

"I think my daughter's high school science fair projects are more scientific than this... My children and I could have done this test and we could have made it look better."

Hon. Marcia S. Crone, E.D. Texas,
denying the admission of expert evidence in *Wright v. Ford Motor Co.*, 05-41723.

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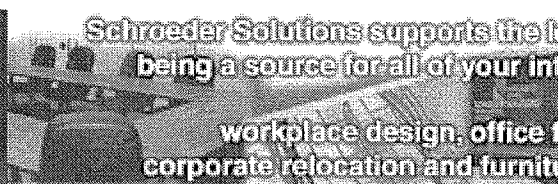
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Looking back at the ride

Attorneys find U.S. Supreme Court oral argument energizing, tiring

by **April Rockstead Barker**

Special to Wisconsin Law Journal

November 26, 2007

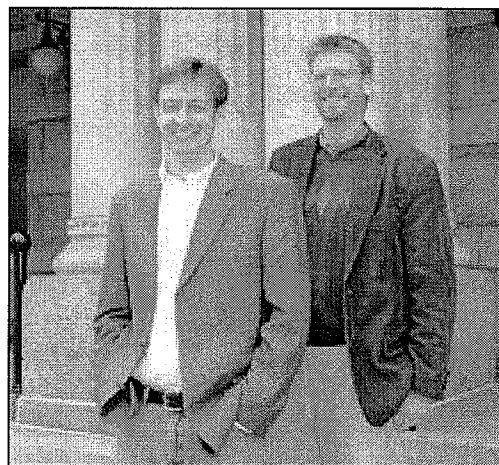
Immediately after his first oral argument in the U.S. Supreme Court, Rick Coad, then an associate public defender with Federal Defender Services of Wisconsin, Inc.'s Madison office, turned to his wife, Amy, and told her two things.

Those statements, according to Coad, roughly translate into "I can't believe I just did that," and "Wow, I really want to do that again."

"You're not remembering the whole process," his wife later joked.

Coad argued the case, *Logan v. United States*, last month, which appeals a decision by the U.S. Court of Appeals for the Seventh Circuit. The defense challenges whether the United States District Court for the Western District of Wisconsin properly gave James D. Logan, who was convicted of being a felon in possession of a firearm, a 15-year minimum sentence as a so-called "armed career criminal" under the federal firearms statute.

According to Coad's co-counsel, Brian Fahl, who is an Associate Public Defender with Federal Defender Services of Wisconsin, Inc.'s Milwaukee office, the Supreme Court's decision could issue at any time.



Rick Coad (l) presented his first oral argument before the U.S. Supreme Court on Oct. 29 in *Logan v. United States*. Coad, now an attorney at Hurley, Burish and Stanton S.C. in Madison, worked with Brian Fahl (r), of Federal Defender Services of Wisconsin's Milwaukee office, to prepare for the oral argument. Both attorneys agreed that mock trials were an essential part of their preparation.

WLJ Photo/Tony Anderson

A Long Week

To have the final argument go well after all the preparation and work felt really good, said Coad, who recently left Federal Defender Services of Wisconsin, Inc. to join Hurley, Burish and Stanton S.C. in Madison.

"It truly was some of the best fun I've ever had," he said of the Logan argument.

But looking back, Coad admits that his wife had a point.

It's a process," he said of Supreme Court advocacy. "There are very painful steps along the way."

The days leading up to the argument were difficult, mentally and physically, Coad said.

He and Fahl traveled to Washington the week before the argument. Fielding questions in moot courts, sleep deprived, and with his mind racing at all times, Coad was tired.

"I didn't really count on that – what a long week it was," he said.

After a working weekend, Coad and Fahl watched the arguments the day before Logan was to be heard.

The day of the argument felt surreal, Coad said. Logan was the second argument, and Coad and Fahl watched in the courtroom during the first argument.

"You sit there for a long time, and you get kind of comfortable," Coad said.

But he was not unaware that as time passed, his turn was approaching.

"I definitely watched the clock," Coad said.

Though Coad said he is not a surfer, he compares the experience to being on a wave, heading for the beach.

"It kind of takes away your nerves, because you realize this is going to happen now, and you're going to do it," he said. "You don't really have a choice."

On the Podium

After the first argument concluded, the call for the next case came fast, Coad said.

"Before the guy even has his papers gathered up and is walking away, I'm up at the podium," he said.

The atmosphere was collegial, Coad said, and the justices were very respectful.

"They don't beat you down," Coad said. "They get to the substance of the issue and the equities that are involved, and talk about them. It was much more conversational than I expected it to be.

"You got the sense that they were listening to you," he added.

During the argument, Fahl said, he was sitting close enough to Coad that Coad could look down at him.

"Every question I was writing in big words what the answer was," Fahl said, though he added that Coad was so prepared and ready for the questions that he gave the appropriate answers anyway.

"I can't say loud enough and often enough what a great job Rick did," Fahl said.

The total experience was reaffirming, Coad said.

"You feel like your client is getting a fair shake," he said. "It's the highest court in the land, and it feels every bit as legitimate as it looks."

Being Prepared

With the argument behind them, Coad and Fahl both say that moot courts were essential to their preparation.

"For so many months you think of a case in a particular way," Coad said, "and when you get other lawyers in the room looking at it, they will invariably give you another perspective that you might not have thought about – but a judge or a justice might be coming from that angle."

There was only one question in the Supreme Court that they hadn't heard in the moot courts, but they had thought a lot about it, Coad said.

"The moots served their purpose tenfold," he said.

"Hearing questions is the only way to really prepare to be asked questions by some of the smartest people around," he added.

But at the same time, Fahl cautioned against overusing the moot court aid.

"As many as you can do without getting fatigued, you should do," he said.

Besides the moot courts, the preparation for the argument involved a lot of re-reading, Coad said.

"You know that there are a handful of cases that are incredibly important to you, and so you know those inside and out," he said.

Fahl said that the only difference he might make in retrospect would be to limit the advice solicited early, because some of the directions that others suggested – though well intentioned – distracted from the issues that Fahl and Coad knew were the foundations of their case.

"If we'd stuck to our guns from the get-go, I think we would have been quicker out of the gate," he said. "But in the end, we got there anyway."

Awaiting the Decision

Now, Fahl said, there's a hole in his schedule following the conclusion of argument in the case that took up several hours of his day for eight or nine months.

But he and Coad are still doing some "Monday-morning quarterbacking," Fahl said.

"Unfortunately, as good as Rick did, we could still lose 9-0," Fahl said. "He answered the questions. The issue is whether or not they liked the answers."

If the decision goes their way, Coad said, the result could be as momentous as the Supreme Court argument.

"I would love to have a re-sentencing," he said. "It would be different, but equally as special, to go in for a re-sentencing on this in district court."