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Q&A With Bradley Arant's Kevin Newsom

Law360, New York (December 07, 2009) -- Kevin C. Newsom is co-chair of the appellate litigation group at Bradley Arant Boult Cummings LLP and is resident in the firm's Birmingham, Ala., office. A former law clerk to U.S. Supreme Court Justice David Souter, Newsom joined Bradley Arant following a three-year stint as the Alabama Solicitor General, in which capacity he directed the State of Alabama's litigation in the U.S. Supreme Court, the U.S. Courts of Appeals, and the Alabama Supreme Court.

Newsom has argued four cases in the U.S. Supreme Court, filed amicus curiae briefs in dozens of others, and authored numerous certiorari petitions and oppositions. Outside the Supreme Court, he has argued more than 20 cases in the U.S. Courts of Appeals for the Second, Third, Seventh, Eleventh and D.C. Circuits, as well as in the Alabama Supreme Court and the Alabama Court of Criminal Appeals.

Newsom has handled cases involving, among other areas, general commercial law, tort law, environmental law, securities law, election law, civil-rights and constitutional law, admiralty law, telecommunications law, immigration law and criminal law.

Q: What is the most challenging case you've worked on, and why?

A: A voting-rights case I recently argued in the Supreme Court — *Riley v. Kennedy*. The case was challenging for a number of reasons. For starters, there was the simple fact that from among a number of lawyers interested in the case — including several top-flight Washington lawyers — Alabama Governor Bob Riley had hired me to represent him. Needless to say, I wanted to make sure he didn't have any buyer's remorse.

Substantively, the case thrust me into territory that was completely unfamiliar. Section 5 of the Voting Rights Act — which prescribes the act's "preclearance" requirement — is its own little universe, and this was my first exposure to it. And to make matters even more interesting, I had the worthiest imaginable adversaries in the case, both of whom are friends: Stanford law professor Pam Karlan, who quite literally wrote the book on the

Voting Rights Act, and all-world Supreme Court lawyer Kannon Shanmugam, who as (then) Assistant Solicitor General was representing the United States of America.

The victory was particularly gratifying because, overwhelmingly, the folks with whom I talked about the case — including most of my moot-court judges — thought that the case was essentially unwinnable. My outstanding team and I made a few key strategic judgments going into the oral argument that (in retrospect) allowed the court to find its way to deciding the case in our favor. It's always rewarding when calculated risks pay off.

Q: How do you prepare for oral argument?

A: A lot. No matter the court, it's always some variation of the following: (1) re-read the briefs and all important cases; (2) make a list of every conceivable question I would ask me if I were a judge, and I prepare draft answers to those questions; (3) settle on the 2-3 key points that I simply have to get across to the court; and (4) subject myself to the horrors of multiple moot courts. (And yes, they usually are horrific. But I'd rather be horrified a week before the argument than at the argument!)

It's important in preparing for an oral argument to figure out how to "peak" at the right time. Obviously, the gravest sin is to begin preparations too late. But if you start preparing too early, there is a risk that you'll get ready too quickly, and that your mind will have grown stale by the time the argument finally rolls around. It goes without saying that, come argument day, you have to know your case cold; but you also want to be continuing to think critically about the issues right up until you step to the podium.

Q: What are some of the biggest problems with the U.S. appeals process?

A: Honestly, I'd have to say the biggest problem with the appeals process is one of lawyers' own making: bad briefs. I remember being stunned during my first clerkship (for Judge O'Scannlain, on the Ninth Circuit) by how poor much of the briefing was. Unsurprisingly, the quality of the work product I saw at the Supreme Court was better, but even there the briefing could be spotty.

There are two problems, I think. First, it's my impression that good writing — as a distinct skill — isn't being taught to children the way it should be in high schools and colleges. Second, I am convinced that too many lawyers treat the trial as the main event and the appeal as an annoying afterthought.

Q: Aside from your own cases, which cases currently on appeal are you following closely, and why?

A: No specific case, really, but I try to keep a pretty close eye on the Supreme Court's docket, as well as the decisions coming out of the federal courts of appeals and the Alabama Supreme Court.

Even if there's nothing handed down on a particular day that pertains to one of my own active matters, there are frequently decisions issued that will hold some relevance for one of my clients or partners. In addition to handling my own cases, I try to be a source of information to those around me.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: There are many. I've had the good fortune to work closely with a number of the best appellate lawyers in the country — Carter Phillips [managing partner of Sidley Austin LLP's Washington, D.C., office], Maureen Mahoney [partner with Latham & Watkins LLP in the firm's Washington office], Roy Englert [partner with Robbins Russell Englert Orseck Untereiner & Sauber LLP in the firm's Washington office], etc.

If I had to single out one, though, it would be Covington & Burling LLP's Bob Long [a partner in the firm's Washington office]. I started my career at Covington, and although I think people are too quick these days to deploy the term, Bob truly was (whether he knew it at the time or not) a mentor to me when I was a young lawyer.

Bob is about as bright, experienced and well-credentialed as a guy could be — Rhodes Scholar, Yale Law School, Supreme Court law clerk, stint in the SG's office, etc. But — and this is the good part — he's also about as nice and normal as a guy could be. He's a good husband and a terrific father. He recognizes that he has a serious job, and yet he doesn't take himself too seriously. He has a healthy sense of perspective. He's someone worth emulating.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

Three things. First, make sure that you truly want to be an appellate lawyer. Many law-school graduates think they want to be appellate lawyers — but only because all they've done for three straight years is read one appellate decision after another after another. Ninety-five percent of an appellate lawyer's work-life is consumed with research and writing. If you don't have a passion for writing, find some other practice area.

Second, try to get an appellate clerkship. Not only will the clerkship likely open up appellate opportunities early in your legal career, but it will likely teach you some valuable lessons about appellate judges' likes and dislikes.

Finally, be proactive and persistent: Seek out an appellate lawyer who seems to have the sort of practice you want and ask him or her for work.