

Identifying **12** Leading Appellate Litigators

It might be tempting to dub this the “ivory tower edition” of *Legal Times*’ ongoing Leading Lawyers series.

After all, the 12 appellate litigation specialists profiled in this section—which begins on Page 32—practice only in the justice system’s upper echelon. They don’t have to bother with the nasty things that may vex their trial court colleagues—like, say, jurors.

But anyone expecting a collection of cerebral law wonks might be surprised by the healthy dose of street smarts it takes for appellate lawyers to create a thriving practice.

These are courtroom chameleons who have mastered the art of quickly retooling arguments based on questioning from the bench. As one lawyer aptly puts it: “An appellate advocate must be able to engage in good dialogue with the judges. One of the most common failings occurs when advocates don’t want to talk about what the judges want to talk about.”

As with any list purporting to deliver the leaders in



any field, some readers may disagree with our selections. Yet it’s important to note that we attempted to touch all of the bases in reporting this article. Editor at Large Jonathan Groner started with leads provided by readers and sources. He was also informed by the base of knowledge in the *Legal Times* newsroom.

Groner then conducted dozens of interviews with clients, appellate lawyers, and knowledgeable sources in academia. In the end, we chose the lawyers profiled in this Practice Focus based upon our reporting.

This week’s article is the second in a series of four reports appearing in 2004. Our next Leading Lawyers, on Sept. 27, will look at trusts and estates attorneys. This series began in 2003 and has chronicled the best in real estate, trial litigation, intellectual property, securities and corporate governance, and labor and employment.

An archive of those articles, as well as information about our further plans for this year, is available online at www.legaltimes.com.

—David Brown, *Managing Editor*

Leading LAWYERS

**Legal Times Identifies Twelve of the D.C. Area's
Top Appellate Litigators**

Evan Tager

Mayer, Brown, Rowe & Maw

When a major company needs to find a lawyer in a key appellate case involving class certification, punitive damages, or arbitration, there's a good chance it will hire Evan Tager of Mayer, Brown, Rowe & Maw.

In the past several years, Tager, 44, has become the go-to attorney in a growing number of cases that matter to big businesses across the United States.

Says Victoria Fimea, senior counsel for litigation at the American Council of Life Insurers: "I value Evan for his overall command of class action and punitive damages issues, as well as his ability to synthesize the issues into well-written briefs that pull together what is relevant in a particular federal circuit court or state appeals court."

In the last five years, Fimea has turned to Tager for amicus briefs in a dozen cases.

Tager, a Stanford Law School graduate and law review member who clerked for Chief Judge Mary Schroeder of the U.S. Court of Appeals for the 9th Circuit, credits his training during 16 years at Mayer, Brown for much of his appellate success. Mayer, Brown was one of the first firms in the nation to actively develop an appellate specialty.

"My whole career is a function of the fact that Ken Geller gave me a job offer one day," says Tager. "It's impossible to have a better experience than being a lawyer at this firm."

In addition to his mentor Geller, still a Mayer, Brown partner, Tager says he learned the appellate lawyer's trade from such Mayer, Brown luminaries as Michael McConnell, now a 10th Circuit judge; partner Andrew Frey; senior counsel Philip Lacovara; and Roy Englert Jr., who left the firm in 2001 and is also profiled in this special report.

"We are the leading law firm in the country on punitive damages issues," Tager says. The U.S. Chamber of Commerce, a major player on the pro-business side of punitive damages cases, often turns to Mayer, Brown—and specifically to Tager—on its cases.

Tager has not argued any cases before the U.S. Supreme Court (he has argued, with excellent reviews, about a dozen cases before the U.S. appeals courts). It's his briefs that have put him in the first rank of appellate advocates.

J. Christopher Collins, senior vice president and deputy general counsel of the Unum-Provident Corp., the world's largest disability insurance company, calls Tager "a brilliant

lawyer, a word smith who can articulate complex arguments in a way that comes alive."

Tager was the principal author of the brief for BMW in *BMW of North America v. Gore*, the 1996 Supreme Court case that struck down a punitive damages award as excessive under the Constitution.

"There was nothing more exciting than hearing the result in the BMW case," says Tager. "We finally turned the corner. We saw our efforts come to fruition after so many years. The Court finally said that excessiveness in punitive awards can have a constitutional dimension."

Tager also played a major role in briefing the Court's most recent pronouncement on punitive damages—its 2003 ruling in *State Farm Mutual Auto Insurance co. v. Campbell* that a \$145



ROBERTO WESTBROOK

million punitive damages award was constitutionally excessive.

Tager is also well-known for his counseling skills in a pre-litigation context.

"We are working with him to design a very progressive pro-consumer arbitration clause that courts should want to enforce, and also to defend it in court," says Neil Berinhout, chief litigation counsel of Cingular Wireless. "Tager and his team write beautifully and can render complicated arguments easily understandable."

Tager says he views legal writing as an art form.

"I've always loved writing," he says. "I see myself as a sculptor who is turning a lump of clay into a work of art. Every sentence has to be fluid."