BUILDING A SUPREME COURT PRACTICE

NATIONAL EXPANSION

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Perhaps at one time or another, most law school students, while delving into the bramble bush of American jurisprudence, ponder the 'what if' of what it would be like to one day argue a benchmark case before the U.S. Supreme Court (or as popularly abbreviated SCOTUS).

If you think that admission to the Supreme Court bar must be reserved only for the golden-tongued Clarence Darrows of the profession, we have some good news for you: for a $200 lifetime admission fee, a mere three years of state bar admission and being in good standing, any lawyer regardless of age or trial experience, can gain admission to the highest bar in the land. But practicing before that bar is another matter. We will examine how one builds a Supreme Court practice.

Prestige Before Practice

Over 1,000 licensed attorneys seek to gain admission to the Supreme Court bar every year, with the figure rising as high as 3,000 during some recent years. In fact, in the 233 years since the Court's inception, over 300,000 lawyers have been admitted resulting in an average of 1,200 admittees per year. But if only a very small percentage of Supreme Court bar members will actually ever argue –or even file—a case before that august judicial body, why the attraction? For many, having that highly prestigious certificate of membership adorning their office wall is deemed to be of greater client impression value than even their Ivy League diploma. But the reality is only a relative handful of the current 75,000 SCOTUS bar members will ever bring a case there.

Admission Basics

Even a top-gun appellate litigator cannot bring a case before SCOTUS without first being admitted to the Supreme Court bar. Membership is governed by Rule 5.1, which provides:

"To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character."

In addition, an applicant needs to be sponsored by two current members of the Supreme Court bar and pay a $200 lifetime membership fee. Many law schools, as well as bar associations, assist with applying for Supreme Court bar membership and with attending the admission ceremony each year.

Ultimately, It Is an Appellate Practice

Aside from the obvious and significant distinctions in practicing before SCOTUS versus any other tribunal, at the end of the day, practice there is essentially appellate practice. Therefore, a lawyer who intends to build a Supreme Court practice must first and foremost hone appellate practice skills. That means taking on cases to argue before one's state appellate and supreme court bodies as well as before federal appeals courts. This focus will not only provide you, the practitioner,

Executive Summary

- **The Issue**
  What practical steps should a lawyer take who wants to build a Supreme Court practice?
- **The Gravamen**
  Start by building a rock-solid appellate practice, whether in state courts or federal courts, where you can hone your appellate procedure as well as your oral argument skills.
- **The Path Forward**
  If at all possible, try to clerk for a Supreme Court justice or work for the Solicitor General's Office or another relevant DOJ litigation department since there is clearly an advantage to a lawyer coming from those backgrounds.

with very valuable experience in both procedurally preparing and arguing appellate cases but will also build your reputation in the legal community as a go-to person for taking cases up on appeal.

Should you happen to find that there is a dearth of clients coming through the door who are in need of an appellate practitioner, the best advice is to seek out pro bono work from organizations that look out for the legal interests of indigent clients. There, the need to take cases up on appeal is quite common, and although such work will not pay the bills, it will provide you with the practical experience you need as well as a resume builder for going forward.

Local Bar Resources and CLE

Presumably, your bar association has an appellate practice section, but if it does not, then approach the organization's administration and propose starting one. Presenting seminars before the bar association will further make a name for you and give you the opportunity to dig into caselaw and procedural rulings that will be of benefit to you personally as you grow your practice. It might also be worthwhile to approach local firms and offer to give in-house training for their own up-and-coming appellate practitioners. If CLE courses are available, sign up for those to further enhance your appellate skills, and, once qualified, offer to give those courses yourself to further raise your profile.

Moot court participation is yet another venue for observing and gauging oral advocacy proficiency.

Publicize Your Wins—And Your Work

Even a relatively obscure appeals case is one that you should try to get mentioned in the papers (or, as more relevant today, in online blogs) so that your name becomes associated with appellate work. Even better, your victories for your clients should be well-publicized as far and wide as possible within your firm or, if you are a sole practitioner, then within your practice community. Publishing your own articles on appellate practice is another great way to get your name associated with the appellate practice.

Entering the Big League

Now that you have excellent credentials and experience in appellate work, how do you bring all of that before SCOTUS? Here is where a reality check must be inserted: A study of SCOTUS cases brought over a nine-year period found that 66 of the 17,000 lawyers who petitioned the Supreme Court were successful in getting their cases heard—in fact, those 66 lawyers were six times more likely than other private practitioners to have their cases accepted for hearing by the Supreme Court. What's their secret? To begin with, about half of them worked for justices in the past, and some have enough familiarity to socialize with them. Others had experience with the Solicitor General's Office or other relevant divisions of the DOJ.

Furthermore, although these 'elites' constitute less than 1 percent of lawyers who filed appeals to the

Action

1. **Appellate Focus:** Because SCOTUS practice is ultimately appellate practice, your concentration must be in that area of law.
2. **Getting Experience:** By taking on appellate cases no one else might want—including pro bono work—you will become proficient in the appellate advocacy skills you will need on your way up to the Supreme Court.
3. **Getting Well-Known:** Participate in as many educational and organizational experiences related to appellate practice as you can, offer to give training to others, and always get your cases—even those of yet uncertain outcomes—publicized.
4. **Follow the Trend:** Because SCOTUS practice is moving from the few, select firms to Big Law firms, get your foot in the door in their emerging Supreme Court practice groups, even if their attorneys might not actually be getting their cases accepted for hearing by the Supreme Court.

Supreme Court, they were involved in 43 percent of the cases that the Supreme Court agreed to hear between 2004 through 2012. Clearly, getting to the Supreme Court requires one to have the right stepping stones in place first.

Enter: Big Law SCOTUS Ambitions

Until quite recently, practice before the Supreme Court was clearly dominated by a mere 4 or 5 specialty practice firms—largely located in the DC area. Now, however, Big Law firms nationwide, anxious to get a piece of the SCOTUS practice pie, are poaching lawyers from those firms and building their own in-house SCOTUS practice. Having a SCOTUS practice in a big firm is considered prestigious— not unlike the 'unused' membership certificate posted on the small-town lawyer's wall—and enhances the firm's branding to existing clients while also attracting new ones. Are they successful? In 2019 Big Law attorneys represented parties in 43 out of 71 Supreme Court cases heard in a term, or 61%. When amicus briefs are included in the count, the percentage rises to 86% of filings.

But while competition is building for the aforementioned elites, at the same time, the opportunities to ply their SCOTUS wares are stagnant, if not shrinking. During the 1980s, SCOTUS agreed to hear around 150 cases per term, but now that figure is down by about a third.

In sum, as the young violinist was told when he asked a passerby, 'how do I get to Carnegie Hall?' "Practice. Practice. Practice."

> **"A NAME-BRAND APPELLATE PRACTICE IS PRESTIGIOUS IN ITSELF, BUT A SERIOUS SCOTUS PRACTICE IS THAT, CUBED."**
>
> —BRUCE MACEWAN, PRESIDENT OF LEGAL CONSULTING GROUP, ADAM SMITH ESQ.

Further Reading

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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.

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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.

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- Ensuring privacy and security of client data is a critical component of our business. GreenPoint has instituted rigorous physical, administrative, and technical safeguards to protect the integrity, security, and privacy of client data, all of which comply with the most stringent US and global standards and regulations.

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- Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.

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