

## Government

# Memphis Attorney Jan Chilton Discusses Recent Appearance before the Supreme Court

ANDY MEEK | *The Daily News*

Not every one gets a chance to stride through the oak doors that lead into the stately court chamber of the U.S. Supreme Court, where they're quickly dwarfed by a 44-foot ceiling and a raised mahogany bench, behind which sit the nine most powerful judges in the country.

But even fewer people get to sit at the tables in front of the judge's bench, which are occupied by attorneys who have cases before the court. Memphis attorney Jan Chilton is one of those people.

And here's one for the history books: A few months ago, he made the winning argument in a case for which Chief Justice John Roberts - barely two months after taking the bench last year - issued his first written opinion.

The ruling involved when attorneys' fees can be awarded by federal courts when cases are sent back to state courts, and it was handed down Dec. 7.

"It was a tremendously thrilling experience to be up there," said Chilton, a 59-year-old member of the San Francisco-based law firm Severson & Werson's Memphis office.



BEFORE THE HIGH COURT: This sketch, commissioned by San Francisco-based Severson & Werson, shows the firm's Memphis attorney, Jan Chilton, arguing before the U.S. Supreme Court in November. -- Illustration by Todd Crespi

### Procedural parlay

The substance of the case he argued on Nov. 8, *Martin v. Franklin Capital Corp.*, isn't especially exciting, Chilton admits. What the Supreme Court took up, however, was a small bit of the case that dealt with procedure.

Many defendants think federal courts are more favorable to them, Chilton said, so they'll try to remove their state court case to federal court whenever possible.

"But federal courts don't have jurisdiction over all kinds of cases," he said.

What's more, if the plaintiff in a case is successful in getting it thrown back to state court, the law allows for attorneys' fees to be awarded to the plaintiff. But because the language is vague, Chilton argued the standard ought to be what most courts have done in the past - not to award attorneys' fees unless the case is removed for an improper reason.



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Writing in the *National Law Journal*, Marcia Coyle wrote that, "while (it's) neither a burning constitutional challenge nor a major statutory interpretation issue," the issue has come up quite a bit recently. Some accounts peg the total at 200 reported cases in the last two decades.

So in *Martin v. Franklin Capital Corp.*, the high court came out and said it: If a removed case is sent back to state court because the federal court lacks jurisdiction, the federal court may not award the plaintiff attorneys' fees.

Chilton wasn't surprised the court picked his case as the one for which Roberts wrote his first opinion on behalf of the court.

"They wouldn't have chosen a case where he would have been in the dissent, nor would they choose a case where there was dissent," he said. "They wanted to show respect for their new chief."

### **A 'keystone'**

The court's decision in Chilton's case was 9-0. He said the experience for him was comparable to the thrill of playing and winning an NBA championship game.

"It's the big match," he said. "It's a lot of fun, and after 30 years of appellate practice, it was nice."

His fellow partners at Severson & Werson watched Chilton's high court victory with pride. Mark Kenney, managing director of the San Francisco office, called Chilton a "force of nature."

"He is, by all odds, perhaps the finest all-around attorney in terms of scholarship, acumen, breadth of knowledge and skill in producing exemplary legal writing that I've ever seen," Kenney said. "He's a keystone of our law firm."

On the firm's Web site, Chilton's win is listed at the top of a list of recent news items, headlined "Landmark Decision."

"He's a fantastic person to have as your partner in a law firm," said fellow S&W attorney Patricia McClaran.

Chilton said his Supreme Court case called for much more groundwork than usual. There are nine justices, he explained, many of whom have their own personal philosophies that have to be anticipated and addressed.

"For example, (Justice Antonin) Scalia you'd expect to be someone more interested in statutory language and what it means, than, say (Justice Stephen) Breyer or (Justice David) Souter," Chilton said. "They're more interested in other signs of Congressional intent.

"And it was especially interesting trying to scope out Roberts, because there's relatively little available on where he stands on a lot of issues."

Chilton absorbed many of the smallest details and the drama that permeated the high court's chamber. That includes their appearance, the solemn court traditions and the grand entrance the justices make each morning.

In the morning, he said, everybody is herded into a relatively small courtroom in the center of the building and seated by 15 minutes to 10.

"And at exactly 10 o'clock, from curtains behind the nine seats the judges will sit in, they appear," Chilton said. "Exactly at 10 o'clock - not a minute before, not a minute after, not one at a time - all nine at once. It's kind of dramatic and neat, in a way, and they realize there's a lot of symbolism in that."

The interesting thing about his own case, Chilton noted, is that the high court's ruling isn't the final chapter in the case.

"It was filed about nine years ago in state court in New Mexico," he said. "It's a plaintiff class action against a company that's still far from over."