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Q&A With Snell & Wilmer's Richard Derevan

Law360, New York (December 23, 2009) -- Rick Derevan is a partner at Snell & Wilmer LLP. He is a certified specialist in appellate law, California State Bar Association, Board of Legal Specialization. He has been lead counsel in more than 275 appeals and writ proceedings. Substantive areas have included business torts, product liability, contracts, securities, and various business and commercial issues.

Q: What is the most challenging case you have worked on and why?

A: *Todecheene v. Ford Motor Company*. This case concerned a knotty question of whether the Navajo tribal courts could assert jurisdiction over Ford Motor Company in a product liability action arising out of an on-reservation accident that killed a tribal public safety officer. United States Supreme Court authority on the extent to which a tribal court may exercise jurisdiction over a nonmember of the tribe is both ever-evolving and confusing.

After the tribal court denied our motion to dismiss, we obtained an injunction in the United States District Court against further tribal court proceedings. Both the plaintiff and the tribe appealed from the injunction to the Ninth Circuit. The Ninth Circuit initially issued a 2-1 published opinion in our client's favor but later, after two petitions for rehearing—and two years under submission—vacated the opinion, retained jurisdiction over the appeal, and directed us to seek further review from the Navajo Supreme Court before coming back to the Ninth Circuit.

After briefing the case in the Navajo Supreme Court, I argued the case before that court in a hearing held at the Arizona State Law School in Tempe, Ariz., in front of a packed house of law students. The Navajo Supreme Court upheld tribal court jurisdiction, so it was back to the Ninth Circuit, which held another argument before the same panel that issued the initial published opinion. These proceedings — believe it or not — spanned the period from 2001, when I first argued the motion to dismiss in tribal court, to 2009, when I argued it a second time before the Ninth Circuit. Ultimately, the case settled

before the court issued a decision following the second argument. The case was a real endurance contest.

Q: What do you do to prepare for oral argument?

A: Rereading selected parts of the record, the briefs, and the key cases is a given. But I expend most of my effort on two tasks: (i) trying to anticipate what questions the panel will ask and how best to answer them; and (ii) preparing an outline of the key points I want to make. Though I find I rarely refer to the outline at argument, the process of preparing it helps clarify the points I want to make and how best to make them in oral argument.

Q: What are some of the biggest problems in the U.S. appeals process?

A: Delay and cost. The length of time it takes an appeal from start to finish, plus the cost of doing it correctly, can be very frustrating for clients.

Q: Aside from your own cases, which cases currently on appeal are you following closely, and why?

A: I closely followed *Caperton v. A.T. Massey Coal Co. Inc.* decided last term by the U.S. Supreme Court because I am concerned about the corrosive effect of money on judicial elections, and the American Academy of Appellate Lawyers, of which I am a member, filed an amicus brief in the case. I am also closely watching two cases in the California Supreme Court dealing with procedural issues of particular interest to appellate lawyers, *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (No. S156598), which deals with proper handling of extraordinary writ petitions, and *Reid v. Google* (S158965), which deals with record preservation issues, specifically objections to evidence in summary judgment motions.

Q: Outside your own firm, name one lawyer who's impressed you and why.

A: Robin Meadow of Greines Martin Stein & Richland (LLP) in Los Angeles. Robin is a consummate professional who does excellent work, is a master of current technologies, and who recognizes the importance of civility in legal practice. I've had the pleasure of both working with and opposing Robin.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: First, try to get some trial experience to gain perspective on the pressure under which trial lawyers and judges operate, which in turn helps one dissect an appellate record for potential error. Second, learn to write well, since conventional wisdom is that it is the (very) rare case in which oral argument makes a significant difference. Third, find a mentor who can guide you in the practice, review and constructively comment on your work, and provide opportunities for stand-up experience before a panel of appellate judges.