

Q&A With Kannon Shanmugam: Building a Supreme Court Practice

Tony Mauro

Five years ago, Kannon Shanmugam left the U.S. Solicitor General's office to build an appellate practice as a partner at the noted litigation firm Williams & Connolly.

He was at the leading edge of a trend that has continued ever since: assistants to the solicitor general taking (or sharing) the reins at Supreme Court practices at top firms.

Think Deanne Maynard at Morrison & Foerster, Lisa Blatt at Arnold & Porter, Douglas Hallward-Driemeier at Ropes & Gray and William Jay at Goodwin Procter. Pratik Shah in August joined Akin Gump Strauss Hauer & Feld and Sullivan & Cromwell announced the hiring of Jeffrey Wall this month.

Shanmugam has argued five cases at the high court since joining Williams & Connolly, for a total of 13—matching the number of co-founder Edward Bennett Williams, whose legacy looms large at the roughly 275-lawyer firm.

Recently Shanmugam sat down with *Supreme Court Brief* to discuss building a practice at a firm that does not have practice groups, amid the competitive and economic pressures of representing clients before the nation's highest court.

"It's very rare nowadays that you have a Supreme Court case where you can charge your usual rates," Shanmugam said, offering an assessment of the economic realities of current Supreme Court practice. Even former SGs, he continued, "are routinely doing cases in the court nowadays at reduced rates."

This interview has been edited for clarity and length.

Tony Mauro: What did you find when you arrived at Williams & Connolly five years ago, in terms of the appellate practice?

Kannon Shanmugam: Williams & Connolly has always had a vibrant appellate practice. That goes back to the days of the firm's founder, Edward Bennett Williams, who was not only a fantastic trial lawyer but also a fantastic Supreme Court litigator. If anything, I think the firm may have suffered from a bit of a perception problem, in that the firm was not perceived by the outside world as having a Supreme Court and appellate practice. So the first task when I got to the firm was to try to correct that perception and make sure that the world at large realized that the firm had that capacity.

Mauro: Were the cases coming up inside the

firm through litigation below, or was it a matter of getting new business at the appellate stage?

Shanmugam: It was both. For any appellate practice to succeed over the long term, you have to have some volume of internally generated work. Appellate work will always flow naturally from work the firm is doing on the trial level. But beyond that, the goal is obviously to attract new cases and new clients and to do more appellate work for the firm's existing clients.

Mauro: So how did you build the practice?

Shanmugam: One of the most important things to do was to make sure that the firm's existing clients knew that we had capacity to do Supreme Court and appellate work, and I certainly spent a lot of time when I first got to the firm just going out to visit the firm's clients and talking to them about that. Beyond that, the most important thing for any lawyer in building a practice is simply to do the best work that you can and to hope people recognize that over time.

Mauro: Did you also set about to hire more attorneys to do appellate work?

Shanmugam: Williams & Connolly is unusual in that we don't have practice groups. Consistent with that culture, we don't have a discretely defined appellate litigation group. There certainly are plenty of lawyers here, myself included, who spend a substantial amount of their time focusing on appellate work. But we don't require our associates to choose when they get here, nor do we somehow select associates and tell them that they're going to be in the appellate litigation group.

Maybe I'm biased, but I think that that is the best model, because there's a danger that, if you have a formally defined group, there's a little bit of an us-and-them mentality. There's just none of that here.

Mauro: Except that you yourself are doing only appellate work and you came in as a partner, right? Was there any resistance to that, or did people think you ought to be a generalist also?

Shanmugam: There was no resistance to it at all, and I think in large part that's because it was fairly unusual for the firm to bring in a lateral partner, and the firm had thought long and hard about the need for an appellate specialist before making a decision to invite me to join the partnership. No one has ever said to me, "Oh, we want you to go out and try cases."

That having been said, I have never thought of myself primarily or solely as a Supreme Court litigator. I really enjoy litigation of all varieties, and I love going into new courts where I've never appeared before.

More broadly, I've tried very hard to make sure that my practice is fully integrated in the litigation work of the firm as a whole and that it isn't a stand-alone practice.

Mauro: So when you came your mandate wasn't to get five Supreme Court cases a term, which some lawyers do?

Shanmugam: That's right. Being in the Supreme Court is an important part of any successful appellate practice, but I certainly didn't set out to do as many Supreme Court arguments as possible. That's never been my goal and isn't my goal now. My goal is to build a sustainable appellate practice, of which the Supreme Court work is a part.

The firm had only been in the Supreme Court once in the seven years before I got to the firm, so it was one of my priorities to make sure that we are in the Supreme Court on a regular basis. But I don't think it's particularly important to be in the Supreme Court a certain number of times a year.

Mauro: Why is it important to be in the Supreme Court? It seems to be the brass ring for some firms.

Shanmugam: It's more visible, so I think there's a sense in which it is valuable to be there regularly. And look, everyone enjoys Supreme Court arguments. I love arguing in the Supreme Court, but I also love arguing in other courts, so I don't view it as the be-all and end-all for our practice. I have now argued five cases in the court in my first five years at the firm, which is frankly more than I would have expected or hoped for when I got here. But it isn't a priority of mine to get as many Supreme Court arguments as possible.

Part of the reason why that's true, quite frankly, that a lot of the work in the Supreme Court is



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work that is done pro bono or at a reduced rate. While it's obviously worthwhile to do cases in the court pro bono, provided those cases are consistent with the objectives of our pro bono program, my long-term goal is to build a practice that is sustainable. It's very rare nowadays that you have a Supreme Court case where you can charge your usual rates, and even former solicitors general are routinely doing cases in the court nowadays at reduced rates.

Mauro: Are the reduced rates a result of the economy or supply and demand?

Shanmugam: I think there's just incredible competition for cases in the court, and that's borne out in the reports about how aggressive some lawyers have been in pursuing those cases. So it's supply and demand in the sense that the supply of Supreme Court arguments is relatively limited.

Mauro: I want to talk about your pro bono cases. Of course, the most recent one, with probably the highest profile, is *Maryland v. King*, involving police taking DNA samples from arrestees. How did that come to the firm and to you?

Shanmugam: I was sitting here in my office one day, when I got a phone call from Adrienne Coleman, who is Alonzo King's aunt, asking if we would be willing to take on his representation at the court. This was before the court had granted certiorari, but after the chief justice had entered a stay, and so it was clearly a case that had some potential to be granted. As it happens, I'm friends with Celia Davis, the lawyer who had argued the case in the Maryland Court of Appeals, and she had told me about the decision when it came down, so I already had some familiarity with the case.

First of all, before we took on the representation, I wanted to make sure that it was consistent with the objectives of our pro bono program, and clearly it was because Mr. King is indigent. Second of all, I took a look at the merits of the case, and it didn't take me very long to conclude that there was a very substantial and important constitutional issue in the case. So it ultimately was not a difficult decision to agree to take on the case. Of course, it ended up being a fascinating case to work on, though we were obviously very disappointed by the result.

Mauro: Did you make an assessment ahead of time that this was going to be a tough case to win, or did you think it was winnable?

Shanmugam: It was always going to be a challenging case, but the more we got into the case, the more we thought we had a very real chance. It was one of the relatively rare

Supreme Court cases where coming out of the oral argument I thought to myself, 'this case could go either way.' That's a pretty rare experience for advocates in the court. You usually have at least an instinct.

Mauro: In the end, it certainly was close [5-4] and it was an interesting array of justices, right?

Shanmugam: I'm not sure whether the fact that it was close makes it better or worse. In some ways when you lose a case 5-4 in the court, you always wonder whether you could have done something differently. That's a little less true when you lose a case 9-0.

But it really was a fascinating case, both because the legal issues were so complex and because it was one of those relatively rare cases that involves the application of constitutional principles to emerging technologies. That's something that the court is clearly going to be continuing to wrestle with in the coming years, in a wide array of contexts.

Mauro: For a case like that or another case, how do you assemble a team?

Shanmugam: Because of the way we're structured, I don't have some elaborate hierarchy underneath me. When I work on cases in the court, it's typically with a team of associates. My philosophy is that, particularly with appellate work, there's no reason why talented young lawyers can't bear substantial responsibility for preparing briefs right out of the box. That is different from a lot of other Supreme Court and appellate practices.

Mauro: I wanted to ask also about the summer associates who go from here to clerk at the Supreme Court. Is that something you've cultivated?

Shanmugam: I think it happens just because we attract such talented people to the firm. I believe we've had 21 Supreme Court clerks over the five years that I've been at the firm who were either summer associates or full-time associates here. That really has nothing to do with me or anyone else here at the firm, and everything to do with the quality of those people.

Mauro: Has Elena Kagan, a Williams & Connolly alum, taken a number of them?

Shanmugam: I think she's hired a couple, but I don't think she gives any particular special preference to people who've been here. We've had people go to all nine of the justices.

Mauro: On the subject of oral argument, I've always noticed you have a very calm aspect when you're arguing. You never seem to get flustered. How do you manage that in the face

of all the questioning you get?

Shanmugam: Well, you're kind to say that but I'm not sure that it's true. I do think that experience really matters in that regard. The first time I argued a case in the Supreme Court, I remember thinking to myself, I just hope I get through this without throwing up or fainting. The more often you do it, the more comfortable you are. That's not to say that you ever completely stop being nervous. Whenever you have an oral argument at the court, your adrenalin is pumping.

I think the most important thing to remember about oral argument is that your goal as an oral advocate is to answer the court's questions and to answer them as best you can. In any case, there are always questions that are going to be the hardest questions to answer for your side, and you have to focus on giving the best possible answers to those questions that you can. You can never anticipate all of the questions you're going to get from the court. The goal in preparation is to anticipate as many of them as possible.

Mauro: So, five years on, are you where you want to be in terms of the practice?

Shanmugam: I think so. I would hope that if I were ever completely satisfied, I'd realize that it was time to retire. My goal is to continue to build the practice and develop a reputation for doing excellent work in the court and elsewhere.

One of the greatest advantages I have in building the Supreme Court and appellate practice here is being at a firm with such a great reputation for litigation more generally. Leading the appellate practice here is like being the basketball coach at Kansas. It's not hard to build a practice or to attract talented young lawyers to a law firm with a reputation like Williams & Connolly's. I feel very privileged to be a partner here.

Mauro: Gee, I wonder why you picked Kansas? [Shanmugam grew up in Lawrence, Kansas and is an ardent Jayhawks fan.]

Shanmugam: If I were a college basketball coach, that's where I'd want to be the coach.

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