THE PRIZE: Steve Levin, who lives on a boat in Guam, had what top lawyers in the U.S. were willing to fight over: a case before the Supreme Court. REUTERS/ VICTOR CONSAGA

A small cadre of lawyers at the top of the U.S. legal system is locked in a fight to push themselves up the rankings of Supreme Court advocacy.

A case in Guam is a rare prize for top lawyers

BY JOAN BISKUPIC

HAGATNA, GUAM, JUNE 18, 2013

Steven Levin lives alone on a boat docked off the coast of the Pacific island of Guam, about as far away from the U.S. mainland as an American resident can get. He has no wife or kids, no job, no phone or Internet service.

But last year, the itinerant 64-year-old had something of great value to elite lawyers half a world away: a case that reached the U.S. Supreme Court. Within hours after the justices announced that they would hear it, attorneys at some of the nation's most prestigious

law firms began pitching their services to Levin, offering to represent him for free.

The fact that Levin's case presented a procedural question stemming from a cataract operation - and not a momentous issue of constitutional law or social policy - did not deter the members of such firms as Akin Gump, Mayer Brown and Skadden Arps. They tracked Levin down using the only contact information they had, an email address he listed on his court petition, and touted their high-court credentials.

"I have argued 31 cases in the Supreme Court, and have briefed literally scores of cases there," Patricia Millett of Akin Gump wrote Levin on Sept. 26, less than 24 hours after the court issued its one-sentence order agreeing to hear his case. Two days later, Paul Wolfson of Wilmer Hale wrote, "You may find it useful to have lawyers representing you who have been before the Court many times," noting, "I have personally argued there 20 times." Andrew Tulumello of Gibson Dunn boasted of his firm's record: "We have argued more than 15 cases in the last several years – more than any other law firm."

These emails, which Levin provided to Reuters, attest to a little-known phenomenon at the apex of the U.S. legal system. A small coterie of powerful lawyers at wealthy private firms dominates the lectern at the Supreme Court. They work hard to get cases, even if for some it means not charging for their services. Racking up appearances at the Supreme Court - which hears only about 70 cases a year - represents prestige and publicity and, in some cases, the potential to draw high-paying clients on other matters.

"It is important for the firm to be seen as regularly participating in Supreme Court practice," Wolfson said in an interview. He said appearing on Supreme Court cases raises a firm's public profile and helps draw clients and recruit talent.

Another lawyer who emailed Levin, Joshua Rosenkranz of Orrick, Herrington & Sutcliffe, explained in an interview why he offered free representation. "I want to position myself for the most important cases for the important clients across the country," he said. "In order to land cases like that, I believe one needs to be viewed in the major leagues. Arguing cases before the Supreme Court is part of being in the major leagues." He said he is not trying to rack up multiple cases each year but rather to average about one a term.

NOMINEE: The president this month named Patricia Millett, who has argued more than 30 cases before the Supreme Court, to be a judge on the influential D.C. Circuit Court of Appeals. **REUTERS/KEVIN LAMARQUE**

Millett, who was nominated on June 4 by President Barack Obama to the influential U.S. Court of Appeals for the District of Columbia Circuit, declined to comment on her correspondence with Levin. Tulumello did not return calls and emails.

HEAVY HITTERS

The top sluggers include Paul Clement, who has argued 69 cases. A partner at the Bancroft law firm, he currently represents a Republican-dominated group from the U.S. House of Representatives seeking to uphold a federal law denying benefits to same-sex married couples. Last year he argued the challenge against President Obama's healthcare plan. Seth Waxman, of Wilmer Hale, has argued 65 cases, including for Monsanto in its successful case this year against an Indiana farmer who wanted to use patented soybeans to generate new seeds without Monsanto's permission. Another is Theodore Olson of Gibson Dunn, whose March argument against California's prohibition on gay marriage brought his total to 60.

These favored few rarely have to chase business and they did not write to Levin. But just beyond this inner circle of power hitters is a larger group of prominent lawyers, many of whom were assistants in the office of the U.S. solicitor general, which represents the federal government before the court. They monitor filings at the Supreme Court and check its website on days the court posts its orders, hoping for a case that will boost their numbers.

Indeed, Levin learned that the Supreme Court had accepted his case only after the attorneys did. One day he went into Guam's capital city of Hagatna, where he was working temporarily as an intern at the Guam Attorney General's office, and connected to the Internet from his makeshift workstation. When he logged on to his email account, he first saw a series of messages from lawyers

he had never heard of. Then, he saw the one from the Supreme Court.

On the way home, he bought a bottle of gin, and then fixed himself a martini with lots of olives. He spread out on a settee in his ramshackle boat, the "Mystic Moon," harbored at a marina in Agat on Guam's western shore, and said to himself, "This is the Supreme Court of the United States. I'm finally going to get justice."

COURTS GIVE CONFLICTING ANSWERS

The Supreme Court does not explain its decisions for accepting or rejecting petitions, but the justices are often receptive when a lower court has struck down a federal statute or if a weighty constitutional dilemma lands on their marble doorstep. They also tend to take cases when lower courts have issued conflicting answers to questions of federal law, as happened in Levin's case.

In 2003, Levin entered the U.S. Naval Hospital in Guam for cataract surgery on his right eye. Once in the operating room, he said, he had second thoughts. He began to worry about the equipment and the type of artificial lens that was to be inserted. He said he tried to call off the surgery but the physician brushed him off. The surgery turned out to be complicated and Levin underwent several follow-up procedures.

A hefty man with bushy eyebrows, a salt-and-pepper mustache and a goatee, Levin said the surgery left him with corneal edema, a condition that causes problems with vision. If he closes his left eye and looks only through his right eye, he said, things can be fuzzy. In an interview, Levin was quick to pull down the lower lid to show the scarring.

In 2005, with the help of a local lawyer he briefly retained, Levin sued the U.S. government in federal court, contending that he was a victim of battery. The suit claimed that a Navy doctor acting within the scope of his employment was covered by a U.S. law, the Federal Tort Claims Act, that suspends the government's usual immunity from injury lawsuits. He asked for $3 million in damages.

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>
> **Joshua Rosenkranz**
> Lawyer at Orrick, Herrington & Sutcliffe

The U.S. district court in Guam dismissed the case, and Levin appealed to the 9th U.S. Circuit Court of Appeals in San Francisco. He also started studying for a paralegal certificate at the University of Guam. After the appeals court, too, rejected Levin's claim, he was ready for his final appeal. He sat down and typed out a 22-page petition to the Supreme Court. Then he emailed a printer in Washington, who prepared the required hard copies and filed them.

Levin said he knew it was a long shot. "I wasn't holding my breath," he said.

The Supreme Court receives more than 8,000 petitions each term, which begins annually on the first Monday in October. It almost never takes a case from someone who doesn't have a lawyer. Often, the attorney who handles a case in the lower courts drafts the Supreme Court petition. If the case is accepted, then a litigant may choose to keep that lawyer, or turn to an appellate specialist.

Levin's success thus presented a rare, and ripe, opportunity. And virtually all the leading commercial firms with an appellate specialty tried to seize it - nearly a dozen in total.

The attorneys worked whatever angles they could. Millett, a partner at Akin Gump, played up her work in the office of the U.S. solicitor general, telling Levin she knew his "opponent's litigating practices." Neil Weare, writing on behalf of lawyers at the Constitutional Accountability Center, a public-interest law firm that specializes in appellate litigation, opened by saying he had grown up in Guam. Going for the personal touch, Weare said his mother in Guam "has had a lot of eye problems as well."

Weare left the CAC in February to run a non-profit organization that advocates on behalf of people in U.S. territories. He said in an interview that he reached out to Levin to find cases for CAC and to help someone from his home island, because "it's not every day that a person from Guam gets a case accepted." CAC President Douglas Kendall said, "We're simply looking for an opportunity to break in ... where we have a particular expertise or alignment with clients."

Several of the lawyers invoked their skill at handling the media. "I would definitely use press connections to call attention to the merits of your case," said Rosenkranz of Orrick, Herrington & Sutcliffe. He later told Reuters, "It was a really interesting question of law, and I like sympathetic cases."

EMAILS ABOUT SCREENPLAYS

Before he turned to a life on the sea decades ago, Levin, who is originally from Los Angeles, worked as an actor in professional dinner theater. He said he played the rabbi in a Scottsdale, Arizona, production of "Fiddler on the Roof." He later tried his hand at screenplays, none of which have been produced. The lawyers' entreaties apparently emboldened him. He began to envision a star turn for himself on a national stage.

As Levin responded to the emails, he asked the lawyers about their possible legal arguments, but also asked for help selling screenplays. He asked about tickets to fly round trip to Washington. He thought he could even share the argument time at the lectern, as he later told Reuters, perhaps to present "prepared remarks."

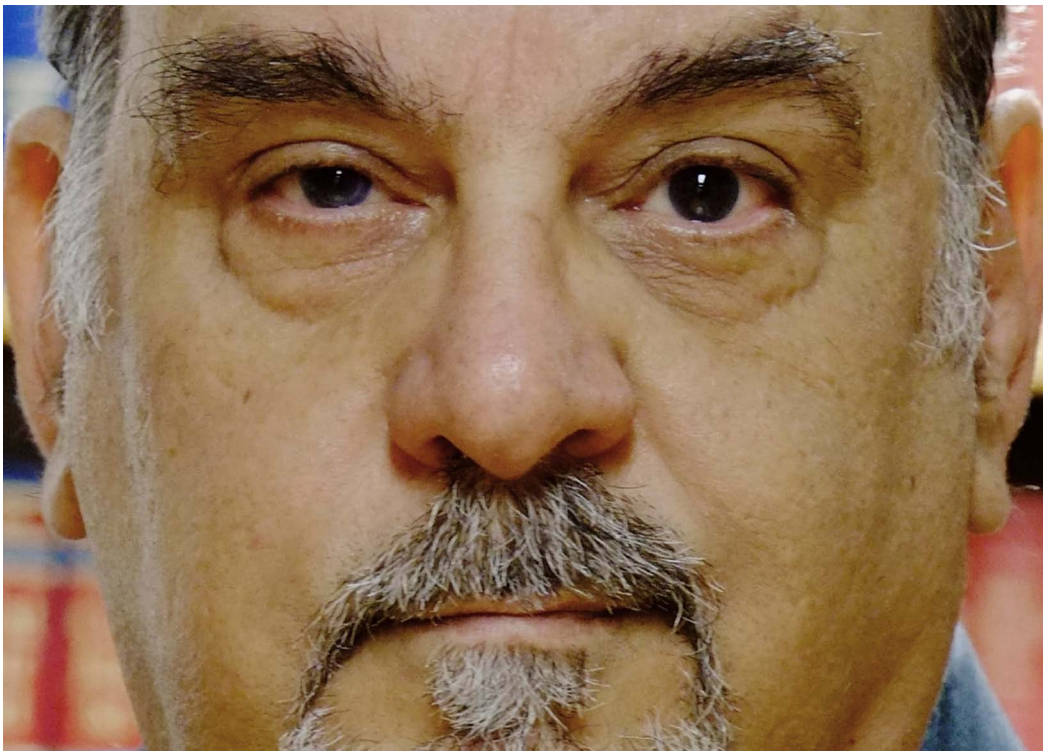
In an email responding to lawyer Matthew Hellman of Jenner & Block, Levin wrote, "My ultimate goal, beyond what I hope for the SCOTUS case, is to serve as a legal assistant with a law firm in New Zealand offices and as a co-producer of some stage/screenplay material I have; all ideally, out of offices in New Zealand with production components perhaps in Guam, perhaps Australia and the US mainland."

Levin began circulating emails from the

individual lawyers, along with his responses, to all the other lawyers, trying to get them to work together on his behalf. Separately, Levin emailed the Supreme Court to ask if he could argue the case himself. Kathy Arberg, spokeswoman for the court, said the chief deputy clerk responded that "a party who is not a lawyer will not be permitted to argue."

As Levin continued to dither and court officials grew impatient, the court took an unusual step in what was already an unusual situation: It appointed James Feldman, a former assistant U.S. solicitor general, to present the case but not to represent Levin personally. Feldman has argued 47 cases at the Supreme Court. He lectures part-time at the University of Pennsylvania law school and takes on a small number of clients. He said he felt honored to get the assignment, which was unpaid.

Technically, Levin still could have hired his own lawyer, but the court usually permits only one lawyer per side to present the case at the lectern. Almost immediately, interest from the other lawyers dried up.



DROPPED: After the Supreme Court appointed someone else to argue Levin's case, the other lawyers abandoned him. The case stems from surgery to his right eye. **REUTERS/VICTOR CONSAGA**

About a week after Feldman had been appointed, Wilmer Hale's Wolfson wrote Levin, "[M]y law firm is not in a position to represent you, so I think you should stop corresponding with me." He said there would be no role for his firm because, "Any argument that can responsibly be made for you will be made by" Feldman.

Three days later, Orrick's Rosenkranz was equally emphatic: "Steve, I've told you as clearly as I can that I will not represent you in this case and the firm would not be interested in representing you in this or any other matter." Rosenkranz declined in an interview to elaborate. Levin said that Rosenkranz told him that he, Levin, had turned the process into "a circus."

Feldman argued the case in January. On March 4, the Supreme Court in an opinion by Justice Ruth Bader Ginsburg ruled unanimously that a person could sue the United States for an alleged medical battery by a Navy doctor. "We find the government's reading [of federal tort law] strained, and Levin's far more compatible with the text and purpose of the federal legislation," Ginsburg wrote.

The next morning, Levin was sitting at a computer in the Navy hospital's first-floor library, where he sometimes spends his time. He saw an email from Feldman, who had forwarded the opinion to him. As he was reading it, the research librarian came over to tell him his name had popped up on her Google Alert.

He had won. It was a remarkable, against-the-odds victory. His case could proceed to trial in Guam. But still, Levin said, he wished he had handled things differently with the lawyers who had volunteered their services. He said he had been overwhelmed at first and got "a fat head." He would have waited to mention his desire for help selling his screenplays at least until he had gotten to Washington, and then, he said, "maybe over dinner."

He said he has not heard from any of them since the Supreme Court ruled. And he thinks he knows why: "They just wanted another notch in their belts."

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