

High Court Bar's Future: Latham's Roman Martinez

By Katie Buehler

Law360 (December 16, 2024, 4:04 PM EST) -- Roman Martinez of Latham & Watkins LLP approaches oral arguments before the U.S. Supreme Court as if they were just another dinner with family or friends — people he's argued with since he was a kid.

The subjects may have changed from when's an appropriate bedtime, sports and politics, to attorney fees, administrative law and whether students with disabilities must exhaust administrative remedies before filing certain suits. But Martinez brings the same levelheadedness and expertise to each argument in an effort to persuade the nine justices that he's right.

"What I try to do is really come to court and talk to the justices in a very natural and relatable way," he told Law360. "I don't try to be professorial or lecture them about what the law is. I act as if I am trying to persuade a friend of mine at the dinner table."

Martinez's approach has earned him a winning record over his 14 appearances before the high court, one that's capped by his most recent victory in the Supreme Court's landmark joint ruling in *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*, which overturned a 40-year-old precedent that had instructed courts to defer to federal agencies' interpretations of ambiguous statutes.

He convinced an albeit sympathetic court to toss the so-called Chevron deference doctrine using plain language and everyday analogies. When, for example, Justice Amy Coney Barrett asked him during oral arguments to explain the difference between agency policy actions that are subject to arbitrary and capricious review and questions of law that courts must decide, Martinez explained it using colors.

"If the statute says the agency can pick red, blue or green, then the choice among those three options is



Roman Martinez

Supreme Court arguments: 14

Professional highlights: Partner, Latham & Watkins LLP, 2016-present; assistant, U.S. Solicitor General's Office, 2013-2016; associate, Latham, 2010-2013.

Clerkships: Chief Justice John Roberts, 2009-2010; then-D.C. Circuit Judge Brett Kavanaugh, 2008-2009.

Education: Yale Law School, J.D.; University of Cambridge, Masters of Philosophy; Harvard College, Bachelor of Arts.

Notable: Practice includes significant pro bono work in support of children with disabilities and veterans.

for the agency," he said. "But if you have a ... question, like does pink count as red? That's a legal question."

Colleagues and appellate practitioners told Law360 that Martinez's argument style, coupled with his ability to grow a successful practice that handles a variety of disputes while remaining active in the pro bono realm, makes him one of 12 lawyers poised to become the high court bar's leading voices, whom Law360 is profiling this Supreme Court term.

Before Martinez ever argued a case in front of the high court, he was debating with his parents, siblings, teachers and friends. He would also occasionally get the chance to verbally spar with his uncle, Roberto, a former Florida prosecutor who Martinez said introduced him to constitutional issues and the legal system.

"He was the lawyer in the family," Martinez said. "I learned from him what being a lawyer might be like."

So by the time he graduated from Yale Law School, Martinez was already aspiring to argue before the justices. He would go on to clerk for then-D.C. Circuit Judge Brett Kavanaugh and Chief Justice John Roberts, and then work as an associate at Latham for three years, before getting his first argument before the high court in 2014.

At that time, he was an assistant to then-U.S. Solicitor General Donald Verrilli Jr. assigned to argue as amicus in an attorney fees case, *Octane Fitness LLC v. ICON Health & Fitness Inc.* Martinez helped Octane Fitness convince the justices that the Federal Circuit's interpretation of "exceptional" had improperly prevented the company from recouping attorney fees after defeating patent infringement allegations.

"My parents didn't think it was as exciting an issue as I did," he said. "But for me, it was a really remarkable experience."

Martinez remembers being nervous, because he was the rookie in the solicitor general's office. But he said he was able to get through his 10 minutes of allotted time without missing any major points.

He argued six other cases while at the solicitor general's office, covering topics that ranged from whether a fish is a "tangible object" prohibited from being destroyed under the Sarbanes-Oxley Act, to which test courts should apply when considering enhancing patent infringement damages.

In 2016, Martinez returned to Latham as a partner and has developed his practice there ever since.

He's notched wins in six of the seven cases he's argued while in private practice, persuading the justices that the Telephone Consumer Protection Act's ban on automated calls to cellphones contains an exception for those seeking to collect federally-backed debts, and that federal courts cannot order companies to provide documents or testimony to a private arbitration tribunal, among others.

Latham partner Gregory G. Garre, chair of the firm's Supreme Court and appellate practice group, told Law360 that Martinez's calm and commanding demeanor at the lectern seems to captivate the justices.

"When he argues, the justices listen," said Garre, who recruited Martinez to join the firm after his clerkships. "He meets the hardest questions head-on. He doesn't try to dodge them or shy away. His

goal is to convince the justices that his position is right."

Garre added that Martinez's argument in the *Relentless* case this past term was a "tour de force."

"He throws himself into the issue, and he's able to convince the court" to accept his argument, Garre said.

But for Martinez, the results of a particular argument aren't always the defining aspect. When Law360 asked him what some of his most memorable oral arguments were, he mentioned several for reasons unrelated to the content of the case or its outcome.

The *Relentless* case was an obvious favorite because it involved an issue Martinez said he has "been thinking about and grappling with since law school." But it also stood out to him as the first time he participated in a post argument press conference on the steps of the Supreme Court. Although, he admits he didn't prepare his remarks beforehand.

"My focus was on the justices," he said, adding that he told his colleagues that, "after the argument's done, we'll figure out what I am going to say."

During 2022's October term, Martinez convinced the justices to unanimously rule that the Individuals with Disabilities Education Act's requirement that disputes should first be addressed in administrative proceedings does not apply to claims that seek monetary damages. The case was brought by Miguel Perez, a 23-year-old student who is deaf and claimed the Michigan Department of Education denied him an adequate education by providing him with a classroom aide who didn't know sign language and didn't know how to work with deaf students.

The decision overturned a universal understanding of the IDEA and made it easier for children with disabilities to defend their rights in court, Martinez said.

More importantly, though, Perez attended oral arguments in the case with the aid of two interpreters.

"It was inspiring to have him there in the courtroom," Martinez said.

The TCPA case, *Barr v. American Association of Political Consultants Inc.*, also resulted in an experience Martinez said he won't forget. For starters, the case was his first argument in private practice, and he had to present it via phone from Latham's office due to the Supreme Court's move to telephonic oral arguments during the COVID-19 pandemic.

It was an important First Amendment case, Martinez said, but what catapulted it into the national spotlight was a toilet flush.

Martinez was in the middle of responding to Justice Elena Kagan's suggestion that the TCPA provision being challenged was aimed at controlling economic activity and, therefore, wasn't a content-based restriction on speech when the mystery flush occurred. And to his credit, he didn't miss a beat.

"The subject matter of the call might range beyond the collection of government-backed debt," Martinez said, according to a recording of the argument. "... And what the FCC has said is that when" —

toilet begins to flush — "the subject matter of the call ranges to such topics, then the call" — toilet stops flushing — "is transformed and it's a call that would have been allowed and it's no longer allowed."

"It's something to tell my grandkids about," Martinez told Law360.

--Editing by Nicole Bleier.

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