

Q&A With Sheppard Mullin's Guylyn Cummins

Law360, New York (April 15, 2013, 5:04 PM ET) -- Guylyn Cummins is a partner with Sheppard Mullin Richter & Hampton LLP in the firm's San Diego and Century City, Calif., offices. She is a seasoned litigator and certified appellate specialist by the California State Bar. Cummins has represented clients in appeals before state and federal courts, including the California Supreme Court and the United States Supreme Court. Among others, she has represented state and national media in appeals involving important public access rights. She has been selected as one of The Best Lawyers in America, the leading lawyers in The Legal 500 U.S. (Vol. II IP and Media), and America's Leading Business Lawyers in Media and Entertainment by Chambers USA.

Q: What is the most challenging case you have worked on and what made it challenging?

In re Copley Press Inc., United States v. Higuera-Guerrero, 518 F.3d 1022 (9 Cir., Mar 4, 2008) and In re United States District Court for The Southern District of California v. John Doe (9 Cir. (Cal.), Mar 4, 2008 (cases involving First Amendment right of public access to plea hearing transcript in Congressman Duke Cunningham criminal case involving co-conspirator Kontogiannis's plea and national security issues in Arellano Felix drug cartel case).

The government asserted "compelling interests" of national security under seal and personal safety of drug cartel participants in these two important cases that blocked public understanding of various aspects of the criminal process. Regarding the national security issue, since all of the government briefing was done in secret, it was particularly difficult to challenge in the blind. Regarding the drug cartel safety issues, the government concerns can be legitimate or overstated, and often involving secrecy concerns, like government informants, so they can be equally difficult to challenge.

Q: What aspects of your practice area are in need of reform and why?

A: Severe budget shortfalls have caused appellate courts to cut back services and allocate resources to cases needing priority (e.g., criminal writs and appeals), and have created substantial backlogs and delays, especially with respect to civil appeals. With respect to public access to appellate court files and records, it has suffered from the budget cuts as well. The major reform needed today is a sufficient budget allocation for the appellate courts to function to ensure they can provide timely and thorough justice, and to ensure public access is not curtailed.

Public access to records and government functions has similarly severely declined with the economic recession and the Internet advertising revenue models that drive less advertising dollars to traditional media entities who have fought the access battles in the past. Without the media watchdog capacity and funding for this litigation, government becomes less transparent, honest and accountable. Many public access cases depend on the appellate court decisions that ensure public access rights are enforced appropriately.

Q: What is an important issue or case relevant to your practice area and why?

A: I am presently briefing case no. 12-55263 in the United States Court of Appeals for the Ninth Circuit, entitled Webceleb Inc. v. The Procter & Gamble Company, BermanBraun LLC and Microsoft Corporation, wherein I represent BermanBraun LLC. This case involves a plaintiff that trademarked the common phrase “web celeb” in downloadable software, and now seeks to prevent media entities from using the phrase “web celeb” to refer to Internet celebrities in news and entertainment products. This type of trademark litigation is growing has a chilling effect on free speech that needs to be summarily halted.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: David Blair-Loy. He is an ACLU attorney that has taken on many important causes on appeal and in the trial courts. Individuals like him are extremely important to society, as they litigate crucial issues involving our fundamental rights that can easily fall through the cracks without them.

Q: What is a mistake you made early in your career and what did you learn from it?

A: Not to run up too close to deadlines, as tasks often take more time than you thought they would. Especially on appeal, it is important that the issues be fully briefed and heard, as more often than not, appellate courts publish their cases and their holdings become binding law.

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