

Lawyer Howard Srebnick: Heavy Prep, Stress for Two Supreme Court Arguments

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Howard Srebnick

Miami attorney Howard Srebnick's career came full circle this month when he argued a case in the U.S. Supreme Court.

The Black, Srebnick, Kornspan & Stumpf partner represented Sila Luis against the U.S. in a case asking whether federal prosecutors can freeze untainted assets needed by a criminal defendant to retain an attorney.

In his Nov. 10 oral argument, Srebnick harkened back to the 1989 arguments in *U.S. v. Monsanto* and *Caplin & Drysdale v. U.S.*, the two key precedents in his case—and the only U.S. Supreme Court arguments he got to see as a student at Georgetown Law.

"All of us who heard the argument of *Monsanto* and *Caplin & Drysdale* when it was delivered in 1989 understood the line was drawn between tainted and untainted assets," he told the justices.

It was Srebnick's second U.S. Supreme Court argument in about two years. In *Kaley v. U.S.*, he unsuccessfully argued that assets traceable to a crime should not be restrained when needed for attorney fees.

Srebnick sat down with the Daily Business Review a few days after his latest argument to discuss how he prepared, with nearly round-the-clock help from his brother, appellate attorney Scott Srebnick of the Law Office of Scott A. Srebnick, and Black Srebnick associate Josh Shore.

What did you learn from arguing *Kaley* that you brought to your preparation for this argument?

What I learned from that experience is that it truly is a conversation that you learn to have with the justices while you are 'arguing.' The lawyer is not going to teach the justices anything that the justices likely haven't already heard. What the lawyer's going to do is essentially be a sounding board for the justices as they express to one another what issues are important to them, troubling to them.

How did you prepare for oral argument?

Georgetown is known for what is titled the Supreme Court Institute. It's a moot court. Georgetown recruits professors and practitioners to serve as mock justices. The lawyers that are going to argue before the U.S. Supreme Court are invited to deliver their argument before this panel of mock justices who will grill the lawyers.

It's a great experience for the lawyers because it gives us a real feel of what it's going to be like the day that we argue the case. I had the same experience here at the University of Miami law school. I did one at Duke University as well. I also was mooted by the Heritage Foundation, a think tank in Washington.

U.S. v. Monsanto and *Caplin & Drysdale v. U.S.*, when they were going to be argued in the Supreme Court, were mooted at Georgetown. I was on the panel that mooted those lawyers even though I was just a law student because I had argued a case in 1988 as a law student at the United States Court of Appeals in Chicago. Little did I know that almost 30 years later I would be arguing the two cases that are the stepchildren of *Monsanto* and *Caplin & Drysdale*.

What is the brief preparation like?

It's very stressful getting the briefs done. It's an enormous amount of editing and proofing. You don't know if the Supreme Court's going to take the case. So on June 8, they said, '[Writ of certiorari] is granted, here's your schedule.' It's not like I don't have anything else on my plate. I had trials set. I had appeals set.

How did you balance your schedule with your other cases?

I had at least two federal judges reschedule matters so that I would not have those right as I was trying to prepare for the Supreme Court, and I'm very grateful that they did that. Luckily, I work at a law firm where we have other lawyers who can pick up the extra time that's needed to dedicate to a particular client matter if I can't give that time. I did not pick up any new cases since June 8.

What's next?

Sometime next year, unbeknownst to us, the decision will be announced. Starting in February, every Monday morning, we log into SCOTUSblog, and we watch as the reporters are telling us what's been decided. You can actually go to the courthouse and sit there and wait to hear if your case gets called. I've been flirting with the idea of picking a Monday when my kids have spring break. They could sit for 10 minutes and watch the 'Oyez, oyez,' and watch all the justices walk in. Maybe I'll get lucky, and it'll be the day they announce the case.