

# Understudies Take Stage at Supreme Court

First- and second-time appellate advocates took the spotlight in cases argued during the 2013-14 term.

Tony Mauro, The National Law Journal

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First-time advocates were among the winners of landmark cases before the U.S. Supreme Court in the term just ended — a signal that new faces are beginning to join the ranks of veteran practitioners.

An unusually large number of first- and second-time advocates argued before the high court between last October and this April. Among them were several lawyers from firms with established Supreme Court practices where longtime advocates often keep the arguments for themselves — or are asked to do so by clients.

"It has been a breakout year, very different from what we have seen in the past," said Tom Goldstein of Goldstein & Russell. "It's been a real opportunity for another generation of advocates to make their mark."

Lawyers making their debut in marquee cases, and winning, include: Erin Murphy of Bancroft in the campaign-finance case *McCutcheon v. FEC*; Jones Day's Noel Francisco in *NLRB v. Noel Canning* on presidential recess appointments; Aaron Streett of Baker Botts in the securities class action case *Halliburton v. Erica P. John Fund*; and Mark Rienzi of Catholic University of America Columbus School of Law in *McCullen v. Coakley*, the abortion clinic buffer-zone dispute.

By Goldstein's estimate, more than half of the 121 advocates who went to the high court lectern this term were doing so for the first or second time. They include some women and minorities, in a practice area dominated by white men.

"There are two trends in conflict," said Evan Tager, appellate and Supreme Court partner at Mayer Brown. "The clients want the big names, so it is hard to persuade them to have a first-timer argue their case. But firms realize they need to create a transition to the next generation."

Murphy, for example, won her assignment to argue *McCutcheon* last October in part because her colleague, former U.S. Solicitor General Paul Clement, was arguing another case the day before — the first of five he argued during the term.

But the 33-year-old Murphy said, "It wouldn't have come along if Paul didn't want it to. It was important to Paul to make it happen."

Firms need to make room for new colleagues to give them a chance to grow and shine, Goldstein said. "If you don't there will be frustration in the lower ranks," he said. "You can work on 100 briefs, but the client wants to know, 'Have you argued at the Supreme Court?' "

But the emergence of new advocates before the high court this term does not yet herald a generational passing of the torch.

Veteran private firm advocates Carter Phillips, Theodore Olson, Seth Waxman and Clement, each of whom has argued 60 or more cases at the court, show no signs of stopping anytime soon. "You can do this work into your 80s," Goldstein said. Tager added, "It takes so much stamina to argue there that, over time, you'd think clients would want younger people to argue, but many don't."

At Gibson, Dunn & Crutcher, where Olson, Thomas Hungar and Miguel Estrada have handled the bulk of the firm's Supreme Court litigation, Thomas Dupree Jr. made his debut in a key business case, *DaimlerChrysler v. Bauman*.

Jones Day, which prides itself on not depending on a single star advocate, put Francisco forward to argue in the Noel Canning separation-of-powers case decided June 26. Jones Day Chicago partners Brian Murray and Lawrence DiNardo also made debut arguments.

Sidley Austin's Phillips, who averaged four arguments in past terms, argued twice this past term while also juggling duties as chairman of the firm's worldwide executive committee. Sidley partner Jonathan Cohn stepped up to argue his first case this term.

Like many of the new advocates, Cohn had extensive experience arguing before lower courts.

"He was the former head of the [Justice Department] Civil Division's appellate section so he has a lot of oral argument experience," Phillips said. "I expect he will be competing for Supreme Court matters for a long time to come and will win more than his fair share."

At Wilmer Cutler Pickering Hale and Dorr, former Solicitor General Waxman argued four times this term as he often does. Wilmer partner Catherine Carroll argued her first case at the high court last October.

Goldstein's firm fielded Tejinder Singh to argue his first case in *Lane v. Franks*, a significant if not total win. The key to making clients comfortable with a first-timer, Singh said, is to get to know the client from the beginning of the representation.

"I was the sole point of contact from the start," said Singh, who cold-called the lawyers who lost in the court below — a longtime trademark of Goldstein's practice. "Tom says that if you bring in the client, it's yours, soup to nuts."

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