

Three Supreme Court Insiders From Outside the Beltway

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During a public appearance in June, Chief Justice John Roberts Jr. said he sometimes longs for the days when out-of-town lawyers with “battered briefcases” argued before the U.S. Supreme Court.

“Mr. Smith comes to Washington” moments are scarcer than ever, Roberts said—and he was right.

With the growing dominance of Washington-based lawyers at the Supreme Court lectern, fewer and fewer outside-the-beltway lawyers from private firms are familiar faces at the court.

Gone are the days nearly 20 years ago when Jeffrey Sutton, now a federal appeals court judge, ran an active Supreme Court practice out of Jones Day’s Columbus, Ohio office. (Jones Day has deployed some of its recent former Supreme Court clerk hires across the country, so that outside-D.C. practice may return.)

Some New York-based firms have added Supreme Court practices to their more lucrative transactional work, but the lawyers they send before the justices tend to be from their Washington offices, such as Jeffrey Wall of Sullivan & Cromwell. At some out-of-town firms, their Supreme Court specialists have two offices—like Aaron Streett of Baker Botts, who shuttles between Houston and D.C.

But a small handful of private-firm advocates still make the journey to



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(L-R) JOSHUA ROSENKRANZ, PETER STRIS, AND ALLYSON HO.

Washington for Supreme Court arguments from offices outside the beltway. Among those who have argued two or more cases in the last two terms are: New York-based E. Joshua Rosenkranz of Orrick, Herrington & Sutcliffe; Allyson Ho of Morgan, Lewis & Bockius, with offices in Dallas and Houston; and Peter Stris of Stris & Maher, from Los Angeles. Here are their stories:

E. Joshua Rosenkranz

When he read Roberts’ “battered briefcase” comment, Josh Rosenkranz realized his own briefcase is “kind of battered” and could use an upgrade.



E. JOSHUA ROSENKRANZ OF ORRICK, HERRINGTON & SUTCLIFFE.

But that may be the only resemblance he has to the type of “Mr. Smith comes to Washington” lawyer Roberts

was talking about. Rosenkranz was a clerk to the late Justice William Brennan Jr. and founding president of the Brennan Center for Justice in New York, no small town.

When he went into private practice 10 years ago, Rosenkranz wanted to stay in New York, knowing he would be an odd duck as a Supreme Court specialist in a legal community that favors Wall Street over One First Street any day of the week.

“That was the bet I made hanging out my shingle in New York,” Rosenkranz said. It took awhile, but has paid off. He has argued 12 cases before the high court, with his 13th set for the fall in *Lightfoot v. Cendant Mortgage*.

When he joined Orrick seven years ago, “It was only me” with appellate and Supreme Court expertise, Rosenkranz said. Now, he says, Orrick has five partners and 22 associates focused exclusively on appellate work. He recruited former

clerks from the Supreme Court and the U.S. Court of Appeals for the Second Circuit who wanted to live in New York.

Other New York firms have been slow to follow suit, he said. “A firm in New York City is not going to emerge as a major appellate shop unless it decides to recruit top appellate talent in New York and train more junior lawyers to be great appellate lawyers in New York.”

Allyson Ho

Dallas-based Allyson Ho argued two Supreme Court cases 21 days apart in 2014, so she decamped to Washington for awhile to prepare. But that’s not much different than if she lived in D.C., she said, because “you’re going to have to live a hermit-like existence anyway” in the weeks before Supreme Court arguments.

As a result Ho, a partner at Morgan, Lewis & Bockius, does not see any downside to building a Supreme Court practice from outside the beltway. “As a Texas native, it’s the best of both worlds,” she said. Then why is it so rare?

Ho chalks it up in part to the shrinking court docket and the “rich get richer” growth of the D.C. specialized Supreme Court bar. But she also cites the fact that most veteran advocates now come from the ranks of former Supreme Court clerks and lawyers in the U.S. Solicitor General’s Office — many of whom have already settled or want

to settle in the Washington area. Ho clerked for Justice Sandra Day O’Connor.

One contrary trend Ho knows something about has been the number of former Supreme Court clerks who left Washington for jobs as solicitor general in their home state. Sen. R. Ted Cruz, R-Texas, a former clerk to Chief Justice William Rehnquist, was a pioneer on this path when he became Texas solicitor general in 2003. Ho married one of Cruz’s successors, James Ho, now a partner at Gibson, Dunn & Crutcher in Dallas. Over time, she said, some former state SGs are building appellate practices outside the beltway.

Peter Stris

Peter Stris was surprised in 2014 to see himself listed among the 66 lawyers with the most clout in getting cases before the Supreme Court in a Reuters report titled The Echo Chamber.

By his count 51 of the 66 were based in D.C. “I was struck at how the practice is still dominated by firms inside the beltway,” said Stris, partner in the Los Angeles boutique Stris & Maher. “We kind of feel like interlopers,” Stris said, especially when he views his Supreme Court practice as a small part of the portfolio of the 13-member firm.

With six arguments under his belt, however, his Supreme Court focus has drawn attention from potential clients and job applicants.

And the fact that he is based in Los Angeles has probably helped more than it has hurt, Stris said.

“It has had a tremendous impact in attracting talent,” Stris said. He has been able to hire former Ninth Circuit clerks and others who are interested in appellate work but want to stay in Los Angeles. Clients from the West Coast, including startups, entrepreneurs and plaintiffs, are warming up to the firm’s location too.

But that does not mean that arguing before the Supreme Court impresses his Los Angeles friends, Stris said. “In a place like LA, having cases involving Microsoft is what gets people to notice. In D.C., the mere fact that you are in the Supreme Court is a big deal.”

Stris is set to argue in the fall on behalf of a class-action plaintiff in *Microsoft v. Baker*, a dispute over faulty Xbox 360 devices.

The only downside to having a Supreme Court practice in Los Angeles, Stris said, is that “it makes it a little harder to coordinate if you really want to do really plugged-in moot courts,” which typically take place in Washington. “To do that, you have to travel.”



ALLYSON N. HO OF MORGAN, LEWIS & BOCKIUS

Photo: Mark Graham



PETER STRIS OF STRIS & MAHER LLP

Courtesy photo