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Supreme Court Case During the Pandemic? Landline Essential, Business Suit Optional

High-court advocates wrestle with how to argue their cases remotely; 'I practice law better when dressed as a lawyer'

By [Matt Grossman](#)

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Neal Katyal has argued 43 cases before the Supreme Court. Until the coronavirus pandemic hit, he hadn't once enlisted his son as an assistant.

Now, Mr. Katyal and other lawyers appearing in the nation's highest court have to argue their cases remotely, which often means from home. In November, as Mr. Katyal prepared in his home office to represent the city of Philadelphia in a case about religious objections to same-sex parents, he worried about the street noise.

So he gave his 19-year-old son \$100 and instructed him to go outside and dole out cash to quiet down any noisemakers. Sure enough, minutes before the hearing began, a truck rolled up, idling loudly.

"Oh my God, the justices are going to be so mad at me," Mr. Katyal, who served as acting solicitor general in the Obama administration, recalled thinking. Fortunately, the truck drove away without his son having to intercede.

For the nation's Supreme Court lawyers, being freed from the decorous norms of appearing in person before the high court has brought a new set of questions. Where to work? What to wear? What kind of phone to use? And how to stay in order in a telephone courtroom?



Some advocates have tried to replicate the high court's pomp, dressing in business attire and setting up mock courtrooms to evoke the real-life setting. Others have donned sweatshirts and planted themselves behind messy desks.

Supreme Court,
please

The Supreme Court's remote-hearing guidelines encourage lawyers to use landlines, not smartphones, because landlines can be more reliable, said Kathleen L. Arberg, a court spokeswoman. Some justices have dialed into the hearings from home, while others have joined from their private chambers in the Supreme Court building, she said.

In oral arguments, lawyers typically have 30 minutes to present their case, with the nine justices routinely butting in with questions. One challenge on the phone is to avoid accidentally interrupting one of the justices. Lawyers say that they normally rely on the justices' body language to gauge when one of them wants to speak up. That isn't possible in phone hearings.

"Naturally, the idea is that one never wants to speak over a justice," said Bryan Garner, a lawyer and legal scholar who argued a case in December. "You have to recede the moment a justice begins speaking."

To make sure he could stop talking as soon as a justice started, Mr. Garner tested two speakerphone systems. He wasn't satisfied with the audio on either. His old-fashioned solution: a telephone handset cradled to his ear.

"What I was told from various quarters was that the handset sound was the best that you could get," he said.

The phone guidelines posed a problem for Sarah Harris, who argued her first Supreme Court case on Nov. 2. "I'm in my 30s," she said. "I don't have a landline at home."

Ms. Harris, who represented a railroad worker in a dispute over benefits, ruled out using her law firm's Washington office because the city's downtown was boarded up over fears of Election Day rioting. Instead, she dropped off her young daughters with her in-laws and used the landline at a colleague's house.



Sarah Harris at a colleague's house with the speakerphone she used for her Supreme Court argument.

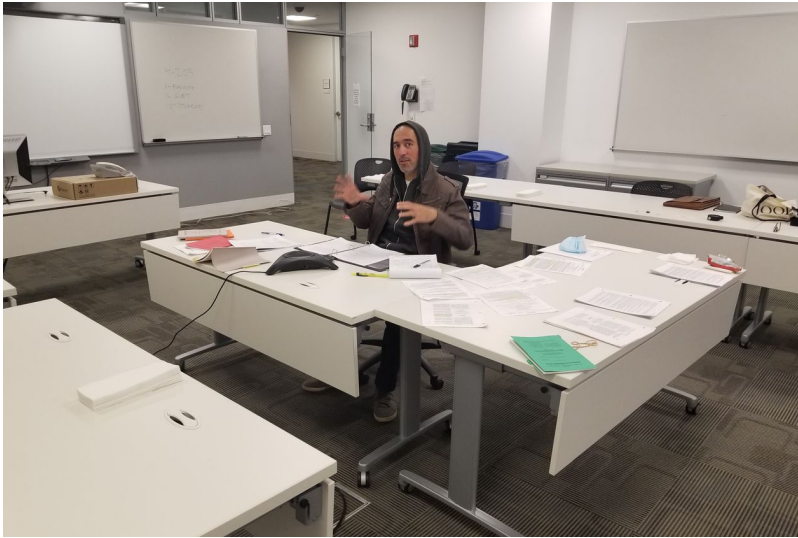
PHOTO: JEFF HARRIS

“Any opportunity to argue before the Supreme Court was the opportunity of a lifetime,” Ms. Harris said. “I’m a silver-lining kind of person.”

Ramzi Kassem, a professor at the City University of New York School of Law, had counted on appearing before the justices in person in March, wearing a business suit, to argue on behalf of Muslim men who sued Federal Bureau of Investigation agents, alleging religious-freedom infringements.

That isn't how it worked out.

“I do stake the claim of being the first person to have argued a case before the U.S. Supreme Court from Queens in a hoodie,” said Mr. Kassem, whose argument was delayed until October.



Ramzi Kassem argued his case before the Supreme Court from a law school classroom, wearing a hoodie.

PHOTO: STEVE KATZ

Although the wardrobe choice was mostly about comfort, he said, he hoped a court artist's sketch showing his attire during the argument—commissioned and published by the SCOTUSBlog website—could expand law students' ideas about who can appear before the Supreme Court.

Sean Marotta, who represented Ford Motor Co. before the high court in October, experimented with wearing a suit during a moot-court practice session.

“Some people feel empowered wearing a business suit,” he said. But during his practice session, he said, “I felt like a guy in a suit yelling at a speakerphone.” On the day of the hearing, he wound up wearing a red pullover shirt.

SHARE YOUR THOUGHTS

What's the biggest problem you've encountered trying to do your job from home? Join the conversation below.

For Mr. Katyal, the idea of ditching his suit jacket or necktie was unthinkable. He has worn the same lucky set of clothes for all of his appearances before the court, beginning with his first oral argument 15 years ago.

Those clothes—a tie and socks given to him by his mother and an inexpensive suit he bought over the internet—were what he wore for his first work-from-home hearing in November.

“I did feel that I can’t be thinking of this as just Neal-sitting-in-his-office,” Mr. Katyal said.

In December, André Bélanger, a first-time Supreme Court advocate, represented a Louisiana inmate before the high court in a case about jury verdicts.

“One of the things I learned early on with the Covid restrictions is that I practice law better when dressed as a lawyer than when dressed as a guy going to Home Depot, ” he said.



André Bélanger made his Supreme Court argument from a replica courtroom, complete with a portrait of each justice.

PHOTO: JAMES KNIPE

Mr. Bélanger hewed to the normal routine. For the oral argument, he traveled from his home in Louisiana to Washington, where a law firm hosted him. The firm had set up a replica courtroom, complete with a portrait of each justice placed atop a long bench according to the real-life seating chart, which is based on seniority.

A colleague volunteered to help Mr. Bélanger stay on track during the hearing by aiming a red laser pointer at the justice who was questioning him. Mr. Bélanger declined the offer.

Write to Matt Grossman at matt.grossman@wsj.com

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