

THE APPELLATE ADVOCATE



NATIONAL CHAMPIONS AT LEFKOWITZ!

Welcome to the inaugural edition of Berkeley Law School's Appellate Advocate. This annual publication, submitted for the review of faculty, staff, and students, is meant to showcase the hard work, determination, and commitment – not to mention enviable skills – of our moot court teams.

Each year, Berkeley sends students to nine competitions across the United States and the world, in everything from intellectual property to environmental to constitutional law. The students spend months preparing for their competitions, writing briefs and preparing to argue. They sacrifice their social lives, their semester breaks, and often

their sleep to prepare for competing against some of the most talented student advocates in the nation. In competition the students must argue both sides of the case, and in some, they must brief both sides, as well. As any experienced advocate knows, one must always know the other side's case in order to rebut it; in these competitions the students not only know the other side but advocate for it, forcing them to examine and tighten their reasoning with every switch. These students are truly incredible, and this year they made us all proud.

While the tangible results were clear from our performance in competition, the truly remarkable part of this year has been the outpouring of support for our students from the administration, the faculty, the alumni, and the community at large. This season saw the ranks of the coaching staff increase to 12, by far the most coaches we've ever had. The addition of another faculty member in the Appellate Programs office also helped support the teams with coaching, strategy, and administration. But mostly it's the high caliber of the students that have made this program great, and we have the results to show for it.

We have one competition in the fall, the National Moot Court Competition, and the other eight in the Spring. We sent students to New York, Portland, Los Angeles, Silicon Valley, Vienna, D.C., and across the bridge to San Francisco.

We hope you enjoy this season-ending edition of the newsletter. We once again have many reasons to be proud.

Bill Fernholz, Director, Appellate Competitions Program

Anne Gordon, Advocacy Fellow

Barbara Andersen, Competitions Coordinator

Pictured above, at center, are Christina Farmer '14 and Wilson Dunlavy, '15, winners of this year's Saul Lefkowitz Trademarks Moot Court Competition, surrounded by the judging panel.

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'13 - '14

First Issue

National Moot Court Competition

San Francisco, CA

We started off our year with the National Moot Court Competition (NMCC), sponsored by the New York City Bar and the American College of Trial Lawyers and hosted by Hastings College of the Law in San Francisco. We sent two teams, one with two students and one with three.

Berkeley fielded two teams: Avery Masters '15 and Charlie Weiss '15, and Daniel Bruggemeier, '15, Jennifer Le '15 and Rebecca Yates '15. Coaches Scotia Hicks '07, Grace Yang '12, and Anne Gordon helped the team prepare.



NMCC is the oldest, largest, and some say the most prestigious moot court competition in the United States. Co-sponsored by the New York City Bar Association and the American College of Trial Lawyers, the competition includes 179 teams from 124 law schools, who compete in regional competitions in November with the top two in each region advancing to the national competition held in the landmark House of the New York City Bar Association at the end of January.

The case usually involves two questions of constitutional import, and this year's were a doozy. The teams wrestled with a First Amendment issue and a dormant commerce

clause issue, namely whether a state could: 1) require a beverage bottling company to put a label on its containers designating where they were bought, and 2) require retailers to post a sign about the ill health effects of sugar-sweetened beverages.

Both teams had to argue both sides of the case. Team Masters-Weiss (in other words, Fire and Ice) put hours and hours of mooting to work with Ms. Masters learning everything possible about the dormant commerce clause, while Mr. Weiss put Floyd Abrams to shame by learning the ins and outs of the First Amendment's compelled speech doctrine.

Meanwhile, Team Yates – Bruggemeier – Le performed feats of argumentative acrobatics by dividing two sides and two issues among three competitors.

Your honor, I'm an advocate: From left, are NMCC team members Rebecca Yates, Avery Masters, Jennifer Le, Daniel Bruggemeier, and Charlie Weiss, all class of 2015, at the Ninth Circuit Court of Appeals in San Francisco.

All the better to school you with, my dear. This team also did an amazing job, and both teams advanced to the second day of competition.

Alternately arguing that sugar is the "building block of life" and that it's destroying the health of our citizenry, the teams switched back and forth between their arguments and got better and better with every round. They faced tough competition in the quarters, and although they didn't advance, they're hungry for 2014 . . .

Giles Sutherland Rich IP Law Moot Court

Silicon Valley, CA

California is the place for innovation, the Bay Area is the place for intellectual property practice, and Berkeley is the place to learn how it all gets done. This year's Giles Sutherland Rich Moot Court team was comprised of Norris Boothe '15 and Ognjen "Ogi" Zivonjnovic '15. The two tackled a problem related to pseudogenes (never thought you'd learn that in law school, did you?) and whether a process of isolating those genes deserved patent protection. Alternately representing the patent holder and the and the Natural Anonymous Rights Foundation ("NARF"), the students argued first whether isolating this particular genetic sequence was even patentable in the first place, and second, if patentable, whether NARF had breached a patent license entered between the two parties.

Unlike other competitions, GSR requires students to write two complete briefs, one for the Appellant and one for the Respondent. Good thing these guys came prepared: Norris with an MBA from UCLA and Ogi with an MS from Stanford. These guys are experts.

The team was sponsored by the Berkeley Center for Law and Technology, and ably coached by two loyal partners from Latham & Watkins, Doug Lumish and Jeffrey Homrig '01. Jeff and Doug were there from the beginning, putting the team through its paces and hosting them at their Silicon Valley offices as the competition approached. Jeff and Doug were incredible assets to the team, and we thank them profusely for devoting time to us in their otherwise busy lives.

Although the team did not advance to the regional semi-finals, both agreed that the teamwork, the briefwriting process, and the chance to connect with prominent firm partners was worth the pain and suffering. And isn't that what lawyering is all about?

**Berkeley Law:
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Saul Lefkowitz Moot Court Competition

*San Francisco, CA
Washington, DC*

When is a toy a counterfeit? When is a “tribute” a trademark violation? When is a small novelty purveyor a “sophisticated businessman?” When you’re at the Lefkowitz competition, it depends on who you’re arguing for! This year Berkeley sent two teams to the Saul Lefkowitz memorial moot court competition, where the teams squared off around whether a cowhide-and-flag-bedecked toy guitar violated the trademark of a curiously similar original (patented by a country music legend, of course).

The teams were made up of Judah Marans '15 and Sam Welch '14, and Wilson Dunlavey '15 and Christina Farmer '14, and sponsored by the Berkeley Center for Law and Technology. The team members had different backgrounds, areas of expertise, and career aspirations, but everyone came together around this entertaining and difficult problem. And because it was so fun, they had no problem getting their fellow branch members to moot them.

The first round of the competition was in February in San Francisco. There must have been some kind of home-field advantage, because the teams were on fire! Judah and Sam’s visual aids were unlike any presented at the competition. Judah proved his stellar research prowess not only by finding the section in the rules that permitted visual aids, but also by digging up a little-known case about a Fender guitar head. He found the exhibits attached to the Fender case and blew them up in a wonderfully illustrative visual aid for the court. He also special-ordered a toy guitar to prove his points. Ultimately this team did not advance, but it was not for lack of diligence, creativity, and enthusiasm.

Next up we had team Dunlavey-Farmer. These two proved to be an unstoppable combination of brilliance and southern charm, and the judges ate it up. One of their arguments was in front of the head of the Lefkowitz competition, who told Wilson that his rebuttal was the best he’d ever seen! Guaranteed we’re asking him back next year to teach our teams how it’s done. With this



Pictured above, Wilson Dunlavey '15 and Christina Farmer '14.

stellar oral advocacy and second-in-region brief score, it’s no surprise that Wilson and Christina ended up winning the regional competition.

Then it was on to D.C. With just a little over a month to prepare, the whole appellate team came together to try to improve on perfection . . . and it apparently worked. Wilson and Christina were crowned the champions, with the third best brief in the country to show for it! Thank you to our dedicated practitioner coaches, Jane Levich '13 and Lauren Escher '13, as well as their fantastic student coach (and travelling partner) Elliot Shackelford '14. A big win for Berkeley!

Roger J. Traynor California Moot Court Competition

Los Angeles, CA

Poor Harvey Winslow. From being stalked by a supervisor to getting fired for testing the carbonation level of a soda, the guy just can’t get a break. Good thing Aaron Blumenthal '15 and Aram Boghosian '15 were on the case . . . look out BigBox store!

With help from Professor Karen Tani, Coblentz attorney Sean Kiley, and dedicated student coach Devon Ahern '14, the team took Mr. Winslow from zero to hero, producing a compelling brief that not only made Mr. Winslow’s case, but left readers wondering how there could ever be another side to the case!

Pictured right, Aram Boghosian '15 and Aaron Blumenthal '15.

But by the time they got to the competition, the doubt was not whether BigBox had a case, but whether there could be a side other than the one this team was arguing. Even though this was the last competition of the semester, the team’s energy was never stronger. The team upped their game with every practice, in addition to being loyal and skilled mooters for the other teams throughout the semester.

Aram went from what he described as “arm-flailing” to a picture of control in a matter of weeks, and Aaron was able to harness his calm, cool precision in service of his client – and they have the trophy to show for it. Maybe it was their elite debate background. Maybe it was their curiously matching initials. Whatever it was, the team ultimately came in second place in the finals – a huge win! It’s no wonder that so many students want to be on the Traynor team next year!



National Environmental Law Moot Court (Pace)

White Plains, NY

Even before this year began, the Pace team was champing at the bit to get to White Plains. The team never lost this impressive drive, through the brief writing process, the innumerable practice moots, and the competition itself. Even the cold snowy streets of White Plains weren't enough to dampen their enthusiasm.

Returning semifinalists Chris Heckman '14 and Liz Long '14 teamed up with brilliant first-timer Yesica Hernandez '14 for a problem that had not two sides but three: Jacques Bonhomme against Shifty Maleau (yes, "good man" and "bad water"), with the State of Progress as an intervenor for good measure.

The competition, now in its 26th year, is recognized as the preeminent environmental

law moot court in the United States, drawing more than 200 students from across the United States and Canada, and 200 attorneys who serve as judges, for three days of oral arguments.

What is unusual about this competition is that each team must argue on behalf of three different parties - the government, a public interest group, and a member of the regulated industry - in successive rounds over a three-day period. Student teams write and file their briefs for their respective parties in early December and come to the Pace campus in February for the oral phase of the competition.

The team briefed and argued both sides of all three positions, arguing over culverts and navigable waterways and arsenic levels under the Clean Water Act. The team was able to distill their arguments down into a few crystal clear points, letting their sparkling arguments flow from the lectern. So to speak.

Heading to White Plains, New York in February was no vacation (hey, did you hear some people get to go to Vienna?) but the team kept it classy - from the iPad-enabled restaurant in the airport to the shoe department at Nordstrom after the competition ended (hey, a little retail therapy never hurt anyone).

Their argument styles could not have been more different, but the combined impact of their knowledge of the cases and their presentation styles was powerful. Chris was cool, calm, and collected - he is a master at cultivating an easy conversation with the bench. Yesica was precise, knowledgeable, and affable - even though she had to argue the toughest part of the case. And Liz was the fire to Chris and Yesica's water - she hammered on points again and again, engaging the judges in a spirited debate every time she argued.

The team was rewarded greatly with a trip to the quarter-finals from a field of more than 70 teams. Although they did not advance past this round (it's hard to win as a polluter in front of a panel of environmentalists), Liz won Best Oralist in both of the rounds she competed in, and the judges were clearly impressed with the team's ability to master the arguments.



Left, from left to right are Liz Long, Chris Heckman, and Yesica Hernandez, all Class of 2014.

This classic "Power Pose" stance is what ensured the domination of all the Berkeley teams in the 2014-15 year.

Right, Ms. Hernandez, Ms. Long, and Mr. Heckman contemplating the vagaries of the Clean Water Act.



Prince Evidence Competition

Brooklyn, NY

The Prince competition is one of the most fun competitions in the Appellate Team smorgasbord - a trip to Brooklyn, an entertaining and timely issue, and a great opportunity to chew on a sticky Evidence problem. And a dance. Yes, a dance.

The Jerome Prince Memorial Evidence Competition draws over 30 law school teams from across the country each year to participate in this appellate competition, which addresses an issue at the forefront of evidence law in a contemporary context. The competition is hosted in the spring on

Brooklyn Law School's campus in the heart of Brooklyn Heights, NY. Each year, distinguished scholars and judges join the competition's final bench.

The team this year, made up of Arevik Stepanyan '15 and Aida Ashouri '14, made Berkeley proud. Their problem was an incredibly complicated question of whether 404(b) propensity evidence should have been admitted to the trial of Olympians, one who may or may not have been selling drugs to her teammates, and another who may or may not have been involved in a conspiracy to kill! Never knew the Olympics (or evidence) could be this juicy.

The team had a great time, got to see New York, and gets to call themselves evidence experts!



Pictured above, from left, Aida Ashouri '14, Arevik Stepanyan '15, and student coach Maria Gershenovich '14

Jessup International Law Competition

Portland, OR

This year's Jessup team, made up of Elisse Larouche '15, Reed Forbush '15, Melissa Centeno '15, and Jamie Lanphear '14, grappled with the problem of a rogue yacht, piracy on the high seas, and undersea minerals exploration. And don't forget the poor dead wrasses (that's fish to you).

The Jessup is the world's largest moot court competition with participants from more than 550 law schools in more than 80 countries. The Competition is a simulation of a dispute between countries before the International Court of Justice, the judicial arm of the United Nations. Thousands of law students from around the world will work all year long on this season's Jessup problem and compete in qualifying competitions worldwide.

This year, our team was coached by Kaushik Krishnan and Jai Sahai Endlaw LLM '14 (see next article), who prepared them for the tough judges that they eventually faced in Portland. During the competition, they faced a cold bench (with a judge on his cell phone!), a fiery one (with the students barely able to get a word in), and a simply clueless one who didn't appear to be listening at all. The students faced all this with grace and aplomb, and internalized the value of preparing for all kinds of panels in the real world. The students also learned valuable lessons about presentation, and Elisse and Jamie won 5th and 9th place best oralist in the region.

“Jessup taught me how to create an argument that goes beyond U.S. case law - I relied on international treaties, customs in other countries, scholarly articles, and policy arguments that promoted international peace and order.”

-Elisse Larouche '15

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Pictured above, from left, Reed Forbush '15, Elisse Larouche '15, Jamie Lanphear '14, coach Jai Sahai Endlaw LLM '14, and I. Melissa Centeno '15.

Coach's Profile

Jai Sahai Endlaw, LLM '14

Invaluable. Outstanding. A huge asset. These are the words that this year's Jessup students used to describe Jai Sahai Endlaw, a 2014 LLM and the Jessup team's "head coach" this year. Jai has an enormous wealth of international moot experience, and we are so lucky to have had him coaching our team this year. Jai hails from New Delhi and received his law degree in 2013 from the National Law University in Jodhpur, Rajasthan. In India, says Jai, there is a "crazy moot culture," with his university alone doing over 30 a year. Only about a dozen teams get to compete internationally each year, and Jai competed in moots throughout his time. One of his noted achievements was being the first Indian team to win the Stetson Environmental Moot Court Competition, beating UC-Hastings for the top prize!

It was with this background that Jai came to Berkeley Law, interested in litigation. He planned to concentrate on only his LLM studies, but when he saw Berkeley's library, he says, "I was mesmerized. To see all those books first-hand, the books quoted by other books I've read, was amazing." So he wrote to the Jessup team's student coach, Maria Gershenovich '14, and offered to help.

Maria knew what a fantastic resource he was, so she immediately put him to work. Jai was a tireless coach, attending nearly 20 of the team's practices, learning the fact pattern and the ambiguity of the competition problem, and even developing a "law quiz" to ensure that the team could deal with whatever international law problem came their way during oral argument.

Jai enjoyed his time working with the Jessup team both because he loves international law, and because it was a great way to get to know JDs in the program. "In India, students meet each other every day because everyone lives on campus. Here, everything is communicated digitally - it's much harder to find a time to sit down and think through a problem." But over the course of the semester, "the walls came down" as he started meeting with the students more and more the closer they got to the competition. He sees getting to know the students as "a huge personal achievement. I stepped out of my comfort zone, and that's what I came to Berkeley to do. These are the skills I came to Berkeley to build." He eventually traveled with the team to Portland, Oregon.

The Jessup team wasn't Jai's only success this year - he also advised this year's Vis team, made it through two semesters of American-style law school finals, and won Best Oral Advocate in his Legal Writing class. Congratulations, Jai!

National Appellate Advocacy Competition *San Francisco, CA*

The ABA Law Student Division National Appellate Advocacy Competition (NAAC) emphasizes the development of oral advocacy skills through a realistic appellate advocacy experience. The NAAC team -- Jana Loeb, Katie DeMocker, Malvika Sinha, Matt Bunnett, and Mike Gaffney (all '15) -- delivered just that, with some of the highest-quality appellate advocacy we've seen so far this year. The case involved a labor law and a computer fraud issue arising out of a suit between a law firm and one of their 2L summer hires. With a combination of employment law, federal criminal law, and a little bit of personal interest (when is an intern not an intern?), the students were engaged and excited to get to work. Coincidentally, the problem also touched on

the McBaine competition's problem this year, so the NAAC team graciously agreed to help prepare the McBaine competitors when they returned from their competition. Now that's what I call a significant immediate advantage with no reasonable expectation of compensation!

The team tore into the fact pattern, and ended up with some spectacular briefs, producing the second best (for Katie and Mike) and fourth best (for Malvika, Matt, and Jana) briefs overall.

Then, with help from their amazing coaches Suzanne Miles (who is also the Assistant Director of the ASP program here at Berkeley) and student coach Devon Ahearn '14, the team continued to dominate at the regional competition in San Francisco. Both teams qualified for the semi-finals, and Mike and Katie advanced to the final round. Jana was ranked the second best oral advocate in the entire regional. Congratulations to a fantastic team!



Pictured above, from left, Matt Bunnett '15, Malvika Sinha '15, and student coach Devon Ahearn '14.

"I learned so much. I never thought I would be interested in administrative law, and now it's a class I really want to take."

-Malvika Sinha '15

Willam C. Vis International Arbitration Moot *Vienna, Austria*

An appellate competition in Europe? Yes, such a thing does exist (hey, at least Traynor upgraded from Fresno to LA this year). In order to take advantage of this marvelous opportunity, however, students must school themselves in all aspects of international arbitration -- not an easy task. But no one ever said Vis was easy.

Vis team members Matt Morretti '15, Megan Niedermeyer '14, Courtney Whang '15, and Kimya Saied '14 first prepared for the competition by writing two memoranda: one for claimant and one for respondent. This involved learning international law, reading arbitral decisions, and writing clearly and concisely. In this competition perhaps more than any other, the principles of clear writing were paramount, because judges came from all over the world. It's hard enough writing clearly for native English speakers!

The second section of the competition was the fun part. The team first traveled to Budapest, Hungary, where they performed multiple rounds of practice arbitrations. Teams from Australia, Singapore, Germany, Brazil, Russian Federation, India, Hungary,

Poland, Indonesia, USA, Canada, Georgia, Finland, and Romania all put the team through their paces in preparation for the final round. The Berkeley team's hard work was rewarded when they received an Honorable Mention at the Budapest Pre-Moot. Their arguments were very well received and the arbitrators gave helpful advice. A great experience to have ahead of the main event: Vienna!

In Vienna, the competitors charged ahead with their newly-honed arguments -- multiple rounds in front of arbitral experts. Through both forensic and written exercises, the teams battled over questions of contract -- flowing from a transaction relating to the sale or purchase of goods under the United Nations Convention on Contracts for the

International Sale of Goods and other uniform international commercial law -- in the context of an arbitration of a dispute under specified Arbitration Rules.

The competition is incredibly prestigious in the international community -- practitioners want to be a part of it, schools want to be a part of it, and the alumni network is unparalleled. In the international community, people are getting jobs by how well they do in the Vis competition. The students clearly felt the love, and said that the networking, community, and education they came away with was invaluable.

Below: The Vis team prepares for mooting with a fine European vintage





Above. Chris and Liz know that one must always stay hydrated when discussing the Clean Water Act with the Pace Competition in New York.

Left, Aaron and Aram demonstrating the key to any moot court victory: the Power Pose.

Below left, Ms. DeMocker and Mr. Gaffney make it as far as they can without having to go any further at the NAAC Competition.

Below right: Matt, Courtney, and Kimya stop to smell the roses at the Vis competition in Vienna.



“I learned a lot about the CISG, CEPANI, and international arbitration generally. Additionally, the competition as a whole was a very unique and rewarding professional experience; the networking opportunities and the individual arbitrators I met left a very positive impression and have made me reconsider a career in international arbitration.”

- Kimya Saied '14 / Vis 2014



Above. Arevik and Aida, our own Moot Court Olympians, in Brooklyn before the Prince competition.

Above Right, Reed, Elisse, Jamie, Jai, and Melissa with their Jessup awards (and what appears to be a movie poster for a thriller called “The Malachi Gap.” Pirates! Destruction! Wrasses! Just when you thought it was safe to go back in the water . . .)

Right, Aram, Aaron, and student coach Devon Ahern with the finalists’ plate – another addition to our Cabinet of Glory!

Below right: Norris, Ogi, and the Santa Clara team waiting for results in the GSR competition.

Below: Maria Gershenovich ’14, Elliot Shackelford ’14, and Devon Ahern ’14, this year’s fearless Appellate Branch Co-Chairs. These three worked tirelessly to make this year the best the branch has ever seen – attending hundreds of moots, booking rooms, learning fact patterns, traveling with the teams, providing moral support, cracking the whip, and being cheerleaders. You will all be greatly missed next year!!



SPONSOR A COMPETITION TEAM

Berkeley Law offers one of the best competitive advocacy programs of any law school. This year we will send approximately 20 appellate moot court, mock trial, and negotiations teams to national and international competitions. The law school commits significant time and resources to training these students, who gain skills essential to their eventual law practice. We are proud of our relationships with top local appellate advocates, trial attorneys, negotiators, and mediators, who volunteer their valuable time to help our students excel. Team sponsors have the chance to support some of Berkeley's best and brightest students as well as connect to our international network of alumni and friends.

We offer various sponsorship levels for firms that wish to participate. Full sponsorship includes all of the benefits listed here:

- 1 Acknowledgment of gift in Berkeley Law's Annual Report of Philanthropy and on the school website.
- 2 Berkeley Law will acknowledge your sponsorship in team announcements, internal and external newsletters, moot court publications, the BoA website's donor pages, and team t-shirts.
- 3 Opportunity to connect with and mentor some of Berkeley's best and brightest students, including invitation-only recruitment events with Board of Advocates competitors.
- 4 Opportunity to get your firm involved in the law school and the legal community—alumni, professors, and students—both in California and beyond.
- 5 Opportunity to host team events at your firm during the school year, including practice moots and social/recruitment events.
- 6 You may be involved in preparing the team for competition to extent agreed upon by you and Berkeley Law.
- 7 You may publicize your sponsorship of the team.
- 8 Berkeley Law will keep you informed of the team's progress.

For more information, or to schedule a presentation at your firm, please contact Anne Gordon at adgordon@law.berkeley.edu or (510) 666-3783.

THE FOLLOWING COMPETITIONS ARE CURRENTLY SEEKING SPONSORSHIP FOR 2014-2015:

APPELLATE COMPETITIONS:

National Appellate Advocacy Competition: The other of the two most prestigious moot court competitions, usually involving questions of constitutional law. Sponsored by the American Bar Association. Berkeley will field two teams. \$6,000

Jessup International Law Competition: The premier international law moot court competition. Hundreds of teams from across the world compete in regional qualifying rounds. Winning teams advance to the international rounds in Washington, D.C. Berkeley Law will field one team. \$5,000

National Environmental Law Moot Court Competition: Nationally-known environmental law competition. Each team represents a company, an environmental citizens' group, and the intervening government agency (EPA). Berkeley Law will field one team. \$5,000

Jerome Prince Evidence Competition: This competition, held in Brooklyn, provides law students an opportunity to write an appellate brief addressing evidentiary issues in a contemporary context. Berkeley Law will field one team. \$5,000

Traynor California Appellate Competition: A nationally-recognized appellate moot court competition developed by the California Young Lawyers Association of the State Bar of California. Berkeley Law will field one team. \$2,000

ADR COMPETITIONS:

ABA Negotiations Competition: A competition in negotiation! Students compete to obtain winning results for their clients in simulated negotiations. This is the premier national negotiations competition. Berkeley Law will field two teams. \$5,000

ABA Mediation Competition: Designed to acquaint law students with advocacy skills in ADR, specifically mediation. Berkeley will send two teams. \$5,000

National IP LawMeet: The premier lawyering competition for students contemplating a transactional practice focused on Intellectual Property (IP). The competition involves drafting, mark-ups, and negotiations. Berkeley Law will field one team. \$8,000