



Danielle Spinelli

RETIRED PARTNER

WASHINGTON DC
+ 1 202 663 6000

Danielle Spinelli was a nationally recognized appellate advocate and litigator. She argued seven cases before the US Supreme Court and briefed many others, as well as briefing and arguing many cases before federal courts of appeals and district courts. Ms. Spinelli had one of the country's leading bankruptcy appellate practices: she successfully argued four bankruptcy cases in the US Supreme Court, including two of the most important Chapter 11 cases of recent years, and repeatedly prevailed in the courts of appeals on behalf of creditors challenging their treatment in bankruptcy. She was also a nationally recognized Native American law practitioner who successfully represented tribal clients in multiple complex litigation matters and appeals. She successfully handled matters in many other areas, including administrative law, antitrust, commercial law, constitutional law, criminal law and procedure, federal jurisdiction and preemption, insurance law, international trade, and trademark law. Ms. Spinelli was nationally ranked in appellate and Native American law by *Chambers USA*, which described her as “utterly brilliant” and someone who “thinks things through in a way that eludes most lawyers.”

As noted, Ms. Spinelli had substantial experience in disputes and appeals raising complex bankruptcy problems in both the business and consumer arenas. In the US Supreme Court, she successfully argued *Mission Product Holdings v. Tempnology, LLC* (2019), which held that a trademark licensee does not lose its right to use the mark when the licensor rejects the license agreement in bankruptcy, resolving a fundamental and long-standing question about the nature and effect of rejection. She also successfully argued on behalf of priority creditors in *Czyzewski v. Jevic Transportation Co.* (2017), which held that a structured dismissal may not distribute estate assets in violation of the Bankruptcy Code's priority scheme. She also successfully argued *Clark v. Rameker* (2014), holding that inherited IRAs are not exempt in bankruptcy, and *Bank of America v. Caulkett* (2015), holding that Chapter 7 debtors may not strip off underwater junior liens on their houses. Also in the Supreme Court, she played a major role in the successful representation of the Marshall estate in *Stern v. Marshall* (2011), a watershed decision on Article III and bankruptcy court authority. In the courts of appeals, she successfully represented secured creditors challenging their treatment under Chapter 11 plans

in a trio of cases stemming from the Momentive Performance Materials, EFIG and Houston Regional Sports Network bankruptcies. She also represented a major insurer in a series of appeals involving novel questions at the intersection of Chapter 11 and insurance law, including prevailing before the *en banc* Third Circuit on the question of insurer standing.

Ms. Spinelli also had substantial experience representing Native American tribes in complex litigation, appeals and administrative proceedings involving land-into-trust, gaming, jurisdictional and sovereign immunity issues. She argued before the Supreme Court in *United States v. Tohono O'odham Nation* (2011), involving jurisdiction over tribal breach of trust claims. Separately, she represented the nation in a series of lawsuits and appeals involving its planned \$400 million gaming facility, including successfully invalidating an Arizona state statute on preemption grounds, successfully obtaining summary judgment in a contract suit against the nation and preserving both victories on appeal. In May 2017, she obtained a settlement for the nation enabling it to operate the disputed facility. She also represented many other tribes in proceedings related to land-into-trust and gaming issues. For instance, she won summary judgment for the Spokane Tribe in a challenge to a determination to take land into trust for gaming purposes, she helped obtain summary judgment for the North Fork Rancheria of Mono Indians in a similar challenge and then preserved that victory on appeal, and she assisted in obtaining Secretarial procedures to govern Class III gaming for North Fork and for the Estom Yumeka Maidu Tribe of the Enterprise Rancheria.

Ms. Spinelli had an active pro bono practice focused largely on death-penalty and juvenile justice issues. In the US Supreme Court, she argued *Mathena v. Malvo* (pending), involving life-without-parole sentences for juveniles. She also successfully argued the right-to-counsel case of *Rothgery v. Gillespie County* (2008). She played a lead role in the successful representation of Robert McCoy in *McCoy v. Louisiana* (2018), which held that the Sixth Amendment bars a lawyer from admitting his client's guilt without the client's consent, and in the successful representation of Freddie Lee Hall in *Hall v. Florida* (2014), striking down Florida's scheme for determining whether capital defendants have an intellectual disability that would bar their execution. She also played a major role in the successful representation of Chris Simmons in *Roper v. Simmons* (2005), which held that the Eighth Amendment prohibits the execution of juvenile offenders, and represented the American Psychological Association as amicus in the subsequent cases of *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), which limited life without parole sentences for juvenile offenders.

Professional Activities

- Appointed by Chief Justice to the Judicial Conference Advisory Committee on Appellate Rules, 2017–present
- Fellow, American College of Bankruptcy, 2018–present (for distinguished contributions to the bankruptcy and restructuring field)
- Fellow, American Bar Foundation, 2018–present
- Chair, American Bar Association Standing Committee on Amicus Curiae Briefs, 2015–

2018 (Member, 2012–2015)

- Adjunct Professor of Law, Georgetown Law School, 2018 (taught bankruptcy)
- Member, National Conference of Bankruptcy Judges Education Committee, 2018–2019
- Co-Chair, Bankruptcy Appeals Subcommittee, American Bar Association Business Bankruptcy Committee, 2014–present

Experience

BANKRUPTCY

- Successfully argued in US Supreme Court on behalf of licensee in *Mission Product Holdings v. Tempnology, LLC* (2019), holding that a trademark licensor may not cut off the licensee’s right to use the trademark by rejecting the license agreement in bankruptcy.
- Successfully argued in US Supreme Court on behalf of creditors in *Czyzewski v. Jevic Transportation Co.* (2017), which presents the question whether a structured dismissal of a Chapter 11 case may distribute estate assets in violation of the priority scheme in the Bankruptcy Code.
- Successfully argued in US Supreme Court on behalf of secured creditor in *Bank of America v. Caulkett* (2015), regarding stripping junior liens in Chapter 7 cases.
- Successfully argued in US Supreme Court on behalf of the Chapter 7 trustee in *Clark v. Rameker* (2014), which presents the question whether inherited IRAs are exempt in bankruptcy.
- Played a major role in the successful representation in US Supreme Court of the estate of E. Pierce Marshall in *Stern v. Marshall* (2011), a landmark decision on the scope of Article III and the limits of bankruptcy courts' authority.
- Successfully represented Chapter 7 trustee in US Supreme Court in *Schwab v. Reilly* (2010), which involved the process for objecting to claimed exemptions.
- Successfully represented senior secured noteholders in the Energy Future Holdings Chapter 11 bankruptcy, obtaining a reversal in the Third Circuit of the bankruptcy court’s ruling that the noteholders were not entitled to a make-whole payment.
- Successfully represented the senior secured creditors of Chapter 11 debtor Momentive Performance Materials, Inc., obtaining a reversal in the Second Circuit of the bankruptcy court’s ruling regarding their entitlement to interest on their claims.
- Successfully represented a secured creditor of Chapter 11 debtor Houston Regional Sports Network, obtaining a reversal in the Fifth Circuit of the bankruptcy court’s valuation of the creditor’s collateral.
- Played a lead role in the firm's representation of Hartford Financial Services Group, Inc. and its subsidiaries in many asbestos-related bankruptcy proceedings and appeals, including:

- prevailing before the *en banc* Third Circuit on an important issue of insurer standing in bankruptcy in *In re Global Industrial Technologies, Inc.* (2011);
 - successfully arguing before the Third Circuit in *In re American Capital Equipment* (2012), regarding the validity of a Chapter 11 plan filed by a defunct entity with no meaningful assets other than insurance; and
 - playing a major role in developing overall strategy and briefing and arguing complex legal issues, often of first impression, in the *Combustion Engineering, Western Asbestos, Mid-Valley, North American Refractory Co., Federal-Mogul* and other bankruptcies and resulting appeals.
- Successfully argued before the Second Circuit in an appeal brought by former dealers arising out of the Chrysler bankruptcy.
 - Successfully argued before the Third Circuit on behalf of client AOL in a fraudulent-transfer dispute with the estate of bankrupt internet retailer eToys.
 - Represented swap counterparties in disputes with the Lehman bankruptcy estate involving interpretation of the Bankruptcy Code's provisions governing complex financial products.
 - Represented amici in a number of recent Supreme Court bankruptcy cases, including *Ritzen Group, Inc. v. Jackson Masonry, LLC* (pending); *Midland Funding, LLC v. Johnson* (2017); *Bullard v. Hyde Park Savings Bank* (2015); *Wellness International Network, Ltd. v. Sharif* (2015); *Executive Benefits, Inc. v. Arkison* (2014); *Law v. Siegel* (2014); *RadLAX Gateway Hotel v. Amalgamated Bank* (2012); *Marrama v. Citizens Bank* (2007); and *Marshall v. Marshall* (2006).

NATIVE AMERICAN LAW

- Argued for respondent in the US Supreme Court in *United States v. Tohono O'odham Nation* (2011), which involved federal jurisdiction over tribal breach-of-trust claims.
- Represented the Tohono O'odham Nation in complex land-into-trust and gaming litigation, ultimately obtaining a very favorable settlement permitting the Nation to proceed with the project at issue. Representation included:
 - successfully defending in the trial court and on appeal the Secretary of the Interior's decision to take land into trust for the Nation;
 - obtaining a judgment that an Arizona statute seeking to prevent the trust acquisition was preempted by federal law, and successfully defending that judgment on appeal; and
 - obtaining summary judgment for the Nation in a suit brought by the State of Arizona for breach of the Nation's tribal-state gaming compact, and successfully defending that judgment on appeal.
- Successfully represented the Spokane Tribe in obtaining summary judgment in a challenge to the Secretary of the Interior's decision to take land into trust for the Tribe for gaming purposes.
- Represents the North Fork Rancheria of Mono Indians in complex land-into-trust and gaming litigation, including:
 - obtaining summary judgment upholding Interior's decision to take land into trust for gaming and successfully defending that judgment on appeal to the DC Circuit;

- obtaining a favorable judgment in a case against the State of California, resulting in the issuance of Secretarial procedures to govern Class III gaming; and
- obtaining summary judgment in a challenge to the legality of the Secretarial procedures.
- Obtained a favorable judgment against California for the Estom Yumeka Maidu Tribe of the Enterprise Rancheria, resulting in the issuance of Secretarial procedures.
- Represented the Sault Ste. Marie Band of Chippewa Indians in litigation presenting land-into-trust and gaming issues, including obtaining the reversal of a preliminary injunction against the tribe on appeal to the Sixth Circuit, and obtaining the dismissal of a subsequent suit against tribal officers.
- Represents members of Congress as amici in the Fifth Circuit in *Brackeen v. Bernhardt*, defending the constitutionality of the Indian Child Welfare Act.
- Represented the National Congress of American Indians as amicus in multiple cases involving the application of the National Labor Relations Act to tribes.
- In the US Supreme Court, authored amicus briefs on behalf of historians in *Dollar General v. Mississippi Band of Choctaw Indians* (2016) and the National Congress of American Indians in *Salazar v. Ramah Navajo Chapter* (2012).

CONSTITUTIONAL AND CRIMINAL LAW

- Successfully argued in the US Supreme Court on behalf of petitioner in *Rothgery v. Gillespie County, Texas* (2008), regarding the scope of the Sixth Amendment right to counsel.
- In the US Supreme Court, successfully represented the petitioner in *McCoy v. Louisiana* (2018), which held that the Sixth Amendment bars defense counsel from conceding guilt for tactical reasons over a defendant's objection.
- In the US Supreme Court, successfully represented the petitioner in *Hall v. Florida* (2014), which held that Florida's scheme for identifying capital defendants with intellectual disabilities was unconstitutional.
- Successfully represented the respondent in *Roper v. Simmons* (2005), in which the US Supreme Court held that the execution of offenders who committed their crimes as juveniles violated the Eighth Amendment.
- Played a major role in the US Supreme Court representation of the sponsors of the Bipartisan Campaign Reform Act in *FEC v. Wisconsin Right to Life, Inc.* (2007), defending the constitutionality of BCRA's electioneering communication provisions.
- Played a lead role in the firm's important victory in *United States v. Stein* (2008), in which the Second Circuit upheld the dismissal, on Fifth and Sixth Amendment grounds, of the indictments in the tax-fraud prosecution of thirteen former partners or employees of the accounting firm KPMG.
- Authored amicus briefs on behalf of the American Psychological Association and American Psychiatric Association, cited in the US Supreme Court's decisions in *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), which restricted life without parole sentences for juvenile offenders.
- Authored amicus briefs in the US Supreme Court on behalf of the American Bar Association in *Trump v. Hawaii* (2018) and *Moore v. Texas* (2017); the National

Association of Criminal Defense Lawyers in *Florida v. Jardines* (2013) and *Florida v. Harris* (2013); the Congressional Tri-Caucus in *Shelby County v. Holder* (2013); DNA scientists in *Maryland v. King* (2013); and the Constitution Project in *Smith v. Texas* (2007).

OTHER MATTERS

- On appeal to the Third Circuit, obtained the reversal of a substantial jury verdict in a complex antitrust dispute for a major telecommunications company.
- Played a major role in the firm's representation of the Government of Canada in its multibillion-dollar dispute with the United States over duties on imported softwood lumber, and in litigation raising related issues, including:
 - successfully arguing before the Federal Circuit in *Canadian Wheat Board v. United States* (2011), which resolved a significant and recurring question regarding the interpretation of the NAFTA Implementation Act in favor of Canada; and
 - obtaining a victory in unusual proceedings before an Extraordinary Challenge Committee convened under NAFTA.
- Played a major role in the firm's victory in the Connecticut Supreme Court on behalf of a leading insurer in a complex reinsurance dispute stemming from a billion-dollar settlement.

Recognition



***Leading Lawyer Nationwide in
Appellate Law and Native American
Law***

Chambers USA

2016–2022



***Appellate Law and Native American
Law***

Best Lawyers in America

2020; 2017–2022



***Leading Supreme Court and
Appellate Advocate***

The Legal 500 United States

2013–2022

- Recognized as a leading lawyer nationwide in appellate law and Native American law in *Chambers USA: America's Leading Lawyers for Business* (2016–2022)
- Named a top Supreme Court lawyer by *Washingtonian* (2017–2018)
- Selected by peers for inclusion in *Best Lawyers in America* for Appellate Law (2020–2023), Native American Law (2017–2023) and Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law (2021–2023)
- Recognized as a leading Supreme Court and appellate advocate in *The Legal 500 United States* (2013–2022)
- Named a *Law360* “legal lion” in 2014, 2015, 2016, 2017 and 2019
- Named *National Law Journal's* Appellate Lawyer of the Week (November 2010)
- Named a future star in DC litigation by *Benchmark Litigation* (2010 and 2011) for “play[ing] a major role as one of the [firm's] younger Supreme Court practitioners”
- Received WilmerHale's 2006 John H. Pickering Award for outstanding pro bono service
- Received *National Law Journal's* 2005 Pro Bono Award for work on *Roper v. Simmons*
- Amicus brief in support of certiorari in *Smith v. Texas* was one of two briefs honored as instances of Exemplary Legal Writing for 2006 by *Green Bag*
- Amicus brief in *Marrama v. Citizens Bank* received 2007 Pro Bono Award from National Association of Consumer Bankruptcy Attorneys

Credentials

EDUCATION

JD, Harvard Law School, 1999

magna cum laude

Sears Prize; Executive Editor, Harvard Law Review

BA, Mary Baldwin College

magna cum laude

MA, Columbia University

ADMISSIONS

District of Columbia

Massachusetts

New York

CLERKSHIPS

The Hon. Stephen G. Breyer,
US Supreme Court, 2000 -
2001

The Hon. Guido Calabresi, US
Court of Appeals for the
Second Circuit, 1999 - 2000