

Memorandum



Subject
Appellate Argument Opportunities

Date
August 26, 1981

To
Ken Starr

From
John Roberts *JR*

I've made a survey of the appellate argument opportunities available to members of the Attorney General's staff. The most manageable areas appear to be cases from the Civil, Criminal, and Lands Divisions. The uniform rule established by the appellate section chiefs in all three areas is that the person doing the oral argument must write the brief.

Bob Kopp seemed delighted at the prospect of receiving some relief for his beleaguered staff. He described the process as if it were a computer dating service: tell him what type of case you're interested in, and what background you have, and in about 2-3 weeks he will be able to provide an appropriate case. An appellate staff reviewer will also be assigned to the case. After a case is selected, the writer has 30 days to file a brief, although an additional 30-day extension is usually available. While the amount of work involved in preparing the brief obviously varies considerably depending on the difficulty of the issues and the writer's familiarity with the area, Bob estimates 1-2 solid weeks of work in the 30 or 60 day period. After the brief is filed, the timing of oral argument varies from Circuit to Circuit, from 3-18 months.

Bill Bryson from the Criminal Division also seemed pleased at the prospect of additional hands, although he was somewhat skeptical that someone on the Attorney General's staff would be able to block out the necessary time to write a brief. He has primarily strike force cases available, 85 percent as appellee. After notice he will keep an eye out for an appropriate case and should be able to have one within three weeks. Timing of briefs and the estimate of work involved are roughly the same as with Civil Division cases. Bill warned there was no guarantee that after reading the briefs the court would not dispense with the actual oral argument, but said he would try to select cases where that was unlikely.

cc: David Hiller
Hank Habicht
✓ Carolyn Kuhl
John Roberts
Chips Stewart

peter Steenland in Lands was also receptive to members of the Attorney General's staff doing an argument or two, noting that special assistants to the Associate Attorney General and lawyers from OLC had done so in the past. He suggested the same pattern as did the Civil and Criminal chiefs: when you see an open period of time 2-4 weeks in the future, let him know to allow him time to find an appropriate case. Peter stressed more than the others the variance in difficulty of the cases, ranging from a simple condemnation to cases involving the complex environmental statutes. He also noted that 35 percent of the cases were in the Ninth Circuit, and most of the others in the Tenth or D.C. Circuits. Citing budgetary problems, he indicated that arguments which involved significant travel were usually coordinated with other arguments in the same area. He suggested that if the Attorney General's office were willing to fund the travel of one of its lawyers to argue a Lands case he would be particularly pleased.