

Hogan Lovells' Washington Wunderkind: Neal Katyal

By **Gavin Broady**



Law360, New York (September 23, 2014, 8:04 PM ET) -- In March 2006, as the Supreme Court prepared to hear oral arguments in a historic challenge to the government's Guantanamo Bay military trials, all eyes were on a 35-year-old Georgetown Law professor named Neal Katyal, who was handling the first major case of his career but had at least one ace up his sleeve: He'd already made the argument 15 times before.

"Any Supreme Court case is hard, and when the stakes are this monumental it's even harder," Katyal says. "So what I did was I took a legal pad and made a list of all the lawyers who scared me most, and then I called them up and asked them to moot me."

Katyal spent a sleepless year crisscrossing the country, subjecting himself to 15 practice arguments from a who's who of legal luminaries, including a Harvard dean by the name of Elena Kagan and legendary professor Lawrence Tribe. He obsessively dissected recordings of the moots on long runs, hired an acting coach after Tribe knocked him for seeming "too small" at the podium, and in the end brought home a win in what has become a landmark case on executive powers.



While Katyal is still a firm believer in The Bard's edict that "the readiness is all," these days he can count on his colleagues at Hogan Lovells LLP to help him avoid any argument day surprises without needing quite so many practice swings.

"I've probably done 40 moots for the six Supreme Court arguments I've had since I've been here," he says. "And to this day I don't think I've gotten a single question at the real court that one of my colleagues at Hogan Lovells hasn't already asked me."

The Great Debater

Born in Chicago to a pediatrician mother and an engineer father, the 44-year-old Katyal jokes his Indian immigrant parents "tried all kinds of brainwashing" to convince him to go into medicine.

It was his uncle, however, who pointed the young scholar in the direction of law, urging him to join his high school debate team, where he became an immediate star and was aggressively recruited by Dartmouth College.

Four more standout years as an ace college debater paved the way for Yale Law School, where Katyal caught the eye of the school's Dean, Guido Calabresi. When Calabresi was tapped for the Second Circuit, he asked Katyal to come along as his clerk.

That clerkship led to a second post with Justice Stephen Breyer on the Supreme Court, after which the 27-year-old joined the Justice Department, where he served as a national security adviser in the Clinton administration and worked as a special assistant to Deputy Attorney General Eric Holder.

In his three years with the DOJ, Katyal advised the administration on high-stakes international issues like the legality of airstrikes against Kosovo and nuclear sanctions against India and Pakistan, and he spearheaded an effort to eliminate the Independent Counsel Act, which he saw as a "headless fourth branch of the government."

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Katyal also quickly learned the lesson that real leadership requires more than simply having the right answer, he says, noting that Holder took him under his wing after the young attorney fumbled a presentation to a group of 20 senior attorneys.

“He never flat-out said I sucked in that meeting, but he did say, ‘I want you to watch how I interact with people,’” Katyal recalls. “And I watched him on a daily basis and saw how he forged consensus, and how he started working well before the actual meetings to familiarize people with the ideas he would present.”

Upon leaving the government, Katyal became one of the youngest Georgetown Law professors ever to receive tenure. While working with the school's law center, he was approached by military officer Charles Swift about mounting a challenge to the Bush administration's Guantanamo tribunals, with a detainee who had served as Osama bin Laden's driver as the test case.

The case became a media sensation — rumors have circulated for years of a George Clooney-helmed film adaptation in the works — and when the Supreme Court granted cert, Katyal says he tried to pass argument duties off to several attorneys with more experience and more conservative credentials.

“So many retired officers and enlisted soldiers had written to tell me that they were Republicans but that they supported the case because they feared what would happen to our troops if we threw out the Geneva Convention,” he says. “So I did not think for a minute the case was political, but I didn't want the fact that I had worked in the Clinton administration to make it look political.”

After his overtures to outside attorneys were all stymied by conflicts, however, Katyal agreed to handle the argument himself, and following his cross-country moot court extravaganza he showed up for the

day of arguments ready — if not entirely relaxed.

“I was nervous as all heck that day, but then as I got to the podium I remembered something [Harvard law professor] David Shapiro had told me,” Katyal recalls. “He said you’re gonna be nervous for the first 30 seconds, and then you’re going to realize you know the case better than anyone else in the world and forget about your nerves. And that’s exactly what happened.”

“That wasn’t the case for my second argument, by the way,” Katyal adds with a laugh. “That was the one I was really nervous for, and I remember sitting there thinking: I won my first Supreme Court case, why the heck didn’t I just quit while I was ahead!”

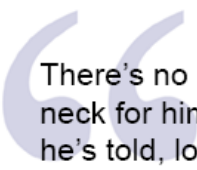
Courting Controversies

Katyal remained involved in Democratic politics while teaching at Georgetown, spending a month of sleepless nights helping Al Gore’s legal team in the 2000 election fracas and working occasionally with the party’s rising star in Chicago, Barack Obama.

When Obama became president, Katyal returned to the Justice Department as a deputy solicitor general, where he argued 13 cases and eventually stepped in as acting solicitor general when his predecessor, Kagan, was named to the Supreme Court.

Katyal would prove to be more than a transitional officeholder during his 13 months in the top spot, and he showed his willingness to take a firm stance on controversial issues in choosing to argue *Association for Molecular Pathology v. Myriad Genetics*, a landmark case concerning the patentability of individual genes in the human genome.

It was an issue on which the federal government was completely deadlocked, and Katyal was so convinced that the genetic patents should be invalidated that he chose to personally argue the case before the Federal Circuit, becoming the first sitting solicitor general to take the podium in that court.



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“It was a very controversial decision that upset a lot of people in the biotech community, but I felt there was a way to do it that would still protect incentives to innovate,” he says. “At the time I remember everyone said it was a crazy position, and there were articles in *The New York Times* saying nobody was going to accept it.”

True to form, Katyal devoted a year and a half preparing for the case, spending his Monday nights going to the National Institutes of Health for tutoring sessions on genetics and speaking with economists on the potential impact of various patent regimes. In the end, the Supreme Court took up the case, backing his position unanimously in a decision last year.

However charged that case may have been, it had nothing on the personal complications involved in

Katyal's handling of *Ashcroft v. Al Kidd*, in which John Ashcroft was accused of illegally approving the detention of an American-born terror suspect.

Though Katyal had been a gadfly to Ashcroft during the years he was pursuing the Hamdan litigation, he now found himself in the potentially awkward position of defending the former attorney general in another terror-related case.

"There's no doubt I was a pain in the neck for him for many years, and then he's told, lo and behold, that this guy is now your lawyer," Katyal says. "But he completely put his trust in me, and was a prince at every turn. And that became a very meaningful case to me, because I could've easily seen it go the other way."

Even as his relatively brief time at the helm of the SG's office came to a close, Katyal continued to rock the boat by taking on controversial issues both in and out of the courtroom. In May 2011, he turned heads with a speech in which he offered the first public mea culpa on behalf of the DOJ for the internment of thousands of American citizens of Japanese descent during the second world war.

Katyal says he agonized over the decision, aware that calling out predecessors who were no longer around to defend themselves would open himself up to withering criticism, but says at the end of the day the very real human suffering that internment had caused was too profound to ignore.

"The stories you hear will break your heart, about people who were interned and are still too ashamed to talk about it," he says. "You never want to burn someone's memory, but what happened was so horrendous that I ultimately decided I had to do it."

Big Shoes to Fill

When it came time to leave the government, Katyal searched far and wide for his next opportunity, talking to banks, tech companies and law firms before deciding to return to Hogan Lovells — where he had worked as a law school summer associate — to take over the practice John Roberts had built into a well-oiled appellate machine before departing to become chief justice.

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Katyal has since pushed a policy requiring every lawyer on his team to make at least one argument in court a year, and evolved the division to focus on what he calls the firm's appellate "sweet spot" of large, multifirm cases.

Hogan Lovells' practice is also heavily tech-focused, which was a huge attraction for Katyal, who was among the first people at the DOJ to talk systematically about cybercrime while there in the late '90s and speaks with obvious passion about the firm's advisory work with Silicon Valley juggernauts like Google.

Katyal was recently in Mountain View, California, to take a ride in Google's driverless car prototype, and he says he was blown away by the implications of the project.

“It’s perhaps the most innovative technology I’ve ever seen, and it was so incredible I teared up at the end of the ride,” he says. “When we think about the 60,000 Americans who die in car accidents every year, about the environmental implications of sitting around in traffic ... it’s going to be a transformative change to our society. And that’s the kind of project we want.”

Katyal is hardly short of new projects these days. With five cases already on the Supreme Court’s October docket, the firm is staffing up for a big autumn, and when Katyal isn’t skiing with his three sons or hanging out at his favorite D.C. alt-rock club, he’s busy with his usual battery of moot courts.

And while Katyal may have all the makings of a man bound for the federal bench — including the sort of easy onscreen charm that has landed him repeated guest spots on "The Colbert Report" — he insists he has found his calling in private practice.

“One thing I hadn’t appreciated in the SG’s office, where your client is abstract, is how rewarding it is to have real clients, whether it’s a huge company with billions on the line or relatively small companies,” he says. “These are living, breathing entities. They represent people, jobs, entire industries on the line. It makes a big difference to have that level of concreteness.”

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--Editing by Jeremy Barker.

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