How Appealing Extra

its majority in both houses of Congress.

Political observers expect the issue to gain little traction with the Democrats in control.

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Posted 2:50 PM by Howard Bashman

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March 8, 2007

Before Going Live at Supreme Court, Lawyers Refine on Moot Court Circuit

By Brent Kendall
Daily Journal Staff Writer

WASHINGTON - When Los Angeles attorney Jean-Claude Andre learned last year that the U. S. Supreme Court had agreed to hear one of his cases, the lawyer was eager to call his wife and share the good news: He would be making his first high court appearance.

But the court's announcement left Andre with an immediate concern: He would need to practice his arguments, and a quick phone call could ensure that he wouldn't miss out on a particularly good opportunity to do so.

Which call did he make first?

"I honestly can't remember," Andre said with a laugh.

At some point in those first few minutes, Andre, an attorney with Ivey, Smith & Ramirez, dialed Georgetown Law Center in Washington, D.C., and asked the school to set up a moot court in which a group of lawyers and law professors could put him through the ringer before the justices did.

With a high-powered list of attorneys who volunteer their time and an impressive mock courtroom decorated to resemble the Supreme Court's, Georgetown's moot-court services are in high demand.

The school's Supreme Court Institute will moot anyone with a case headed to the court, for free, but for appearances, it won't prep both parties in the same dispute, and it is first come, first served.

Andre's prompt call paid off - the school penciled him in to practice his case, involving the Prison Litigation Reform Act.

When the court accepted another of his cases a few months later, again he called Georgetown immediately.

"The other side in both cases called a couple of hours too late," he said.

Whether a newcomer like Andre or a battle-tested veteran of the Supreme Court bar, most attorneys headed to the high court moot their cases repeatedly before they go live on the nation's biggest legal stage.

By the time the practice sessions roll around, lawyers have written their briefs and tried to prepare for any curve balls the court may throw at them. But are they really ready?
In moot courts that vary in form and formality, the answer comes quickly - and while there's still time to make adjustments.

"We've always got this orientation about why we're right," said Thomas C. Goldstein of Akin Gump Strauss Hauer & Feld, who regularly argues before the court. "Until you're forced to defend something orally in the face of hostile questions, you don't really make yourself see the other side's arguments. That's the real value [of moot courts]."

Veteran Supreme Court advocate Theodore B. Olson of Gibson Dunn & Crutcher said the practice sessions train attorneys to deliver succinct, precise answers and to react quickly.

"In court, you can't waste time, you can't be unclear and you can't stand there and think about the question," he said.

The sessions, Olson said, have the added value of forcing lawyers to get on top of their cases earlier than they might otherwise.

"The fear of being embarrassed and humiliated by people you respect causes you to work hard and get ready," he said.

For the typical moot court session, an attorney will stay "in role" for roughly an hour, sometimes longer, answering rapid-fire questions just as he or she would on argument day.

The purpose is not to limit the session to the 20-30 minutes the typical attorney receives for the actual argument, but instead to handle as many questions as the "justices" can think to ask.

Contrary to some perceptions, mock justices don't pretend to be particular members of the court, so there's no one designated to deliver Antonin Scalia's trademark zingers or Stephen Breyer's famously complex hypotheticals.

In fact, the average moot doesn't feature nine justices, rather five or six.

"Nine is a waste," said Georgetown law professor Richard Lazarus, who co-directs the school's Supreme Court Institute. "You don't need that many to get things going."

**Collegially Critical Feedback**

And though some mock justices make a concerted effort to be mean, Goldstein said that's not the point.

"The court is actually generally very cordial, very collegial and very smart," he said. "So what you need are people who are going to give you very probing questions."

Particularly for Washington-based practice sessions, Supreme Court attorneys frequently volunteer to serve as justices for their brethren, even if they're not fans of the case they're prepping.

"It's just a matter of helping out as a professional courtesy," Olson said.

After the last questions are answered, moot-court panelists critique the lawyer on style and substance, and because most sessions are done in private, they don't shy away from offering their unvarnished views on the attorney's case.

"These things are really candid," Lazarus said. In the extreme case, he said, panelists will even tell an attorney, "I think you're going to lose your case. Is there a way you can have a soft landing here?"

"The very best advocates are the ones who often change their arguments the most based on the moots," Lazarus said. For first-timers, he said, "it's harder for them to change what they're arguing."

Georgetown is home to one of several established moot-court programs in the Washington area, though the others are more specialized.

The National Association of Attorneys General holds moot sessions for virtually every state attorney with a case at the Supreme Court. The advocacy group Public Citizen preps
attorneys representing the so-called "little guy" in public interest cases. Law firm Sidley Austin, meanwhile, offers moot courts and other assistance to federal public defenders.

The U.S. solicitor general's office, which represents the federal government at the court, holds its own internal sessions, normally two for each case. If the office is arguing a case in conjunction with a state or a private party, those lawyers are invited to participate.

Large law firms often organize their own moots internally, inviting in-house lawyers and calling in favors from colleagues in other firms.

Outside of Washington, college campuses are frequently the site for moots. In California, Stanford Law School does them with the most regularity, averaging six or seven each Supreme Court term.

Pamela Karlan, who co-directs the school's Supreme Court Litigation Clinic, said Stanford moots all cases the clinic is involved with, and does a few outside cases, too, relying predominantly on law professors to serve as justices. One student also sits on the mock panels.

The school sometimes invites West Coast attorneys to come in, while other times advocates call in their own requests, Karlan said.

"One of the values we bring to this is, we will moot cases that no one is interested in," she said.

Up the road, Boalt Hall held a moot for one of the most unlikely lawyers to appear before the court this term, Louisville, Ky., attorney Teddy Gordon, who argued that his city's use of racial classifications to assign students to public schools was unconstitutional.

"If I'd applied to Boalt law school in 1968, they would have used my application for the bottom of a bird cage," said a jovial Gordon, a night-school law graduate who spends more time on traffic tickets and divorces than tackling hot-button constitutional issues.

Gordon said the Boalt experience made him realize how much more work he had to do.

"They stopped me as soon as I started," Gordon said. "I absolutely wasn't ready for the intensity of it. They kicked my butt. It was wonderful."

Down at Santa Clara Law School, professor Gerald Uelmen puts together about five moots a year, mostly inviting California lawyers who've had their cases granted.

The sessions are great for students and allow the faculty to stay abreast of cutting-edge legal issues, Uelmen said.

"I stole the idea from Georgetown," he admitted.

**Georgetown's Model**

Launched in 1999 as a public service, Georgetown's moot court program proved popular almost immediately.

When attorneys called seeking the school's help, "the goal was to see if we could not say no," said Lazarus, the program's co-director.

Because the moots are staffed with volunteers, the program does not cost a bundle to run. The school employs one paid staffer to handle day-to-day operations.

So far this term, the school has held moot sessions for 94 percent of the court's cases.

Armed with a database of 450 lawyers who are willing to serve as justices, Georgetown tries to create a mix on its panels, with a faculty member or two, maybe a former Supreme Court law clerk, and attorneys ranging in age and experience who know the court well.

"It's a little like putting together a string quartet of five or six," Lazarus said. "You want them to work together."

Andre, who made the trip from Los Angeles recently to argue his second high court case, involving the Individuals With Disabilities Education Act, said Georgetown gave him three
justices who each had 17 or 18 oral arguments under their belts, plus another two panelists with specific expertise about the law in his case.

"It provided for the perfect moot," he said, "where I got nitpicky questions and big, broad questions."

Andre, who participated in three moots for each of his cases this term, said the mock justices who prepped him for his two arguments anticipated 95 percent of the questions the real justices ultimately asked.

"Both sets of moots were extremely helpful in both cases," he said.

He won his first case and is still waiting on the outcome for his second.

While Georgetown's contacts and location-it's just a short walk from the court-may be its main drawing points, its mock courtroom also has become a signature piece of the program.

The room is adorned with burgundy curtains and a hanging clock designed to resemble those at the court. The carpet is more than a resemblance - it's the real thing. The school asked for, and received, the court's permission to use its ornate pattern.

"It all helps you take the moot seriously," Andre said.

Don't, however, expect to see the mock courtroom in use. Georgetown guards the confidentiality of its sessions so zealously that a Daily Journal photographer was not allowed inside until after Andre's session concluded.

Only specially selected students are ever allowed to attend, and that's only if they have permission from the lawyer.

"When Harvard does [a moot], they turn it into a public event," Lazarus said. "I wouldn't advise anyone to do that."

No one, he said, is going to give a completely honest moot in public.

As a general rule, most attorneys do two or three practice sessions per case. Some do more when preparing for particularly complex cases.

'Will You Moot Me?'

And then there's Georgetown University law professor Neal Katyal, who may hold the modern record: He did a staggering 15 moots before he argued a key war on terrorism case last term in which he convinced the court to strike down a Bush administration plan to try terrorism suspects in military tribunals.

"I basically took a legal pad out," Katyal said, "and made a list of all the people in the country who intimidated me the most, and then I called them all up and said, 'Will you moot me?'"

"For me, it was all about making sure that the right arguments were being made, and being made in the right way," said Katyal, who had watched about 150 Supreme Court arguments but never done one himself.

At the other end of the spectrum are a few old-school holdouts, including veteran advocate Carter G. Phillips of Sidley Austin, who do no moots at all.

Phillips argued his first high-court cases in the 1980s as a member of the solicitor general's office, which didn't hold moot sessions back then. Even after going into private practice, he had argued 15 to 20 cases before the thought of moots even crossed his mind. By then, he decided not to bother.

"There aren't that many dinosaurs like me," Phillips said.

Phillips said he prepares for an argument by sitting around a table with trusted colleagues and just talking to them about his case.

"It's more of a give and take process," he said. "It's really much more conversational. For me, it works just fine. I hope to be more conversational with the justices anyway."
But Phillips, who started the Sidley program that offers moot courts to federal public defenders, said he believes the moot sessions are vitally important for people with limited exposure to the court.

"It's good experience on how not to lose your cool and how not to take it personally," he said.

Goldstein of Akin Gump, however, warned that no amount of practice can completely prepare an attorney for the big day.

"That's a whole other level of stress," he said. "Nothing compares to walking into the courtroom and what that does to your pulse rate."

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AT UNUSUAL HEARING, OUSTED PROSECUTORS TALK BACK
Justice Department Says Lam Fired for Her Handling of Gun, Immigration Cases

By Lawrence Hurley
Daily Journal Staff Writer

WASHINGTON - Ousted San Diego U.S. Attorney Carol C. Lam forcefully defended her handling of immigration cases when she testified before Congress Tuesday as Democrats continue their probe into a mass firing of federal prosecutors.

She finally broke her silence over the circumstances of her sudden departure in February, revealing under oath before the Senate Judiciary Committee that she was not told why she was fired after 4-½ years on the job and was troubled by how the Justice Department handled the matter.

Lam testified along with five of the other eight U.S. attorneys forced from office by the Justice Department since December.

Later in the day, a Justice Department official, explaining for the first time why each attorney was fired, said Lam was terminated because of her poor record on immigration and gun crimes.

Lam said she opted to participate in the highly unusual congressional hearing to defend her record and the work of her former staff in light of the public scrutiny of her tenure.

Democrats are accusing the Bush administration of playing politics with its own appointed prosecutors, and Republicans maintain the dismissals were appropriate because U.S. attorneys serve at the pleasure of the president.

The other former prosecutors who testified Tuesday - David C. Iglesias of New Mexico, John McKay of Washington state, H. E. "Bud" Cummins of Arkansas, Daniel Bogden of Nevada, and Paul Charlton of Arizona - all voiced unease about the manner of their dismissals.

Only one of the eight, San Francisco's Kevin Ryan, who was not called to testify, was widely perceived to be in danger of losing his job because of reported management problems within his office.