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THE NATIONAL FREDERICK DOUGLASS MOOT COURT COMPETITION — OPERATING IN THE SPIRIT AND LEGACY OF FREDERICK DOUGLASS

BY MARGUERITE L. BUTLER†

INTRODUCTION

The Frederick Douglass Moot Court Competition (FDMCC) inherited a legacy from Frederick Douglass¹, the first slave in nineteenth century America who spoke out on abolishing slavery. In 1975, the National Black Law Student's Association (NBLSA) established the FDMCC. The baton of Frederick Douglass' life's work was passed to today's generation. One legacy that he urged upon future generations was to "agitate, agitate, agitate".² All political, social, and religious issues designed to limit an African American's free exercise of citizenship rights should be challenged with both the written and spoken word.

Each year the FDMCC problem requires the participant to examine constitutional principles that affect African Americans in some aspect of everyday life. The competition also affords an opportunity for each advocate to develop oral and written skills in much the same way Frederick Douglass developed his, through self-study and self-improvement. The Frederick Douglass Moot Court Competition, for many advocates, is their first opportunity to participate in an inter-school, regional and national moot court competition. The need for the FDMCC arose from the limited or non-existent opportunities for minority students to learn the necessary skills to qualify for membership on a moot court team.

This paper is designed to examine Frederick Douglass, the man, his motivations, his impact on constitutional law, and human rights in

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1. DOUGLAS T. MILLER, *FREDERICK DOUGLASS AND THE FIGHT FOR FREEDOM* 2 (1988). His long given name was Frederick Augustus Washington Bailey. He changed his surname to Douglass after he escaped from slavery. See *FREDERICK DOUGLASS, MY BONDAGE AND MY FREEDOM* 343 (Dover edition 1969). (This is a reprint of the original 1855 edition.)

2. Frederick Douglass, 2 *THE FREDERICK DOUGLASS PAPERS SERIES ONE: SPEECHES, DEBATES AND INTERVIEWS 1847-1854*, Agitate, Agitate 393, 396 (1982). (Frederick Douglass delivered this address in Salem, Ohio, on August 23, 1852 to the Western Anti-slavery Society. He explained the antislavery movement needed a body of faithful men and women who, when truthfully exposing the evil deeds of slavery, would "Agitate, Agitate.")

America. It is quite appropriate for the FDMCC to carry his name. His life is addressed in some detail to applaud the organization's decision to name the competition in honor of a non-lawyer. His words are quoted extensively to give the reader just a small flavor of his eloquence. Secondly, this paper is written to examine how Frederick Douglass developed his passion for advocating the abolition of slavery and the rights of free African Americans.³ The next purpose is to examine some details of Frederick Douglass' rhetorical skills that he employed in his advocacy. These rhetorical techniques can enhance the written and oral arguments that are especially relevant to the law student. This discussion is designed to instruct and inspire each student who doubts his or her ability to learn these skills without a formal coach. Finally, this paper examines some of the topics that FDMCC advocates have researched, written and argued over the past twenty-five years. The competition has remained true to Frederick Douglass' legacy of examining constitutional principles impacting the African American community and encouraging each participant to develop their written and oral advocacy skills.

FREDERICK DOUGLASS – THE ROOT OF HIS PASSION

Frederick Douglass was born a slave in 1818⁴. He began his life's work during the height of the American slave trade, long after the constitutional compromise to end slavery was supposed to have brought the trade to a natural end.⁵ The abolition of slavery became Frederick Douglass' most pressing political, social, economic, and moral compass until the Emancipation Proclamation set in motion the final steps that changed the legal nature of slavery in this country.⁶

3. Although not a lawyer he engaged in legal analysis in several speeches. He was a self-taught man, not unlike Abraham Lincoln who developed his skills by self-teaching. A formal legal education was uncommon at that time. In his day, lawyers studied the law in apprentice-like environments.

4. *My Bondage and My Freedom* at 35. Frederick Douglass celebrated his birthday as February 14, 1817 for many years. In the slave system, it was believed that unnecessary trouble would arise by allowing a slave to know this information. Slaveholders did not record the slave's date of birth except in the context of the receipt of new property. No birth certificates were issued and the meager transaction record was not divulged. It was certain that most slaves would not be able to read it, even if they found the ledger. Frederick Douglass wrote, "I never met a slave who could tell me how old he was. Like other slaves, I cannot tell how old I am. I learned when I grew up, that my master – and this is the case with masters generally – allowed no questions to be put to him, by which a slave might learn his ages. Such questions are deemed evidence of impatience, and even impudent curiosity." Years later, Frederick Douglass discovered from one of these ledgers that his actual year of birth was 1818 in Tuckahoe, Maryland on the eastern shore. He lived 77 years and died on February 20, 1895. See FREDERICK S. VOSS, *MAJESTIC IN HIS WRATH – A PICTORIAL LIFE OF FREDERICK DOUGLASS* xvii (1995).

5. U.S. Const. Art. 1 §9.

6. FREDERICK DOUGLASS, *AUTOBIOGRAPHIES – LIFE AND TIMES OF FREDERICK DOUGLASS* 789-793 (1994)

Nearly one hundred years would pass before the start of another civil rights movement, led by an equally brilliant spokesperson, would accomplish many of the goals that Frederick Douglass spent his life advocating on behalf of African Americans.⁷

Congress passed, and the States ratified, the Thirteenth (1865)⁸, Fourteenth (1868)⁹ and Fifteenth (1870)¹⁰ Amendments that respectively abolished slavery, affirmed the citizenship of persons born or naturalized in the United States, and guaranteed the right to vote to all citizens in both state and federal elections.¹¹ However, the intent of these amendments was maintained.¹² The successes that slaves made after 1863, and for approximately twelve years after Emancipation, began to erode in the mid 1870's.¹³ The erosion occurred for

7. DONALD T. PHILLIPS, MARTIN LUTHER KING, JR. ON LEADERSHIP 38, 46-47 (1998). (Martin Luther King was elected president of the Montgomery Improvement Association (MIA) that was created by the African-American leadership in Montgomery, Alabama to protest Rosa Parks arrest for refusing to give up her seat on the bus to a white man. This organization successfully led a city bus boycott in the black community. The boycott ended on December 21, 1956, after the Supreme Court upheld the lower court decision declaring Alabama's laws on bus segregation unconstitutional.

8. The 13th Amendment was ratified in December, 1865. 13th Amendment is codified in 42 U.S.C. § 1981 concerning contracts and §1982 concerning housing.

9. The 14th Amendment was ratified in 1868. The 14th Amendment is codified in 42 U.S.C. § 1983 and it is the authority for basic civil rights litigation.

10. The 15th Amendment was ratified in March 30, 1870. The 15th Amendment is codified in 42 U.S.C. §§ 1985 & 1986 and the Voting Rights Act of 1973 42 U.S.C. §1965.

11. DONALD T. PHILLIPS, MARTIN LUTHER KING, JR. ON LEADERSHIP AT 13.

12. DONALD T. PHILLIPS, MARTIN LUTHER KING, JR. ON LEADERSHIP AT 14. An economic depression in the late 1870's and a belief that African Americans had gained too much freedom, too fast, precipitated the enactment of Black Codes, designed by State legislatures to retard or revert the progress that African Americans had already made. Such things as requiring special licenses to perform farm or menial work became required. The Klu Klux Klan began murdering former slaves and an estimated 10,000 African Americans were lynched in the last twenty years of the nineteenth century.

13. ERIC FONER, A SHORT HISTORY OF RECONSTRUCTION 1863-1877, 1-275 (1990). "Reconstruction" transformed into "Redemption" in the mid-1870's. Redemption became the label that defined the Republicans political downfall and the Democratic party's resurgence to political domination. Among the many events that permitted the transformation were (1) The political defeat of Republicans in the federal and state elections, *Id.* at 183, 221, 237. In defying federal law and the Constitution, the Governor of Mississippi remarked, "a revolution has taken place—by force of arms – and a race are disfranchised— they are to be returned to a condition of serfdom – an era of second slavery." *Id.* at 236; (2) the failure of the abolitionist societies to maintain the public voice of protest on the Southern laws and private activities. Most had disbanded by 1874, turning their backs on the desire to "purge American life of racial inequality" *Id.* at 223 (3) the mood of the country which, tired of the "Negro Question" *Id.* at 193, and the church, which decided that blacks were "ungrateful for the organization's efforts on behalf of blacks," *Id.* (4) the hesitancy of the federal government to "redress wrongs in the states" *Id.* at 195 and (5) The economic collapse of the national railroads, which led to the onset of the economic depression of 1876. *Id.* at 217; (6) the Supreme Court's decision in the *Slaughter House Cases*, 83 U.S. (15 Wall.) 36 (1873). There the State of Louisiana monopolized the butchering industry. White butchers sought the protection of the 14th Amendment to protect their right to pursue a livelihood. The court distinguished the rights of the federal and state governments and held that the 14th amendment only concerned rights that "owed their existence to the federal government", which were access to ports and navigable waterways, the ability to run for federal

several reasons; the institution of sharecropping, poll taxes and examinations that effectively disenfranchised African American voters, and the withdrawal of federal troops from the South.¹⁴ President Johnson, the vice-president who became president after President Lincoln's assassination, refused to support African American enfranchisement and further urged that the solution to the question was to send African Americans back to Africa in what was called the Colonization effort.¹⁵ The infamous Supreme Court decision, *Plessy v. Ferguson*¹⁶, ratified the doctrine of separate but equal that led to the legal separation of the races in every aspect of American life for nearly seventy years.¹⁷ It was upon this stage of American history that Martin Luther King, Jr. stood to lead the Civil Rights revolution that Frederick Douglass had begun.

In his first autobiography, *THE NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS – AN AMERICAN SLAVE*, Frederick Douglass explained how he frequently heard Mrs. Auld reading the Bible out loud when her husband was away.¹⁸ He asked Mrs. Auld to teach him how

office, travel to the seat of government and be protected on the high seas and abroad. The Court held that freemen had little concern for these rights, that most of the rights of citizens remained under state control, and the 14th amendment could not protect the white man's asserted concerns; (7) The Court's *United States v. Cruikshank*, 92 U.S. 542 (1875) decision which construed the Enforcement Act of May 31, 1870 that provided penalties for specific acts of violence or intimidation where the perpetrator could receive as punishment a fine and or imprisonment. The Supreme Court overturned the convictions of the only three persons that had been indicted and convicted because it held that the 14th Amendment only permitted the federal government to prohibit violations perpetrated against black rights by states and that punishing crimes of violence by individuals made the Act unconstitutional under the Fourteenth Amendment. This decision gave the State the right to reign terror over blacks without any fear of reprisal from the Federal Government. *Id.* at 224-225, and (8) A reign of terrorism by the Klu Klux Klan that victimized and killed Republican loyalists, educated blacks, and those blacks that exercised their rights "in order to undermine Reconstruction, reestablish control of the black labor force and restore racial subordination in every aspect of Southern life." *Id.* at 184-185.

14. DONALD T. PHILLIPS, MARTIN LUTHER KING, JR. ON LEADERSHIP at 14.

15. FREDERICK DOUGLASS, *FREDERICK DOUGLASS – SELECTED SPEECHES AND WRITINGS* 586-590 (ed. Philip S. Foner and Yuval Taylor 1999). After a delegation visited with President Johnson, Frederick Douglass wrote the Reply of the Colored Delegation to the President and published it in the Washington Chronicle, February 7, 1866. The Convention of Colored Men met in 1866 and appointed a delegation of men to meet with President Johnson on the issue of Colonization and African American enfranchisement. The convention went on record to say that they were "unalterably opposed to foreign colonization and would resist to the utmost any attempt at compulsory emigration or removal to any place, in this country, or out of it, not of our own free choice. They were prepared to support any effort of the government to provide homes for the homeless in any portion of our country" and urged the government "through Congressional legislation, to . . . secure the right of suffrage."

16. 163 U.S. 537 (1896). *Roberts v. City of Boston*, 59 Mass. (Cush.) 198 (1849) established the separate but equal principal. *Scott v. Sanford* incorporated it into the federal law and sealed it prior to Emancipation in 1865. *Plessy* announced that the more things changed, the more thing remain the same. In reaffirming the separate but equal principle.

17. *Brown v. Board of Education*, 347 U.S. 483 (1954) overruled *Plessy v. Ferguson* in public education and led to its downfall in other decisions in other areas of American life.

18. FREDERICK DOUGLASS, *MY BONDAGE AND MY FREEDOM* 145 (Dover ed. 1969).

to read because when he heard her read, he became curious about "the mysteries of reading".¹⁹ It appeared that Mrs. Auld did not understand the vagaries of slavery because she consented to teach him his ABC's and how to spell three and four letter words until Mr. Auld learned of her activities.²⁰ He then strictly forbade Mrs. Auld from continuing this instruction. He said that "among other things it was unlawful²¹ [and] unsafe to teach a slave to read."²² Mr. Auld's further expressions of displeasure created within Frederick Douglass a deep-seated foundation for his desire to escape from slavery:

If you give a nigger an inch, he will take a nell. A nigger should know nothing but to obey his master – to do as he is told to do. Learning would *spoil* the best nigger in the world. Now . . . if you teach that nigger (speaking of myself) how to read, there would be no keeping him. It would forever unfit him to be a slave. He would at once become unmanageable and of no value to his master. As to him, it could

19. *Id.*

20. NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS – AN AMERICAN SLAVE at 38-39 and My Bondage and My Freedom at 145.

21. FREDERICK DOUGLASS, MY BONDAGE AND MY FREEDOM 409-415 (1969 Dover edition) (Reception Speech at Finsbury Chapel, Moorfields, England, May 12 1846.) In this speech Frederick Douglass refers to specific laws and practices that governed slavery in the United States during that time in the States of Virginia, Missouri, Mississippi and in Brevard's Digest, Prince's Digest, and Haywood's Manual:

"What is to be thought of a nation boasting of its liberty, boasting of its humanity, boasting of its Christianity, boasting of its love of justice and purity, and yet having within its own borders three millions of persons denied by law the right of marriage. . . . This is American slavery; no marriage – no education—the light of the gospel shut out from the dark mind of the bondman – and he forbidden by law to learn to read. If a mother shall teach her children to read, the law in Louisiana proclaims that she may be hanged by the neck. If the father attempt to give his son knowledge of letters, he may be punished by the whip in one instance, and in another be killed, at the discretion of the court". . . .

"If more than seven slaves together are found in any road without a white person, twenty lashes a piece; for visiting a plantation without a written pass, ten lashes; for letting loose a boat from where it is made fast, thirty-nine lashes for the first offense; and for the second, shall have cut off from his head one ear; for keeping or carrying a club, thirty-nine lashes; for traveling in the night without a pass, forty lashes. . . . For being found in another person's Negro-quarters, forty lashes; for hunting with dogs in the woods, thirty lashes; for riding or going abroad in the night, or riding horse in the day time, without leave, a slave may be whipped, cropped, or branded in the cheek with the letter R., or otherwise punished, such punishment not extending to life, or so as to render him unfit for labor. . . .

They treat the slave on the principle that they must be punished for light offenses, in order to prevent the commission of larger ones." . . . "I wish you to mark that in the single state of Virginia, there are seventy-one crimes for which a colored man may be executed; while there are only three of these crimes, which when committed by a white man, will subject him to that punishment. In the State of Maryland, there is a law to this effect: that if a slave shall strike his master, he may be hanged, his head severed from his body, his body quartered, and his head and quarters set up in the most prominent places in the neighborhood. If a colored woman, in the defense of her own virtue, in defense of her own person, should shield herself from the brutal attacks of her tyrannical master, or make the slightest resistance, she may be killed on the spot. No law whatever will bring the guilty man to justice for the crime."

22. *Id.*

do him no good, but a great deal of harm. It would make him discontent and unhappy.²³

From Mr. Auld's words sprang, what Frederick Douglass later called, a "new and special revelation, explaining dark and mysterious things with which my youthful understanding had struggled, but struggled in vain."²⁴ Mr. Auld's words explained to Frederick Douglass the reason the "white man had power to enslave the black man" and showed him "the pathway from slavery to freedom."²⁵ Frederick Douglass was about seven or eight years old when this happened.²⁶

Mr. Auld's words inspired Frederick Douglass to overcome the difficulty of learning to read without a teacher and purposed in his mind the "hope to learn to read at whatever cost."²⁷ In his first two autobiographies Frederick Douglass described how, at twelve years old, he learned to read and write. Whenever his master sent him on errands he "employed" his white playmates as teachers to help him learn to read single words.²⁸ He always carried an old spelling book with him in order to get his friends to help him with a spelling lesson.²⁹ For their assistance he would pay them with a biscuit or bread that he always carried in his pocket.³⁰ He surreptitiously "converted" schoolboys into teachers until he succeeded in learning to read.³¹

He first noticed that workers in the shipyard would write the letters on pieces of lumber and later he learned what each letter represented by watching and asking questions about the letters, to the workers.³² He learned that the writing on the boards were abbreviations for words that designated where each board would be placed in constructing the ship.³³ After he practiced writing the letters that he learned in the shipyard, he would challenge any schoolboy that he knew to write other letters, after he displayed his ability to write the four letters that he had learned from the shipyard.³⁴ He perfected his writing skill by copying letters from the Webster's Spelling Book and writing in Master Thomas' copy book, the writing book used by school boys of the day, when Mrs. Auld left for her class meeting each Monday after-

23. FREDERICK DOUGLASS NARRATIVE OF THE LIFE OF FREDERICK DOUGLAS - AN AMERICAN SLAVE 39 (ed. Deborah E. McDowell 1999) (Originally published in 1845 by the Boston Anti-Slavery Society.)

24. *Id.*

25. *Id.* at 146.

26. *Id.* at 34.

27. *Id.*

28. *My Bondage and My Freedom* at 155.

29. *Id.*

30. *Id.*

31. *Id.* at 47.

32. *Id.* at 46-47.

33. *Id.* at 47.

34. *Id.* at 47.

noon.³⁵ After years of practice he learned how to write like Master Thomas.³⁶

Frederick Douglass anguished about the decision to learn to read, and knew that Mr. Auld's prediction had come true because it caused him to be angrier about his slave status.³⁷ But his ability to read and learn about the abolitionist movement³⁸ and the encouragement of two Irish sailors, gave him the resolve to learn to write so that he could write his own pass when he decided to escape.³⁹

Mr. Auld's worst fears came true after his escape from slavery. Frederick Douglass took the "eel" not only in becoming his own man, but also in initially adopting the anti-slavery philosophy of William Lloyd Garrison and the Garrisonian movement.⁴⁰ He identified himself with that abolitionist movement almost immediately after his escape from slavery.⁴¹

Frederick Douglass' first attempt at publishing a newspaper came after he had returned from England.⁴² His English supporters and friends had not only purchased his freedom for him from Dr. Auld and his brother, but they also provided funds for him to purchase a printing press and supplies.⁴³ He had not expected the cool and sometimes hostile reception that Mr. Garrison and the other abolitionists

35. *Id.* at 47.

36. *Id.* at 47. See also *Id.* at 20, 34-35. At the age of seven or eight Frederick Douglass' Master, Colonel Edward Lloyd, sent him to Baltimore to be the slave companion to Thomas Auld, a child. Thomas Auld's father, Hugh Auld, was Captain Auld's brother and married to Sophia. Capt. Auld was Colonel Lloyd's son-in-law who married his daughter Lucretia and served as his Clerk and Superintendent.

37. *Id.* at 45.

38. *Id.* at 45-46.

39. *Id.* at 46.

40. MY BONDAGE AND MY FREEDOM at 354-356. "In four or five months after reaching New Bedford, there came a young man to me, with a copy of the 'Liberator', the paper edited by William Lloyd Garrison. . . . I told him I had but just escaped from slavery and was of course, very poor. . . . and unable to pay for it. . . . few men possessed a more heavenly countenance than William Lloyd Garrison. . . . The Liberator was a paper after my own heart. . . . Every week the Liberator came, and every week I made myself master of its contents."

41. *Id.* at 354-356.

42. *Id.* at 365-395. This trip also cultivated the fertile soil of his mind, to launch the first successful newspaper owned by an African American, The North Star. He had left America for twenty-one months to spend time in England after he wrote his first autobiography in order to avoid beginning recaptured and returned to slavery.

43. *Id.* at 374-375. (On these pages is found a copy of the manumission papers transferring Frederick Douglass from Thomas to Hugh Auld and from Hugh Auld to himself.) See also FREDERICK DOUGLASS, FREDERICK DOUGLASS - SELECTED SPEECHES AND WRITINGS *Letter to Henry C. Wright* at 53, where he makes several logical and persuasive arguments concerning the right of the English benefactors to pay \$750 for his manumission. He concludes by saying, "I am persuaded to receive the papers . . . not however as a proof of my right to be free, for that is self-evident, but as a proof that my friends have been legally robbed of \$750 in order to secure that which is the birth-right of every man. And I hold up those papers before the world, in proof of the plundering character of the American government." See also note 70, *infra*.

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would have to his idea of producing a newspaper.⁴⁴ After some delay, he pursued this endeavor over the objections of his New England friends who believed that Douglass could not be successful in the endeavor because of his lack of education.⁴⁵ Frederick Douglass explained in his autobiography:

I found them very earnestly opposed to the idea of my starting a paper, and for several reasons. First the paper was not needed; secondly, it would interfere with my usefulness as a lecturer; thirdly, I was better fitted to speak than to write; fourthly the paper could not succeed. . . . Very much was said to me in respect to my imperfect literary acquirements I felt to be most painfully true. The unsuccessful projectors of all the previous colored newspapers were my superiors in point of education, and if they failed how could I hope for success. Yet I did hope for success, and persisted in the undertaking. Some of my English friends greatly encouraged me to go forward, and I shall never cease to be grateful for their words of cheer and generous deeds.⁴⁶

The North Star and its progeny⁴⁷ have provided Douglass' posterity with a unique written perspective about the issues African Americans were concerned with prior to Emancipation.⁴⁸ Frederick Douglass wrote copiously in the *North Star* newspaper. In 1852 a professor of rhetoric wrote: "Douglass is not only great in orator, tongue-wise, but, considering his circumstances in early life, still more marvelous in composition, pen-wise".⁴⁹

In his writings, Frederick Douglass was not afraid to publicly address any issue that affected slaves or free colored people. Even though he risked recapture and a return to slavery with this public exposure, he spoke out on the issues, without hesitation or apprehen-

44. Id. at 392. "My friends in England had resolved to raise a given sum to purchase for me a press and printing materials. . . . Intimation had reach my friends in Boston of what I intended to do, before my arrival, and I was prepared to find them favorably disposed toward my much cherished enterprise. In this I was mistaken.

45. Id.

46. Id. at 393.

47. (After returning from England Frederick Douglass launched the *North Star*. After he broke his allegiance with William Lloyd Garrison and the Garrisonian movement, he started the Frederick Douglass' Paper with the financial support of Gerrit Smith, a New York Abolitionist in 1851. In 1859 the Frederick Douglass Paper became a monthly newspaper and was called the Douglass monthly. Publication ceased after his printing press was destroyed by vandals and he moved from Rochester, New York to Washington, D.C.)

48. FREDERICK DOUGLASS, FREDERICK DOUGLASS AUTOBIOGRAPHIES 709 (1994). On June 2, 1872 Frederick Douglass' house burned down. Among other things of value, he lost twelve bound volumes of *The North Star* that covered the period from 1848 to 1860. Harvard University had requested that he send the volumes to preserve them in a fire-proof building, but he had never sent them. Other people did keep some of the papers but none had a comprehensive set such as this. He started publishing the *North Star* in 1847 and stopped publishing the newspaper in 1863.

49. FREDERICK DOUGLASS, FREDERICK DOUGLASS - SELECTED SPEECHES AND WRITINGS xii (eds. Philip S. Foner and Yuval Taylor 1999).

sion.⁵⁰ The possibility of recapture, however, did not deter him from pledging to enlist “every fiber of his soul in the cause for emancipation”.⁵¹

He published his first letter to Thomas Auld, the man who claimed ownership of him, on September 22, 1848 in the *Liberator*.⁵² In this letter Frederick Douglass expressed his sentiments about the advertisement that Mr. Auld had placed in the newspaper, which offered a large sum of money for his capture and return.⁵³ In a number of talks and writings after escaping from slavery, he publicly denounced the part his master played in perpetuating slavery.⁵⁴ On the tenth anniversary of his escape from slavery, in what was to become his characteristic writing style,⁵⁵ he wrote a detailed description about his feelings and passions on the day of his departure from slavery:

Just ten years ago, this beautiful September morning yon bright sun beheld me a slave – a poor degraded chattel – trembling at the sound of your voice, lamenting that I was a man, and wishing myself a

50. My Bondage and My Freedom at 322-323. Frederick Douglass wrote, “While, therefore, it would afford me pleasure, and perhaps would materially add to the interest of my story were I at liberty to gratify a curiosity which I know to exist in the minds of many, as to the manner of my escape, I must deprive myself of this pleasure, and the curious of the gratification, which such a statement of facts would afford. I would allow myself to suffer under the greatest imputations that evil minded men might suggest, rather than exculpate myself by an explanation, and thereby run the hazard of closing the slightest avenue by which a brother in suffering might clear himself of the chains and fetters of slavery.”

51. FREDERICK DOUGLASS, FREDERICK DOUGLASS – SELECTED SPEECHES AND WRITINGS 311 (eds. Philip S. Foner and Yuval Taylor 1999). (The Antislavery Movement lecture delivered before the Rochester Ladies’ Anti-Slavery Society March 19, 1855.)

52. *Id.* at 111-112 (September 3, 1848 letter to Thomas Auld).

53. *Id.*

54. FREDERICK DOUGLASS, FREDERICK DOUGLASS – SELECTED SPEECHES AND WRITINGS 54 n.1 (eds. Philip S. Foner and Yuval Taylor 1999). For example, Frederick Douglass published the manumission documents that released him from slavery and the bill of sale in the *North Star* on December 3, 1847. “He added these words as a preface: “We give our readers the evidence of our right to be free in this democratic and Christian country – not so much however to establish our right to ourselves as to expose the cold-blooded Methodist man-stealer, who claim us as his property, and the hypocritical nation that has sanctioned his infamous claim. We shall send him a copy of this paper.” His manumission documents read:

“To whom it may concern: Be it known, that I, Hugh Auld, of the city of Baltimore, in Baltimore County, in the State of Maryland, for divers good causes and considerations, me thereunto moving, have released from slavery, liberated, manumitted, and set free, and by these presents do herby release from slavery, manumit and set free, My Negro Man, named Frederick Bailey, otherwise called Douglass, being of the age of twenty-eight years, or thereabouts, and able to work and gain a sufficient livelihood and maintenance; and him the said Negro man, named Frederick Bailey, otherwise called Frederick Douglass, I do declare to be henceforth free, manumitted and discharged from all manner of servitude to me, my executors, and administrators forever.”

55. RONALD K. BURKE, FREDERICK DOUGLASS – CRUSADING ORATOR FOR HUMAN RIGHTS 60 (1996). Frederick Douglass published many of his speeches in the abolitionist newspapers, including his own. Burke commented that Frederick Douglass’ “orations were not dry” and that he employed a “variety of rhetorical forms including hypothetical situations, explanation, sarcasm, definition, refutation, and expose” to support the arguments that he advanced in his speeches.

brute. . . I have no words to describe to you the deep agony of my soul which I experienced on that never to be forgotten morning (for I left by daylight). . . I was making a leap in the dark.

The probabilities, so far as I should by reason determine them, were stoutly against the undertaking. . .

You sir, can never know my feelings. Trying however as they were, and gloomy as was the prospect, thanks be to the most high God of the oppressed, at the moment which was to determine my whole earthly career, His grace was sufficient, my mind was made up. I embraced the golden opportunity, took the morning tide at the flood, and a free man, young, active and strong, is the result.⁵⁶

Frederick Douglass' life demonstrates that well honed writing skills can be developed, despite the circumstances of birth or poor education. When he "employed" the schoolboys as his teacher he showed that no opportunity to learn a desired skilled should be ignored. His life demonstrates that the motivation for learning must come from a burning desire within. These significant attributes of Frederick Douglass' life are the foundation upon which the Frederick Douglass Moot Competition thrives.

FREDERICK DOUGLASS, THE ORAL ADVOCATE

The Frederick Douglass Moot Court Competition provides a serious opportunity for participants to develop oral advocacy skills. After the first round of competition, oral advocacy skills are accorded more weight. Consequently, they become more important in a team's ability to advance to the later rounds of the competition. The competition's emphasis on oral advocacy promotes the legacy of excellence in oratory for which Frederick Douglass is most famous. He adopted the Aristolian classical style to organize his speeches. This style requires the orator to state his case and prove it. In this tradition there are four parts to the argument: the introduction, the statement of the case, the argument and the conclusion.⁵⁷ The argument is the logical presentation of proof that supports the statement of the case. Frederick Douglass prepared extensively for his lectures, but seldom used a prepared manuscript to deliver his speech.⁵⁸ His lecture notes usually consisted of a dozen or more words to trigger his thoughts. Otherwise, his extensive preparation and the inspiration of the occasion, carried the day. These features of his public speaking emanated from the historical work, the *Columbian Orator*.

56. Id. at 112-113

57. RONALD BURKE, CRUSADING ORATOR 20 (1996).

58. DAVID B. CHESEBROUGH, FREDERICK DOUGLASS - ORATORY FROM SLAVERY 103 (1998) On a table near him was a leaf of paper on which were scrawled perhaps two dozen words. What is this? He was asked. He said, 'that is my speech' as he laughed.

The *Columbian Orator*⁵⁹ was the text that school boys studied at that time. One day Frederick Douglass overheard a group of schoolboys saying that they were going to "learn some pieces out of the *Columbian Orator* for the exhibition" and he decided that he had to purchase the book. He later bought the book for fifty cents⁶⁰ and spent hours reading and mastering the speeches and studying the specific instructions for improving his rhetorical skills.⁶¹ In memorizing two speeches in particular he learned substantive arguments about the rights and liberties of all men, denouncing slavery.

THE COLUMBIAN ORATOR

When Frederick Douglass purchased a *Columbian Orator* he became privy to the best oratorical instruction available.⁶² The preliminary pages of the *Columbian Orator* reflect the country's high regard for great oratorical skills during the first century of America's history. The book cover indicates that the United States Government authorized its publication by an Act of Congress in May 1797, for the specific purpose of "developing the fundamental art in and instilling the spirit of oratory among the youth of America."⁶³ The types of rhetorical devices are dispersed throughout the text.

The discussions in the *Columbian Orator* are formulated from skills passed down from the Grecian/Roman rhetorical tradition.⁶⁴ This tradition stressed that constant practice of speech before friends, acquaintances, and judges as indispensable to the orator's development.⁶⁵ Judges were required to address and correct an orator's language, pronunciation, inaccuracies, style, use of voice or gestures, and any other item that impeded outstanding delivery of the presentation.⁶⁶ Judges continued to address these concerns, even after the student had perfected the rhetorical skill.⁶⁷ These sessions were designed to correct problems before they became habitual.⁶⁸ A per-

59. The text of this book is written in old English and requires stamina to interpret it.

60. *Id.* at 157. He had earned the money to purchase the book by polishing boots.

61. *Id.* at 158. He mastered "Sheridan's might speeches on the subject of Catholic Emancipation, Lord Chatham's speech on the American War, and speeches by the great William Pitt and by Fox, Speech in the British Parliament, 1770, 1766, 1777.

62. DOUGLASS T. MILLER, *FREDERICK DOUGLASS AND THE FIGHT FOR FREEDOM* 35 (1994). Frederick Douglass became a master of the *Columbian Orator's* techniques.

63. *COLUMBIAN ORATOR* at 1.

64. *Id.* at 7-14. Specific references are made to Demosthenes, Quintilian, Cesar, Ligarius, Cicero, Homer and Achilles, all ancient Roman or Greek orators.

65. *Id.* at 13

66. *Id.*

67. *Id.*

68. *Id.*

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son trained in this way had no choice but to become an excellent orator.⁶⁹

The Grecian/Roman tradition is alive and well in today's law school. Students usually experience their first moot court experience in the law school classroom setting, during the first or second year appellate litigation class. The type of preparation made for this event varies greatly from student to student. Bad habits and mannerisms invariably impact the presentation negatively. Only a coach can help a student to correct these mannerisms. The substantive arguments that initially sound good on paper can fall apart under close scrutiny. Although the competition prohibits anyone from changing the substance of an advocate's argument, it is imperative, in the tradition of Frederick Douglass' legacy, to practice and be well prepared to present complete and compelling arguments in competition.

The comprehensive rhetorical instruction in the *Columbian Orator* not only focused upon how the orator delivered or pronounced words⁷⁰ but also the movement or gestures of body. Language by itself was considered insufficient to express passion. Therefore, motions and gestures were expected to accompany the words.⁷¹ Eloquence, the ancients believed, could not occur if the orator was cold when talking to others.⁷² An orator's approach to the podium or stage was just as important in establishing a good delivery.⁷³ This aspect of delivery required the speaker to settle himself, compose his countenance and take a respectful view of his audience before starting to speak.⁷⁴ Approaching the podium or stage this way prepared the audience for silence and attention.⁷⁵

Finally, the *Columbian Orator* emphasized the organization of the discourse and its critical relationship to persuasion. Much has been said about the voice, but the same concern was expressed for making a deliberate effort to "divide the speech into distinct parts".⁷⁶ The op-

69. *Id.*

70. *Id.* at 7. "The best judges among the ancients have represented Pronunciation, which they likewise called Action, as the principal part of an orator's province; from whence his is chiefly to expect success in the art of persuasion."

71. *Id.* at 20.

72. *Id.* at 12. Caleb quotes Marcus Tullius Cicero's (106-43 B.C.) oration that addressed how words alone fail to convey ideas: "Would you talk thus (says he) if you were ferious? Would you, who are wont to display your eloquence so warmly in the danger of others, act so coldly in your own? Where is that concern, that ardor, which used to extort pity of mind or body; neither the forehead struck, nor the thigh; nor so much as a tamp of the foot. Therefore, you have been so far from inflaming our minds, that you have scarcely kept us awake." Cicero is credited with being the greatest of the Roman orators.

73. *Id.* at 25.

74. *Id.* at 24.

75. *Id.* at 25.

76. *Id.* at 26.

posing party's strongest arguments should be clearly addressed so that it did not appear to the listener that the speaker had attempted to conceal or avoid the force of the opposing argument.⁷⁷ In answering a question, the voice and gestures should be quick and lively so that the answer appears to be reasonable and truthful.⁷⁸

These instructions are also pearls of wisdom for the moot court advocate. Not only must the advocate be concerned with his or her body movements while at the podium, but also with their movement and countenance when approaching the podium. A student's awareness of these intangibles is necessary in order to improve them.

Four of the many rhetorical traditions that Frederick Douglass employed are considered well suited for the art of advocacy in legal argument. Two of these rhetorical skills, *Ethos* and *Pathos* authenticate *The Columbian Orator's* major influence on Frederick Douglass' speaking style. *Ethos*,⁷⁹ requires the author to establish credibility with his audience and *Pathos*⁸⁰ requires the orator to use passion in his or her delivery. The third rhetorical style that distinguishes Frederick Douglass' writings and orations is Parallelism.⁸¹ This technique occurs when the writer or speaker repeats certain words or group of words to begin sentences, clauses or phrases. Finally, there is *Antithesis*. Commentators applaud Frederick Douglass' exquisite implementation of this rhetorical skill to establish contrasts between concepts to make his point.

ETHOS — THE ABILITY TO ESTABLISH CREDIBILITY WITH THE AUDIENCE

The *Columbian Orator* instructed the orator on the criteria and techniques needed to establish credibility with the audience.⁸² The ancients required the orator be a good man because it was believed that only a person with good character could identify with the cause that he spoke about.⁸³ To establish credibility and competence the orator also had to affirm his personal character by demonstrating an interest in the audience.⁸⁴ It was believed that if the subject of the oration affected the orator, then the orator's credibility would per-

77. *Id.* at 26.

78. *Id.* at 26.

79. Frederick Douglass FREDERICK DOUGLASS — ORATORY FROM SLAVERY (Rhetorical Techniques) at 83.

80. *Id.* at 90.

81. *Id.* at 96.

82. COLUMBIAN ORATOR at 10.

83. *Id.* "Because a person of this character will bake the cause he espouses his own; and the more sensibly he is touched with it himself; the more natural will be his action; and, of course, the more easily will he affect others."

84. Frederick Douglass Rhetorical Techniques 83-88

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suade others.⁸⁵ Credibility was of such importance to the ancients that even if the orator spoke with "counterfeit" information, if he had credibility, he could affect his audience with his discourse.⁸⁶

Frederick Douglass established his credibility in several ways. Initially, his credibility was established because he was a former slave and could speak in the first person on the heinousness of slavery. In the following passage, Frederick Douglass establishes his credibility by first acknowledging his lack of competency as a constitutional scholar when speaking on the Court's declaration of the unconstitutionality of the Civil Rights Act of 1875.⁸⁷ Slaves could not enjoy the rights given to other citizens by Constitution because the court explained that the Constitutional framers had not *intended* to include slaves in the language "all men".⁸⁸ Frederick Douglass explained:

I am not here in this presence to discuss the constitutionality or the unconstitutionality of this decision of the Supreme Court. The decision may or may not be constitutional. That is a question for lawyers and not for laymen and there are lawyers on this platform as learned, able and eloquent as any who have appeared in this case before the Supreme Court, or as any of the land. To these I leave the exposition of the Constitution.

But I claim the right to remark upon a strange and glaring inconsistency of this decision with former decisions, where the rules of law apply. It is a new departure, entirely out of the line of precedents and decisions of the Supreme Court, at other times and in other directions, where the rights of colored men were concerned.

It has utterly ignored and rejected the force and application of the object and intention of the adoption of the Fourteenth Amendment. It has made no account whatever of the intention and purpose of Congress and the President in putting the Civil Rights Bill upon the statute book of the nation. It has seen fit in this case affecting a weak and

85. COLUMBIAN ORATOR at 10.

86. *Id.* The force of pronunciation is so powerful that "where it is wholly counterfeit, it will from the time work the same effect as if it were founded in truth."

87. 18 Stat. 335 (1875)

88. *Scott v. Sanford*, 60 U.S. (How.) 393, 407 (1857). Mr. Chief Justice Taney who delivered the opinion of the court, wrote, "They [Negroes] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; AND SO FAR INFERIOR, THAT THEY HAD NO RIGHTS WHICH THE WHITE MAN WAS BOUND TO RESPECT; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society, daily and habitually, acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion."

much persecuted people, to be guided by the narrowest and most restricted rules of legal interpretation.⁸⁹

It was appropriate for Frederick Douglass to raise the esteem of the lawyer listeners and acknowledge that he was not a legal scholar. Douglass' elevation of the lawyer did not diminish him; rather, it made his place among this group of learned men more prominent. This lesson in establishing credibility should assist the advocate in understanding that he has the right to make arguments before those persons who may have better credentials or higher esteem. Neither status nor educational attainment alone can validate the voice that speaks.

PATHOS — THE AUTHOR'S ABILITY TO USE PASSION TO DELIVER THE DISCOURSE

When the orator's speaking goal is to persuade, then the delivery or "pronunciation" of the oration is one of the keys to the art of persuasion.⁹⁰ The music and harmony of the voice lies between the extremes of a loud boisterous voice and a low drawling soft voice that can hardly be heard by the audience.⁹¹ Since no two people will have the same voice, every speaker must make the best use of the voice given to them at birth.⁹² Each person must also use the natural range of his voice so that it is neither too shrill and squeaking nor harsh and rough.⁹³ A person who speaks ideas slowly does not keep the listeners attention.⁹⁴ If the speaker gives the words their intended full sound and separates every sentence with the appropriate pause, this problem can be avoided.⁹⁵ Finally, a speaker must be concerned with cadence, which is the reverse of emphasis; the speaker should lower the voice on the last syllable, of the last word, in the sentence⁹⁶.

The ancients believed that the ability to persuade required truth and that truth could only occur by speaking naturally. An orator who speaks naturally is believable and consequently persuasive.⁹⁷ The principles of oration require the speaker to remove all impediments

89. FREDERICK DOUGLASS, FREDERICK DOUGLASS AUTOBIOGRAPHIES at 974

90. *Columbian Orator* at 7. "All [other parts of oratory] have their effect as they are pronounced. It is the action alone which governs in speaking; without which the best orator is of no value; and is often defeated by one, in other respects, much his inferior."

91. *Id.* at 14.

92. *Id.* at 15.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.* at 15.

97. *Id.* at 7.

that prevent clear and articulate pronunciation of words.⁹⁸ How the oration is delivered speaks volumes over what the speaker says because the delivery motivates the audience.⁹⁹ The *Columbian Orator* further instructed the speaker to deliver the discourse with the same exactness that would occur if it were read.¹⁰⁰ This instruction requires the speaker to speak at a conversational pace, in a conversational tone and place emphasis on important words.¹⁰¹ Emphasis should be placed on words in order to distinguish and stress the most important words in a sentence¹⁰². Words that require emphasis are pronouns,¹⁰³ those that heighten or magnify an idea,¹⁰⁴ and those that lessen or debase an idea.¹⁰⁵ The common rule in reading, according to the *Orator*, was to "pause at a comma for one beat, at a semicolon, two beats, at a colon three beats and at a full period, four beats."¹⁰⁶ Frederick Douglass offered the following passionate words on the occasion after the Supreme Court found the Civil Rights Act of 1875 unconstitutional. Imagine Frederick Douglass employing all of the tools of pronunciation to develop the passion needed to deliver the following oration that establishes the absurdity of the Supreme Court's decision in the Civil Rights Cases. He speaks in concise sentences to make his point. If the common rules of reading, cadence, emphasis, and accent are applied here, then the passion of his voice is quite audible in its reading:

What is a State, in the absence of the people who compose it: Land, air and water. That is all. Land and water do not discriminate. All are equal before them. This law was made for people. As individuals, the people of the State of South Carolina may stamp out the rights of the negro wherever they please, so long as they do not do so as a State, and this absurd conclusion is to be called a law. All the parts can violate the Constitution, but the whole cannot. It is not the act

98. *Id.* at 9. One example given in the *Columbian Orator* concerned the Grecian orator Demosthenes' work at improving his impediments: "He found means to render his pronunciation more clear and articulate by the help of some little stones put under his tongue." Demosthenes (384-322 B.C.) is considered one of the most prolific orators of the fourth century B.C. His earliest speeches are for plaintiffs or defendants in private lawsuits.

99. *Id.* at 9. Marcus Fabius Quintilian (35-96 A.D.) a great Roman orator whose mark was made on Roman society when public dissension was not tolerated by the government. He was a paid teacher of rhetoric and believed that "It is not of so much moment what our compositions are, as how they are pronounced; since it is the manner of the delivery, by which the audience is moved."

100. *Id.* at 13.

101. *Id.* at 14.

102. *Id.*

103. *Id.* at 21. Examples are the pronouns this, they and those.

104. *Id.* 1. The voice should be elevated when they are spoken. Examples of such words are: unable, admirable, majestic, and greatly.

105. *Id.* When spoken, the voice should be depressed or the tone protracted. Examples of such words are: little, mean, poorly and contemptible.

106. *Id.* at 13.

itself, according to this decision, which is unconstitutional. The unconstitutionality of the case depends wholly upon the party committing the act. If the State commits it, the act is wrong; if the citizen of the State commits it, the act is right.¹⁰⁷

Learning how to pronounce and pace the words in the discourse is key to persuasion. Practice is key to developing this rhetorical skill. Practice occurs not only in the practice sessions for the competition, but also in the daily activities of the student: in class, at work and in friendly conversation. A student who intends to perfect this skill does not always have the desire to persuade. But he can only be in a position to persuade, when called upon, if he has employed these three P's – pronunciation, pacing and practice in his daily routine. Frederick Douglass began developing these skills as a child in slavery and he perfected this skill as an adult.

PARALLELISM — THE REPETITION OF CERTAIN WORDS OR GROUP OF WORDS TO BEGIN SENTENCES, CLAUSES OR PHRASES

Parallelism or anaphora, of which this rhetorical technique is sometimes referred, is a technique where the speaker repeats certain words or groups of words at the beginning of a sentence, clause or phrase.¹⁰⁸ The use of this technique creates rhythm in the speech and it allows the listener to clearly understand the point the speaker makes. There are many examples of this technique in his writings but here I offer an excerpt from the closing paragraphs of his third autobiography:

It will be seen in these pages that I have lived several lives in one: first, the life of slavery; secondly, the life of a fugitive from slavery; thirdly, the life of comparative freedom; fourthly, the life of conflict and battle; and fifthly, the life of victory, if not complete, at least assured. To, those who have suffered in slavery I can say, I too have suffered. To those who have taken some risks and encountered hardships in the flight from bondage I can say, I, too, have endured and risked. To those who have battled for liberty, brotherhood, and citizenship I can say, I, too, have battled. And to those who have lived to enjoy the fruits of victory I can say, I, too, live and, rejoice.¹⁰⁹

This skill is especially effective in its potential to make a point clear. This passage explains that Frederick Douglass had many common experiences with the slave but his achievements had not separated him from the slave who remained in bondage. By repeating the phrases, “The life of”, “To Those” and “ I, too”, this simple explanation becomes more powerful and therefore more memorable.

107. DOUGLASS, *supra* note 12, at 977.

108. Chesebrough, *supra* note 74, at 96.

109. DOUGLASS, *supra* note 12, at 914.

ANTITHESIS — THE USE OF WORDS THAT SHOW EXTREME CONTRAST

Aristotle noted that “[t]hings are best known by opposition and are better known when the opposites are put side by side.”¹¹⁰ Frederick Douglass perfected the use of antithesis in constructing passages within his speeches. He often matched strongly contrasting words and ideas about the degradations of slavery with those that championed freedom and liberation. This following passage offers antithetical concepts for the purpose of keeping the former slave encouraged during the uphill challenges faced during Reconstruction.

I have aimed to assure [the former slave]
 that *knowledge* can be obtained under *difficulties*;
 that *poverty* may give place to *competency*;
 that *obscurity* is not an absolute bar to *distinction*,
 and that a *way is open* to welfare and happiness to all who will resolutely and *wisely pursue* that way;
 that *neither slavery, stripes, imprisonment nor proscription* need extinguish *self-respect, crush manly ambition, or paralyze effort*;
 that no *power outside of himself* can prevent a man from *sustaining an honorable character and a useful relation to his day and generation*;
 that *neither institutions nor friends* can make a race to stand unless it has *strength in its own legs*;
 that there is no power in the world which can be relied upon to help the *weak against the strong* or the *simple against the wise*;
 that *races, like individuals*, must *stand or fall* by their own merits;
 that all the *prayers of Christendom* cannot *stop the force of a single bullet, divest arsenic of poison, or suspend any law of nature*.¹¹¹

In this passage Frederick Douglass compares the words with positive attributes, characteristics, and aspirations, with negative words and phrases. In addition, the meaning of the words establish the extreme contrasts. In making these contrasts he offers the listener clear choices. He employs sharply contrasting concepts to show a way for successfully navigating life's challenges. One of the most telling signs of a good oratory is its ability to transcend time and place. Although Frederick Douglass offered these words to inspire the former slave during his quest for full citizenship rights during Reconstruction, he has also provided wisdom for the challenges that each succeeding generation will face.

110. Chesebrough, *supra* note 74, at 98-99.

111. DOUGLASS, *supra* note 12, at 913.

FREDERICK DOUGLASS' FIRST SPEECH

In 1839, Frederick Douglass made his first public speech concerning the abolition of slavery.¹¹² He later wrote of the speech that he could not remember very much of it and that he felt that he had not presented it very well.¹¹³ Though he did not remember his initial public address with great fondness, an extraordinary number of speaking engagements in England created excellent opportunities to improve his delivery and confidence. He left a legacy to the Frederick Douglass Moot Court Competitor to pursue excellent writing and speaking skills. Perfection is only attainable through practice, and Frederick Douglass is legendary proof of this.

Frederick Douglass made the journey to England to avoid recapture and enslavement. In his first autobiography, Douglass revealed verifiable details about his former Master and his years of enslavement. The Fugitive Slave Law of 1793 augmented and justified his fear of recapture.¹¹⁴ When the citizens of the British Isles permitted Frederick Douglass to enjoy, for the first time, the genuine respect of Whites, this newfound respect created a mental haven where he could think thoughts he would never have dared to think in America.

While in England he lectured extensively on America's peculiar institution, slavery. There he perfected his oratorical skills by pursuing a discourse about slavery in every public arena. He not only made the standard stump speech that related the details of slave life in America to which the American Antislavery Society had attempted to limit his speeches,¹¹⁵ but he also related how the evils associated with slavery

112. Chesebrough, *supra* note 74, at 17.

113. "My speech on this occasion is about the only one I ever made, of which I do not remember a single connected sentence. It was with the utmost difficulty that I could stand erect, or that I could command and articulate two words without hesitation and stammering. "I trembled in every limb. I am not sure that my embarrassment was not the most effective part of my speech, if speech it could be called. At any rate, this is about the only part of my performance that I now distinctly remember."

DOUGLASS, *supra* note 1, at 358.

114. The Fugitive Slave law of 1793 established a procedure by which slaves were to be brought before a magistrate and a procedure to discharge the slave if the owner did not claim the slave within six months. The Fugitive Slave Act of 1850, Act of September 18, 1850, 9 Stat. 462, disposed of any semblance of due process and required all citizens to assist in returning escaped slaves to bondage, under penalty of law. This later bill was passed after Frederick Douglass had returned from England and secured his manumission papers. However, it was not uncommon for free men to be stolen and sold back into slavery. See DOUGLASS, *supra* note 21. At 54.

115. "During the first three or four months, my speeches were almost exclusively made up of narration of my own personal experience as a slave. "Let us have the facts," said the people. So also said Friend [sic] George Foster, who always wished to pin me down to my simple narrative. "Give us the facts," said Collins, "we will care of the philosophy." Just here arose some embarrassment. It was impossible for me to repeat the same old story month after month, and to keep up my interest in it. It was new to the people, it is true, but it was an old story to me; and to go through with it night after night was a task altogether too mechanical for my nature. "Tell your story, Frederick," would whisper my then revered

adversely affected other important issues of the day.¹¹⁶ While in England he stood outside both the physical and intellectual boundaries of American slavery. The people of the British Isles made no public or political distinctions about him based on the color of his skin and always regarded him a man of high esteem throughout his stay.¹¹⁷ This period assisted him greatly after he returned to America.

Many students probably share the same sentiments about their first arguments as Frederick Douglass expressed concerning his first speech. My own Frederick Douglass arguments were tremendously challenging. The first intramural competition found me standing before four different benches, four consecutive nights, unable to answer one question without hesitating or stumbling over my words. I placed myself in harms way to satisfy my youthful, burning desire to speak eloquently, and to mirror the oratorical skills of Martin Luther King, Jr. that I observed in my youth while following the civil rights movement of the 1960's on television. I had devoured the orations of

friend, William Lloyd Garrison, as I stepped upon the platform. I could not always obey, for I was now reading and thinking. . . . It did not entirely satisfy me to *narrate* wrongs; I felt like *denouncing* them."

DOUGLASS, *supra* note 1, at 361-362.

116. *Id.* at 381-386. The Church of Scotland solicited and received money from the churches located in the slave holding American South to support the creation of the newly formed Free Church of Scotland. Frederick Douglass exposed this fact and coined the slogan "Send Back the Money." See also DOUGLASS, *supra* note 21 at 40 concerning a letter to Samuel Hanson Cox, D.D. This letter was published in the *Liberator* to address Mr. Cox's objection to Douglass address at the World Temperance Convention in England. The New York Evangelist had initially published a long angry letter written by Cox to Douglass on this subject. The leaders of the World Temperance meeting in England invited him to address the convention where he proceeded to expose the American Temperance movement's anti-abolitionist motivations. The American delegates to the convention objected to his right to be the voice that spoke on behalf of the interests of slaves and free African Americans that exposed the pro-slavery sentiment of the American temperance movement.

117. "In the northern states, a fugitive slave [is] liable to be hunted at any moment, like a felon, and to be hurled into the terrible jaws of slavery – doomed by an inveterate prejudice against color to insult and outrage on every hand . . . – denied the privileges and courtesies common to others in the use of the most humble means of conveyance – shut out from the cabins on steamboats – refused admission to respectable hotels – caricatured, scorned, scoffed, mocked, and maltreated with impunity by anyone (no matter how black his heart, [sic]), so he has a white skin. But now behold the change! Eleven days and a half gone, and I have crossed three thousand miles of the perilous deep. Instead of a democratic government, I am under a monarchical government. Instead of the bright, blue sky of America, I am covered with the soft, grey fog of the Emerald Isle. I breathe, and lo! the chattel becomes a man. I gaze around in vain for one who will question my equal humanity, claim me as his slave, or offer me an insult. I employ a cab – I am seated beside white people – I reach the hotel – I enter the same door – I am shown into the same parlor – I dine at the same table – and no one is offended. No delicate nose grows deformed in my presence. I find no difficulty here in obtaining admission into any place of worship, instruction, or amusement, on equal terms with people as white as any I ever saw in the United States. I meet nothing to remind me of my complexion. I find myself regarded and treated at every turn with the kindness and deference paid to white people. When I go to church, I am met by no upturned nose and scornful lip to tell me, 'We don't allow niggers in here!'"

DOUGLASS, *supra* note 1, at 370-371. From a letter written to Henry Lloyd Garrison after Douglass had spent a few days on his first trip to the Emerald Isle.

Martin Luther King, Jr. and developed a pressing desire to motivate people, in word and voice, just as Dr. King had motivated me.¹¹⁸ Little did I know then that an equally profound example of oration had predated Dr. King. My history classes had never revealed the existence of Frederick Douglass even though he had led the same fight for African American equality over one hundred years before Dr. King.¹¹⁹

THE FDMCC STRUCTURE

Douglass knew that after the Emancipation Proclamation dust settled there was real work yet to come. He knew that new leaders would have to be developed to take the place of the "leaders of the rebellion" and that the former slave would have to be educated in order to benefit from their new status in life.¹²⁰

Four generations later, in the 1975-76 academic year, members of the National Black Law Student Association (NBLSA) resurrected the legacy and spirit of Frederick Douglass when they established the National Frederick Douglass Moot Court Competition (FDMCC). The competition began only seven years after the leader of the "second" nationally prominent drum major for justice, Martin Luther King, Jr., died by an assassin's bullet.¹²¹ An Emory University law student, Cynthia Stevens¹²² seeded the idea for the FDMCC in 1974.

118. I can only say that I have progressed in this quest though I continue toward this goal vicariously through my moot court students and personally through writing, teaching and a few other public speaking engagements.

119. The Civil Rights Movement associated with Dr. King began in 1956 with the Rosa Parks and the Montgomery bus boycott. Frederick Douglass's journey began in 1840, three years after he emancipated himself from slavery.

120. Autobiographies - Life and Times of Frederick Douglass at 728-732. Harriet Beecher Stowe requested that he pen a letter to her explaining what he thought she should do to assist free colored people, with the contributions that she might receive on her trip to England. He shared, "I assert then, that poverty, ignorance and degradation are the combined evils; or in other words, these constitute the social disease of the free colored people of the United States. To deliver them from this triple malady is to improve and elevate them on an equal footing with their white fellow countrymen in the sacred right to "*Life, Liberty*, and the pursuit of happiness." I am for no fancied or artificial elevation, but only ask fair play. How shall this be obtained? I answer, first, not by establishing for our use, high schools and colleges. Such institutions are, in my judgment, beyond our immediate occasions and are not adapted to our present most pressing wants. High schools and colleges are excellent institutions, and will in due seasons be greatly subservient to our progress; but they are the result, as well as they are the demand, of a point of progress which we as a people have not yet attained. . . . What can be done for the free colored people . . . is the establishment in Rochester N.Y. or in some other part of the United States equally favorable to such an enterprise, of an INDUSTRIAL COLLEGE in which shall be taught several important branches of the mechanic arts . . . and it should be opened to colored youth."

121. Martin Luther King was killed by an assassin's bullet on April 4, 1968 in Memphis Tennessee.

122. Cynthia Stevens is currently a Third Circuit Court judge in Detroit, Michigan. She graduated from Emory University Law School in 1974.

James M. Douglass¹²³, Denise Carty-Benia,¹²⁴ and Ralph Smith¹²⁵ wrote the second FDMCC problem. At that time they were assistant professors, just starting their legal teaching careers, and BLSA national advisors. These pioneers designed the competition not only to give its membership an opportunity to develop oral and written advocacy skills, but to also address contemporary constitutional issues that Frederick Douglass spent his life's work addressing.

Through the years some competition rules have been modified, but the basic tenets of the competition have always permitted each local BLSA organization to register as many two-person teams as there were interested members in the local chapter who wanted to participate.¹²⁶ There are six BLSA regions. Each team initially competes at the site of their BLSA regional meeting that is held during February of each year. Between 1975 and 2000 the top two teams from each region advanced to the national competition. The 2001 rules permit the top three teams from each region to advance to the national competition.¹²⁷ The national competition is always held at the site of the National BLSA annual convention and it rotates to a city in each region, each year. The various awards that may be earned regionally and nationally are the best petitioner's brief, best respondent's brief, best advocate, honorable mention oral advocate (nationally only) and the first and second overall top team awards.¹²⁸ Before a team may be eliminated in the preliminary round, each advocate must make two separate fifteen-minute arguments, on behalf of the petitioner and respondent.¹²⁹ Whether the top sixteen or eight teams advance to the next round of competition depends upon the number of teams that start out in each regional competition.¹³⁰ There is always a semi-final

123. James M. Douglass is presently the Distinguished Professor of Law at Texas Southern University, Thurgood Marshall School of Law. He is also the former Dean of this law school (1981-1995) and President of Texas Southern University (1996-1999). He served as Associate Dean at Syracuse University College of Law (1975-1980) and law school professor at Cleveland-Marshall School (1973-1975).

124. Denise Carty-Benia (1948 - 1992) was an assistant professor at Wayne State University Law School at that time and later became a tenured professor at Northeastern University.

125. Ralph Smith was at that time a professor at the University of Pennsylvania Law School. He is now the Vice-President of the Annie E. Casey Foundation in Baltimore, Maryland.

126. 1976-1977 FDMCC Rule III B permitted teams to consist of two BLSA members from the same region. "A team may also be composed of any two BLSA, LaRaza Unida, or American Indian Law Student Association members who attend law school within the same BLSA region." To insure that *only* BLSA members participate in the competition, 2000-2001 FDMCC Rule Art. VI A (3) a-d imposes additional individual and chapter requirements that must be met before a student may participate in the competition.

127. 2000-2001 FDMCC Rules Art. IX B (7).

128. 2000-2001 FDMCC Rules Art. XV A-L.

129. 2000-2001 FDMCC Rules Art. IX B (2).

130. 2000-2001 FDMCC Rules Art. IX B (1-9) & C (1-5). In 1983, when I coached my first FDMCC team, only three teams competed at the Rocky Mountain Regional. The number of teams that compete in this region has multiplied since that time. Also, some teams may register

round (top four teams) and final round (top two teams). Advocates are judged on their written and oral advocacy skills.¹³¹

ROOTED IN SLAVERY — A REVIEW OF SELECTED FDMCC PROBLEMS FROM THE PAST TWENTY YEARS

Although FDMCC problems have addressed issues concerning the First Amendment freedom of speech clause and Fifth Amendment Federal Government prohibitions, most of the problems have revolved around constitutional issues that concern statutory interpretation of the Fourteenth Amendment. It is appropriate for FDMCC problems to primarily examine Fourteenth Amendment issues because Congress designed this Amendment to provide legal protection to African Americans against any state that sought to perpetuate slavery. Year after year, FDMCC problems examine contemporary legal developments that implicate the Fourteenth Amendment, in order to foster public discussion of the issues that affect African Americans, which may never otherwise be encountered in a classroom.

The very first FDMCC problem concerned desegregation.¹³² A yearly review of the subsequent FDMCC problems clearly chronicles the important African American issues in contemporary history since the inception of the competition. Over the past twenty years the FDMCC problems have examined issues concerning:

1. First and Fourteenth Amendment and the statutory interpretation of three state statutes, which when read in combination, prohibited citizens from restraining trade or boycotting an establishment unless the parties gave the merchant a notice of concerns in advance of the boycott *and* the merchant had the ability *or* opportunity to correct the problem, in the context of a black community organization's effort to secure employment for the town's black citizen's.¹³³

to compete but fail to complete the brief and sometimes or not appear at the Regional convention for the competition.

131. 2000-2001 FDMCC Rules Art. X (A). In each subsequent round, the percentage of the oral score progressively increases and the brief score percentage progressively decreases to calculate the total round score. Initially the first sixteen teams advance, depending on the number of teams that enter the competition, to make one additional argument. In either of these rounds, the total round score equals fifty % of the oral score and fifty % of the brief score. The top eight teams advance to the quarter final round and the total round score equals seventy % of the oral score and thirty % of the brief score. The top four teams advance to the semi-final rounds and the total round score equals eighty % of the oral score and twenty % of the brief score. The top two teams advance to the final round of competition and the oral score equals ninety % of the oral score and ten % of the brief score.

132. Personal Interview with Joyce Hartsfield, member of the first team that won the National FDMCC. The documents for this problem are lost in the annals of time.

133. The finalists in the 1976-77, second National FDMCC finals were Sherman L. Anderson, Case Western Reserve College of Law, and Jonathan T. Green, Cleveland State University College of Law, who represented the Appellants and Daphne Taylor and Reuben Daniels from Marquette College of Law, who represented the Appellees. The winning briefs for this competi-

2. The statutory interpretation of a bona fide seniority or merit program provision of Title VII of the Civil Rights Acts of 1964 § 703 [h], and a Fourteenth Amendment challenge to a courts exercise of discretion in modifying the terms of a consent decree where a governmental employer settled a race and sex discrimination hiring and promotions claim but six months later announced a work-force reduction and modified a facially neutral seniority-based, last-hired, first-fired, program that otherwise would have perpetuated the initial discriminatory conduct. The minority workers had the least amount of seniority because of the city's prior discriminatory hiring practices and two-thirds of the minority workers would be laid off if the rules for seniority were followed.¹³⁴

3. The FDA's Fourteenth Amendment regulatory duty to investigate and regulate the unapproved use of approved drugs to execute prisoners with lethal injections under State death penalty statutes and an Eighth Amendment challenge concerning the constitutionally permissible burden that the FDA may place on death row prisoners when it declines to exercise its regulatory discretion.¹³⁵

4. First and Fourteenth Amendment concerns surrounding a State Human Relations Commission's Anti-Discrimination Act and a black non-profit student organization, formed by and for full-time black female college students who attended a private white university, that did not permit a white female to join the organization. The Act exempted sororities and fraternities.¹³⁶

5. The problem concerned Section 2 of the Sherman Act and anti-trust issues with a non-profit organization's monopoly power in the context of a company's refusal to permit two competing non-profit

tion are published in 5 Black L. J. 418-517 (1977). The judges on the final bench were Honorable Judges Theodore R. Newman, Jr., District of Columbia Superior Court; Robert M. Duncan, Federal District Court for the Southern, District of Ohio; and Lloyd O. Brown, Cuyahoga County Court of Common Pleas. This problem, *National Organization for the Liberation of Black People v. Renquist Hardware, Co.*, examined the right to protest in conjunction with first amendment fundamental rights in *NAACP v. Alabama*, 377 U.S. 288 (1964) and the right to boycott for a legal purpose protected under the Fourteenth Amendment as explained in *Hughes v. Superior Court*, 339 U.S. 460 (1950).

134. The 1983 FDMCC problem was *Stotts v. City of Memphis*. This problem analyzed the principles discussed in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), which exempted all bona fide seniority programs from attack based on a discrimination claim and *United States v. Swift*, 286 U.S. 106 (1932) that addressed the district court's authority to modify a consent decree absent a finding that a party admitted discrimination.

135. The 1984 FDMCC problem, *Heckler v. Chaney*, focused on the concerns of an agency's absolute discretion as announced in *United States v. Nixon*, 418 U.S. 683 (1974) and the judicial review of agency decisions as interpreted under §§ 701-704 of the Administrative Procedure Act and *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

136. The 1985 FDMCC problem was *Petrie v. Black Women's Collegiate Forum*. The leading cases that laid the foundation for the problem were *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) which addresses the First Amendment protections for individuals to freely associate in intimate and expressive settings, and *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) which reviewed the intent analysis that establishes a constitutionally valid discrimination claim.

organizations from soliciting funds from their employees in a payroll deduction campaign. The traditional agency had an exclusive agreement with the company to conduct employee charity drive campaign and only two of the traditional non-profit's affiliates had minority executive directors; it would not provide funding to black controlled organizations. The competing agency also wanted to participate in the employee charity drive campaign to solicit donations for the affiliates that did not receive funding from the traditional agency. The company denied them that opportunity.¹³⁷

6. The statutory interpretation of §5 of the Voting Rights Act and the applicable Code of Federal Regulations section where the City of Sunny annexed a parcel of undeveloped land but held an election, before the Attorney General approved the annexation and in violation of the pre-clearance requirement for States covered by the Act.¹³⁸

7. The Fourteenth Amendment Equal Protection Clause and the Fair Housing Act in the context of a housing project's decision to enforce an explicit, race-conscious tenant selection policy that limited the Black population in the project to thirty-five percent in order to preserve the racially integrated character of the housing project.¹³⁹

8. A violation of the Title VII of the Civil Rights Act of 1964 and its amendments and the Fourteenth Amendment Equal Protection Clause as it concerned a white male who applied for a position as a professor at a predominately white and male law school. The law school hired a qualified African American female instead.¹⁴⁰

137. The 1986 FDMCC problem was *Black Community Support Fund v. American Charity and Transco Oil, Inc.* This problem examined *American Tobacco v. United States*, 323 U.S. 781 (1946) that discusses the power to exclude competition when it is desired to do so coupled with the purpose of intent to exercise that power is a section 2 Sherman Act violation, and *United States v. Griffith*, 334 U.S. 100 (1948) that said foreclosing the competitive advantage by destroying a competitor is unlawful, no matter how lawfully the advantage was acquired.

138. The 1988 FDMCC problem, *United States v. City of Sunny Vista* considered *Perkins v. Mathews*, 400 U.S. 379 (1971) that concerned the effect of changing voter boundary lines by annexations, *Reynolds v. Simms*, 377 U.S. 533 (1964) in addressing vote dilution in the context of annexing uninhabited land under § 5 of the Voting Rights Act and *South Carolina v. Katzenbach*, which examines in detail the legislative history of the Act.

139. The 1989 FDMCC problem was *Ingram v. City of Pero*. The leading key cases: *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979) which examined the use of racial preferential hiring goals designed to eliminated racial imbalances in the workforce; *United States v. Paradise* which governs the constitutional compelling interest scrutiny that an employer must establish in order to justify a race-based goal; and *Wygant v. Jackson Board of Education*, 478 U.S. 1014 (1986) which examines the need to establish more than societal discrimination to justify an employers use of race-based goals.

140. The 1991 FDMCC Problem, *Bushe v. Amandla State University* examined the principles in *Local Number 93, Int'l Assoc. of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986) which reviewed Title VII legislative history as it concerns the voluntary implementation of affirmative action plans, and *United Steelworkers of America v. Weber*, 433 U.S. 193 (1979) which reiterated the two prong test to determine the validity of a voluntary affirmative action plan.

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9. A Fourteenth Amendment right to a fair and impartial jury constitutional challenge to the prosecutor's use of peremptory challenges to strike all of the African Americans in the jury pool while offering a race neutral reason for their exclusion and the interpretation of the armed career criminal act, interpreting of the sentencing enhancement statute, 18 U.S.C. §§ 922 (g) and 924 (e) (1), which provides for the enhancement of a sentence after three felony convictions, when two of the three convictions were prosecuted in one single indictment, during one judicial proceeding.¹⁴¹

10. The federal government's liability for the injuries sustained under the Federal Tort Claims Act 28 U.S.C. § 1346 (b) that permits plaintiffs to sue the government for tort claims under limited circumstances and the Little Tucker Act 28 U.S.C. § 1346 (a)(2), concerning a breach of contract action in the context of a city's failure to provide police protection at an African American citizen group's ceremony to rename a park in memory of a descendent of a slave who had fought in the civil war against his slave owner. The honored slave lived in the town following Emancipation and during the federal government's retrenchment of national support for the emancipated slave after the short period of reconstruction. The group had received death threats before the ceremony and during the ceremony a bomb blast killed of the honoree a descendent of that slave and refused to pay their taxes for three years.¹⁴²

11. Immigration issues citing the First Amendment right to *expressive association and the free exercise of religion* and Fifth Amendment substantive due process and equal protection clauses in conjunction with the immigration legislation, in 8 U.S.C. §1151, which permits a citizen to petition the INS to adjust a partner's status to a *spouse and immediate relative of an American citizen after a marriage*. In this case, same sex partners, both of African decent, one an American citizen and the other, a non-citizen immigrant from the Sudan, obtained a marriage license in a State that recognized same sex marriages. The INS denied

141. The 1992 FDMCC problem, *Walker v. United States*, examined *Batson v. Kentucky*, 476 U.S. 79 (1986) and the three-step analysis for analyzing a prosecutor's impermissible use of race in exercising peremptory challenges; *Hernandez v. New York*, 111 S. Ct. 1859 (1991) which provides the standard for determining a prosecutor's discriminatory intent in exercising peremptory challenges; and *United States v. Herbert*, 860 F. 2d 673 (3rd Cir. 1989), addressing multiple convictions in one indictment under the sentencing enhancement statute.

142. The 1994 FDMCC problem, *United States v. Morris Island Resident's Assoc.*, permitted the Frederick Douglass advocates for the first time to learn about the Emancipation Proclamation. The setting of this problem, in a small southern fictitious town, provided the historical context that examined the political and social problems that surrounded the community before and after the Emancipation Proclamation. The problem examined the principles in *F.D.I.C. v. Meyer*, 510 U.S. 471 (1994) concerning when the federal government waives sovereign immunity in personal injury actions and *Schuerman v. United States*, 30 Fed. Cl. 420 (1994) that discusses the elements of a contract in conjunction with the novel allegation that the Emancipation Proclamation formed an express contract between the slave and the federal government to recognize and maintain their freedom.

the petition and began deportation proceedings against the non-citizen immigrant.¹⁴³

12. The mandatory minimum sentencing requirements imposed on drug-related offenses in the Federal Sentencing Guidelines and the Fifth Amendment Equal Protection Due Process Clause concerning the evidentiary admission of an exculpatory polygraph. As is concerns the conviction of two male college roommates, one white and one black, traveling through an army base, found with a controlled substance in the car owned by the black roommate and traces of cocaine on his person of the white roommate. The polygraph test indicated that the black roommate had no prior knowledge that the cocaine was in his car, but the court would not admit the polygraph test results;¹⁴⁴

13. What constitutes a person and state involvement under 42 U.S.C. § 1983 and the Fourteenth Amendment as it concerns a private bar association's award of a scholarship designated for minority students who matriculated at a State University;¹⁴⁵

14. Fourteenth Amendment Enforcement Clause and Congressional Commerce Clause power to enact the Violence Against Women Act (42 U.S.C. § 13981 (1994)), in the context of a female organization inciting violence against the male school Athletic director who refused to upgrade a female tennis team to varsity status.¹⁴⁶

Frederick Douglass would have had a word to say on these issues because each one is rooted in slavery. The laws that prohibited teaching African Americans to read and write are at the roots of school desegregation cases. The death penalty that affexs a greater percentage of African American and company seniority programs that perpetuate prior discriminatory practices have their roots in slavery. The

143. The 1996 FDMCC problem, *Shakur v. INS.*, examined the principles in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) which addressed First Amendment protections of an individual to freely associate in intimate and expressive settings, and *Kleindienst v. Mandel*, 408 U.S. 753 (1977) which provides that Congress may confide administrative officers with the authority to enforce immigration legislation.

144. The 1997 FDMCC problem, *United States v. Warren*, examined *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) concerning the admission of polygraph test results as evidence in court and the rational basis standard of review, and *Washington v. Davis*, 426 U.S. 229, 242 (1976), requiring the constitutionality of a facially neutral law, that has a disproportionate adverse effect upon a racial minority, to be traced to a discriminatory purpose.

145. The 1998 FDMCC problem, *Samsky v. Brown*, revisited *Lugar v. Edmondson Oil, Co.*, 457 U.S.922 (1982) which addressed the criteria for when a party acts under color of state law; *Bakke v. Regents of the Univ. of Cal.*, 438 U.S. 265 (1978) concerning the flaw in preferential programs where the selection criteria is solely based on race; and *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989) concerning the use of race based remedies to rectify societal discrimination.

146. The 1999 FDMCC problem, *Justice v. Jane*, examined the principles in *United States v. Lopez*, 514 U.S. 549 (1995), which addresses the principles of commercial intercourse that are proscribed in interstate commerce, and *Katzenbach v. Morgan*, 384 U.S. 641 (1966), which sets out the principles of Congress' scope of legislative authority to enact legislation under § 5 of the Fourteenth Amendment, which authorizes Congress to enact legislation to enforce the amendment.

right of African Americans to freely associate is directly related to laws that prohibited two or more slaves from meeting together, under penalty of punishment or death. The statutory interpretation of the Voting Rights Act originated from the country's protracted fear of giving the former slave the right to vote, even after the passage of the Fifteenth Amendment. The application of immigration laws to African Americans, which were ignored during the importation of slaves for two hundred and fifty years, has its immediate roots in slavery. The use of racial criteria to force entities to hire African American employee and admit African American students to their universities is directly related to the after-effects of slavery.

Frederick Douglass would have asked those who found it uncomfortable to listen to his position on these contemporary issues that affect African Americans to understand that it was not only his responsibility, but also his calling, to speak out on affirmative action, a resultant directly rooted to slavery and for those who continue to live on the margins of American society. He would have spoken out on behalf of any race that found themselves in the same or similarly position as African American. He would say, just as he said in 1885, that his work was not done. The Frederick Douglass Moot Competition has remained true to his vision and mission of providing a valuable voice in the public discourse that affects the masses of African Americans.

CONCLUSION

During his career, Frederick Douglass "gave over 2000 speeches, wrote thousands of editorials, articles and letters" and published three autobiographies.¹⁴⁷ Frederick Douglass' prolific advocacy, in word and speech, on the issue of abolishing slavery and on all other issues that impacted the abolition of slavery, only begin to examine Frederick Douglass' power of persuasion. Understanding how he developed his written and verbal skills to persuade world that he stood on the right side of the issues can assist the FDMCC advocate in developing and improving their own oral and written skills. Frederick Douglass

147. The three autobiographies chronicle his remembrances of slavery through emancipation until 1892, three years before his death. The first autobiography published in 1845, just seven years after his escape from slavery at the age of 27, was titled *NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS - AN AMERICAN SLAVE. MY BONDAGE AND MY FREEDOM* was the second autobiography of the trilogy published in 1855. The first autobiography ended with his arrival in New Bedford and learning about the existence of the abolitionist newspaper, the *Liberator*. The second autobiography embellishes the first one and adds approximately fifty additional pages that discuss his life as freeman and his association with the Massachusetts antislavery society. The final autobiography, *THE LIFE AND TIMES OF FREDERICK DOUGLASS*, published in 1881 and expanded in 1892, greatly reduces the discussion concerning his life in slavery to address his life after the Civil War and the Emancipation Proclamation.

was able to learn these fundamentals based on his desire to write and speak well, despite his lack of a teacher in a formal school environment. It is even more astonishing that he pursued his course of learning and intellectual development at a time when the law made it a criminal act to teach a slave how to read and write. Frederick Douglass stands as a stellar example to the world that even slavery, and its many attendant horrors, cannot deter a person who is committed to learning and that a commitment to self-improvement makes the difference between ignorance and intellectual superiority for any person, even in the direst circumstances

In the closing paragraphs of his last autobiography Frederick Douglass stated that it had been his honor to stand as advocate for the needs of his people and if he had it to do all over again, he would.¹⁴⁸ At the time that the Emancipation Proclamation was about to become effective, he said that the work of the abolitionist was not done: "I know it is that we have recently achieved vast political victories. I am glad of it. I value these victories, however, more for what they have prevented than for what they have actually accomplished."¹⁴⁹ As the civil war neared its end he cautioned that ". . . The work before us is nothing less than a radical revolution . . . There is no such thing as immediate emancipation either for the master or for the slave. Time, experience and culture must gradually bring society back to the normal condition from which long years of slavery have carried all under its iron sway."¹⁵⁰ Frederick Douglass had not expected the former slaveholder to embrace the slave, nor the slave to immediately throw off the chains of slavery. He envisioned that a new class of men would have to be created to erase the slaveholder mentality. For the millions¹⁵¹ of former slaves, education and schools would have to be a

148. FREDERICK DOUGLASS, AUTOBIOGRAPHIES — LIFE AND TIMES OF FREDERICK DOUGLASS 914 "Forty years of my life have been given to the cause of my people, and if I had forty years more they should all be sacredly given to the same great cause. If I have done something for that cause, I am, after all, more a debtor to it than it is debtor to me."

149. FREDERICK DOUGLASS, FREDERICK DOUGLASS SELECTED SPEECHES, *Our Work Is Not Done* 549 (Philip S. Foner and Yuval Taylor, eds. 1999)

150. *Id.* at 522. "It would be absurd and ridiculous to expect that the conquered traitors will once cordially cooperate with the Federal government. Neither the slave nor the slaveholder can instantly throw off the sentiments inspired and ground into them by long years of tyranny on the one hand and of abject and cringing submission on the other. The master will carry into the new relation of liberty much of the insolence, caprice and pretension exercised by him while the admitted lord of the lash. The slave in his turn will be bound in the invisible chains of slavery long after his iron chains are broken and forever buried out of sight."

151. W.E.B. DuBois, *THE SUPPRESSION OF THE AFRICAN SLAVE-TRADE TO THE UNITED STATES OF AMERICA, 1638-1870* 3-4 England signed an agreement with Spain, called the Asiento, in 1713 to secure a monopoly on the slave trade in order to supply the American colonies with free labor. "The colonists declared slaves the strength and sinews of this western world and the lack of them the grand obstruction, as the settlements cannot subsist without supplies of them." England paid Spain for the right to engage in this monopoly because Spain had formerly

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priority, the family, which had no real existence under slavery, would have to be resurrected and all of the institutions of the country would have to be extended to them.¹⁵² Frederick Douglass' final legacy to his followers is to remember that, "... the work [did] not end with the abolition of slavery, it [began.]"¹⁵³

The FDMCC continues his legacy by providing a training ground for hundreds of its members to develop oral and written skills and cultivating many voices that will be prepared to address the contemporary issues that affect African Americans in this generation and in generations to come. Frederick Douglass, the great human rights orator and writer, had a clear vision and the National Black Law Student's Association appropriately perpetuates his legacy in the Frederick Douglass Moot Court Competition.

dominated the "manstealing" industry. The census taken in 1790, just after the revolutionary war, showed 697,897 slaves in the United States.

152. FREDERICK DOUGLASS, *FREDERICK DOUGLASS SELECTED SPEECHES*, *The Work of the Future* 523 (Philip S. Foner and Yuval Taylor, eds. 1999).

153. *Id.*