

Appellate Lawyer of the Week: Danielle Spinelli

MARCIA COYLE

Whether it's their first or the 50th argument, a special "high" comes with an appearance before the highest court in the land, say lawyers who have had that rarified experience.

Four hours after making her second Supreme Court argument, the "high" still lingered for appellate litigator Danielle Spinelli, partner in Washington's Wilmer Cutler Pickering Hale and Dorr.

Spinelli argued on Monday on behalf of an Indian nation in *U.S. v. Tohono O'odham Nation*, a challenge by the government to the tribe's claims for relief in both the U.S. Court of Claims and federal district court in a case involving tribal trust assets.

The practice of law was a sharp turn in her road to becoming an English professor for Spinelli.

"I spent five years in graduate school at Columbia University," she recalled. "I decided that perhaps that wasn't the right thing for me and I should give law school a chance. It turned out it was the best decision I ever made."

Spinelli, a Harvard Law graduate and a former clerk to Justice Stephen Breyer and Judge Guido Calabresi of the U.S. Court of Appeals for the 2d Circuit, argued and won her first Supreme Court case in 2008 — *Rothgery v. Gillespie County, Texas*, a case involving the scope of the Sixth Amendment right to counsel.

She also was the primary author of the firm's brief in the 2005 landmark Supreme Court case — *Roper v. Simmons* — which abolished the death penalty for juvenile murderers. Partner Seth Waxman argued the case.

Since joining WilmerHale in 2002, she has written numerous amicus briefs in Supreme Court cases and also has handled federal and state appellate cases raising novel issues in criminal law and procedure, bankruptcy law, administrative law and statutory interpretation.

"I think my strengths are reading and writing," she said. "I did do two appellate



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clerkships and I actually believed, coming out of the Supreme Court, that I was going to be a law professor. I thought I would spend a couple of years in a law firm and then teach. The idea of teaching is still appealing, but it turns out I love litigating so much that I never left."

Appellate practice groups, she said, are "sort of the last refuge of generalists," which is the source of the "fun" she finds in practicing law.

"I've done a lot of bankruptcy work, which I enjoy very much primarily because the bankruptcy code is a big statute and presents many interesting statutory interpretation questions to wrestle with," she said.

Even the questions that seem the driest at first become extremely interesting "once you dig into them," she added. That was the experience of working on the Tohono O'odham case, she said, explaining, "It sounds like an obscure issue but it's incredibly interesting and quite important involving the scope of the Claims Court's jurisdiction and statutory interpretation."

The case came to her as the result of other work she was doing for the Tohono O'odham, she said. "We've been working with them on some litigation regarding their efforts to have land taken into trust in Arizona. Based on that work, I offered to help them out with the Supreme Court case and they decided to have me do it."

She prepares for her arguments by doing moot courts. "In this case, I did four, which is a lot but I had the time and I thought it would be helpful. I got some incredible experience

from brilliant advocates here at the firm and at the Chamber of Commerce and Georgetown's Supreme Court clinic."

She said she tends to write a little outline of points "which I usually don't look at during argument. You really don't get a chance. If you're not pulled into a conversation with the justices and you're just looking at your points, you're probably not making the best use of this time."

Spinelli has a second passion related to her law practice — death penalty pro bono work.

"I believe that that's something very, very necessary and that not enough lawyers are able to do," she explained. "It's very time intensive, very labor intensive, and sometimes hard on the emotions. I thought it was a contribution I should try to make. When I worked on the Supreme Court, I was involved in evaluating petitions for certiorari from prisoners under death sentences, and I felt I should now try being on the lawyer's side."

The death penalty work, she said, represents the best and worst days of her professional life.

"By far the hardest has been my representation, along with many other people at my firm, of Darick Walker of Virginia, who was executed in May and whom we represented for 11 years. He had very, very strong claims that his trial was unconstitutional," she said. Spinelli was present at his execution.

"The best day of my career was in March 2005, when I found out we had won the juvenile death penalty case in the Supreme Court."

Death penalty work is "both a wonderful and terrible, but ultimately a very important experience for me," said Spinelli. "I've also had wonderful experiences with the work I do for paying clients. Having the chance to work on so many cutting issues is something I'm incredibly grateful for.

"Right now I have no plans to stop litigating. I just find it so much fun."

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