



Jeffrey Fisher, Partner, Davis Wright Tremaine, Seattle

[by Regan Morris]

Jeffrey Fisher is batting a thousand. He became partner at Davis Wright Tremaine in Seattle late last year at the ripe old age of 34. It would have been quite bad form if the firm hadn't promoted Mr. Fisher; the young attorney had argued and won two cases before the Supreme Court by the time he was 33.

The two cases—*Blakely vs. Washington* and *Crawford vs. Washington*—were Mr. Fisher's first criminal trials, and the effects of his victories are being felt across the country. His dramatic success before the high court has prompted some to call him one of the most influential attorneys of our time. Last year, he was a runner-up for the *National Law Journal's* Lawyer of the Year Award.

Mr. Fisher is the co-chair of Davis Wright Tremaine's Appellate Practice Group and a member of the Communications, Media & Information Technologies Group. Mr. Fisher specializes in First Amendment, criminal defense, and other constitutional matters, and he handles appeals and related work at all levels of the federal and state courts. He teaches Constitutional law at the University of Washington Law School.

Mr. Fisher found both the *Blakely* and the *Crawford* cases while reading court opinions online and took on the appeals pro-bono. He still prowls the court websites for new decisions and issues in the hope of a third opportunity to argue before the Supreme Court. *Crawford* was a Sixth Amendment case in which Mr. Fisher successfully argued that testimony is inadmissible if the witness would not be available for cross examination. *Blakely* dealt with sentencing guidelines and a judge's right to add or subtract years to a person's sentence.

"I'm working with a few people to identify some more cases," he said. "I don't have anything pending right now, but I expect that I will in the next six months or so."

Mr. Fisher took on both cases in the spring of 2003, filed his certiorari petitions to the Supreme Court, and then learned that the court had agreed to consider both cases. The odds of that happening for any attorney, especially a 33-year-old attorney, are extremely rare. More than 6,000 certiorari petitions are filed in the Supreme Court each year, and only about 100-150 cases are considered.

Blakely vs. Washington involved sentencing guidelines. In 1998, Ralph Blakely, a schizophrenic man facing divorce and the likely loss of his family trust, forced his wife into a box in his truck and drove her to Montana. Along the way, he begged her to forget the divorce proceedings and leave his money alone. He was arrested and eventually pleaded guilty to second-degree kidnapping.

Prosecutors and defense lawyers looked up the Washington state sentencing guidelines and agreed that Blakely should get four years in prison. But the judge took advantage of his right to make his own interpretation and sentenced Blakely to more than seven years. Mr. Fisher didn't like it. The sentence didn't seem fair, and he felt it was a good example of the problem with sentencing guidelines. The Supreme Court had rejected various related cases, and people said Mr. Fisher was crazy for trying. But he thought it was a simple case.

"There's a standard sentencing range, but judges were able to give people stiffer sentences based on the judge's own findings," he said. "And it seemed to me that what sentencing-guideline systems really do

is set up normal crimes and then aggravated versions of the crime. And just like when we try to convict somebody of murder instead of manslaughter or of armed robbery instead of robbery, that's a more serious crime that the prosecutor has to prove to the jury. And it seemed to me that with guideline-sentencing systems, we had the same kind of system set up, except defendants didn't have that jury protection."

Mr. Fisher thought the defendants deserved that jury protection.

"And that's really what I was fighting against in the *Blakely* case," he said. "It was partly that the defendants' rights weren't being protected, because the judges were making findings by preponderance of the evidence beyond a reasonable doubt. So there was that burden of proof problem."

Mr. Fisher said his argument was not an attack on judges for taking too much power but more of an attack on the system, which allowed judges to act with more power than a jury when it comes to sentencing. What was the point of guidelines if judges could decide sentences for themselves?

"The judges were acting under the system that the legislature had set up, so, in a sense, if it was anyone, it was the legislature that had been denying defendants their normal procedural rights," Mr. Fisher said.

For Mr. Fisher, who grew up in Kansas City and attended the University of Michigan Law School, it was a return to the Supreme Court. He clerked for Justice John Paul Stevens



before moving to Seattle. Of all the clerks he worked with at the Supreme Court, Mr. Fisher was the first to return and argue before the court.

"I was the first one to get back to argue before the Supreme Court, even though if you had asked all of us when we were leaving who's got the best chance based on where we were going, I certainly would not have been listed at the top," he said. "Because I had these friends going to these other fancy offices, and I was off to the hinterlands."

Mr. Fisher believes many attorneys are unhappy because they go to jobs they think

will look good on a resume or benefit them in the future instead of doing what they'd enjoy now. Most Supreme Court clerks end up in prestigious D.C. or New York firms. Mr. Fisher and his attorney wife were more interested in a quality, balanced life and chose Seattle because they thought it would be a good place to raise a family.

"I found a job in a really good office here, and I've done really well. And I think part of the reason why is just because I picked a situation I'd be happy in and did the best with it," he said. "A lot of people I talk to who aren't so happy are doing what other people perceive is the right thing to do and not so

much what their heart is in. So I think that's been a bit of the lesson from my work."

Mr. Fisher, who is the son of an attorney, laughs when asked if his ultimate goal is to be a U.S. Supreme Court justice.

"I'm not sure anyone is foolish enough to have that as an ultimate goal. I don't know; that's maybe a little beyond what my dreams would be."

Then again, given his track record, anything is possible.