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(Photo provided by Bradley Arant.)

## Lawyer Limelight: Kevin Newsom

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By John Ryan

Kevin Newsom was thrilled to become Alabama's solicitor general in late 2003. Still, the Birmingham, Ala.-born attorney, then just 31, always assumed he would eventually return to Washington, DC, where he had clerked for U.S. Supreme Court Justice David Souter and worked as an associate in Covington & Burling's appellate practice. Generally, the nation's capitol is where the appellate heavies, particularly of the Supreme Court variety, tend to congregate.

But a funny thing happened as Newsom rounded out his successful 3 1/2-year tenure as SG last year: He realized he could build a stellar appellate practice while living and working in his home town. Now 36, Newsom serves as co-chair of the appellate practice at the Birmingham-based, full service firm of Bradley Arant Rose & White. The young attorney says he is not alone but rather part of a growing trend of former state SGs who have developed thriving appellate practices outside of DC.

While his group's bread-and-butter workload comes before the 11th U.S. Circuit Court of Appeals and the Alabama Supreme Court, its practice is increasingly less regional. In fact, the Harvard Law School grad had two victories before the U.S. Supreme Court last year.

**Lawdragon:** First off, what's this Supreme Court term looking like? Is it going to be a quiet term as many observers have said?

**Kevin Newsom:** There are certainly fewer blockbuster cases on the docket – at least to this point – than the court had last year. One newsworthy tidbit is the court's move to three-a-day oral arguments. In recent years, the court has heard two arguments in the morning and called it a day. This year, at least for the first few months, the court will hear an afternoon argument, as well. Last year, I think I argued the only afternoon case of the entire term, and that, I think, was the result of a scheduling quirk, not a policy shift. The question, now, is whether the move to afternoon arguments will spell an increase in the number of cases the court takes.

**LD:** How did you get into this area of practice?

**KN:** I convinced myself at Harvard that I wanted to be a law professor, and I learned that Covington & Burling had – and still has – a strong reputation for sending its alumni into the teaching field. I thought I'd go to Covington, bide my time, publish an article or two and move on. Well, about the time I published my first article, I began working with two terrific lawyers, Bob Long and Ed Bruce, who were not only very interesting and smart but also eager to mentor. I found, much to my surprise, that I didn't want to be a law professor, after all – I wanted to be an appellate lawyer. Appellate practice feeds the academic in me and allows for strategic advocacy, too. It was a perfect marriage, and I was blessed to stumble into it.

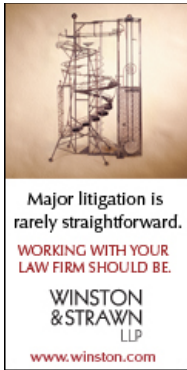
**LD:** What would you tell a student or young lawyer thinking about going into an appellate practice?

**KN:** If you go into appellate law, you'd better love to write. There is not, I admit, a

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...if you go into appellate law, you'd better hope to write. There is not a penny's worth of client contact. I spend about 98 percent of my time at the computer researching and writing. As much as I enjoy oral argument, if I had to do one thing – if someone said you can either write briefs or argue cases for a living but not both – I would choose to write.

**LD:** I noticed that you've won some awards for your brief writing. What makes a brief stand out?

**KN:** The substance has to be in there. You have to be making the right arguments and citing the right cases – that's the bare minimum. From there, I think what distinguishes a great brief from an adequate one is, first, that it is logical in the sense that the argument unfolds sensibly from one point to the next. It can't be a smorgasbord of points. One way I use to check myself when I'm finished with a draft is to review the table of contents and see if it shows the argument progressing the way I want it to.

Then, the brief absolutely has to be readable. And to be readable it has to be interesting. Without losing your bearings, you have to make it as fun and interesting as you can possibly make it. I have, for better or worse, a very conversational writing style. Conversational is good, but breezy is bad. My basic rule is that people should write the way they talk – assuming, of course, a baseline of proper English. I think that makes for the most readable type of brief. A great way to test both is to get someone whose judgment you respect to give your brief a careful review.

**LD:** What's one of the biggest lessons you learned during your time as solicitor general?

**KN:** What stands out is the experience young lawyers get working for the government – not just the state government but the federal government, as well. The experience is just unsurpassed. Covington was great about encouraging young lawyers to carve out time for pro bono work, if need be, to get face time in court.

While I was there I argued four cases in the U.S. Courts of Appeals, three of them pro bono and one paying. Over the next three years, as SG, I probably argued 17 or 18 cases in the U.S. Supreme Court, the U.S. Courts of Appeals, and the Alabama Supreme Court. It's an incredible universe of experience in a very short period of time, and it's experience you just can't buy in the private sector. Understandably, clients typically aren't in a position to take a chance on someone so young.

**LD:** Describe a little bit the process of how you decided to not return to DC after your tenure was up.

**KN:** When I moved to Montgomery, I fully assumed I would go back to Covington when I finished my tenure as solicitor general. Like I said, I loved – love – Covington. But I came to realize during my time in Alabama that I could have a thriving appellate practice in Birmingham, and I am now at a firm – Bradley Arant – where we are in the process of building what I think is a top appellate practice. In my 10-person group, for instance, there are four former U.S. Supreme Court clerks. I had assumed all interesting appellate work had to come out of Washington. It was only through a lot of research and soul-searching that I came to realize that I could have not just an adequate and satisfying practice here, but a really terrific practice – and in my home town. It was just a little too good to pass up.

A big part of it now is that we have two small children, and my extended family is here. This is a great city in which to raise a family, and the draw of family was pretty significant. At the same time, I would not have moved here in a million years if I couldn't be happy professionally. As my wife said to me, "You'll be at work most of the waking day, so you need to be really thrilled with your job." If you're happy at work, then you're happy at home.

**LD:** How do you go about recruiting attorneys?

**KN:** Most of the folks we're trying to attract have terrific credentials and really could end up – and thrive – anywhere in the country. But for one reason or another, like me, they have some tie to the South or to Alabama. We think we have a terrific product to sell. I can sell my own story. I didn't think I could make this work, but I learned that you really can have your cake and eat it, too. It's an easy story to tell because it's mine.

**LD:** Will you be able to appear before the U.S. Supreme Court regularly?

**KN:** As you probably know, the U.S. Supreme Court bar is small and shrinking. There are a handful of folks, four or five maybe, who are routinely in the court more than once a year. Am I going to be in that group in the near term? Doubtful. But do I have a reasonable prospect of having cases before the court? Absolutely. My first Supreme Court term here at Bradley Arant panned out about as well as it possibly could have. Early in the term, I scored one of only two summary reversals the court granted and then, in the spring, I argued and won the Riley voting rights case [Riley v. Kennedy, No. 07-77, decided May 27, 2008.]. A good start.

**LD:** What do you remember about your first case before the Supreme Court?

**KN:** Two months after I took the job as solicitor general I had a 10-minute amicus argument in support of a company that had been sued under one of the federal civil rights statutes. Thankfully, we were supporting Carter Phillips [of Sidley Austin], a powerhouse Supreme Court lawyer – and a terrifically nice guy, to boot. I don't remember much about the argument, frankly – it was a blur. What I remember most – the lesson I have to tell: Don't get to the podium without your water. I remember how dry my mouth was three minutes into the argument. Have water at the ready – that's the lesson I've carried with me.

**LD:** Has your argument style evolved over the years?

**KN:** I don't really know if it's evolved. The truth is whether I am talking to you or hanging out with friends or playing with my kids or standing at the podium in the Supreme Court, it's all the same. I'm the same guy – it's the only way I know how to be. My view has always been that the best oral advocates are conversationalists. You have to get over the notion that it's a performance in any way, shape or form. You have to imagine yourself at a conference table discussing your case with the justices. You have to act like you would in that setting.

**LD:** What was it like clerking for Justice Souter?

**KN:** It was absolutely a dream job. There's no other way to describe it. It was everything it was cracked up to be. I am as nostalgic for that year as I am for any year of my professional life, and I am a huge fan of Justice Souter. He is blindingly brilliant. My co-clerks and I always joked that he could have done that job alone. ... He's a compelling guy. He shines during oral arguments. He is very tough and persistent but very fair when questioning. He is one of the folks on the court who keeps attorneys up the night before the argument; he's always a step ahead.

**LD:** Would you ever want to go into the judiciary?

**KN:** It seems so otherworldly. Certainly I would be interested but it's not something that one plans his or her life around; there are just too many variables. I feel very fortunate to have the job that I have, to enjoy it as much as I do. I'll just keep my head down and churn out good work, and if that leads to something else, terrific. But I'm happy where I am.

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