Leading
LAWYERS

***Legal Times* Identifies Twelve of the D.C. Area's Top Appellate Litigators**

Identifying 12 Leading Appellate Litigators

It might be tempting to dub this the "ivory tower edition" of *Legal Times*' ongoing Leading Lawyers series.

After all, the 12 appellate litigation specialists profiled in this section—which begins on Page 32—practice only in the justice system's upper echelon. They don't have to bother with the nasty things that may vex their trial court colleagues—like, say, jurors.

But anyone expecting a collection of cerebral law wonks might be surprised by the healthy dose of street smarts it takes for appellate lawyers to create a thriving practice.

APPELLATE LITIGATION

A Practice Focus

These are courtroom chameleons who have mastered the art of quickly retooling arguments based on questioning from the bench. As one lawyer aptly puts it: "An appellate advocate must be able to engage in good dialogue with the judges. One of the most common failings occurs when advocates don't want to talk about what the judges want to talk about."

As with any list purporting to deliver the leaders in any field, some readers may disagree with our selections. Yet it's important to note that we attempted to touch all of the bases in reporting this article. Editor at Large Jonathan Groner started with leads provided by readers and sources. He was also informed by the base of knowledge in the *Legal Times* newsroom.

Groner then conducted dozens of interviews with clients, appellate lawyers, and knowledgeable sources in academia. In the end, we chose the lawyers profiled in this Practice Focus based upon our reporting.

This week's article is the second in a series of four reports appearing in 2004. Our next Leading Lawyers, on Sept. 27, will look at trusts and estates attorneys. This series began in 2003 and has chronicled the best in real estate, trial litigation, intellectual property, securities and corporate governance, and labor and employment.

An archive of those articles, as well as information about our further plans for this year, is available online at www.legaltimes.com.

—David Brown, *Managing Editor*

LegalTimes

WEEK OF July 19, 2004 • VOL. XXVII, NO. 29

Leading LAWYERS

***Legal Times* Identifies Twelve of the D.C. Area's Top Appellate Litigators**

Roy Englert Jr.

Robbins, Russell, Englert, Orseck & Untereiner

It was Nov. 26, 2002, and Roy Englert Jr. had just been asked to argue a case in the U.S. Supreme Court on behalf of a group of anti-abortion protesters.

The problem: Englert knew very little about the case, which one of his partners had been handling. And the argument was set for Dec. 4, just eight days away. But the clients wanted Englert, a partner at Robbins, Russell, Englert, Orseck & Untereiner, to go before the justices.

"When our clients learned that [then- Solicitor General] Ted Olson was arguing on the other side, they got nervous about the disparity in experience," Englert recalls. His partner had only one high court argument under his belt, while, Englert says, "it was my 13th argument, and I'd argued against Ted before."

STACEY CRAMP

So Englert dropped everything and spent all his time preparing the argument—straight through the Thanksgiving weekend. It helped, he says, that he had kept his work schedule free because of the holiday.

The deadline pressure worked well for Englert. The result was an 8-1 win for his clients—Joseph Scheidler and other antiabortion activists—in *Scheidler v. NOW Inc.*

The Feb. 26, 2003, ruling by the Supreme Court reversed the U.S. Court of Appeals for the 7th Circuit and held that although the protesters interfered with the business of abortion clinics, they did not commit extortion under the federal Hobbs Act since they did not obtain property from the clinics or from the women seeking abortions.

The case was viewed as a win for protesters of all sorts, shielding political protest from one line of challenge.

"Roy was utterly superb," says Thomas Brejcha, chief counsel for the Thomas More Society, a Chicago-based anti-abortion group that Englert represented. "He mastered the material in short order in what was a very difficult case." Brejcha says Englert "uttered a tautology [at oral argument] that actually made a lot of sense in context. He said, 'Property is property.' The lower court had said that interference with someone's rights was a taking of property."

That theme—that a Hobbs Act violation occurs only if actual property is taken—was picked up by Chief Justice William Rehnquist in his majority opinion.

Englert, 45, started the Supreme Court and appellate boutique in May 2001 with other lawyers who had left what was then Mayer, Brown & Platt. The Robbins, Russell firm now has 10 lawyers.

Englert, a graduate of Harvard Law School, was a court law clerk at the D.C. Circuit in 1981-82. He spent three years at the solicitor general's office and 12 years at Mayer, Brown before getting involved in forming his current firm.

In 1999, while still at Mayer, Brown, Englert successfully argued *Sutton v. United Air Lines Inc.*, a landmark case under the Americans With Disabilities Act.

In that case, the Court ruled 7-2 that a disability under the ADA should be viewed in light of corrective measures that can be taken to relieve it. The justices therefore rejected a claim by twin sisters that United had violated the ADA when it declined to hire them as pilots since their uncorrected vision was poor.

Englert says conversation is the key to appellate success.

"An appellate advocate must be able to engage in good dialogue with the judges," he says. "One of the most common failings occurs when advocates don't want to talk about what the judges want to talk about."