

One of the things you are becoming known for is liking your briefs in audio file format as well as hard copies. Are you a radio fan? Why audio in particular?

So, what happened is this: when I was going through the process to become a judge, one of the steps you go through is you go to the Senate Judiciary Committee, and the Committee can ask you some tough questions. You know, occasionally, they would go to the briefs and they would say, what about this legal issue such as "what do you think about a Pullman abstention?" Well, no lawyer has done any Pullman abstentions recently. And so, I was afraid someone would say to me: "How do you feel about the 19th Amendment?" Given the fact that I would say: "It's my favourite." But I thought I ought to know a little about all of them.

So, what I did was for each Constitutional amendment, I went and listened to two or three of the leading Supreme Court arguments to do with that Constitutional amendment in some way, and so if they asked me a question on the spot in front of everybody, I would be able to say, "The 19th amendment had to do with a women's right to vote," and know what it was. And so, I found that I got pretty good at it since 2016, I have listened to every Supreme Court argument that they have. And I found that I learn pretty well that way.

I also commute once a week between Austin and Waco and so, if I am commuting back home to Austin on Thursday before I get to work, I have found that if I have an audio version of the brief, I would have read the brief already but then, if I listened to the audio on the drive home, number one, it makes the drive home more pleasant, but also, the next day, it is like I have had a double scoop of the case, like I am more familiar with the case by doing it that way

Is there any Supreme Court case that you particularly recommend to listen to, be it a patent case or anything else?

Oh boy! I'll tell you, for sure, one of the most amazing ones was from 2018, I believe. It was the one that had to do with whether states should be able to charge taxes on internet sales [*South Dakota v Wayfair*]. I guarantee you, if you listen to that, at the end of the oral arguments, you are going to think that's absolutely right, there is no possible way the other guy can win. That one is a pretty good one. There is a lawyer at Kirkland & Ellis named Paul Clement who has now done 100 arguments and I have listened to every one of them available on tape. And he and [Gibson Dunn's] Ted Olson are probably my two favourites.

You are probably aware from your days as a trial attorney that some districts get a reputation as being plaintiff friendly. Were you to be seen in that way?

I am glad you asked me that. In every single talk I have ever given since the first time I started talking about this, I have tried to make it as clear as possible that the last thing anyone should think about this venue is that it is plaintiff friendly. Not only because I just generally like it, but, you know, we are in an era when defendants can have a lot of reasons to try and transfer cases, and I never saw that it was a problem for me in wanting to get a lot of good quality patent cases to get a reputation of being plaintiff friendly in such a way that every party who is sued in my court would file a motion to try and get out of it.

I thought that was the worst possible thing that could happen. So, every single time I have ever given a talk to anybody, I have tried to make what I am hoping the people are going to get from my court is someone who had 20 years of experience handling patent cases, a number of patent trials to verdict - but also handled them on both sides of the docket. I want every party that comes out of my court to be treated as scrupulously fair.

Again, the way I put together the [procedures] committee in the beginning, when I was asking people to be on it, I went crazy and I was absolutely sure that every conceivable type of patent litigant would be represented. I don't know what the breakdown is among big firms and little firms but everything I do, I run by them. Every conceivable interest is involved to make sure that whatever I do, that could either sue or be sued in my court. And you asked was I going to keep the committee intact? Not only that but, from

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In patent circles, there is a lot of discussion at the moment about the state of case law around 101 and we see the Federal Circuit moving towards a more regular basis. Do you think there is now clarity?

Let's just say if there is clarity, I'm still working to find it. Every 101 motion that is filed in my court, we carefully review but the main concern in my court is that I won't take up a Section 101 motion until after a Markman in the form of a motion for summary judgment.

You are still to have your first jury trial in a patent case, right?

You know, I've had to reschedule at the parties' request everything I have had and I am no longer overly optimistic that my first jury trial is going to happen in this situation. I would sure like to get one under my belt. We have a trial set in July, that we are pretty certain is going to go forward. The most likely first patent trial I think we have.

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