often contained references to pop culture designed to highlight the more endearing effects of the drug. Best Bud, Inc., the largest of several marijuana companies, was well known for its creative packaging. Several labels, in bold, bright colors, portrayed young adults as vibrant and engaged in a pastime or enduring at their studies. One such advertisement depicted a group of young adults in what appeared to be a studious environment, with the letters LSAT on several of the papers strewn about the floor.

On April 20, 2013 the FDA promulgated a final rule for the regulation of the advertisement and packaging of marijuana. The rule required all marijuana packaging sold to the public (whether rolled and distributed in boxes or loose in containers) to disclose several of the negative effects of the drug. In addition to the well-recognized Surgeon General's warning that is contained on all cigarette boxes, marijuana companies were required to disclose that the drug contained up to twenty times more carcinogens than an ordinary tobacco cigarette. All containers must state that marijuana "may lead to lethargy, loss of short term memory, the use of illegal substances and obesity." Finally, every package must contain a blood red marijuana leaf displayed conspicuously and no smaller than one square-inch.

The very next day, several marijuana companies filed an injunction in the United States District Court for the District of Astonia alleging that the regulation violated the companies' First Amendment right to free speech.

QUESTION PRESENTED

Whether the circuit court erred in concluding that the Food and Drug Administration's final rule requiring textual warnings and graphic images on the packaging of all marijuana products is a violation of Respondents' First Amendment right to free speech?

Special Thanks

The Honorable Michele M. Woodard
Douglas Good, Esq.
Kevin Schlosser, Esq.

-and-

Professor Barbara S. Barron
Dean Eric Lane
Dean Mary T. Ruggilo
Dean Lisa M. Monticciolo
Samantha Hankins
Michele LoFaso
Anna Pellegrini
Marcela Fernandez
Hofstra Moot Court Board Staff

The problem for this competition was written by the
Managing and Associate Editors.

Hofstra Moot Court Board extends its gracious thanks to all members of
the bench for donating their time and expertise to ensure a successful
and challenging final round.