

## LAWYER LIMELIGHT: JOSHUA NEWCOMER

By Emily Jackoway | April 5, 2022 | Lawyer Limelights

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Attorney **Joshua Newcomer** says his success as a litigator is rooted in his ability to see the human aspect of complicated financial disputes. Behind corporations are real people with real problems, explains Newcomer, who has wielded this approach to great success for both plaintiffs and defendants as the Managing Principal of McKool Smith's Houston office.

"We have this human interaction that a lot of people forget exists when they talk about complex litigation," he says.

Among his many notable cases, Newcomer successfully defended the government of Antigua and Barbuda in two RICO class actions alleging the government's involvement in the \$8B Ponzi scheme run by R. Allen Stanford. He also defended Zachry construction companies against fiduciary duty and fraudulent transfer claims resulting from the construction of a billion-dollar toll road.

Newcomer's passion for justice has taken him outside the world of financial litigation. For more than a decade he has acted as an attorney and board member for nonprofit organization Freedom Now, which

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**Lawdragon:** So, walk me through your career path. You were at Hogan Lovells, and then you joined McKool Smith in 2013, right?

**Joshua Newcomer:** That's right. In 2013, a partner I worked closely with at Hogan Lovells decided to leave and come to McKool Smith, so I jumped at the opportunity.

**LD:** What do you enjoy about McKool Smith's environment?

**JN:** It's a wonderful firm. All the attorneys that I've met here are good people first and foremost, and they are invested in advancing your career as a trial attorney.

What drew me to McKool Smith was the opportunity to get a real trial practice going. As much as I had a great career developing at Hogan Lovells, it is a large, international law firm, and McKool Smith offered a different profile where I felt I could take a bet on myself and expand my practice.

**LD:** Absolutely. How did you decide you wanted to become a lawyer?

**JN:** In hindsight, I should have known all along. I did all the legal-adjacent activities in high school, like mock trial. I've always been interested in our society, our governmental institutions, and in that civic aspect of what it means to live in America.

I also had a real dedication to science. I actually worked as an intern for the National Cancer Institute for a while. And then, when I went to Penn, I started undergrad as a biochemistry major.

**LD:** What happened to change your mind?

**JN:** Midway through school, I looked up from the microscope one day and said, "While this one obscure chemical pathway I'm studying is very interesting, I don't want to be so myopic for my career." So, I decided to go more of the social science route and became a history major, which, again, has that societal bent to it. From there, I took a couple other turns and then started law school.

**LD:** How did you get into your specific practice area?

**JN:** It happened organically as my career has grown, particularly as I came over here to McKool Smith.

I have always been interested in the trial aspect of litigation. I like having that pressure. It's make it or break it being in that spotlight. As stressful as it can be, it's also the part of the law that I live for.

**LD:** It's thrilling.

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I really started to develop a niche working with post-bankruptcy trustees and other clients in the financial space related to failed companies. I'm not a bankruptcy lawyer, but a lot of company failures result in that type of litigation.

**LD:** What do you enjoy about it?

**JN:** I think it goes back to my business consulting days, which was my job before I became a lawyer. Back then, I liked the analytical aspect of my work. There is a logic system associated with the ins and outs of money and how it flows. I learned to read balance sheets and cash flow statements, to perform discounted cash flows, and to understand key financial transactions, and, in my work now, there are a lot of aspects to the businesses of our clients that are impacted by those.

But what makes the practice of law interesting is that all our clients are real people. Even for big companies, the in-house counsel we work with are people who have their own concerns and their own issues. And their internal clients are people who are running these companies.

**LD:** Absolutely. Would you say that attitude impacts your style in court?

**JN:** Perhaps. I'd say that my style is relatively even keeled. I am not bombastic – my approach is more matter of fact. You have to be somewhat entertaining, but I just don't have the personality to be flamboyant. What I can deliver is just cold, hard logic.

Because of how I grew up, I can look jurors and the judge in the eye and know that we have a shared human experience that I think people can relate to. Or I hope so.

**LD:** What do you mean by how you grew up?

**JN:** Well, I grew up in middle-class America. My father was a police officer and investigator. My mom was a preschool teacher and director. So, frequently when you have jurors looking at sharp suits in the courtroom, they're thinking big money and a lot of wealth and power. But that's not the background I come from. I've been successful now, but who I am was born and bred by my parents and my family. That sticks around, and I hope it's relatable.

**LD:** Absolutely. Especially when your work is with such big companies in high-stakes litigation, it's good to be able to stay grounded.

Looking into your past cases, tell me about the R. Allen Stanford case.

**JN:** So, Stanford managed one of the largest Ponzi schemes in the nation's history.

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It was a fascinating case to work on because we got to see the inner workings of a small island government in the Caribbean. Again, it goes back to the people: There were real people there who were trying to do the right thing, and it was our job to help them navigate the U.S. legal system.

We got to work with great witnesses who helped testify against Stanford in the criminal investigation. There were victims who lost all their savings or a lot of money, so it was really a tragic case. We also fended off class actions against the government of Antigua and Barbuda. In particular, I successfully argued an appeal to the Fifth Circuit of a motion to dismiss based on sovereign immunity.

**LD:** I can imagine. Are there any other cases that have really stuck with you?

**JN:** I just wrapped up a fascinating case representing Zachry against fraudulent transfer and breach of fiduciary duty claims arising out of a billion dollar public-private partnership that had a number of complex legal issues that we got to explore, and it really allowed me to get to know the legal and business teams at Zachry in defending that case.

But, I will go back a little further in time as well. A few years back, we handled a big case related to a Ponzi scheme that focused on financial litigation and fraud: the Lee Farkas Ponzi scheme.

Lee Farkas ran this Ponzi scheme in Florida related to a mortgage lender, TBW, and we represented Freddie Mac against TBW's auditor, Deloitte. It was a fascinating case; it was highly complex due to accounting and auditing practices at that time. It also had some of the more interesting aspects of a case, like deposing people in federal prison, that you don't get to do every day in our profession.

**LD:** Tell me about your work with the nonprofit Freedom Now. What do you do within that organization?

**JN:** Freedom Now is really all about why we all got into law, right? To do good.

I'm now on the board, but I actually started just working cases for them back when I was with Hogan Lovells more than a decade ago. They are an entity dedicated to freeing prisoners of conscience who've been wrongfully imprisoned internationally. They're being imprisoned in other countries for exercising rights that are fundamental: freedom of religion, speech, expression, assembly and press.

We represent people who have been imprisoned wrongfully in violation of their freedoms. So, we appeal to the UN Working Group on Arbitrary Detention, the Human Rights Commission, all of these international bodies to attempt to get binding or semi-binding legal opinions that a foreign government has detained somebody arbitrarily. Then we use those opinions to effectively advocate for our clients wherever we can. Whatever we think the pressure points are for that country, we use them to lobby to attempt to get our clients free from their wrongful detention.

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**JN:** There are a couple of indispensable things that I've had in my career that I think have been immeasurably helpful.

First, do another job first. What I mean by that is doing an office job. I did business consulting. It doesn't have to be that; it can be anything.

But look, in our profession, particularly if you're going to do complex commercial litigation, it's a serious job. You're in an office, and you need to know how to manage those dynamics in a way that can be a tough experience if you haven't worked before. So, I would encourage everybody to have an office job before entering complex commercial litigation.

Then, it's a common refrain at this point, but I found my federal clerkships so helpful. Setting aside the substance of the work I did, they just provided an insight into how judges and chambers really work.

In complex commercial litigation, so many things don't get to trial these days. You have to understand how judges are going to view the case and how their clerks are going to view things to really be successful with your research and writing at an early age.

Lastly, take care with your client relationships. You have to get to know them personally, because, like I said, they're people who have feelings about the case in light of their own interests and goals. You have to be able to understand the attorney-client relationship dynamics at play.



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