Reflections on a Recent Supreme Court Argument

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I had the privilege of arguing recently before the U.S. Supreme Court in *Groff v. DeJoy.* The case involves a mailman—my client—who asked the US Postal Service to accommodate his religious belief that Sunday is a Sabbath day of rest. He volunteered to work every Saturday, holiday, or double shifts on weekdays if the USPS would exempt him from Sunday service delivering Amazon packages. The USPS ultimately refused. The legal question is whether the USPS established an "undue hardship" on its business that would excuse it from accommodating Mr. Groff. Or, more precisely, the question before the Supreme Court was whether it should reject a 1977 case that set a very low standard for undue hardship that made it easy for employers to deny accommodations. Since the case is still pending, I won't say anything more about the case's facts or merits, but instead offer a few observations about arguing before the Supreme Court.

While I clerked at the Supreme Court and have argued there twice before *Groff*, I spend most of my time handling cases in the Fifth Circuit and before other three-judge panels. The Supreme Court argument experience is truly one of a kind. For one thing, the preparation is singularly intense. While I regularly moot all of my appellate arguments, I do 3-4 moots for Supreme Court arguments, with a mix of recent clerks, SCOTUS practitioners, and subject-matter experts. The focus of moots—and SCOTUS argument prep more generally—is thinking through an endless array of hypotheticals that illustrate the limits of your position, while devising and fine-tuning a few persuasive points that will help the Court write an opinion for your client. Appellate lawyers truly are generous to one another when it comes to moots. Having mooted many Supreme Court cases over the years as a mock judge, it was nice to be a recipient of many returned favors and outright kindnesses.

Preparation is unique because the argument itself is unique. Nine Justices, none of whom is shy about asking questions, each with smart clerks helping them think through the issues. In our case, 40+ plus amicus briefs to consider and draw upon. Plus, the arguments are nearly twice as long as they used to be. *Groff* ran for one hour and 45 minutes, compared to the traditional half-hour-per-side that reigned before COVID. The reason, of course, is that the Court recently added a round of seriatim questioning after the initial half-hour per advocate has expired. Theoretically, this should make the first 30 minutes less "hot," as Justices know that they will have an opportunity to ask questions in the seriatim round. And sometimes it does. But not in my argument. I received 54 distinct questions in my 45 minutes of opening argument. It was a privilege fielding questions from every Justice, all of whom were exquisitely prepared and thoughtful about the complexities of the case and the precedent it will set. I also enjoyed arguing across from the US Solicitor General, Elizabeth Prelogar, who is a superb oral advocate.

Two other late-breaking evolutions in oral-argument format are especially welcome. First, the Court now allows a two-minute window for an opening statement, during which the Justices will not ask any questions. Working with my appellate colleagues from Baker Botts—Mark Little and Chris Tutunjian—we revised the introduction many times throughout the moots and preparation process until it was honed into two minutes that—we hope—powerfully summarized our key themes for the argument. Second, and similarly, the Court now refrains from asking questions during the petitioner's

rebuttal time. It is helpful to have a few, uninterrupted minutes to lay out the most important points you want to leave ringing in the mind of your audience. On rebuttals—especially at the Supreme Court—I try to follow the advice of then-advocate John Roberts: Rather than responding to each—or even most—of the arguments raised by your opponent, instead aim to reinforce the two or three "clear winner" points that most urgently compel the Court to rule in your favor.

So now we wait. At least for an April argument, the wait is not long. Almost like clockwork, the Court issues each and every opinion from the Term by the end of June.

For an appellate lawyer, the Supreme Court is the major leagues, with faster fastballs, sharper curveballs, and top-notch opponents and jurists. This case was no exception, and I was honored to play a small part in the unfolding story of American law.