

UC IRVINE VOICES

Arguing in the Supreme Court a daunting task



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Erwin Chemerinsky argued a case in the U.S. Supreme Court on Dec. 4 for his client, Dennis Apel, who was arrested after protesting outside a military base he had been barred from. The case will be decided early this year.

On Dec. 4, I had an experience shared by only about 125 lawyers a year: I argued a case in the U.S. Supreme Court. Although I have argued in the Supreme Court several times before, as always, it was an intense, exhilarating and frustrating experience.



ERWIN CHEMERINSKY
UC IRVINE LAW DEAN

The case concerned the right to protest outside of Vandenberg Air Force Base, a closed military base. Vandenberg has a fenced perimeter and requires visitors to enter through a gate with an armed guard. About 200 yards from the perimeter, the military has painted a green line on the ground. Highway 1 – Pacific Coast Highway – sits on the public side of the green line. It is a fully open road; no one driving on it would realize that federal government owns the land. In 1962, the federal government gave California and the County of Santa Barbara a permanent easement for Highway 1.

On the edge of Highway 1 is a small public protest zone, which was created by the settlement of a lawsuit in 1989. My client, Dennis Apel, was barred from the base because of misconduct in 2003 and 2007. Apel has been protesting at the base every month for 17 years. When he returned to do so in the public protest area, he was arrested and convicted of violating a federal law that prohibits those who have been barred from being on any part of the base. The issues before the Supreme Court involved whether that law, 18 U.S.C. §1382, can be applied to areas fully open to the public and if so, whether it violates the First Amendment to punish peaceful speech on a public street in a designated protest area.

UC Irvine's law school requires all students to participate in a clinic and represent clients under the supervision of a faculty

member. In one of our clinics – the Appellate Litigation Clinic – students brief and argue cases in the United States Court of Appeals for the Ninth Circuit. Our clinic was assigned Apel's case and two students under my supervision represented him. The students, Matthew Plunkett and Selwyn Chu, argued his case in April 2012 and won.

The U.S. government sought Supreme Court review and it was granted in June 2013. Work immediately began on researching the myriad of issues that needed to be considered. I was assisted by a couple of law students; by Selwyn Chu, who continued to be involved; and by a few lawyers who I asked to assist me. We had regular strategy sessions to discuss what needed to be researched, who might write "friend-of-the-court" briefs on our side and how to best structure our argument. The client and one of his longtime advisers also participated in these meetings.

In late August, the United States filed its brief. Mine was due Oct. 21. I prepared a very rough first draft over Labor Day weekend. I circulated it to the members of the team for their comments and suggestions. I prepared a new draft each weekend after that until the brief was due. As the brief became more polished, I also showed it to other lawyers for their comments.

Then, my focus shifted to preparing the oral argument. In any appellate court, an oral argument is different from what might be imagined. The lawyer rarely is allowed more than a few sentences before the judges begin asking questions. Often, the entire time is spent answering the queries. In the Supreme Court, it is virtually always 30 minutes per side. In my first Supreme Court argument, a

case involving California's three strikes law, I got out five words before I received the first question from Justice Scalia.

The big difference in the Supreme Court is that there are eight justices asking questions – Justice Clarence Thomas never asks questions during oral arguments – and the justices have remarkably little respect for each other's questions. Rarely is there a chance to give more than a one- or two-sentence answer before the next question from a different justice.

I prepared by writing out the questions on one side of a legal pad page and my answers on the other. I tried to imagine every question I might be asked. I did this over and over again for weeks, constantly refining my answers.

I conducted three moot courts prior to my argument. Lawyers and law professors agreed to play the roles of justices. I like to do my moot courts in law schools where students can watch the pro-

cess. For this argument, I held moot courts at USC, Loyola and UC Irvine.

As Dec. 4 approached, I spent an increasing amount of time rereading all of the relevant prior decisions, all of the briefs in the case and the record of the lower court proceedings. I continued to write out imagined questions and concise answers.

Before going to court, the last thing I always do is list the major points I want to try to make while answering the questions. I put it in my back pocket. I don't use notes while speaking because it lets me feel more conversational, and I don't take out the list at the podium.

People always ask me if I'm nervous before arguing. The answer is definitely yes. I actually find the hardest time to be the half-hour before the argument begins while sitting at the counsel table in the courtroom. At precisely 10 a.m., the justices emerge from behind the curtains and it begins. Because the government lost in the court of

appeals, the U.S. attorney went first.

Then it was my turn. As I expected, the questioning was intense. At one point, three justices asked questions before I could answer any of them. I had been able to anticipate most of their questions, though the justices, as always, were superbly prepared and focused on the most difficult aspects of my case. I wanted to present the matter as one of freedom of speech and the right to protest. But some of the justices, especially Justice Scalia, seemed to have little interest in that. After explaining to him why this case was about the First Amendment, Justice Scalia responded, "But we don't have to listen to that argument."

The 30 minutes went by very quickly. As I answered one justice's question, I was constantly looking for a way to complete my response answer to a prior inquiry. The podium is equipped with a system of timing lights – a yellow light that indicates five

minutes left and a red light meaning time's up. When that red light came on, I sat down feeling unsure of how it had gone and frustrated that I had so little time to answer one question before the next was posed.

There is an old adage that there are three oral arguments for lawyers in any case: the one that is planned, the one that is delivered and the one we wish we had given. I wish I could do it over again and deliver the argument I wish I could have given, but I feel so fortunate to be one of the small group of attorneys who this year will get to argue in the U.S. Supreme Court. The case will be decided early this year.

Erwin Chemerinsky is the founding Dean, Distinguished Professor of Law and Raymond Pryke Professor of First Amendment Law at UC Irvine. His areas of expertise are constitutional law, federal practice, civil rights and liberties, and appellate litigation.

JOBS

FROM PAGE 1

tips to help you craft your resume or prepare for an interview, Helbig said.

She suggests joining professional associations for the industry you're interested in and attending events to meet potential colleagues as well as representatives from companies that may be hiring.

Networking means more than face-to-face interaction, she said.

This includes having up-to-date career profiles on professional networking websites such as LinkedIn.

Helbig advises job seekers to actively use networking websites by joining alumni and industry groups and participating in conversations.

ONLINE JOB BANKS

Searching for jobs online can be challenging with a large volume of postings and a large number of people applying to the same job.

To help get your application in the "yes pile," Helbig

said to tailor your resume and cover letter to the company and its job posting.

"With the big aggregator sites, you want to pay attention to what words employers are using in their job descriptions," Helbig said. "Try to reflect and mirror those as much as you can in your application."

INTERVIEWS

"The number one thing you can do is anticipate what the employer is going to ask you in an interview," Helbig said.

Helbig recommends going over the job description

prior to the interview and having five good experience stories to draw from for specific examples on your performance, abilities or character.

"You also want to make sure you have questions for them," said Helbig. "It's a big turn-off to employers when they ask if you have any questions and you say no."

"Ideally, ask questions that couldn't be answered easily by scanning their website."

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