

Leading LAWYERS

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

Beth Brinkmann

Morrison & Foerster

Beth Brinkmann has the distinction of having argued more cases before the U.S. Supreme Court than any other woman in private practice today.

But Brinkmann is more than the answer to a high court "Jeopardy!" question. A protégé of Yale law professor Drew Days III when he was President Bill Clinton's first solicitor general, Brinkmann is poised to take over someday for Days as chief D.C. appellate litigator at Morrison & Foerster.

Brinkmann, 45, spent eight years at the solicitor general's office and argued 18 cases there. She became a partner earlier this year at MoFo and chairs the Supreme Court practice in the D.C. office, working closely with Days, 62, who is of counsel with the firm while also teaching in New Haven.

Brinkmann has plenty of appellate role models at MoFo. Also of counsel, in the firm's Los Angeles office, is renowned appellate lawyer Shirley Hufstедler, a former judge on the U.S. Court of Appeals for the 9th Circuit and a former secretary of education.

Brinkmann says that perhaps her biggest appellate win was a unanimous Supreme Court decision in 2000 in *Harris Trust and Savings Bank v. Salomon Smith Barney*. In that case, the Court held that under the Employee Retirement Income Security Act, a pension plan may sue not only a "party in interest" that entered into a prohibited transaction under ERISA, but also the other party to the prohibited transaction.

Brinkmann was with the solicitor general's office at the time and argued as an amicus curiae to present the government's view. "We ended up winning 9-0," she recalls, "but at the time it was argued, it seemed like a close case. It felt good that I was apparently able to make a difference."

Brinkmann has already filed amicus briefs on behalf of MoFo clients in some of the most important cases of the decade.

In the gay rights case *Lawrence v. Texas*, Brinkmann wrote the

American Bar Association's brief urging the Court to strike down the Texas anti-sodomy statute. In the University of Michigan affirmative action cases, she represented the United Negro College Fund. And she represented the chief justices of the states in a key case that eventually upheld the constitutionality of Interest on Lawyer Trust Account (IOLTA) programs.

She recently filed a brief on behalf of the American Psychological Association in *Roper v. Simmons*, a key death penalty case that the Supreme Court will hear this fall.

The case turns on whether 16- and 17-year-olds can be subjected to the death penalty. Brinkmann's brief reviews the psychological literature on the development and maturity of teenagers and says that executing them would be unconstitutional.

"We were looking for someone with a depth of Supreme Court practice and with experience on amicus briefs," says Nathalie Gilfoyle, the American Psychological Association's general counsel. "We interviewed several people, and we found that Beth has high intelligence, plus the ability to read scientific research and translate it in a way that is useful and practical.

It also helped that she has worked in the trenches on death penalty issues."

Brinkmann got her death penalty experience in the early 1990s as a trial attorney at the D.C. Federal Defender Service, the job she held immediately before joining the SG's office.

She is a graduate of the University of California at Berkeley and of Yale Law School, where she was a law review editor, and she clerked for Judge Phyllis Kravitch of the 11th Circuit and for Supreme Court Justice Harry Blackmun.

Brinkmann says one thing that appellate litigators sometimes forget is that the approach that's best for the client is always the right one.

"Your objective is not necessarily to take the high-profile approach but to solve the client's problem," says Brinkmann. "That could mean looking for alternative grounds for a decision. It could mean building a coalition. Sometimes, in fact, the right answer will be to settle the case."



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