AT THE ALTAR OF THE APPELLATE GODS— A BOOK REVIEW

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Very few attorneys get the opportunity to argue a case before the United States Supreme Court. That privilege is usually reserved for veteran SCOTUS advocates, many of whom started their legal careers by clerking for justices on the high court or working in the Solicitor General's office. In fact, oftentimes when a case reaches SCOTUS, the parties will hire veteran advocates to help brief and argue the case.

But Lisa Sarnoff Gochman ("rhymes with watch"),[1] a veteran appellate attorney in the New Jersey Attorney General's office, had that opportunity when one of her appellate cases made it to the high court. *At the Altar of the Appellate Gods*, part personal memoir and part case history, recounts Gochman's experiences—both leading up to argument, the argument itself, and the aftermath of the case.

The start of Gochman's tale is unremarkable: she is assigned to handle an appeal in her state's intermediate courts. That sentence could be written on any given day about hundreds of state appellate attorneys, my husband included. That the case involved issues of constitutional law is also not really that remarkable. Even the disturbing and upsetting facts of the case are not

1. LISA SARNOFF GOCHMAN, AT THE ALTAR OF THE APPELLATE GODS: ARGUING BEFORE THE US SUPREME COURT 92 (2022).

remarkable[2]—unfortunately, state appellate attorneys deal with reprehensible, horrific crimes frequently. It is what happened next that is remarkable—even by Supreme Court standards.

As Gochman explains, the state prevailed in both the state intermediate and supreme court. But then the small-town defense attorney representing the criminal defendant in the case filed a petition for certiorari with the United States Supreme Court, and that petition was granted. And Gochman alongside the defense attorney, Joseph D. O'Neill, ended up arguing the case at the Supreme Court. Finally, while Gochman at the time thought that the case would not be all that important by Supreme Court standards, it ended up being one of the most significant cases of the term and—according to the late Justice John Paul Stevens—one of "the most significant majority opinion[s]"[3] he authored on the Court.

The case, if you haven't guessed it, is *Apprendi v. New Jersey*.[4] In *Apprendi*, the Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."[5] Charles Apprendi, who faced significant charges after shooting at the home of a Black family in his neighborhood, pleaded guilty to three weapons charges in hopes of receiving a sentence of ten years or less.[6] The prosecutor, however, moved for increased sentencing under New Jersey's hate crimes statute, which at the time allowed a judge to decide by a preponderance of the evidence if the crime was racially motivated.[7] The judge did, and Apprendi was sentenced

2. In a targeted attack, the defendant had fired into the home of a Black family as they slept. *Id.* at 13.

3. *Id.* at 180 (quoting JUSTICE JOHN PAUL STEVENS, THE MAKING OF A JUSTICE: REFLECTIONS ON MY FIRST 94 YEARS 357 (2019)).

4. *Id.* at 1 (citing Apprendi v. New Jersey, 530 U.S. 466 (2000)).

5. *Id.* at 172 (quoting *Apprendi*, 530 U.S. at 475–76).

6. *Id.* at 7–8.

7. *Id.* at 13.

to twelve years in prison.[8] Those extra two years became the basis for the appeal.

Gochman does an excellent job explaining the history of the case and the complex legal issues involved. Interestingly, during the pendency of the case before the New Jersey state courts, the United States Supreme Court issued two decisions that directly pertained to the *Apprendi* appeal[9]—something in and of itself that is both unusual and remarkable.

As someone who has studied, taught, and written about appellate practice for over a decade, I found many aspects of the book fascinating. For example, did you know that in New Jersey the intermediate court can hear cases with just two judges?[10] However, if the court sits in three-judge panels and there is a dissent, the losing party has an appeal of right to the state supreme court.[11]

Equally interesting was reading about the trials and tribulations of appellate practice in the late 1990s to early 2000s. Gochman recounts how she could only do computerized legal research in the law library,[12] how she had to work at the office on the weekend for word processing capacity,[13] and how she addressed possible Y2K issues.[14] She tells a few stories about waiting for news from the Court—on either the grant of certiorari or the issuing of the opinion.[15] She had to wait for a phone call from a colleague for news,[16] whereas appellate practitioners today just stalk SCOTUSBlog.

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8. *Id.* at 17.

9. Specifically, *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and *Jones v. United States*, 526 U.S. 227 (1999), *habeas corpus dismissed sub nom.* Logan v. Kallis, No. 17-CV-1140, 2019 WL 355520 (C.D. Ill. Jan. 29, 2019). GOCHMAN, *supra* note 1, at 43.

10. *See* GOCHMAN, *supra* note 1, at 34.

11. *Id.* at 36. However, the appeal is limited to the issue addressed by the dissenting judge. *Id.* (citing N.J. R.A.R. 2:2-1(a)(2)).

12. *Id.* at 71.

13. *Id.* at 72.

14. *Id.* at 84.

15. *See, e.g.*, *id.* at 59–60.

16. *Id.* at 170.

Finally, Gochman sprinkles wonderful nuggets of personality throughout the book. For example, she recounts the difficult decision about the right color pantyhose to wear in court.[17] She shares how she scuffed up the bottom of her new shoes so she wouldn't slip on the Court's marble floors.[18] And, the story about her poor Honda Accord is epic.[19] On a more serious note, Gochman shares her feelings of imposter syndrome and inadequacy.[20] Her honesty is a testament to how far we have come as a profession on issues of mental health—and yet we still have so far to go.

And while I thoroughly enjoyed the book, there were a few things that I thought Gochman could have elaborated on. First, I would have loved more detail on how she wrote her SCOTUS brief and prepared for oral argument. I would have also loved more details on how she balanced her existing caseload with the SCOTUS preparations—something she just hints at in the book. Perhaps these topics are too specialized and specific, but I would have found them interesting. I also think at times Gochman took aspects of the case too personally, such as the questioning from Justice Scalia.[21] But, I also understand how invested one can get in once-in-a-lifetime experiences, like a SCOTUS argument.

In short, Gochman's book is a delightful, easy read for the seasoned appellate attorney, the aspiring advocate, and the Court follower.

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17. *Id.* at 117.

18. *Id.* (Sandpaper does the trick, apparently.) *Id.*

19. *See id.* at 108–10. No previews on the Honda Accord—you will have to read for yourself.

20. *See, e.g.*, *id.* at 122 (Gochman located the bathrooms "so [she] would know where to throw up before the argument"), 136 (Gochman's lawyer persona "vanquished [her] imposter syndrome").

21. *See id.* at 139–40, 142–43.