



12 THINGS I'VE LEARNED

...appearing before the United States Supreme Court

By **MARK WAGGONER**
 Illustration by **ART LIEN**

1 You don't get to memorize and certainly not read anything you prepared for the argument. The Justices ask mostly hypothetical questions. They are not trying to embarrass any of the lawyers but are genuinely interested in the ramifications of ruling in your favor. Justice Ginsburg asked the first question about 10 seconds after I started, the rest of my time was give and take with 6 of the 9 Justices, and I

never even got to look back at my outline.

2 Justice Scalia lived up to his reputation as the most pugnacious questioner of lawyers who appear before the Court. "I don't know where you get that," was one of his "questions" to me.

3 The Justices are really close! The courtroom is cavernous and is always full on argument days with tourists, lawyers and

press, but there is a real cozy feeling between the Justices and the counsel table and rostrum if you can ignore the roomful of people behind you.

4 The U.S. government lawyers from the Solicitor General's office still wear "morning coats" i.e., tails, before the Court.

5 Attorney General Luther Strange really is "Big Luther." He took the podium right before I did and I asked him not to adjust the very old crank-adjustable podium so I wouldn't have to re-adjust. Thank goodness he didn't!

6 Nina Totenberg is not always interested in both sides of the story (duh!). For her NPR report about the case, she interviewed only the plaintiff and his lawyer even though we were all on the Supreme Court steps with her after the argument

7 Quill pens are still provided at counsel table and each lawyer sitting at counsel table can keep one. My mother framed mine along with a few

other mementoes from the argument.

8 The moot court practice sessions I did with my partners at Hand, Arendall were as challenging as the real thing, although they lacked the pressure of the real situation. For the big moot session, a mock court made up of 9 of my partners grilled me for over 2 hours. That was invaluable preparation.

9 Before I even knew that the Court had agreed to hear the case, several lawyers from big D.C. and New York firms with established appellate practices and Supreme Court experience had emailed and left phone messages wanting to handle the case and the argument. At least one said they'd do it for free. They just want to be in any case that goes before the Supreme Court. I am grateful that the client had the confidence in me to handle it.

10 My opposing counsel, Tom Goldstein, is the founder and publisher of the "SCOTUS blog" (scotusblog.com), the pre-eminent website devoted to the Court. He is a real Court-insider and has argued over 30 cases.

11 The transcript of my argument and even the audio recording will be preserved on the Court's website (supremecourt.gov) in perpetuity (that is a word I learned in law school).

12 There are no cameras allowed in the Court so Court artists sketch every person who appears before the Court. I have a sketch done during the argument by Court artist Art Lien that cost \$75 (there is a reason why it was not expensive!). ■