

My Supreme Court Debut: 1 Final Sentence

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As the end of the year draws near, all eyes are turning to the U.S. Supreme Court and the decisions it will issue during its October 2017 term. In this Expert Analysis series, attorneys that have argued before the high court — from veterans to recent first-time arguers — reflect on their very first time standing before the justices.

My first argument before the U.S. Supreme Court was not meant to be. It was in a case called *Health Care Services Corporation v. Pollitt* (No. 09-38) about whether claims under the Federal Employees Health Benefits Act could be removed to federal court, and it was scheduled for oral argument on March 3, 2010. I was a fairly new assistant to the solicitor general at that time, the United States was participating in the case as an amicus curiae, and we had been granted 10 minutes of argument time. Then-Solicitor General Elena Kagan assigned me the case to argue. And I was excited to appear before my former boss, Justice John Paul Stevens, who was still on the court at that time. Then, about two weeks before argument, the case settled.



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My actual first argument before the Supreme Court came a few months later, in November 2010. The case, *CSX Transportation Inc. v. Alabama Department of Revenue* (No. 09-520), was about whether Alabama's sales and use tax on diesel fuel discriminated against railroads under the Railroad Revitalization and Regulatory Reform Act of 1976 (aka the "4-R Act"). Here too, the United States was participating as amicus, we had been granted 10 minutes of argument time, and I had been assigned to argue the case. But by this time, Solicitor General Kagan had become Justice Kagan, replacing the now-retired Justice Stevens. Although I was disappointed not to have the opportunity to argue before Justice Stevens, there was a certain symmetry there. And Justice Kagan ultimately authored the majority decision adopting the position of the railroad (and the United States).

The lead up to the argument was, as one might expect, filled with an unhealthy amount of anxiety. I had argued only one case before any court ever, and the Supreme Court has a well-deserved reputation for being an active bench. I spent many hours in the office reading and re-reading cases, making notes, rewriting my notes, thinking through hard questions, figuring out our strongest arguments — and pacing around my desk and the conference table talking to myself.

The best advice I could ever give to someone preparing for his or her first argument is to talk out loud. Yes, it is awkward at first and a little embarrassing. But presenting an argument orally is a completely different skill set than writing or thinking; what looks good on paper or sounds good in your head does not necessarily translate to the spoken word. Especially when you may have mere seconds to make your point at the podium. And so, in addition to talking to myself, I went through two moot courts with my colleagues in the solicitor general's office serving as judges. This is both customary and invaluable. There is no better preparation than having incredibly smart lawyers who are new to the case and who know the court so well pepper you with questions for an hour as you get ready for a 10 minute argument. Priceless.

I also took advice from experienced advocates outside the solicitor general's office. I grew up as a young lawyer at Latham & Watkins watching Maureen Mahoney prepare for argument. She is meticulous, and I tried to emulate her approach: Learn everything about the record, about the cases, about anything even remotely related to the issues in the case. I also had the privilege of making my argument debut alongside Carter Phillips, who was arguing for the railroad, and who (at that time) had nearly 70 arguments under his belt. I eagerly took counsel from him as well.

Then, in the midst of all this preparation, I had to figure out what to wear. There were two issues. First, morning suit or no morning suit? There has been a long tradition that attorneys in the solicitor general's office wear morning suits for argument. That is still true for the men in the office, but some of the women have opted out. Following the lead of Justice Kagan when she was solicitor general, I decided against tails. Having made that momentous decision, I still needed to choose an argument suit. This might not seem like a big deal, but there are stories of justices being unhappy with less traditional argument attire like, for example, a brown suit. So I ultimately kept it simple: black skirt suit, white shirt.

On Nov. 10, 2010, I arrived at the court in a van with my colleagues — another tradition of the solicitor general's office. On the way there, a colleague and very experienced advocate told me that when driving in on the morning of an argument he had hoped for a car accident — one that was bad enough to make him miss the argument but not so bad that anyone gets hurt. That was a very apt description of how I felt at the moment, and I found great comfort in knowing that I was not alone.

Once at the court, there is an office for the solicitor general and, when we arrived, I went straight there. Then, about 10 minutes before 10 a.m., I entered the courtroom. My case was the first of the morning, so I walked to the table to the right of the podium, sat down, looked at my notes and concentrated on breathing. My husband and parents were in the courtroom, but I was too nervous to look behind me. I later found out that my former professor and a class of students from American University's Washington Semester Program were there as well — further confirming my decision to focus on what was in front of me. The bell rang; the justices took their seats; there were bar admissions; and then the chief justice called our case.

Carter Phillips went first. About 15 minutes later, I walked to the podium with my binder, Chief Justice John Roberts called my name, and then ... it was over. Or at least that is how it felt. Ten minutes goes by very, very fast. The nerves I had felt in the days and hours leading up to the argument largely disappeared once I opened my mouth. And, unlike some of the arguments I have had since then, I had the opportunity to answer the justices' questions in full sentences and, at times, even paragraphs. As my time was winding down, Justice Antonin Scalia asked a critical question. I started in on a fairly detailed answer, and then the red light came on indicating that my 10 minutes were up. I asked the chief justice if I could finish my answer, and he responded: "You can finish the sentence." Justice Scalia offered,

“[u]se a lot of conjunctions,” to which the chief replied “[d]on’t even try.” The transcript indicates “(Laughter),” and the humorous interlude gave me the few seconds I needed to figure out how to condense a much longer answer into a single sentence.

The exhilaration (and relief) I felt when returning to my seat is an experience that I now try to replicate whenever possible. I wish I could bottle that emotion. It makes the weeks of agonizing preparation worthwhile. And it reminds me why I love what I do.

I have now repeated that amazing experience nine times. And although every argument is different, and the nerves become more manageable (or at least more familiar), there are some things that have stayed the same. I have worn the same suit to each of my 10 arguments before the court. I think about the possibility of a car accident (and my more experienced colleague) every time I drive to the court. I never look behind me to see who is in the gallery. And I give it everything I have until the red light goes on.

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